

COMPLAINT

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

RECEIVED
JAN 25 1989
U. S. DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
DEPUTY CLERK

M. WAYNE BATES, JR; ERNEST W.
BUSBY, III; DALTON PREJEAN; and
JOHN SULLIVAN, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

BRUCE LYNN, Secretary of the
Louisiana Department of Corrections,
and HILTON BUTLER, Warden of the
Louisiana State Penitentiary at
Angola, Louisiana,

Defendants.

Civil Action

No. 89-065

SEC. B

COMPLAINT

1. This is a class action on behalf of all prisoners under sentence of death in the State of Louisiana, seeking declaratory and injunctive relief from the unlawful conditions under which they are confined during the many years that their appeals and post-conviction proceedings are pending. The action is brought under 42 U.S.C. §1983 to redress the violation by defendants, acting under color of state law, of plaintiffs' rights under the Sixth and Fourteenth Amendments to the Constitution of the United States.

2. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

Bates v. Lynn



PC-LA-002-001

CLASS ACTION ALLEGATIONS

3. This action is brought as a class action pursuant to Rules 23(a) and (b)(1) and (2) of the Federal Rules of Civil Procedure.

(a) Plaintiffs sue on behalf of all persons who are currently confined under sentence of death in the State of Louisiana, and on behalf of an unknown number of persons who in the future will be confined under sentence of death by the Louisiana Department of Corrections either at the Louisiana State Penitentiary at Angola or elsewhere.

(b) The class currently consists of approximately 39 members and is likely to grow in size during the pendency of this lawsuit. It is so numerous that joinder of all its members is impracticable.

(c) The conditions and practices that are the basis of this complaint, and the questions of law concerning the constitutionality of those conditions and practices, are common to all members of the class.

(d) Plaintiffs are all death-sentenced prisoners confined in Louisiana. Their claims are typical of the claims of the class, and they will fairly and adequately protect the interests of the class. They are represented by counsel who are experienced in representation of death-sentenced prisoners and in representation of cases concerning prison conditions.

(e) The prosecution of separate actions by individual members of the class would create a risk of inconsistent

adjudications with respect to each that would establish incompatible standards of conduct for defendants.

(f) The prosecution of separate actions by individual members of the class would create a risk of adjudications that as a practical matter would be dispositive of the interests of the other members not parties to such adjudications, or would substantially impair or impede their ability to protect their interests.

(g) The defendants have acted or failed to act on grounds generally applicable to all prisoners in their custody who have been sentenced to death, and the appropriate injunctive and declaratory relief would apply to the class as a whole.

PARTIES

A. Plaintiffs

4. Plaintiffs M. WAYNE BATES, JR.; ERNEST W. BUSBY, III; DALTON PREJEAN; and JOHN SULLIVAN are in the custody of the State of Louisiana at the Louisiana State Penitentiary under sentence of death, awaiting the results of their appeals or post-conviction proceedings.

B. Defendants

5. Defendant BRUCE LYNN is Secretary of the Department of Corrections of the State of Louisiana. He is the chief administrative officer of the Louisiana Department of Corrections, which is responsible for the maintenance and operation of all Louisiana prisons including the Louisiana State Penitentiary.

6. Defendant HILTON BUTLER is Warden of the Louisiana State Penitentiary, where Death Row prisoners are currently confined. He is responsible for the management and supervision of that facility and the prisoners confined therein, including the plaintiff class confined under sentence of death. He has custody and control over plaintiffs.

7. Both defendants are named in their official capacities.

FACTS

8. As a result of defendants' actions or failure to act, the plaintiff class is confined under conditions that violate plaintiffs' basic constitutional rights. Absent declaratory and injunctive relief from this Court, plaintiffs will continue to live under such conditions for the many years that their cases are pending on appeal or post-conviction.

9. At all times relevant to the claims herein, defendants have acted or failed to act under color of law of the State of Louisiana.

