IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LEAH JIMMIE, JOSETTE HALECHKO, LEWIS BOWERS, and JANICE SLATER, by and through their next friend, Carl Mosier; RONALD PEARSON and WILLIAM SACKS, by and through their next friend, Connie Hammann; EDWARD NAUSS and BENJAMIN PERRICK, by and through their next friend, Akhnaton Browne, on behalf of themselves and all others similarly situated,	
Plaintiffs,	Filed via ECF System
v.	Civil Action No. 3:09-cv-1112-TIV
DEPARTMENT OF PUBLIC WELFARE OF THE COMMONWEALTH OF PENNSYLVANIA and ESTELLE B. RICHMAN, in her official capacity as Secretary of Public Welfare of the Commonwealth of Pennsylvania,	Class Action (Judge Vanaskie)
Defendants.	

BRIEF IN SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR CLASS CERTIFICATION

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INTRODUCTION

Plaintiffs, through their counsel, submit this Brief in support of their Unopposed Motion for Class Certification. Plaintiffs respectfully request that the Court certify this case to proceed on behalf of the following class:

> All individuals with mental retardation who are institutionalized in state psychiatric facilities and who are not subject to the jurisdiction of the criminal courts.

The criteria of Federal Rules of Civil Procedure 23(a) and 23(b)(2) are satisfied in this case, making class certification appropriate.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs Leah Jimmie, Josette Halechko, Lewis Bowers, Janice Slater, Ronald Pearson, William Sacks, and Edward Nauss are individuals with mental retardation who are institutionalized in Pennsylvania's state psychiatric hospitals.[1] Compl. ¶¶ 25, 26, 30, 31, 35, 36, 41, 42, 46, 47, 51, 52, 56, 57. Plaintiffs filed this class action lawsuit to challenge the actions and inactions of Defendants, the Department of Public Welfare and the Secretary of Public Welfare (collectively, DPW), for failing to offer and provide appropriate mental retardation services in the most integrated setting appropriate to their needs, for failing to provide appropriate habilitation services, and failing to provide mental health services

[1] Plaintiff Benjamin Perrick died in Norristown State Hospital on June 15, 2009, as a result of choking to death on a tuna sandwich. *See* Notice of Death filed June 24, 2009; Meek Decl. ¶ 6.

adapted so that people with mental retardation can benefit from their services. *Id.* ¶¶ 112, 113, 114, 119, 120, 121, 123, 124.

The Mental Health and Retardation Act of 1966 (MH/MR Act), 50 P.S. §§ 4101-4704, requires DPW "to assure within the State the availability and equitable provision of adequate mental health and mental retardation services for all persons who need them …" 50 P.S. § 4201(1). Consistent with the requirements of the MH/MR Act, DPW operates seven state psychiatric hospitals located throughout the Commonwealth in order to serve and treat individuals with mental illness. Compl. ¶¶ 68, 69. There are approximately 115 individuals with a diagnosis of mental retardation that are institutionalized in the seven state psychiatric hospitals who are not subject to the jurisdiction of the criminal courts. *Id.* ¶ 70. While mental illness is treated medically, mental retardation is not a medical problem and is treated by habilitation. *Id.* ¶¶ 72, 73. Habilitation assists individuals to acquire, maximize and maintain skills for self-care, social functioning, and functioning in their environment. In contrast to the medical model used to treat individuals with mental illness, habilitation requires individualized, interdisciplinary evaluations and treatment by staff trained in a developmental model. *Id.* ¶ 73. Habilitation should be provided in as integrated a setting as possible so that individuals have the opportunity to learn by observation and participation in every day activities. In order to avoid regression and loss of skills, habilitation must be provided

constantly to the individual. *Id*. ¶ 73. None of the Plaintiffs receive habilitation services. *Id*. ¶ 27, 32, 38, 43, 48, 53, 58.[2]

To benefit from mental health services, people with a dual diagnosis of mental retardation and mental illness must be provided with those services in a manner that takes into consideration their intellectual disabilities. Compl. ¶ 76. Failure to provide meaningful access to mental health services by adapting those services to their intellectual disabilities makes Plaintiffs and putative class members more likely to be subject to longer institutional stays or recurrent psychiatric readmissions. *Id.* ¶ 76. The average length of stay for individuals with mental retardation in state psychiatric hospitals exceeds 10 years. *Id.* ¶ 71.[3]

In sum, DPW has failed to provide Plaintiffs and putative class members with necessary and appropriate habilitation services to meet their needs, and has failed to adapt the mental health services provided at state psychiatric hospitals to individuals with intellectual disabilities. Compl. ¶¶ 27, 32, 38, 43, 48, 53, 58, 79, 80. The failure to provide appropriate habilitation and mental health services

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[2] It is difficult to provide appropriate habilitation services in state psychiatric hospitals because individuals residing in such facilities lack access to the community activities necessary for habilitation. Compl. ¶ 75.

