

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS DWIGHT WILLIAMS, et al (b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) PLEASE SEE ATTACHED	DEFENDANTS THE CITY OF PHILADELPHIA, et al County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known) PLEASE SEE ATTACHED
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) ☐ 1 U.S. Government Plaintiff ☐ 2 U.S. Government Defendant ☒ 3 Federal Question (U.S. Government Not a Party) ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF ☐ 1</td> <td style="width:10%;">DEF ☐ 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;">PTF ☐ 4</td> <td style="width:10%;">DEF ☐ 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF ☐ 2</td> <td>DEF ☐ 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td>PTF ☐ 5</td> <td>DEF ☐ 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF ☐ 3</td> <td>DEF ☐ 3</td> <td>Foreign Nation</td> <td>PTF ☐ 6</td> <td>DEF ☐ 6</td> </tr> </table>	Citizen of This State	PTF ☐ 1	DEF ☐ 1	Incorporated or Principal Place of Business In This State	PTF ☐ 4	DEF ☐ 4	Citizen of Another State	PTF ☐ 2	DEF ☐ 2	Incorporated and Principal Place of Business In Another State	PTF ☐ 5	DEF ☐ 5	Citizen or Subject of a Foreign Country	PTF ☐ 3	DEF ☐ 3	Foreign Nation	PTF ☐ 6	DEF ☐ 6
Citizen of This State	PTF ☐ 1	DEF ☐ 1	Incorporated or Principal Place of Business In This State	PTF ☐ 4	DEF ☐ 4														
Citizen of Another State	PTF ☐ 2	DEF ☐ 2	Incorporated and Principal Place of Business In Another State	PTF ☐ 5	DEF ☐ 5														
Citizen or Subject of a Foreign Country	PTF ☐ 3	DEF ☐ 3	Foreign Nation	PTF ☐ 6	DEF ☐ 6														

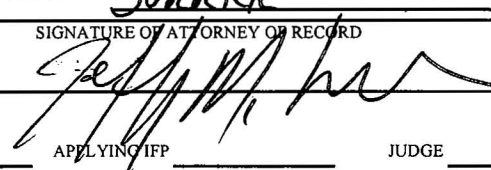
IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT ☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury	PERSONAL INJURY ☐ 362 Personal Injury - Med. Malpractice ☐ 365 Personal Injury - Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal ☐ 385 Property Damage Product Liability	FORFEITURE/PENALTY ☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 463 Habeas Corpus - Alien Detainee ☐ 465 Other Immigration Actions	BANKRUPTCY ☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	OTHER STATUTES ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☒ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence Habeas Corpus: ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)							Appeal to District Judge from Magistrate Judgment
☒ 1 Original Proceeding	☐ 2 Removed from State Court	☐ 3 Remanded from Appellate Court	☐ 4 Reinstated or Reopened	☐ 5 Transferred from another district (specify)	☐ 6 Multidistrict Litigation	☐ 7	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>42 U.S.C. § 1983</u> Brief description of cause: <u>Class action for injunctive and declaratory relief</u>
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VII. REQUESTED IN COMPLAINT:	☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ _____	CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE <u>Sunrick</u>	DOCKET NUMBER <u>08-1979</u>
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DATE 06/27/2008	SIGNATURE OF ATTORNEY OF RECORD 
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FOR OFFICE USE ONLY			
RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____ MAG. JUDGE _____

APPENDIX I

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

DWIGHT WILLIAMS, et al

CIVIL ACTION

v.

THE CITY OF PHILADELPHIA, et al :

NO. 08-1979

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (✓)

June 27, 2008

Jeffrey M. Scott

City of Philadelphia and
Louis Giorla, Commissioner
Philadelphia Prisons
~~Attorney for~~

Date**Attorney-at-law**

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EDWARD ZAMICIELI
LOUIS EUBANKS
JAMES SAUNDERS
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MARISOL LOPEZ**

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THIRD PARTY DEFENDANTS

Honorable C. Darnell Jones, II, President Judge of The First Judicial District of PA

Honorable Luois Presenza, President Judge of The Philadelphia Municipal Court

Jeffrey A. Beard, Ph.D, Secretary of Department of Corrections

**Represented by:
Unknown**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DWIGHT WILLIAMS, et al.,

Plaintiff,

vs.

**THE CITY OF PHILADELPHIA, ET
AL.**

Defendants.

