

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>CHARLES GRAHAM aka CHARLES</b>	)	
<b>STEVENSON and</b>	)	
<b>RUSSELL L. DAVIS, on behalf of</b>	)	
themselves and all others similarly situated,	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>No. 3:16-CV-1954</b>
	)	
<b>TONY C. PARKER, Commissioner,</b>	)	<b>Judge Crenshaw</b>
<b>Tennessee Department of Corrections;</b>	)	<b>Magistrate Judge Brown</b>
<b>DR. MARINA CADRECHE, Assistant</b>	)	
<b>Commissioner of Rehabilitative Services,</b>	)	
<b>Tennessee Department of Corrections;</b>	)	
<b>and DR. KENNETH WILLIAMS, Medical</b>	)	
<b>Director, Tennessee Department of</b>	)	
<b>Corrections, in their official capacities,</b>	)	
	)	
<b>Defendants.</b>	)	

---

**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION**

---

Plaintiffs, through undersigned counsel, submit this memorandum in support of their motion for class certification under Rule 23 of the Federal Rules of Civil Procedure. The Court should grant Plaintiffs’ motion for class certification because Plaintiffs satisfy the requirements of Rule 23 and this action can be most efficiently resolved as a class action.

**INTRODUCTION**

Plaintiffs, as individuals and on behalf of the proposed class, have sued Defendants to stop ongoing violations of the Eighth Amendment rights of all inmates infected with the Hepatitis C virus (“HCV”) incarcerated in the state of Tennessee under the jurisdiction of the Tennessee Department of Corrections (“Department”).

Unfortunately, HCV infection rates have skyrocketed within Tennessee prisons. However, Defendants have confronted this epidemic with little more than indifference, sweeping the medical needs of infected inmates under the rug. Specifically, the Department has failed to institute policies and protocols to any medical treatment to the vast majority of HCV-positive inmates, let alone the most effective treatments widely adopted by the medical community as the current standard of care. In effect, the Department has denied a readily-available cure for a chronic, painful and deadly disease to inmates who are completely reliant on the Department for their medical care.

In order to remedy these inhumane and unconstitutional deficiencies, Named Plaintiffs seek to represent a class of inmates pursuant to Rule 23(b)(2) and/or Rule 23(b)(1) of the Federal Rules of Civil Procedure. The proposed Inmate Class consists of all persons currently incarcerated in facilities under the control or jurisdiction of the Department.

### **CLASS DEFINITION**

Plaintiffs seek to certify a class, referred to as the “Inmate Class,” which is defined as:

**All persons currently incarcerated in any facility under the supervision or control of the Tennessee Department of Corrections or persons incarcerated in a public or privately owned facility for whom the Tennessee Department of Corrections has ultimate responsibility for their medical care and who have at least twelve weeks or more remaining to serve on their sentences and are either currently diagnosed with Hepatitis C infection or are determined to have Hepatitis C after an appropriate screening test has been administered by the Department of Corrections.**

Named Plaintiffs seek to represent the Inmate Class, with their counsel of record serving as Class counsel.

### **STATEMENT OF FACTS**

HCV is a viral infection primarily spread through the transmission of blood from a person infected with the disease to another person. HCV attacks the liver and causes an inflammation of

the liver called hepatitis. The inflammation can significantly impair the liver's ability to filter toxins from the blood, digest essential nutrients, and prevent disease. Chronic HCV can also lead to chronic liver disease, liver fibrosis, and death. Complaint, Dkt. 1 ("Compl."), ¶¶ 1, 31; Compl., Exhibit A, Dkt. 1-1.

Approximately twenty percent of the inmates under the supervision of the Department, 3,487 as of May 2016, are known to be infected with HCV. *Id.* ¶ 17. Statistically, it is likely that as many as half of the roughly 22,000 individuals in the Department's custody are infected with HCV. *Id.* The Department releases several thousand inmates back into Tennessee communities every year. Most of those are not screened or treated for HCV infection.

In the past, the standard treatment for HCV infections, which included the use of interferon and ribavirin medications, failed to cure large numbers of patients and was associated with painful and other adverse side-effects, including psychiatric and autoimmune disorders, flulike symptoms, and gastrointestinal distress. *Id.* ¶ 12. Over the past few years, the Federal Drug Administration ("FDA") has approved new direct-acting antiviral drugs ("DAA") to treat HCV infections. DAAs have few side effects, have greater efficacy than older treatments for HCV, and can be taken for significantly less time (75% less) than prior HCV treatments. *Id.* ¶¶ 13, 14. Use of the latest DAA medications is now the standard of care in the community for the treatment of HCV infections. *Id.* ¶ 41. The CDC has recommended these new treatment modules and the Federal Bureau of Prisons (BOP), in 2014, adopted new Clinical Practice Guidelines that incorporate these new DAA treatment modules. *Id.* ¶ 18.

Defendants have not implemented these new treatment modules for the treatment of HCV infections within the Department. *Id.* ¶ 43. In fact, the current Department Protocol on the treatment of HCV expressly excludes DAA treatment, relying instead on outdated treatment

methods that fall below the community standard of care. In practice, Defendants have largely ceased providing *any* treatment to inmates with HCV infections, including interferon and ribavirin therapy. *Id.* ¶ 44. Defendants have denied requests by the Named Plaintiffs and others for DAA medications to treat their HCV infections. *Id.* ¶ 45. Inmates who seek medical treatment for their HCV infections have been given a variety of excuses, including that no protocol for treatment is currently in place and that treatment is not provided in certain Department facilities. *Id.* Consequently, Named Plaintiffs and other inmates have not received the necessary medical treatment for HCV, including the latest DAA, and have a substantially increased risk of continued HCV infection, liver disease, liver cancer, cirrhosis, and death. *Id.*