[3] Plaintiffs have had varying lengths of stay. For example, Plaintiff Slater is only 19 years of age, but has already spent 11 months institutionalized in a state hospital. Compl. ¶¶ 41, 42, 43. Plaintiff Bowers, 43 years of age, has spent the last 15 years in a state hospital *Id*. ¶ ¶ 35, 36, 37, 38. The now-deceased Plaintiff Perrick spent more than 50 years in a state hospital. *Id*. ¶ 62.

constitutes a substantial departure from professional judgment and deprives the Plaintiffs and putative class members of the minimally adequate training necessary to assure their safety and freedom from unnecessary restraints in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution (Due Process Clause). *Id.* ¶¶ 79, 80, 123. In addition, DPW's failure to adapt its mental health services so that state hospital residents with mental retardation can benefit from the services violates the Americans with Disabilities Act (ADA) and Rehabilitation Act of 1973 (RA). *Id.* ¶¶ 114, 121.

In addition, Plaintiffs and many of the putative class members, with appropriate services and supports, could live in more integrated settings than state psychiatric facilities. Compl. ¶ 81. Many of the Plaintiffs and putative class members desire a chance to live in the community and have been determined by Defendant's treatment professionals to be appropriate for discharge to community mental retardation services. *Id.* ¶¶ 28, 29, 33, 34, 39, 40, 45, 49, 50, 54, 55, 59, 60, 82. Yet, these individuals remain institutionalized.[4] Plaintiffs and many of the putative class are not opposed to discharge to the community, as long as

[4] Those Plaintiffs and many putative class members who have not been determined by treatment professionals to be appropriate for discharge have not received evaluations that accord with professional judgment because the staff in state psychiatric hospitals are not qualified to assess individuals with mental retardation for receipt of appropriate community-based mental retardation services. Compl. ¶ 84.

appropriate services and supports are provided, but have not been offered appropriate community mental retardation services. *Id.* ¶¶ 85, 86.[5] Since most community-based mental retardation services are funded through the joint federal-state Medicaid program, the Commonwealth pays only about 37 percent of the approximately $100,000 average cost of providing community-based mental retardation services. Compl. ¶¶ 94, 96, 97. In contrast, for most residents of state psychiatric hospitals, the Commonwealth must pay 100% of the costs, which average approximately $208,000 per person annually. *Id.* ¶¶ 91, 92, 97. The cost of serving Plaintiffs and putative class members in the community is therefore less than the cost to Defendant for keeping these individuals institutionalized. *Id.* ¶ 104. Despite the lower costs of serving Plaintiffs and putative class members through the community mental retardation system and DPW's significant expansion of community mental retardation services for many other individuals, DPW has not offered such community alternatives to many state hospital residents. *Id.* ¶¶ 101-104.[6] Moreover, DPW has no viable integration plan – with specific timelines and

[5] The putative class members that are currently opposed to discharge to the community may not be familiar with community services and supports that could be provided. If they were provided with information and educated about their options, they might not be opposed to discharge. Compl. ¶ 86.

[6] DPW's policies and practices undermine any effort to secure community mental retardation services for Plaintiffs and putative class members. For example, DPW's process to identify people on the waiting list for community mental

benchmarks – to develop and provide community alternatives to Plaintiffs and putative class members, Compl. ¶ 101, even though the Third Circuit held more than four years ago that the ADA and RA require DPW to have such plans for individuals who are unnecessarily institutionalized. Compl. ¶ 85; *Frederick L. v. Dep't of Public Welfare*, 422 F.3d. 151, 158-59, 160 (3d Cir. 2005).