:
: **CIVIL ACTION**
:
: **No. 08-1979**
:
:
:
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:
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**DEFENDANTS CITY OF PHILADELPHIA AND PHILADELPHIA PRISON
COMMISSIONER LOUIS GIORLA THIRD-PARTY COMPLAINT AGAINST THE
HONORABLE C. DARNELL JONES, II, PRESIDENT JUDGE OF THE COURT OF
COMMON PLEAS, FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, THE
HONORABLE LOUIS PRESENZA, PRESIDENT JUDGE OF THE PHILADELPHIA
MUNICIPAL COURT AND JEFFREY A. BEARD, PH.D., THE SECRETARY OF THE
PENNSYLVANIA DEPARTMENT OF CORRECTIONS**

Defendants City of Philadelphia and Philadelphia Prison Commissioner Louis Giorla, by and through their counsel, hereby file this Third-Party Complaint against The Honorable C. Darnell Jones, II, President Judge of the Court of Common Pleas of the First Judicial District of Pennsylvania, The Honorable Louis Presenza, President Judge of the Philadelphia Municipal Court and Jeffrey A. Beard, Ph.D., the Secretary of Department of Corrections. The following is averred:

JURISDICTION

1. Jurisdiction is conferred upon this Court under 28 U.S.C. Section 1331 and 28 U.S.C. Section 1367.

STATEMENT OF FACTS

2. The Municipal Defendants hereby incorporate by reference the allegations contained in plaintiff's complaint, all of which allegations are denied, as though fully set

forth at length. A copy of the Complaint is attached hereto as Exhibit "A."

3. This is a class action for injunctive and declaratory relief for the named individual plaintiffs and the putative class they represent to secure relief from the alleged unconstitutional conditions of confinement that allegedly exist in the Philadelphia Prison System ("PPS").

4. The alleged putative class consists of all persons confined to the PPS, whether pretrial detainees or convicted prisoners.

5. In the PPS, there are persons awaiting trial, convicted persons with maximum sentences of 24 months or more, persons that violated State parole and persons confined due to writ for various reasons, including but not limited to, (a) inmates who have been sentenced to terms of incarceration in state correctional facilities who are housed in the county jail (PPS) awaiting various hearings and Court appearances; (b) inmates who have been paroled from a state correctional facility by the Board of Probation and Parole and have committed an act or acts in violation of the terms of their parole and are awaiting a hearing by that Board prior to recommitment to a state facility; (c) inmates who have been paroled from a state correctional facility by the Board of Probation and Parole and have been charged with new criminal acts and are awaiting trial on those charges; (d) inmates who have been convicted of criminal offenses and placed on probation under the supervision of the Board of Probation and Parole and have committed an act or acts in violation of the terms of their probation and are awaiting a hearing by the Court of Common Pleas of Philadelphia County; (e) inmates who have been convicted of criminal offenses and placed on probation under the supervision of the Board of Probation and Parole and have been charged with new criminal offenses and are awaiting trial on the new charge; (f) inmates with sentences that qualify them for aggregations which will result in maximum sentences of 24 months or longer, thus making the prisoners eligible for confinement in a state correctional facility.

6. Under State law (42 Pa.C.S. § 9762), when the maximum sentence is two years or more, but less than five years the convicted prisoner may be committed to the Bureau of Corrections for confinement or may be committed to a county prison within the jurisdiction of the court.

7. When the maximum term of a sentence is less than two years, the convicted prisoner shall be committed to a county prison within the jurisdiction of the court "except that as facilities become available on dates and in areas designated by the Governor in proclamations declaring the availability of State correctional facilities, such persons may be committed to the Bureau of Correction for confinement." 42 Pa.C.S. § 9762 (2007).

8. The Philadelphia Court of Common Pleas and the Philadelphia Municipal Court (both part of the First Judicial District of Pennsylvania), are the only governmental bodies authorized to determine whether a convicted person is sentenced to guilt without penalty, probation, fine, partial confinement, and total confinement, 42 Pa.C.S. § 9721(a).

9. The City of Philadelphia and Commissioner Giorla have no authority to prevent a Philadelphia judge from imposing a sentence in county confinement, even where the maximum sentence is two years or more, but less than five years.

10. Likewise, the Philadelphia District Attorney's Office has no authority to impose a sentence in county confinement, even where the maximum sentence is two years or more, but less than five years. At most, the Philadelphia District Attorney's Office can recommend state confinement.

