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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FREDERICK HARPER, individually and on
behalf of all present and future inmates in the
Fulton County Jail in Atlanta, Georgia,

Plaintiff,

v.

DEPUTY TYRONE BENNETT, individually;
and FULTON COUNTY, GEORGIA; FULTON
COUNTY BOARD OF COMMISSIONERS,
KAREN HANDEL, Chairperson, ROB PITTS,
EMMA I. DARNELL, WILLIAM EDWARDS,
TOM LOWE, NANCY BOXILL, members;
JACQUELYN BARRETT, Fulton County Sheriff,
in their official capacities

Defendants.

CIVIL ACTION

NO. 04-CV-1416 MHS

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

Plaintiff Frederick Harper hereby requests that this Court certify this proceeding as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) for the reasons set forth below and in the Plaintiff's supporting memorandum of law.

(9)

In support of his motion, Plaintiff states as follows:

1. Plaintiff Harper challenges in this action a particular altercation that he had with a guard and the conditions and treatment of inmates at the Fulton County Jail. As set out in the *Amended Complaint*, Plaintiff Harper and other inmates at the Jail are housed in a facility that is overcrowded, understaffed and deteriorating due to overuse by too many people. The lives and safety of inmates and correctional staff are in danger. In challenging these conditions and the danger to inmates, Plaintiff Harper seeks to bring this action on behalf of all inmates at the Jail. Because the conditions and practices at the Jail are common to all inmates, this case is properly maintained as a class action. This class consists of all inmates who are now or will be in the future subject to dangerous overcrowding and substandard living conditions at the Fulton County Jail ("Jail") located on Rice Street in Atlanta, Georgia.

2. Joinder of all present and future inmates subject to dangerous overcrowding and substandard living conditions at the Jail would be highly impracticable. At any given time, over 3,000 inmates are confined at the Jail. But the class is made up of an even greater number because inmates are brought in and released from the Jail each day. Some inmates remain in the Jail only a few days;

others remain for substantial periods of time. A substantial number of the inmates have mental or physical illnesses which require their occasional removal from the Jail to other institutions. Because joinder of all inmates at the Jail is not practicable, this action satisfies the requirements of Fed. R. Civ. P. 23(a)(1).

3. There are questions of law and fact that are common to the class. These include the nature and legality of the overcrowded and substandard living conditions at the Jail, whether the defendants have been deliberately indifferent to the condition of the Jail and the lives and safety of those living there. The action therefore satisfies the requirements of Fed. R. Civ. P. 23(a)(2).

4. The conditions and practices of this action apply with equal force to the named Plaintiff and all members of the class. All inmates at the Jail are affected by the overcrowding, the understaffing, and the breakdown of the plumbing, ventilation, laundry and electric systems at the Jail. All inmates at the Jail live in the same fear for their lives and safety. Thus, the claims of the named Plaintiff are typical of the class. This action therefore satisfies the requirements of Fed. R. Civ. P. 23(a)(3).

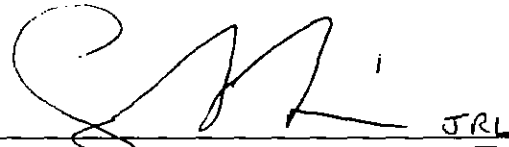
5. The named Plaintiff will fairly and adequately represent the interests of the class. He possesses the requisite personal interest in the subject matter of the

lawsuit and is represented by counsel who are experienced in class action litigation involving jail and prison conditions for over 20 years. Counsel are familiar with the issues raised by this case as a result of representation of inmates at the same jail in Foster v. Fulton County, 223 F.Supp.2d 1292 (N.D. Ga. 2002). There is no conflict or antagonism between the named Plaintiff and the members of the class. This case therefore satisfies the requirements of Fed. R. Civ. P. 23(a)(4).

6. The conditions about which Plaintiff complains are the result of the Defendants having acted and having failed to act on grounds generally applicable to the class. Therefore, final declaratory and injunctive relief with respect to the class as a whole is appropriate. This action therefore satisfies the requirements of Fed. R. Civ. P. 23(b)(2).