DPW's continued unnecessary segregation of and concomitant failure to offer community alternatives to those Plaintiffs and putative class members who are appropriate for and not opposed to discharge violates the ADA and RA. Compl. ¶¶ 112, 119. DPW also violates the ADA and RA by using methods of administration that subjects Plaintiffs and putative class members to discriminatory unnecessary segregation, including, *inter alia*, failing to provide them with access to effective case management and failing to have a viable integration plan to provide community alternatives for state hospital residents with mental retardation. *Id.* ¶¶ 113, 120. In addition, DPW's failure to implement community placement recommendations for Plaintiffs and putative class members also violates the Due

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retardation services and to prioritize access to such services is not effective for many of these individuals. *See* Compl. ¶¶ 98-100. For example, some of these individuals (including Plaintiff Slater and now-deceased Plaintiff Perrick) have not been assessed for placement on the waiting list at all. *Id.* ¶ 100(a). Others who are on the waiting list are not given priority even though they are unnecessarily institutionalized. *See Id.* ¶¶ 113(b), 120(b). Moreover, DPW does not assure that these individuals have access to effective case management services that are necessary to identify and advocate for community alternatives. *Id.* ¶¶ 90, 113(c), 120(c).

Process Clause. *Id.* ¶¶ 83, 124.

Plaintiffs seek appropriate declaratory and injunctive relief to remedy DPW's violations of the ADA, RA, and Due Process Clause. Compl. ¶ 125.

QUESTIONS INVOLVED

Should this case be certified to proceed as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2)?

ARGUMENT

I. THIS ACTION SATISFIES THE PREREQUISITES OF FEDERAL RULE OF CIVIL PROCEDURE 23(a).

Federal Rule of Civil Procedure 23(a) has four requirements that must be satisfied in order for a class action to be maintained:

> (1) the class must be so numerous that joinder of all members is impracticable;
>
> (2) there must be a question of law or fact common to the class;
>
> (3) the claims or defenses of the representative parties must be typical of the claims or defenses of the class; and
>
> (4) the representative parties must fairly and adequately protect the interests of the class.

This case satisfies each of these requirements.

A. The Proposed Class Is So Numerous That Joinder of All Members Is Impracticable.

Federal Rule of Civil Procedure 23(a)(1) requires that a class be so

numerous that joinder of the class members would be impracticable. "Impracticability of joinder does not mean impossibility, but rather that the difficulty or inconvenience of joining all members of the putative class calls for class certification." *In re Tel-Save Sec. Litigation*, Civil Action No. 98-3145, 2000 WL 1005087 at *4 (E.D. Pa. July 29, 2000)(Exh. C); *accord Cureton v. National Collegiate Athletic Ass'n,* Civil Action No. 97-131, 1999 WL 447313 at *4 (E.D. Pa. July 1, 1999)(Exh. D). "No minimum number of plaintiffs is required to maintain a suit as a class action, but generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met." *Stewart v. Abraham*, 275 F.3d 220, 226-227 (3d Cir. 2001), *cert. denied*, 536 U.S. 958 (2002); *see also Massie v. U.S. Dep't of Housing & Urban Dev.*, 246 F.R.D. 490, 493 (W.D. Pa. 2007) (numerosity satisfied by 52 class members); *Serventi v. Bucks Technical High School*, 225 F.R.D. 159, 165 (E.D. Pa. 2004) (numerosity satisfied by at least 47 class members).

In the instant case, DPW provided plaintiffs' counsel with a list of the individuals diagnosed with mental retardation who are institutionalized in Pennsylvania state psychiatric hospitals as of October 31, 2008 (redacted list attached as Exh. B). Declaration of Robert W. Meek ¶ 2 (Exh. A). There are 121 individuals on the list, 115 of whom are not subject to the jurisdiction of the criminal courts. Joinder of such a large number of individuals is by itself

impracticable.

Other factors that weigh in favor of class certification are class dispersion, ease of identifying the class members, and the ability of individual class members to pursue individual cases. *See Robidoux v. Celani,* 987 F.2d 931, 936 (2d Cir. 1993); *Cureton,* 1999 WL 447313 at *6 (E.D. Pa. July 1, 1999); *Metts v. Richman,* Civil Action No. 97-4123, 1997 WL 688804 at *2 (E.D. Pa. Oct. 24, 1997)(Exh. E). Here, the members of the class are located in seven psychiatric hospitals dispersed throughout Pennsylvania. Due to the time and financial resources required to pursue relief, as well as the class members' disabilities, it is highly unlikely that members of the class will file individual lawsuits. Indeed, individual litigation would result only in the most assertive plaintiffs receiving needed services instead of in the systemic relief that is required to address the issues raised in this action. These factors, along with the size of the class, make joinder impracticable. Therefore, the Rule 23(a)(1) requirement of numerosity is satisfied.