11. In the County of Philadelphia, the Philadelphia Court of Common Pleas and Municipal Courts have developed a custom, policy and practice over several decades of committing convicted persons to the Philadelphia Prison System, whose level of offense makes them eligible to serve their term of confinement in one of the many State correctional institutions.

12. As of this filing, there are over 400 inmates in the custody of the City of Philadelphia that should be confined in a state correctional facility, based on their individual sentences.

13. These inmates represent nearly 20% of the Prisons' sentenced population.

14. Neither the Prisons nor the City are reimbursed for costs associated with their care which is estimated at more than \$11,000,000.00 annually.

15. Removal of these inmates from PPS would result in a marked reduction in the Prisons budget, coupled with the availability of over four-hundred beds and reduction in the overall Philadelphia prison population.

16. Pursuant to 61 P.S. § 72, the Secretary of Corrections or designee is authorized and empowered to transfer inmates located in county prisons to the State correctional system for such reasons and upon such terms and conditions as the secretary may determine. The secretary or designee may transfer inmates in the State correctional system to the jurisdiction of a county correctional system upon such terms and conditions that the secretary or designee and the county correctional administrator determine to be in the best interests of the Commonwealth. Inmates located in a county prison may be transferred to another county prison upon such terms and conditions as the counties may determine. The Department of Corrections and county correctional facilities may contract with the Federal Government for the housing of Federal inmates in State and county correctional facilities.

17. Prior to the initiation of this lawsuit, the City of Philadelphia, through its Prison Commissioner, requested Jeffrey A. Beard, the Secretary of the Bureau of Corrections for the Commonwealth of Pennsylvania, to transfer a sufficient number of prisoners from Philadelphia County to alleviate the alleged overcrowding in the City of Philadelphia Prison.

18. Secretary Beard refused to accept the transfers as requested.

19. The failure of Jeffrey A. Beard to approve the transfer of these prisoners has caused and contributed to the increase in prison population and the use of triple celling in the Philadelphia Prison System.

20. If, assuming arguendo, the allegations contained in plaintiffs' complaint are accepted as true, then these prisoners are being subjected to overcrowded and unconstitutional conditions of confinement.

COUNT I-PROSPECTIVE INJUNCTIVE RELIEF
THE CITY OF PHILADELPHIA AND PRISON COMMISSIONER LOUIS
GIORLA V. THE HONORABLE C. DARNELL JONES, II, PRESIDENT
JUDGE OF THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA,
THE HONORABLE LOUIS PRESENZA, PRESIDENT JUDGE OF THE
PHILADELPHIA MUNICIPAL COURT

21. The City of Philadelphia and Prison Commissioner Louis Giorla hereby incorporate by reference the allegations set forth in paragraphs 1-20 as though fully set forth at length.

22. In the County of Philadelphia, the Philadelphia Court of Common Pleas and Municipal Courts have developed a custom, policy and practice over several decades of committing convicted persons to the Philadelphia Prison System, whose level of offense makes them eligible to serve their term of confinement in one of the many State correctional institutions.

23. An order of confinement by the Philadelphia Court of Common Pleas and Municipal Courts to the Philadelphia County with a maximum sentence of two but less than five years ("State prisoners") has caused the prison population in the Philadelphia Prison System to dramatically increase, resulting in prison overcrowding.

24. Historically, in the County of Philadelphia, the disposition of cases and sentences within one year from date of preliminary arraignment until sentencing results in a significant number of convictions and commitments that are eligible for both county and state commitment under 42 Pa.C.S. § 9762.

25. Of the 12,333 defendants entering the justice process in the months of March through May, 2005, an estimated 26 percent or about 3,176, had been both convicted and sentenced by the end of one year. Of those sentenced, an estimated 42 percent—or about 11 percent of the entire defendant cohort—received sentences involving confinement beyond time-served credit for those who had been detained.

26. Of the 11% or 1,357 convicted prisoners, 12% or 162 of those convicted prisoners, had a maximum sentences of 24 months or longer.

27. The continued custom, policy and practice of the judges of the Philadelphia Court of Common Pleas and Philadelphia Court Municipal Courts of committing "State" prisoners to the Philadelphia Prison System has almost quadrupled since March of 2005.

28. As of this filing, there are over 400 inmates in the custody of the City of Philadelphia that should be confined in a state correctional facility, based on their individual sentences.