A. Law Library

10. The plaintiffs are denied any direct access to a law library. According to the rules which apply to all death row prisoners, they are allowed to request and keep in their cells only three books at a time, for three days at a time. They are not allowed to request copies of cases from these books to keep in their cells. No meaningful legal research can occur within the constraints of this system. Because prisoners receive only what they request, and are often unaware of resources, their

ability to fully research applicable law is severely curtailed. Research is delayed by the inability to scan potentially fruitful sources.

11. Two prisoner assistants are assigned to provide legal services to the 39 death row prisoners. Assistants are not adequately trained or qualified to meet the needs of this large group in lieu of direct access to a law library. There are often delays in the delivery of necessary books and legal materials. These delays are critical for prisoners to whom time is of the essence.

12. Prisoners are required to do all their research and writing in their cells. They have no desks or chairs, and lighting is inadequate for this type of work. The atmosphere in death row is often noisy and disruptive, and is not conducive to careful legal study.

13. For death row prisoners who have the wherewithal to do their own legal research and writing, these restrictions are severe, and result in the denial of meaningful access to the courts. Death row prisoners are denied access to the law library solely of their special status as death sentenced, with no consideration of any realistic security risk, and no corresponding attempt to meet their special need to challenge their sentences of death.

B. Appointed Counsel

14. For prisoners who might be able to handle basic legal claims with access to a law library, even that opportunity would

not be sufficient to meet the needs of death sentenced prisoners in regard to complex post-conviction litigation. The state should assure the appointment of trained and qualified lawyers to all death sentenced prisoners in post-conviction proceedings.

15. Many prisoners on death row are illiterate or incapable of researching and preparing complicated legal papers. No provisions are made by state officials to assure meaningful access to the courts for these prisoners for challenges to their capital sentences, in state or federal habeas corpus petitions or in civil rights actions. In this instance, trained and qualified legal assistance must be provided on a systematic basis for legal needs other than post-conviction litigation.

C. Access to Counsel

16. The severe restrictions on visiting death row prisoners apply to counsel as well as all other visitors. Visiting occurs in a small room separated by a heavy mesh screen. Contact visits are routinely denied, the prisoner sits on one side of the screen, the lawyer on the other.

17. Prisoners remain shackled hand and foot even during non-contact visits with their lawyers. This procedure severely inhibits the review by prisoners of documents, inhibits the signing of documents, and is extremely uncomfortable, embarrassing and distracting.

18. It is impossible to review important papers between lawyer and client. In order to share papers, or to have

documents signed, a corrections officer must be summoned and requested to take the papers from one side of the room around the outside of the room to the person on the other side. This procedure invites breaches of confidence between lawyer and client.

19. The visiting room is often hot and uncomfortable, lighting is poor, and there is no provision for food or water during long conferences. The room is extremely noisy, making it necessary to speak very loudly to communicate. Lawyers are often required to wait for extended periods of time locked in their side of the room while awaiting the appearance of their clients, even after making definite, approved appointments.

20. Because there is only one visiting room, only one visit can occur at a time with any maintenance of the attorney-client privilege. Because of the unique need for consultations between lawyer and a client facing death, the limitation to one attorney-client visit at a time for the entire Death Row unreasonably interferes with legal access.

CAUSES OF ACTION

21. Defendants have violated and are violating plaintiffs' constitutional rights to access to the courts and to the assistance of counsel by failing to provide meaningful access to a law library or trained and qualified legal assistance in the preparation of legal papers, in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

22. Defendants have violated and are violating plaintiffs' constitutional rights of access to the courts and to counsel by failing to provide appointed counsel to death sentenced prisoners in pursuit of post-conviction remedies in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

23. Defendants have violated and are violating plaintiffs' constitutional rights of access to the courts and to counsel by failing to provide them with appropriate and effective means of communicating with counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

24. Plaintiffs and the class they represent have no adequate remedy at law to redress the wrongs suffered as set forth in this complaint. Plaintiffs have suffered and will continue to suffer irreparable injury as a result of the unlawful acts, policies and practices of the defendants alleged herein unless they are granted the relief they request. This suit for declaratory and injunctive relief from the unlawful acts, policies and practices of defendants. The need for relief is pressing because the rights at issue are paramount rights under the Constitution of the United States.