B. There Are Questions Of Law And Fact Common To The Class.

Rule 23(a) requires that there be questions of law and fact common to the class. The class members need not have identical claims, but merely common claims. *Hassine v. Jeffes*, 846 F.2d 169, 176-77 (3d Cir. 1988). Plaintiffs are not required to show that all questions of law and fact are common. *In re Flat Glass*

Antitrust Litigation, 191 F.R.D. 472, 478 (W.D. Pa. 1999). "The commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class. Because the requirement may be satisfied by a single common issue, it is easily met." *Baby Neal v. Casey,* 43 F.3d 48, 56 (3d Cir. 1994) (citations omitted). Injunctive actions very often present common questions that satisfy Rule 23(a)(2) because there is no need for an inquiry into appropriate damage awards. *Baby Neal,* 43 F.3d at 57. Class relief is "especially appropriate" where Plaintiffs seek injunctive relief against defendants engaged in a common course of conduct affecting the entire class. *Bacal v. SEPTA,* Civil Action No. 94-6497, 1995 WL 299029 at *3 (E.D. Pa. May 16, 1995)(Exh. F).

This case presents claims for declarative and injunctive relief to remedy Defendants' failure to comply with the ADA, RA, and the Due Process Clause. Several questions of fact and law common to the named Plaintiffs and members of the putative class arise, including:

a. whether Defendants have failed to offer and provide services and supports in more integrated settings to class members who are not opposed to discharge and, if so, whether that failure violates the integration mandates of the ADA and RA;

b. whether Defendants have used methods of administration

that have the effect of discriminating against individuals with disabilities and, if so, whether doing so violates the ADA and RA;

c. whether Defendants have failed to modify their policies, practices, and procedures to adapt the mental health treatment provided at state hospitals to meet the needs of individuals with mental retardation and, if so, whether such failure violates the ADA and RA;

d. whether Defendants have failed to provide habilitation services to state psychiatric hospital residents with mental retardation and, if so, whether such failure violates the Due Process Clause;

e. whether Defendants have failed to adapt the mental health services they provide in state psychiatric hospitals so that individuals with mental retardation can benefit from it and, if so, whether such failure violates the Due Process Clause;

f. whether Defendants have failed to provide community mental retardation services to state psychiatric hospital residents with mental retardation whose qualified treatment professionals have recommended such services and, if so, whether such failure

violates the Due Process Clause.

"Courts appear to consider 'comm on' such challenges based on all eged violations of statutory standards." *Baby Neal*, 43 F.3d at 56-57. This case is based on common legal questions and seeks only declaratory and injunct ive relief. Accordingly, Rule 23(a)(2) is satisfied. *Chiang v. Veneman*, 385 F.3d 256, 265-266 (3d Cir. 2004) (finding comm onality in case involving various discrim ination claims); *Maldonado v. Richman,* 177 F.R.D. 311, 320-21 (E.D. Pa. 1997) (finding commonality satisfied where ther e were common legal questions), *aff'd on other grounds*, 157 F.3d 179 (3d Cir. 1998), *cert denied*, 526 U.S. 1130 (1999).

C. <u>Plaintiffs' Claims Are Typical of Class Members</u>.

Typicality is satisfied if the Plaintiffs' claims arise from the same course of conduct that gave rise to the claim s of other class mem bers, and the claim s are based on the same legal theory. *See Stewart v. Abraham,* 275 F.3d at 228; *Baby Neal,* 43 F.3d at 58; *T.B. v. School Dist. of Philadelphia,* Civil Action No. 97-5453, 1997 WL 786448, at *4-*5 (E.D. Pa. Dec. 1, 1997)(Exh. G); *Armstrong v. Davis,* 275 F.3d 849, 868-69 (9th Cir. 2001) *cert. denied*, 123 S. Ct. 72 (2002).

Claims that challenge conduct that affects the named Plaintiffs as well as the class members, such as the claims in the instant case, "usually satisfy the typicality requirement irrespective of the varying fact patterns underlying t he individual claims ... Actions requesting declarat ory and injunctive relief to remedy conduct

directed at the class clearly fit this mold. " *Baby Neal* , 43 F.3d at 58 (citations omitted); *accord Stewart v. Abraham* , 275 F.3d at 227. "Rul e 23 does not require that the representative plaintiff have endured precisely the same injuries that have been sustained by class m embers, only that the harm co mplained of be *common* to the class…" *Hagan v. Rogers* , 570 F. 3d. 146, 158 (3d Cir. 2009)(emphasis in original).