29. If, assuming arguendo, the allegations contained in plaintiffs' original complaint are accepted as true, then these prisoners are being subjected to overcrowded and unconstitutional conditions of confinement by the continued custom, policy and practice of the judges of the Philadelphia Court of Common Pleas and Philadelphia Court Municipal Courts of committing "State" prisoners to the Philadelphia Prison System.

30. The City of Philadelphia and Commissioner Giorla have no authority to prevent a Philadelphia judge from imposing a sentence in county confinement, even where the maximum sentence is two years or more, but less than five years.

31. The actions of the Philadelphia Court of Common Pleas and Philadelphia Court Municipal Courts of committing "State" prisoners to the Philadelphia Prison System is a direct cause of the allegations of alleged unconstitutional conditions of confinement.

32. The Honorable C. Darnell Jones, II and The Honorable Louis Presenza have direct knowledge that the City of Philadelphia was sued for unconstitutional conditions of confinement at the Philadelphia Prison System in *Bowers v. City of Philadelphia*.

33. The Honorable C. Darnell Jones, II and The Honorable Louis Presenza have direct knowledge that the Philadelphia Prison System was and is using triple-celling to house its inmates due to the increase in prison population, allegedly subjecting the prisoners to unconstitutional conditions of confinement.

34. Despite their knowledge, it is believed that the Honorable C. Darnell Jones, II and The Honorable Louis Presenza failed to take reasonable measures to assure that those persons eligible for commitment to a state correctional facility were in fact committed to a state correctional facility.

35. If, assuming arguendo, the allegations contained in plaintiffs' original complaint are accepted as true, then these prisoners are being subjected to overcrowded and unconstitutional conditions of confinement by the continued custom, policy and practice of the judges of the Philadelphia Court of Common Pleas and Philadelphia Court Municipal Courts of committing "State" prisoners to the Philadelphia Prison System.

WHEREFORE, the City of Philadelphia and Prison Commissioner Louis Giorla respectfully request that this Court order the following classes of prisoners to be transferred and confined to a state correctional facility forthwith:

(a) inmates who have been sentenced to terms of incarceration in state correctional facilities who are housed in the county jail (PPS) awaiting various hearings and Court appearances;

(b) inmates who have been paroled from a state correctional facility by the Board of Probation and Parole and have committed an act or acts in violation of the terms of their parole and are awaiting a hearing by that Board prior to recommitment to a state facility;

(c) inmates who have been paroled from a state correctional facility by the Board of Probation and Parole and have been charged with new criminal acts and are awaiting trial on those charges;

(d) inmates who have been convicted of criminal offenses and placed on probation under the supervision of the Board of Probation and Parole and have committed an act or acts in violation of the terms of their probation and are awaiting a hearing by the Court of Common Pleas of Philadelphia County;

(e) inmates who have been convicted of criminal offenses and placed on probation under the supervision of the Board of Probation and Parole and have been charged with new criminal offenses and are awaiting trial on the new charge;

(f) inmates with sentences that qualify them for aggregations which will result in maximum sentences of 24 months or longer, thus making the prisoners eligible for confinement in a state correctional facility.

B. Reasonable attorney's fees and costs;

C. All other appropriate relief.

COUNT II- PROSPECTIVE INJUNCTIVE RELIEF
THE CITY OF PHILADELPHIA AND PRISON COMMISSIONER LOUIS
GIORLA V. JEFFREY A. BEARD, PH.D., THE SECRETARY OF
DEPARTMENT OF CORRECTIONS

36. The City of Philadelphia and Prison Commissioner Louis Giorla hereby incorporate by reference the allegations set forth in paragraphs 1-35 as though fully set forth at length.

37. As of this filing, there are over 400 inmates in the custody of the City of Philadelphia that should be confined in a state correctional facility, based on their individual sentences.

38. These inmates represent nearly 20% of the Prisons' sentenced population.

39. Neither the Prisons nor the City are reimbursed for costs associated with their care which is estimated at more than \$11,000,000.00 annually.

40. Removal of these inmates from PPS would result in a marked reduction in the Prisons budget, coupled with the availability of over four-hundred beds and reduction in the overall Philadelphia prison population.

41. Pursuant to 61 P.S. § 72, the Secretary of Corrections or designee is hereby authorized and empowered to transfer inmates located in county prisons to the State correctional system for such reasons and upon such terms and conditions as the secretary may determine. The secretary or designee may transfer inmates in the State correctional system to the jurisdiction of a county correctional system upon such terms and conditions that the secretary or designee and the county correctional administrator determine to be in the best interests of the Commonwealth. Inmates located in a county prison may be transferred to another county prison upon such terms and conditions as the counties may determine. The Department of Corrections and county correctional facilities may contract with the Federal Government for the housing of Federal inmates in State and county correctional facilities.