PRAYER FOR RELIEF

25. WHEREFORE, plaintiffs, on behalf of themselves and the class they represent, request that this Court grant them the following relief:

- a. Certify this matter as a class action;

b. Adjudge and declare that the conditions and practices alleged herein are in violation of the rights of plaintiffs and the class they represent under the Constitution of the United States;

c. Enjoin defendants, their agents and employees, and all persons acting in concert with them, from incarcerating plaintiffs and the class they represent under the unconstitutional conditions and practices alleged herein;

d. Enjoin defendants, their agents and employees, and all persons acting in concert with them, from engaging in any acts of retaliation against plaintiffs and the class they represent for having brought this lawsuit;

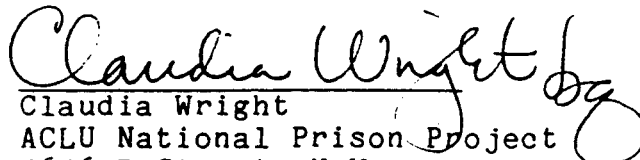
e. Direct defendants to submit a plan for the prompt elimination of the unconstitutional conditions and practices alleged herein;

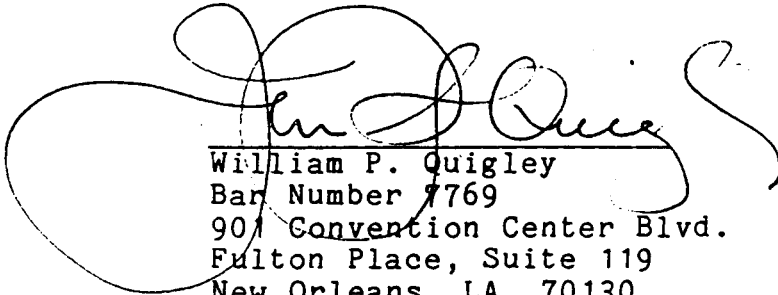
f. Retain jurisdiction in this cause until the unlawful conditions and practices alleged herein no longer exist and the Court is satisfied that they will not recur;

g. Grant plaintiffs the costs and expenses of maintaining this action, including reasonable attorneys' fees; and;

h. Grant such other and additional relief as the Court may deem just and proper.

Respectfully submitted,


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MIDDLE DISTRICT OF LOUISIANA

M. WAYNE BATES, JR., et al.,)
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 Plaintiffs,)
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 v.) Civil Action
) No.
 BRUCE LYNN, et al.,)
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 Defendants.)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION

I. INTRODUCTION

The complaint in this case alleges that policies and practices affecting all death-sentenced prisoners in the custody of the Louisiana Department of Corrections violate the constitutional rights of such prisoners. These policies and practices deny meaningful access to the courts and to counsel. The named plaintiffs, four prisoners under sentence of death in the custody of the Louisiana Department of Corrections, have filed this action as a Rule 23(b)(2) class action on behalf of all prisoners in the custody of the Louisiana Department of Corrections who are now or who will be in the future confined under sentence of death. The named plaintiffs seek declaratory and injunctive relief on behalf of the class.

The motion for class certification alleges that the membership of the class is so numerous that joinder of all members is not practicable; that there are questions of law an

fact common to the class; that the representative plaintiffs' claims are typical of the claims of the class; that as the class representatives, the named plaintiffs will fairly and adequately protect the interests of the entire class; and that the defendants have acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief appropriate for the class as a whole. Accordingly, all the requirements for the maintenance of a 23(b)(2) class action are present in this case.