For these reasons, Plaintiff requests that this Court certify this action a class action with regard to his claims addressing the conditions at the Jail and his prayer for relief with regard thereto.

Respectfully submitted this 25 day of June, 2004.

A handwritten signature in black ink, appearing to be 'S.B. Bright', written over a horizontal line. To the right of the signature, the initials 'JRL' are written in a smaller, simpler font.

STEPHEN B. BRIGHT

GA Bar No. 082075

JOSHUA R. LIPMAN

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Counsel for the plaintiff

*Applying for admission to this Court
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
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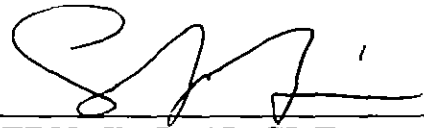
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 Plaintiffs,)
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 v.)
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 TOM LOWE, NANCY BOXILL, members;)
 JACQUELYN BARRETT, Fulton County Sheriff,)
 in their official capacities)
)
 Defendants.)

CIVIL ACTION

NO. 04-CV-1416

CERTIFICATE OF COMPLIANCE

I, Stephen B. Bright, do hereby certify that the foregoing document has been prepared in 14-point Times New Roman font and complies with LR 5.1B.



JRL

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GA Bar No. 082075

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Counsel for the plaintiff

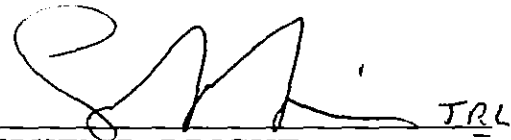
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JACQUELYN BARRETT, Fulton County Sheriff,))	
in their official capacities))	
))	
Defendants.))	
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I, Stephen B. Bright, do hereby certify that on this day I served a copy of the foregoing document by first class United States mail, upon counsel for the defendants:

The Honorable Overtis Hicks Brantley
Fulton County Attorney
141 Pryor Street, Suite 4038
Atlanta, GA 30303

This 25th day of June, 2004.

A handwritten signature in black ink, appearing to read 'S. B. Bright', is written over a horizontal line. To the right of the signature, the initials 'JRL' are written.

STEPHEN B. BRIGHT

GA Bar No. 082075

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Counsel for the plaintiff

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FILED
JUN 25 2004
W. H. ...
Clerk

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in their official capacities

Defendants.

CIVIL ACTION

NO:04-CV-1416 MHS

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

Plaintiff Frederick Harper, an inmate at the Fulton County Jail, challenges
the dangerous, overcrowded and inhumane living conditions of confinement at the
Fulton County Jail. As set out in detail in his *Amended Complaint*, the Jail is

overcrowded, understaffed, and the basic infrastructure – including plumbing, electricity, and air handling system – is collapsing. The Jail is dangerous for many reasons – an insufficient number of guards, the availability of weapons, the tension resulting from the crowded conditions and lack of proper ventilation, and locks that do not work on many cells. These conditions threaten the safety and lives of the inmates confined at the Jail. Plaintiff contends that the Defendants have acted and failed to act to prevent these conditions, which violate the rights of every person at the jail.

Plaintiff Harper sought in his *Amended Complaint* to maintain this action as a class action. He has now moved the Court to certify the proceeding as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), on behalf of all inmates who now are or will be in the future confined at the Jail. It is of course well established that “[c]lass action suits brought on behalf of incarcerated persons are often their only defense to institutional abuse. . . Courts have recognized the advantages of class actions in this area of the law.” 4 Newburg, H., Class Actions § 25.22, at 493 (2d ed. 1985). *See, e.g., Dorrough v. Hogan*, 563 F.2d 1259, 1261 (5th Cir. 1977) (affirming district court’s determination certifying a class consisting of present and future prisoners in prison conditions case.), cert.

denied, 439 U.S. 850 (1978); Abdul-Malik v. Coombe, 1996 WL 706914, *2 (S.D. NY 1996); McKenzie v. Crotty, 738 F. Supp. 1287, 1290-91 (D.S.D. 1990).

This case is similarly appropriate for treatment as a class action.