42. Prior to the initiation of this lawsuit, the City of Philadelphia, through its Prison Commissioner, requested Jeffrey A. Beard, the Secretary of the Bureau of Corrections for the Commonwealth of Pennsylvania, to transfer a sufficient number prisoners from Philadelphia County to alleviate the alleged overcrowding in the City of Philadelphia Prison.

43. Secretary Beard refused to accept the transfers as requested.

44. The failure of Jeffrey A. Beard to approve the transfer of these prisoners has caused and contributed to the increase in prison population and the use of triple celling in the Philadelphia Prison System and was an abuse of his discretion.

45. If, assuming arguendo, the allegations contained in plaintiffs' complaint are accepted as true, then these prisoners are being subjected to overcrowded and unconstitutional conditions of confinement, and the failure of Jeffrey A. Beard to honor the request of the Philadelphia Prison Commissioner is a cause of the alleged unconstitutional conditions of confinement within the Philadelphia Prison System.

WHEREFORE, the City of Philadelphia and Prison Commissioner Louis Giorla respectfully request that this Court to Order Jeffrey A. Beard, the Secretary of the Bureau of Corrections for the Commonwealth of Pennsylvania to transfer prisoners located in the Philadelphia Prison System to the State correctional system.

**COUNT III-CLAIM FOR FEES AND COSTS UNDER FEDERAL
COMMON LAW AND UNDER 42 U.S.C. § 1988 THE CITY OF
PHILADELPHIA AND PRISON COMMISSIONER LOUIS GIORLA V.
THE HONORABLE C. DARNELL JONES, II, PRESIDENT JUDGE OF
THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, THE
HONORABLE LOUIS PRESENZA, PRESIDENT JUDGE OF THE
PHILADELPHIA MUNICIPAL COURT AND JEFFREY A. BEARD,
PH.D., THE SECRETARY OF DEPARTMENT OF CORRECTIONS**

46. The City of Philadelphia and Prison Commissioner Louis Giorla hereby incorporate by reference the allegations set forth in paragraphs 1-45 as though fully set forth at length.

47. If the plaintiffs are deemed prevailing parties, the plaintiffs may be able to recover counsel fees under 42 U.S.C. § 1988.

48. The City of Philadelphia and Prison Commissioner allege that the Third-Party Defendants are legally responsible for the alleged overcrowding conditions of the Philadelphia Prison System.

49. As a result of the Third-Party's actions, the City of Philadelphia is entitled to recover its counsel fees and costs that are attributable to the Third-Party's Actions which caused the alleged overcrowding and alleged unconstitutional conditions of confinement under federal common law and under 42 U.S.C. § 1988.

WHEREFORE, the City of Philadelphia and Prison Commissioner Louis Giorla respectfully request this Court to Order the Third-Party Defendants to pay the costs and counsel fees of the Third-Party Plaintiffs pursuant to federal common law and under 42 U.S.C. § 1988.

Date: June 27, 2008

/s/ Jeffrey M. Kolansky

Jeffrey M. Kolansky

/s/ Jeffrey M. Scott

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Philadelphia, PA 19107
215-963-3300
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of City Defendants Third Party Complaint
Against The Honorable C. Darnell Jones, II, Honorable Louis Presenza, and Jeffrey A. Beard,
Ph.D., Secretary of Department of Corrections was delivered to the Clerk of Court and sent via
email to all parties listed below and will be available for viewing on the ECF System.

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Date: June 27, 2008

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EXHIBIT A

2. In *Bowers v. City of Philadelphia*, C.A. No. 06-3229, this Court found unconstitutional conditions of confinement in the intake areas of the PPS and in police districts. To comply with an injunction issued by the Court, the City of Philadelphia shifted the overcrowding by greatly expanding its practice of housing three inmates in cells meant to accommodate no more than two inmates and housing four inmates in “multi-purpose” rooms (collectively, “triple celling” or “triple cells”), and by increasing the population of overcrowded dormitory areas.