II. ARGUMENT

A. Class Action Suits Have Been the Traditional Vehicle for Challenging Systemically Unconstitutional Conditions of Prison Confinement

Before applying the formal requirements of Rule 23 to the facts of this case, an important historical fact deserves special emphasis. Over the past two decades, in cases similar to the present one, federal courts in this and other judicial circuits have routinely authorized such cases to proceed as class actions on behalf of all inmates confined in the challenged institutions. See Alberti v. Klevenhagen, 790 F.2d 1220, 1221 (5th Cir. 1986), rehearing denied, 799 F.2d 992; Ruiz v. Estelle, 679 F.2d 1115, 1126 (5th Cir. 1982); Jones v. Diamond, 519 F.2d 1090, 1099 (5th Cir. 1975); Newman v. Alabama, 503 F.2d 1320, 1322 (5th Cir. 1974), cert. denied, 421 U.S. 948 (1975); Gates v. Collier, 501 F.2d 1291, 1295 (5th Cir. 1974). See also Jones v. Metzger, 456 F.2d 854, 855 (6th Cir. 1972); French v. Owens, 777 F.2d 1250, 1251 (7th Cir. 1985); Finney v. Arkansas Board of

Correction, 505 F.2d 194, 198 (8th Cir. 1974); Ramos v. Lamm, 639 F.2d 559, 562 (10th Cir. 1980).

Allowing cases that allege systemic abuses to proceed as class actions is a sensible way to address such claims. A class action is an "effective weapon for an across-the-board attack against systematic abuse." Jones v. Diamond, 519 F.2d at 1100, supra. It is a mechanism "admirably suited to the adjudication of civil rights claims," (id. at 1101) and a technique that makes it possible to assert rights effectively that might otherwise go unprotected. Id. at 1100 ("unless class actions are hospitably received into our judicial system, many valid constitutional claims may be stymied").

B. The Requisites of Rule 23(a) of the Federal Rules of Civil Procedure are Present in this Case

The parties who are asserting the existence of a class have the burden of demonstrating that the requirements of Fed.R.Civ.P. 23 have been satisfied. Horton v. Goose Creek Ind. School Dist., 690 F.2d 470, 486, n.28 (5th Cir. 1982). This means that they must show that all the prerequisites identified in Rule 23(a) and one of the prerequisites identified in Rule 23(b) are present in the case. Horton, supra, at 483. However, the Fifth Circuit Court of Appeals has stated that "[i]n class actions, particularly in the civil rights field, the general rules on burden of proof must not be applied rigorously or blindly; [t]he court too bears a great responsibility to insure the just resolution of the claims presented." Jones v. Diamond,

519 F.2d at 1099, supra (reversing lower court's denial of class certification in civil rights action brought on behalf of Mississippi prisoners).

Rule 23(a) permits one or more members of a class to sue on behalf of all members of the class "if (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 interests of the class." All four of the Section (a) factors are present here.

1. Numerosity

The proposed class consists of 39 inmates who are now confined by the Louisiana Department of Corrections under sentence of death, as well as all persons who, in the future, will be so confined by the defendants. The numerosity requirement of Rule 23(a)(1) "refers to the degree of impracticality of joinder of all the individual members of the proposed class." Ledet v. Fischer, 548 F.Supp. 775 at 781 (M.D.La. 1982).

The Fifth Circuit Court of Appeals has made clear that in determining whether numerosity is met, "number requirements miss the point of the Rule." Phillips v. Joint Legislative Committee, 637 F.2d 1014 at 1022 (5th Cir. 1981). In the Phillips case, the Court of Appeals reversed the lower court's denial of class certification to a group of 33 plaintiffs

who brought suit against various Mississippi state agencies for alleged employment discrimination. Having established that "the problem... is not simply to say whether 33 class members are enough or too few to satisfy Rule 23(a)(1)," the court held that the numerosity requirement is clearly met when the alleged class includes future members, "necessarily unidentifiable," since "joinder of unknown individuals is certainly impracticable." Phillips, supra, at 1022, citing Jack v. American Linen Supply Co., 498 F.2d 122 (5th Cir. 1974) (per curiam) and Jones v. Diamond, 519 F.2d 1090, supra. Numbers are particularly irrelevant where the plaintiff(s) "are seeking injunctive relief on behalf of future class members as well as past and present members." Jones v. Diamond, supra, at 1100.