I. THIS CASE SATISFIES THE NUMEROSITY, COMMONALITY, TYPICALITY, AND REPRESENTATION REQUIREMENTS OF FEDERAL RULE OF CIVIL PROCEDURE 23(a).

Federal Rule of Civil Procedure 23 authorizes a lawsuit to proceed as a class action if all four prerequisites of Rule 23(a) and one of the prerequisites of Rule 23(b) are satisfied. *See Franze v. Equitable Assurance*, 296 F.3d 1250, 1253 (11th Cir. 2002); *Pickett v. Iowa Beef Processors*, 209 F.3d 1276, 1279 (11th Cir. 2000). As will be shown in this section, the four requirements of 23(a) are satisfied: “(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interest of the class.” Fed. R. Civ. P. 23(a). In the following Section, we will show that the requirements of Rule 23(b)(2) are also satisfied in that the Defendants have acted or failed to act on grounds generally applicable to the class.

A. Because Joinder of all Members of the Class is Highly Impracticable, Class Certification is Necessary Under Rule 23(a)(1).

The proposed class action consists of all inmates, who are now or will be in the future, confined at the Fulton County Jail. At any given time, the inmate population at the Jail is over 3,000 inmates. This population changes constantly. Some inmates spend only a few days or weeks at the jail; other are there for months or even years. Thus, the number of inmates confined at the Jail can change daily, weekly, monthly, or yearly as inmates are released, confined, or transferred to state correctional facilities.

The Eleventh Circuit has stated that “more than forty” members is generally considered sufficiently numerous to support class certification. *See Cox v. American Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986), cert. denied, 479 U.S. 883 (1986); *see also Faulk v. Home Oil Co., Inc.*, 184 F.R.D. 645, 654 (M.D. Ala. 1999) (a group of 164 employees and 31 applicants affected by the defendant’s actions satisfied the numerosity requirement.); 7A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure: Civil §1762, at 177-78 (2d ed. 1986) (stating that in a “representative series of cases courts have held that joinder impracticable when there were thirty-five, forty, fifty . . . class members”).

More importantly, joinder of all putative class members is highly impracticable in this case. Because some inmates at the Jail are released and new inmates are confined, the class includes numerous future inmates who cannot be joined. *See Kilgo v. Bowman Transportation, Inc.*, 789 F.2d 859, 878 (11th Cir. 1986) (approving certification of a class where “[p]laintiffs have identified at least thirty-one individual class members, and the class includes future and deterred job applicants, which of necessity cannot be identified.”); *Phillips v. Joint Legislative Comm.*, 637 F.2d 1014, 1022 (5th Cir. Unit A 1981) (“In such a case the requirement of rule 23(a)(1) is clearly met, for ‘joinder of unknown individuals is certainly impracticable.’”), *cert. denied*, 456 U.S. 960 (1982), *quoting Jack v. American Linen Supply Co.*, 498 F.2d 122 (5th Cir. 1974).

In addition, given the changing composition of the inmate population at the Jail, class certification is appropriate because the constitutional violations may be ongoing even though individual members of the class may be released from the Jail and replaced by others. *See, e.g., See Stewart v. White*, 669 F.2d 328, 334 (5th Cir. 1982) (stating that “class certification ensures the presence of a continuing class of plaintiffs with a live dispute involving prison authorities.”); *Johnson v. City of Opelousas*, 658 F.2d 1065, 1070 (5th Cir. Unit A 1981)

“Certification of a class under Rule 23(b)(2) is ‘especially appropriate where, as here, the claims of the members of the class may become moot as the case progresses.”); Aherns v. Thomas, 570 F.2d 286, 288-289 (8th Cir. 1978) (“[I]n light of the fairly rapid release or transfer of detainees, the substantial issues raised may never receive judicial scrutiny unless certification is permitted.”). Further, class certification will promote judicial economy. *See* General Telephone Company of the Southwest v. Falcon, 457 U.S. 147, 155 (1982) (observing that “the class-action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion under Rule 23.”) (*quoting* Califano v. Yamasaki, 442 US 682, 700-701 (1979)).