3. The widespread practice of triple celling and placement of inmates in overcrowded dormitories has resulted in system-wide unconstitutional conditions of confinement. And, as the prison population continues to increase, these conditions continue to deteriorate. The conditions are so harsh and degrading, and so dangerous to the health and safety of the inmates, as to constitute cruel and unusual punishment under the Eighth Amendment and a denial of liberty without due process of law under the Fourteenth Amendment.

Jurisdiction

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, 42 U.S.C. §§ 1983 and 1988 and the Eighth and Fourteenth Amendments to the United States Constitution. The Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367(a).

Parties

5. Plaintiffs Dwight Williams, Anthony Ouellette, Koleyon Phillips, Anthony Diggs, Kenneth Smith, Edward Zamichieli, Louis Eubanks, James Saunders, Thomas Scott, Shannon Bolli, and Marisol Lopez are residents of the Commonwealth of Pennsylvania and are currently confined in the PPS subject to the conditions of confinement that are alleged in this Complaint.

The individual plaintiffs sue for injunctive and declaratory relief on behalf of themselves and on

behalf of those who currently are or will in the future be subject to these unconstitutional conditions of confinement. All inmates in the PPS are subject to the conditions of confinement alleged in this Complaint.

6. Defendant City of Philadelphia is a political subdivision of the Commonwealth of Pennsylvania and operates and funds the Philadelphia Prison System. At all relevant times, defendant City of Philadelphia has acted and will continue to act under color of state law.

7. Defendant Louis Giorla is the Commissioner of the Philadelphia Prison System and is sued in his official capacity. At all relevant times, defendant Giorla has acted and will continue to act under color of state law.

Factual Allegations

A. History of Unconstitutional Conditions in the PPS

8. In two related civil rights actions, *Jackson v. Hendrick*, C.P. Philadelphia, February Term, 1971, No. 2437, and *Harris v. City of Philadelphia*, E.D. Pa., No. 82-1847, begun in 1971 and 1982, respectively, state and federal courts ordered the Philadelphia Prison System to implement a series of measures to remedy conditions of confinement that violated the United States and Pennsylvania Constitutions. According to the findings of the three-judge *Jackson* court, which were sustained on appeal, and the allegations of the *Harris* Complaint, which supported a series of court-approved consent decrees, PPS inmates, the large majority of whom were awaiting trial, were subjected to unhealthy, unsafe, and degrading conditions of confinement due, in significant part, to the fact that the resources of the PPS, including housing, security staff, medical care, food, sanitation, and programming, were insufficient and inadequate to meet the needs of the number of inmates in custody.

9. Between them, the *Jackson* and *Harris* courts mandated physical plant improvements, enhancements in medical care and sanitation, the construction of new jails and a courthouse to increase capacity and expedite dispositions, the adoption and implementation of physical and operational standards and policies and procedures affecting conditions of confinement, and the establishment of alternatives to incarceration, including diversion of inmates into drug treatment programs. The *Harris* Court also ordered a limited, charge-based moratorium on the admission of certain categories of untried persons so long as the PPS population exceeded the inmate capacity, as determined by the PPS.

10. The *Harris* litigation was terminated in 2000 with the entry of a final Settlement Agreement in which the City of Philadelphia agreed to fund for a period of two years the cost of independent consultants to monitor the PPS's compliance with PPS Physical and Operational Standards and PPS Policies and Procedures governing all aspects of conditions of confinement. The City also agreed to implement specified physical improvements to the House of Correction on a prescribed schedule. At the time that the *Harris* litigation was terminated, the population of the PPS was approximately 7,000 inmates, and the Court's approval of the parties' settlement was qualified with the expression of concern that without judicial oversight, the population, which had nearly doubled over the life of the litigation, would continue to increase beyond the physical capacity of the PPS.

11. The *Jackson* litigation was terminated in 2001 following 30 years of court supervision that included repeated and specific findings of unconstitutional conditions, a progression of consent decrees, and the release of inmates.

12. In terminating *Jackson*, the City of Philadelphia agreed that upon the opening of a new Women's Detention Facility and the Cambria Correctional Center, and as long as the

population did not exceed 950 women and 6,850 men (a total of 7,800), the City would hold the population in the dormitories at Detention Center (“DC”) to 192, remove all inmates from the dayrooms and annex areas at DC, eliminate all triple celling, and would house no more than four inmates per multi-occupancy room at the Curran Fromhold Correctional Facility (“CFCF”).