In the present case, the fluid nature of the class (produced by the infusion of new inmates into the Department during the pendency of litigation) renders any joinder an impractical task. Accordingly, as the above discussion indicates, the requirement of numerosity under Rule 23(a)(1) is satisfied. In fact, a class action is "the procedural vehicle of choice" for the present litigation. See Hendrix v. Faulkner, 525 F.Supp. 435 at 443 (N.D.Ind. 1981); Green v. Johnson, 513 F.Supp. 965, 975 (D.Mass. 1981) (the actual number of inmates "considered in light of the fact that the inmate population at these facilities is constantly revolving, establishes sufficient numerosity that joinder of all potential members of the class is impracticable").

2. Commonality

The present case focuses upon the conditions of confinement for death-sentenced prisoners in the custody of the Louisiana Department of Corrections. The allegations expressed in plaintiffs' complaint raise significant questions of fact and law that are common to the entire class. All death-sentenced prisoners in Department of Corrections custody either live under, or are subject to living under, the conditions described in the complaint that allegedly produce deprivations of constitutional rights. These allegations raise factual questions that are common to the class. They also raise a number of legal issues that are common to the class: whether access to the prison law library is so restricted that death-sentenced inmates are being denied access to the courts and counsel as required by the Sixth and Fourteenth Amendments to the United States Constitution; whether death sentenced prisoners are entitled to appointed counsel in post-conviction proceedings; whether conditions imposed by prison administrators so inhibit contact between plaintiffs and their lawyers as to deny meaningful access to counsel. The existence of these common questions satisfies the second condition to proceeding as a class.

3. Typicality

Rule 23(a)(3) provides that a class action may be maintained if the claims of the representative parties are typical of the claims 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 claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." General Telephone Co. of Southwest v. Falcon, 457 U.S. 147, 157, n.13 (1982). The typicality requirement mandates that there be "common elements of law or fact such that the class action would be an economical way of prosecuting and defending claims." Herbert v. Monsanto Company, 576 F.2d 77 (5th Cir. 1977) vacated on other grounds, 580 F.2d 178 (5th Cir. 1978). Typicality does not require that all class members' claims be identical, but merely that the claims of named plaintiff(s) be "representative" of those of the entire class. Id. The requirement is designed to insure "that the class action [not be used as] a mere procedural umbrella for individual claims." Id.

In the present case, there are no fundamental factual differences between the circumstances of the representative plaintiffs and those of the class membership. Rather, they share a common interest in eliminating the unconstitutional conditions and practices to which they as a group are subjected.

4. Adequacy of Representation

The final requirement of Rule 23(a) is that the representative parties will fairly and adequately protect the interests of the class. The adequacy requirement calls for "an

inquiry into the zeal and competence of the [class] representative's counsel, into the willingness of the representative to take an active role in and control the litigation, and to protect the interests of absentees." Horton v. Goose Creek Ind. School Dist., 690 F.2d at 484, supra. In addition, there must be no "real possibility of antagonism within the class." Id. at 485.

Plaintiffs' attorneys have had extensive experience and have gained considerable competence in litigating prison class action cases. The National Prison Project of the American Civil Liberties Union has litigated numerous federal class action prison conditions cases in all parts of this country including Palmigiano v. Garrahy, 707 F.2d 636 (1st Cir. 1983) (finding that the National Prison Project "had unique competence in the subject matter of this litigation"); Ramos v. Lamm, 639 F.2d 559 (10th Cir. 1980), cert. denied 450 U.S. 1041 (1981); Inmates of the D.C. Jail v. Jackson, 416 F.Supp. 119 (D.C.D.C. 1976) (conditions in the District of Columbia Jail); and James v. Wallace, 406 F.Supp. 318 (M.D.Ala. 1976), aff'd in substance sub nom. Newman v. State of Alabama, 559 F.2d 283 (5th Cir. 1977) (system-wide class action involving conditions in the Alabama prison system).

The question of antagonistic interests also poses no barrier to certification here. There are no conflicts of interest between the representative plaintiffs and the represented body of the class. As noted previously, they share a common concern that conditions affecting Death Row prisoners are unconstitutional and a common interest in remedying those

conditions. The representative plaintiffs are seeking no special considerations, favors, or relief through this suit and there is no basis for believing that any palpable conflict of interest will develop in this case. The only relief sought by the representative plaintiffs is of an equitable nature that will inure to the benefit of all death-sentenced prisoners.