B. The Nature of the Overcrowding, Living Conditions, and Threat to Personal Security and Their Constitutionality Validity Are Common Questions of Fact and Law Satisfying Rule 23(a)(2).

The case presents questions of law and fact common to the proposed class. The common questions of fact are the conditions and practices at the jail and the deliberate indifference of the Defendants; the common questions of law are

whether the conditions, practices and indifference of the Defendants violates the rights of the inmates at the Jail.

The commonality requirement is to be read liberally as a shorthand test of whether the “principal purpose” of the class action procedure – to “advance the efficiency and economy of litigation” – is satisfied in a particular case. General Telephone Co. Of Southwest v. Falcon, 457 U.S. 147, 158 (1982). *See also*, Califano v. Yamasaki, 442 U.S. 682, 701 (1979).

That requirement is easily met here. The overcrowding, lack of staff, deteriorating systems, and lack of safety affect *all* inmates at the jail. The class members are equally subject to overcrowding, staff shortages, systems failures, practices, and procedures which provide the factual core of the class claims. The legal issues raised are common to all inmates at the prison – whether these circumstances violate the Eighth Amendment and other legal rights of all inmates at the Jail. Thus, Rule 23(a) is therefore satisfied.

C. The Typicality Requirement of Rule 23(a) is Satisfied Because the Named Plaintiff’s Claims Have the Same Essential Characteristics as the Claims of the Class.

The dangerous overcrowding and substandard living conditions in this

action apply equally to the named Plaintiff and all members of the class so that the claims of the named Plaintiff are typical of those of the class.

The typicality and commonality requirements “tend to merge,” both serving as “guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff’s claim and the class claim are so interrelated that interests of the class members will be fairly and adequately protected in their absence.” General Telephone Company of the Southwest v. Falcon, 457 U.S. 147, 157 n.13 (1982). Accord De La Fuente v. Stokley-Van Camp, 713 F.2d 225, 232-33 (7th Cir. 1983). See Wooden v. Board of Regents, 247 F.3d 1262, 1287 (11th Cir. 2001) (“It should be obvious that there cannot be adequate typicality between a class and a named representative unless the named representative has individual standing to raise the legal claims of the class.”); Appleyard v. Wallace, 754 F.2d 955, 958 (11th Cir. 1985) (“[S]ubsection a(3) primarily directs the district court to focus on whether named representatives’ claims have the essential characteristics as the claims of the class at large.”)

Under Rule 23(a)(3), “a sufficient nexus” between the named plaintiff and the class claims is established if the claims “arise from the same event or pattern or

practice and are based on the same legal theory.” Konberg v. Carnival Cruise Lines, Inc., 741 F.2d 1332, 1337 (11th Cir. 1984), cert. denied, 470 U.S. 1004 (1985). *See also*, Larkin v. Pullman-Standard Division, Pullman Inc., 854 F.2d 1549, 1572-73 (11th Cir. 1988), vacated on other grounds, 493 U.S. 929 (1989).

In this case there are no significant factual differences between the conditions, practices, policies, and procedures that the named Plaintiff is experiencing and those experienced by the entire class.¹ The injury about which Plaintiff Harper complains is the same injury suffered by all inmates at the Jail. The legal claims – based primarily on the Eighth Amendment – of the plaintiff is typical of the claims of all other inmates at the Jail. *See* 4 Newberg, H., Class Actions § 25.10, at 480 (2d ed. 1985) (typicality requirement satisfied where “prisonwide unlawful practices and policies. . .[are] charged and supported with allegations of injury to the class members other than the representative

1. Even if there was some “factual variation” between claim of the Plaintiff and those of class members it would not render the named plaintiff’s claims atypical. *See* Appleyard, 754 F.2d at 958. (“strong similarity of legal theories” can satisfy Rule 23(a)(3) even there are substantial differences in the factual claims); Johnson v. American Credit Co. Of Georgia, 581 F.2d 526, 535 (5th Cir. 1978).

plaintiffs.”). The typicality requirement of Rule 23(a)(3) is therefore satisfied.

D. The Named Plaintiff will Fairly and Adequately Protect the Interests of the Class Members Therefore Satisfying Rule 23(a)(4).