13. In the five years following the termination of *Harris* and *Jackson*, the population of the PPS steadily increased, and the increase in the number of inmates far exceeded the additional housing capacity provided by a new women’s facility, the Riverside Correctional Facility.

B. The Overcrowding Crisis of 2006

14 By June, 2006, the population in the PPS had increased to 8,900 inmates, representing an increase of 25% from 2000. There was not a commensurate increase in physical capacity, staffing, or other resources essential to constitutional conditions of confinement.

15. To house the greatly increased population, the prison defendants instituted triple celling at CFCF, Riverside Correctional Facility, and at the House of Correction, placed excessive numbers of inmates in dormitory areas at the Detention Center, and resorted to housing inmates in common spaces and recreation areas in other facilities which were crowded well beyond their capacity.

16. Further, because the defendants did not provide a sufficient number of correctional officers and other staff, they resorted to “lock-downs” and “restricted movements” at each of the facilities on a regular basis. These practices made conditions of confinement even more intolerable, as they deprived inmates of recreation, movement, and services. At the same time, these practices increased dangers to inmates and staff, including correctional officers, due

to the significant increase in tension and disputes that result when inmates are deprived of movement, recreation, and exercise.

17. Even with triple celling, the overuse of dormitory space at the DC, the use of common and recreation areas, and restricted movements and lock-downs of the general population, the City was unable to provide housing for all persons committed to the prisons.

18. In 2006, as the PPS literally ran out of housing space, the PPS instituted a policy and practice (“Operation Strategic Admission” or “OSA”) of holding inmates at the intake/admissions area of the DC, the Philadelphia Industrial Correctional Center (“PICC”), and/or CFCF until a cell was available in medical quarantine or in the general population.

19. Pursuant to this official practice and policy, inmates were first held at police districts and the Police Administration Building for periods ranging up to seven days. Thereafter, they were held in the intake areas of the PPS for well beyond the 24 hours required for admission into the system. The conditions at the police districts and the intake areas were dangerous, degrading and threatening to life, safety and health, all in violation of the Eighth and Fourteenth Amendments.

20. In *Bowers v. City of Philadelphia*, the Court, after certifying the matter as a class action, and after a full hearing on a Motion for Preliminary Injunction, ruled that the totality of circumstances regarding the conditions in the police districts and the intake/admissions areas of the PPS were so dangerous, punitive, and severe, as to violate the Eighth and Fourteenth Amendments.

21. The Court determined that the severe overcrowding, lack of adequate hygiene supplies, and lack of bedding, denial of medical care, and unsanitary conditions of confinement

served no legitimate penal purpose, and ordered specific relief aimed at these constitutional violations. Thereafter, the Court extended the grant of preliminary injunctive relief.

22. The Court determined that the City's response to the overcrowding crisis was both too little and too late and did not adequately address the constitutional violations. Opinion, 52-53.

23. The Court recognized that the PPS had attempted to solve the "immediate pretrial detainee overcrowding problem with one main solution – triple-celling in the quarantine unit of CFCF intake." Opinion, 53. The Court warned, however, that "triple-celling . . . is not tenable as a permanent cure," Opinion, 53, and likened this approach to "a band-aid on a wound that requires surgery." Opinion, 54. In summary, the Court ruled that the City's failure to provide adequate housing was "shocking." Opinion, 54.

C. The Current Overcrowding Crises

24. During the hearing and post-hearing proceedings in *Bowers*, the City of Philadelphia presented plans and proposals that were touted as solutions to the overcrowding and related unconstitutional conditions of confinement, including a 24-Point Plan for a coordinated criminal justice system effort at establishing constitutional conditions of confinement.

25. Most of the plans and programs presented by the City have *not* been implemented and the City continues to manifest deliberate indifference to the myriad problems that the *Bowers* litigation exposed.

26. To deal with the acute problems of overcrowding, the City has expanded triple celling and increased the dormitory population and, as a result, inmates are confined in these conditions for months at a time. The number of inmates confined in triple cells substantially exceeds the number who were triple-celled at the time of the decision in *Bowers*. On any given

date, there are well over 2,000 inmates housed in triple-cells, and hundreds more in overcrowded dormitory areas.

27. To accommodate the third inmate in cells designed for two, one of the inmates is required to sleep in a plastic shell (“blue boat”) that sits on the floor.

28. To attempt to control and service this steadily expanding population, the PPS has increasingly relied on “restricted movements” and “lockdowns,” of inmates, particularly when there are insufficient numbers of correctional officers to provide adequate services, security, and safety to inmates and to the staff.