5. The Criteria of Rule 23(b)(2) are Satisfied in the Present Case

As alluded to earlier, a prospective class action can be maintained if, in addition to satisfying all requirements of Rule 23(a), the case falls under one of the subsections of 23(b). This action can fit comfortably under the rubric of 23(b)(2), which authorizes a class action if the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief and corresponding declaratory relief appropriate for the class as a whole.

As discussed previously, prison conditions suits have traditionally been brought as class actions under Rule 23(b)(2). This subsection has been liberally applied in the area of civil rights, including suits that have challenged conditions of confinement, because it was specifically designed for situations in which broad injunctive and declaratory relief are sought. See Penson v. Terminal Transport Co., 634 F.2d 989 (5th Cir. 1981); Jones v. Diamond, 519 F.2d at 1090, supra. Moreover, in this action, the defendants bear direct responsibility for the continuation of unconstitutional conditions of confinement for

death-sentenced prisoners. They have either acted or refused to act in the areas that give rise to this suit on grounds that have general application to the class as a whole. The conditions and practices at issue are not the result of actions, policies, or practices that are aimed at the named plaintiffs or at other particular prisoners. Instead, they are the products of policies and practices, as well as inaction, that have general application to death-sentenced prisoners as a group. Therefore, injunctive and declaratory relief with respect to the class as a whole will be entirely appropriate.

CONCLUSION

For the reasons discussed above, plaintiffs' motion for class certification should be granted.

Respectfully submitted,

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Counsel for Plaintiffs

Dated:

UNITED STATES DISTRICT COURT
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 Plaintiffs,)
)
 v.)
)
BRUCE LYNN, et al.,)
)
 Defendants.)

Civil Action
No.

MOTION FOR CLASS CERTIFICATION

Plaintiffs move this Court for an order certifying this proceeding as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. Plaintiffs bring this action on their own behalf and on behalf of a class consisting of all persons who are or will be confined under sentence of death by the State of Louisiana. Plaintiffs seek declaratory and injunctive relief to redress the denial by defendants of rights secured to the plaintiff class under the Constitution and laws of the United States. Plaintiffs are prisoners who are or will be confined under sentence of death by the Louisiana Department of Corrections.

1. The class, consisting of 39 persons, is so numerous as to make joinder of all members impracticable.

2. There are questions of law and fact common to the class, namely, whether the policies and practices of the defendants are denying the plaintiff class meaningful access to

the courts and to the assistance of counsel.

3. The policies and practices that form the basis of this complaint affect all members of the class, and the relief sought will apply to the entire class.

4. The plaintiffs are all prisoners sentenced to death by the State of Louisiana. Their claims are typical of the claims of the class, and they will fairly and adequately protect the interests of the class. They are represented by counsel who are experienced in representation of prisoners in cases concerning prison conditions.

5. The prosecution of separate actions by individual members of the class could create a risk of inconsistent adjudication with respect to each that would establish incompatible standards of conduct for defendants. The defendants have acted or failed to act on grounds generally applicable to all death-sentenced prisoners incarcerated by the Louisiana Department of Corrections. The appropriate injunctive and declaratory relief would apply to the class as a whole.

6. The prosecution of separate actions by individual members of the class would create a risk of adjudication that as a practical matter would be dispositive of the interests of other members not party to such adjudication, or would substantially impair or impede their ability to protect their interests.

WHEREFORE, plaintiffs respectfully request the Court to determine that this proceeding may be maintained as a class action pursuant to F.R.Civ.P. 23(a) and (b)(1) and (2).

Respectfully submitted,

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Counsel for Plaintiffs

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MOTION TO PROCEED PRO HAC VICE

Counsel of Record moves this Honorable Court, pursuant to Rule 1 (e) Rules of the District Court for the Middle District of Louisiana, to permit Claudia Wright to appear and participate as co-counsel for the plaintiffs in this case. Ms. Wright is a member in good standing of the Florida Bar and of the United States District Court for the District of Maryland.

Respectfully submitted,

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