Here, Plaintiffs' claims are typical of those of the class memb ers since they arise from the same policies and practices a nd course of conduct as those that give rise to the clai ms of the class and are based on the same legal theories, *i.e.*, Defendants' discrimination against Plaintiffs and putative class members by failing to offer and provi de both m ental health treatment that ta kes account of thei r intellectual disabilities, by faili ng to deliver services in the m ost integrated setting appropriate to their needs, and Defendant's violat ion of Plaintiffs' and putative class members due process rights by, *inter alia*, failing to provide t hem with habilitation services and adapted mental health services in accordan ce with the dictates of sound professi onal judgment, and failure to im plement discharge recommendations in accordance with professional judgment.

Plaintiffs' action for declarator y and injunctive relief to remedy Defendant 's legal violations is typical of the putativ e class since it is "' based on patterns and practices not special or unique to [Plainti ffs,] [and] a signifi cant number of other

members of the class have been similarly victimized by the same patterns or practices.'" *Cureton,* 1999 WL 447313 at *8 (quoting *Weiss v. York Hosp.,* 745 F.2d 786, 809 n.36 (3d Cir. 1984)). Although there are differences in underlying fact patterns, Plaintiffs and members of both classes are all "victims of the same systemic failures." *T.B.,* 1997 WL 786448 at *5. Even though each class member may suffer a different injury as a result of the practice and conduct of DPW, "a claim framed as a violative practice can support a class action embracing a variety of injuries so long as those injuries can all be linked to the practice." *Baby Neal,* 43 F.3d at 63; *accord General Tel. Co. of the Southwest v. Falcon,* 457 U.S. 147, 159 n.15, (1982).

D. The Named Plaintiffs Will Fairly And Adequately Represent The Interests Of The Class.

Rule 23(a)(4) requires that the named Plaintiffs fairly and adequately protect the interests of the class. The inquiry that a court should make regarding the adequacy of representation includes a determination that: 1) the named Plaintiffs have the ability and incentive to represent the claims of the class vigorously, 2) Plaintiffs have obtained adequate counsel, and 3) there is no conflict between the Plaintiffs' individual claims and those asserted on behalf of the class. *Hassine,* 846 F.2d at 179. With respect to this requirement, "the burden is apparently on the party opposing certification to demonstrate that the representation is inadequate."

Cureton 1999 WL 447313 at *8.

Plaintiffs, through their next friends, have demonstrated their interest in fully and vigorously pursuing the claims set forth in the Complaint. Their incentive is clear. They all have immediate or ongoing needs for mental health treatment that takes into account their intellectual disabilities and mental retardation services and have not been able to access such treatment and services. Named Plaintiffs and class members are all subject to the same risk of harm and seek the same declaratory and injunctive relief to end DPW's violations of the ADA, RA, and the Due Process Clause. The Plaintiffs and the putative class members seek relief that will benefit the class as a whole, and there are no individual claims. "Because the plaintiffs seek the same injunctive relief as all members of the class, the court 'can find no potential for conflict between the claims of the complainants and those of the class as a whole.'" *Metts*, 1997 WL 688804 at *4 (quoting *Hassine*, 846 F.2d at 179).

Plaintiffs' counsel, Robert W. Meek, Mark J. Murphy, Robin Resnick, and Carol Horowitz of the Disability Rights Network of Pennsylvania (DRN), formerly known as the Disabilities Law Project, are qualified and experienced in federal class action litigation, and the rights of individuals with disabilities, the ADA, the RA, and the Constitution. *see,* Decl. Robert W. Meek ¶¶ 3-6. These attorneys have represented people with disabilities in certified class actions. *see, e.g.*,

Frederick L. v. Dep't of Public Welfare, 364 F.3d 487, 489 n.1 (3d Cir. 2004) (noting certification of class of state hospital residents in ADA lawsuit represented by Robert W. Meek, Mark J. Murphy, and Robin Resnick). *Serventi v. Bucks Technical High School* 225 F.R.D. 159, 165-66 (E.D.Pa. 2004) ("the Disabilities Law Project [and co-counsel] are qualified and experienced in federal class action litigation involving [the ADA and Section 504]"); *Richard C. v. Snider,* Civil Action No. 89-2038, 1993 WL 757634 at *5 (W.D. Pa. June 22, 1993) (finding Mark Murphy of the Disabilities Law Project "extremely qualified and well able to conduct the proposed litigation.")(Exh. H); *Kathleen S v. Dep't of Public Welfare*, Civil Action No. 97-6610, 1998 WL 83973 at *3 (E.D. Pa. Feb. 25, 1998) (Robert Meek, Robin Resnick, and Mark Murphy of the Disabilities Law Project "are qualified, experienced civil rights litigators")(Exh. I); *Anderson v. Dep't of Public Welfare,* 1 F. Supp.2d 456, 462 (E.D. Pa. 1998) (finding the Disabilities Law Project to be "qualified, experienced, and generally able to conduct the proposed litigation"); *Metts,* 1997 WL 688804 at * 2. (finding Mark Murphy of the Disabilities Law Project adequate to represent class);

For all of the reasons stated above, Plaintiffs have satisfied the final requirement of Rule 23(a).