29. As a result of the overcrowding and the failure of the City to provide adequate services, supplies, and staffing at the PPS, the plaintiffs and members of the plaintiff class have been, and without judicial intervention, will be subjected to a pervasive system of unconstitutional conditions that include (a) severe overcrowding with three inmates in cells designed for no more than two inmates and in overcrowded dormitories, (b) lack of adequate sanitation and hygiene, (c) danger to the physical and mental health and safety of inmates due to lack of sufficient numbers of correctional officers, medical personnel and other staff, (d) high risks of assault and violence, (e) the spread of disease and infections, and (f) denial of programs and services.

30. The *Bowers* Court specifically stated that unconstitutional conditions are more likely to occur as the population and use of triple-celling expands, and the Court warned against use of triple celling as a long term solution to the overcrowding problem. Opinion, 53-54. It is now more than a year from the date of the Court’s Opinion and Order of January 25, 2007 finding serious and pervasive unconstitutional conditions in the intake areas of the PPS, and the

City has failed to institute remedial measures that do more than shift the locus of the inhumane conditions to the general population.

Class Action Allegations

31. Plaintiffs seek to represent, on claims for declaratory and injunctive relief, a class of all persons who have been or will in the future be held in custody in the PPS in triple cells, overcrowded dormitories, or other overcrowded housing areas, and who have been or will be subjected to the unconstitutional policies and practices alleged in this Complaint. The class is so numerous that joinder of their claims is impracticable.

32. Plaintiffs' claims are typical of the claims of the class members, in that each member of the class has suffered the same harms as a result of the defendants' acts and omissions. Plaintiffs will be adequate representatives of the class, in that they are represented by competent and skilled counsel whose interests are fully aligned with the interests of the class.

33. There are questions of law and fact common to the class, specifically whether defendants' practices and procedures, which force confinement of all members of the plaintiff class in overcrowded, unsanitary and dangerous conditions, violate the Eighth and Fourteenth Amendments to the U.S. Constitution. The policies and practices of the defendants and the resulting conditions of confinement are the same for all members of the plaintiff class.

34. The questions of fact and law that are common to the members of the class predominate over any questions affecting any individual members of the class. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

35. The defendants have acted, or refused to act, on grounds generally applicable to the class. Final injunctive and declaratory relief is appropriate with respect to all of the members of the class.

36. This action may properly be maintained under Fed. R. Civ. P. 23(b)(2).

Count I – Federal Constitutional Violations

37. Plaintiffs incorporate by reference paragraphs 1-36, as if fully set forth in this paragraph.

38. The practices, policies, acts and omissions alleged in this Complaint are in violation of the Eighth and Fourteenth Amendments to the United States Constitution in that they deprive plaintiffs and members of the plaintiff class their rights to be free from deprivations of liberty without due process of law and to be free from cruel and unusual punishment. If appropriate declaratory and injunctive relief that is necessary to correct the unconstitutional conditions of confinement is not granted, the harms suffered will be irreparable, as the unconstitutional policies, practices and conditions will continue to exist for the foreseeable future.

Count II-State Law Claims

39. Plaintiffs incorporate paragraphs 1-38 by reference as if fully set forth in this paragraph.

40. The policies, practices, and conditions alleged in this Complaint deprive plaintiffs of their rights under the Pennsylvania Constitution and the laws of the Commonwealth of Pennsylvania to be free of deprivations of liberty without due process of law, and to be free from cruel and unusual punishment.

Relief

Wherefore, plaintiffs request the following relief:

1. For the named plaintiffs and the members of the plaintiff class, a declaratory judgment that the practices, policies, and conditions alleged in this Complaint are unconstitutional;
2. For the named plaintiffs and the plaintiff class, a permanent injunction that is narrowly drawn, that extends no further than necessary to correct the unconstitutional conditions, and that is the least intrusive means necessary to correct the unconstitutional conditions such that the defendants are prohibited from confining plaintiffs in triple cells and overcrowded dormitory areas, and are required to provide constitutionally mandated sanitation and environmental protection, medical care, habitable cells, and protection from assaults or other dangers to plaintiffs' lives and safety;
3. If the defendants do not provide the necessary and required constitutional conditions of confinement, plaintiffs request that a three-judge court be empanelled, and that reductions in population be ordered;
4. Reasonable attorney's fees and costs;
5. All other appropriate relief.

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