The final requirement of Rule 23(a) is that the representative parties will fairly and adequately protect the interests of the class. Adequacy of representation involves two considerations. The first is whether counsel for the named plaintiff are qualified and experienced and will vigorously prosecute the interests of the class. *See In re Joint Eastern and Southern District Asbestos Litigation*, 78 F.3d 764, 778 (2d Cir. 1996) (“class counsel must be qualified, experienced and generally able to conduct the litigation.”); *Griffin v. Carlin*, 755 F.2d 1516, 1533 (11th Cir. 1985) (“The adequate representation requirement involves questions of whether plaintiffs’ counsel are qualified, experienced, and generally able to conduct the proposed litigation, and of whether plaintiffs have interests antagonistic to those of the rest of the class.”)

The second is whether the interests of the representative parties will conflict with those of the class members. *See General Telephone Company of the Southwest v. Falcon*, 457 U.S. at 157 n.13 (1982); *Miles v. Metropolitan Dad*

County, 916 F.2d 1528, 1534 (11th Cir. 1990), cert. denied, 502 U.S. 898 (1991) (“In addition, class conflicts may defeat an otherwise proper class.”).

Plaintiff’s counsel has ample experience in litigating various legal issues. Specifically, counsel for the Plaintiff has extensive experience litigating class action prison and jail condition cases addressing similar conditions over the last 20 years, including previous litigation involving the Fulton County Jail. *See Foster v. Fulton County*, 223 F.Supp.2d 1292 (N.D. Ga. 2002). Plaintiff counsel is committed to vigorously prosecuting the interests of the inmates confined at the Jail through this lawsuit.

The named Plaintiff and the class members share a common interest in obtaining relief from violation of their constitutional rights resulting from the overcrowded conditions, shortage of uniformed staff, and overwhelmed facility infrastructure. The representatives are seeking permanent equitable relief which will protect the constitutional rights of the entire inmate population at the Jail. There is no conflict or antagonism between the named Plaintiff and the members of the class. Thus, the requirements of Rule 23(a)(4) are therefore satisfied.

II. BECAUSE THE DEFENDANTS HAVE ACTED AND HAVE REFUSED TO ACT ON GROUNDS GENERALLY APPLICABLE TO THE CLASS, THE REQUIREMENTS OF RULE 23(b)(2) ARE SATISFIED

The final requirement for class certification is met because the Defendants have “acted or refused to act on grounds generally applicable to the class, hereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” Fed. R. Civ. P. 23(b)(2). The purpose of the Rule 23(b)(2) inquiry is simply to ensure that “the interests of the class members are so like those of the individual representatives that injustice will not result from their being bound by such judgment in the subsequent application of principles of *res judicata*.” Hassine v. Jeffes, 846 F.2d 169, 179 (3rd Cir. 1988).

The actions and failures to act on the part of the Defendants – the Sheriff and Fulton County Commission and its members – are the basis for this lawsuit. Their actions and inactions have resulted in the dangerous, overcrowded conditions challenged in this lawsuit. The Plaintiff seeks declaratory and injunctive relief – relief that necessarily will have an impact on everyone at the jail. It would be virtually impossible for the Court to deal with the issues raised in this case one inmate a time and provide individual relief for each inmate. Instead,

injunctive relief is required that directs the Defendants to take certain actions with regard to the Jail in order to correct conditions and practices that violate the Constitution. Thus, this case fits well within the requirements of Rule 23(b)(2). *See Penson v. Terminal Transportation Co.*, 634 F.2d 989, 993 (5th Cir. Unit B 1981) (“This rule [23(b)(2)] was intended primarily to facilitate civil rights class actions, where the class representatives typically sought broad injunctive or declaratory relief”).

CONCLUSION

For these reasons, Plaintiff requests that this Court certify this lawsuit as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) for the purposes of declaratory and equitable relief, on behalf of the class of all inmates who are now or will be in the future confined at the Fulton County Jail.

Respectfully submitted this 25 day of June, 2004.



STEPHEN B. BRIGHT
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MS Bar No. 101399*
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Counsel for the plaintiff

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Counsel for the plaintiff

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