II. THIS ACTION IS MAINTAINABLE AS A CLASS ACTION UNDER RULE 23(b) SINCE DEFENDANT HAS ACTED OR REFUSED TO ACT ON GROUNDS

GENERALLY APPLICABLE TO THE CLASS.

In addition to meeting the prerequisites of Rule 23(a), a party seeking class certification must fall in at least one of the Rule 23(b) categories. Fed. R. Civ. P. 23 (b). Rule 23(b)(2) allows a class action to be maintained if:

> the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole[.]

Fed. R. Civ. P. 23(b)(2). "[T]his requirement is almost automatically satisfied in actions primarily seeking injunctive relief. 'When a suit seeks to define the relationship between the defendant(s) and the world at large, ... (b)(2) certification is appropriate.'" *Baby Neal*, 43 F.3d at 58 (quoting *Weiss v. York Hospital*, 745 F.2d at 811). "[I]t is generally recognized that civil rights actions seeking relief on behalf of classes…normally meet the requirements of Rule 23(b)(2). *Stewart v. Abraham*, 275 F.3d at 228; *accord Baby Neal*, 43 F.3d at 59. "The writers of Rule 23 intended that subsection (b)(2) foster institutional reform by facilitating suits that challenge widespread rights violations of people who are individually unable to vindicate their own rights." *Baby Neal*, 43 F.3d at 64.

This action readily meets the requirements of Rule 23(b)(2). Plaintiffs, through this case, seek to define DP W's obligations under the ADA, RA, and Due Process Clause to individuals with mental retardation who are confined in state

psychiatric hospitals. Plaintiffs seek solely declaratory and injunctive relief to assure that DPW implements its federal obligations to assure that these individuals receive appropriate mental health and mental retardation services in the psychiatric hospitals and that they have access to services in integrated, community settings when appropriate. Courts in this Circuit and elsewhere typically have certified under Rule 23(b)(2) cases, such as this, that challenge public officials' policies or practices relating to persons who are institutionalized and that seek injunctive relief. *See, e.g., Frederick L.*, 364 F.3d at 489 (noting certification of class of Norristown State Hospital residents who brought ADA and RA claims to challenge their unnecessary institutionalization); *Goldy v. Beal*, 429 F. Supp. 640, 649 (M.D. Pa. 1976) (three-judge court) (certifying class of persons involuntarily committed to institutions); *Long v. Benson*, Civil Action No. 4:08cv26-RH/WCS, 2008 WL 4571904 at *3 (N.D. Fla. Oct. 14, 2008) (certifying class of nursing facility residents in ADA claim that challenged their unnecessary institutionalization)(Exh. J); *Williams v. Blagojevich*, Civil Action No. 05 C 4673, 2006 WL 3332844 at *5 (N.D. Ill. Nov. 13, 2006) (certifying class of people with mental illness who brought ADA and RA claims to challenge their unnecessary institutionalization)(Exh. K); *Kathleen S.*, 1998 WL 83973 at *3 (certifying class in ADA case challenging unnecessary institutionalization of persons at Haverford State Hospital); *Richard C.*, 1993 WL 757634 at *4-*5 (confirming certification of

class of persons in state-operated m ental retardation institution). This case, too, presents a paradigmatic lawsuit for class certification.

CONCLUSION

For all of the above stated reasons, Plai ntiffs respectfully request that this Court certify this case to proceed as a class action.

Respectfully submitted,

Dated: September 2, 2009

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LOCAL RULE 7.8(B)(2) CERTIFICATE

I certify under penalty of perjury that the Brief in Support of Plaintiffs' Unopposed Motion for Class Certification complies with Local Rule 7.8(b)(2) of this Court because, based on the word processing system used to prepare the Brief, Microsoft Word, the Brief contains 4130 words (excluding the Table of Contents and Table of Citations).

Dated: September 2, 2009

/s/ Robert W. Meek
Robert W. Meek