### **ARGUMENT**

For a class to be certified and litigation to proceed as a class action, the party seeking certification must satisfy all four requirements of Rule 23(a) and at least one of the three requirements in Rule 23(b) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 23(b); *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996). Although the court must conduct a “rigorous analysis” to determine if the Rule 23 prerequisites are met, *Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 161 (1982), class certification depends only on the requirements of Rule 23, and not on the plaintiff stating a claim or the likely success on the merits of the case. *Weathers v. Peters Realty Corp.*, 499 F.2d 1197, 1201 (6th Cir. 1974) (citing *Miller v. Mackey Int’l.*, 452 F.2d 424, 427 (5th Cir. 1971)). Plaintiffs’ motion to certify the Inmate Class as defined should be granted because Plaintiffs, as the class representatives, and this proposed Class satisfy the requirements of Fed. R. Civ. P. 23.

#### **I. PLAINTIFFS SATISFY THE RULE 23(a) REQUIREMENTS**

A proposed class meets the requirements in Fed. R. Civ. P. 23(a) 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 of the class representative is typical of the claims of the class, and
- (4) the class representative will fairly and adequately protect the interests of the class.

*See Am. Med. Sys., Inc.*, 75 F.3d at 1079. Rule 23(a)'s requirements effectively limit the class claims to claims that are fairly encompassed by the named plaintiff's claim. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011). The proposed Class satisfies the Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy of representation and therefore Plaintiffs may sue as Class representatives. *See Fed. R. Civ. P. 23(a)*.

**A. The Inmate Class satisfies Rule 23(a)(1) because joinder of all Class members would be impracticable.**

The Inmate Class satisfies Rule 23(a)(1) because joinder of all Class members is impracticable based on the large number of Class members, the geographic diversity of Class members, and the inability of many Class members to bring individual suits. To be certified as a class, Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." *Fed. R. Civ. P. 23(a)(1)*.

There is no strict numerical test for determining that joinder is impracticable; therefore, the impracticability of joinder is determined based on the circumstances of the case. *Am. Med. Sys., Inc.*, 75 F.3d at 1079 (citing *Senter v. GMC*, 532 F.2d 511, 523 n.24 (6th Cir. 1976)). A "substantial number" of class members will satisfy the numerosity requirement, however the Sixth Circuit grants a "presumption that joinder is impracticable" for classes in which the number of class members reaches forty. *Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th Cir. 2006); *City of Goodlettsville v. Priceline.com, Inc.*, 267 F.R.D. 523, 529 (M.D. Tenn. 2010).

Even if the exact size of the class is unknown, the proposed class satisfies the numerosity requirement if “general knowledge and common sense indicate that it is large.” *Olden v. LaFarge Corp.*, 203 F.R.D. 254, 269 (E.D. Mich.), *aff’d*, 383 F.3d 495 (6th Cir. 2004). In terms of size, a “substantial number” of class members satisfies the numerosity requirement of Rule 23(a)(1) and a class with forty or more members is presumed to satisfy the numerosity requirement based on its size alone.

In addition to the size of the proposed class, factors such as the ease of identifying class members, the geographic dispersion of class members, and judicial economy may indicate that joinder of all class members is impracticable. *Mays v. Tenn. Valley Auth.*, 274 F.R.D. 614, 621 (E.D. Tenn. May 10, 2011). In *Mays*, the court denied class certification under Rule 23(a)(1) because the Plaintiffs did not show that joinder was impracticable because the class members were in close geographic proximity to one another and a number of the class members had already filed suits on their own. *Id.* at 621-22. Thus, a class with a substantial number of members combined with geographic disparity of the members or the inability of the members to bring separate suits weighs in favor of class certification under Fed. R. Civ. P. 23(a)(1).

The Inmate Class includes a substantial number of Class members in several different prisons across the state, making joinder of all members in a single suit impracticable. The total number of Class members well exceeds forty. According to a recent report, 3,487 inmates in Tennessee prisons currently have a diagnosis of HCV infection. *Id.* ¶¶ 17, 19. The actual number of infected inmates is likely closer to 11,000, given that approximately half of inmates tested are positive. *Id.*<sup>1</sup> The Inmate Class numbers well into the thousands of plaintiffs and,

---

<sup>1</sup> The Department has in its custody approximately 22,000 inmates. Of 901 inmates tested in 2015 for HCV, 424 tested positive. *Id.* ¶ 17. From that number and from professional estimates,

therefore, should be presumed to be impractical because of its size alone. *See Daffin*, 458 F.3d at 552; *see also Priceline.com, Inc.*, 267 F.R.D. at 529.

Furthermore, the Class members are geographically dispersed across the state of Tennessee and most, if not all, Class members do not have the resources to bring individual suits to vindicate their Eighth Amendment rights. They are held in Department facilities, in county-owned or privately-owned facilities that contract with the Department or in county jails awaiting transfer. Inmates in all prisons operated by the Department or private contractors under Department authority have reported inmates with HCV diagnoses. *Id.* ¶ 26. Additionally, the inmates who comprise this class likely have no resources of their own and could not bring separate, individual suits should they desire and were aware that their rights are being violated.

The Inmate Class satisfies Rule 23(a)(1)'s numerosity requirement. The substantial size of the Class, the geographic diversity of the Class members, and the unlikelihood that the Class members would – or could – bring separate suits weigh in favor of certification under Fed. R. Civ. P. 23(a)(1).

**B. Rule 23(a)(2) is satisfied because there are questions of law and fact common to each member of the Inmate Class.**

Injunctive actions, by their very nature, often present common questions satisfying Rule 23(a)(2) because there are “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). They also do not involve an individualized inquiry for the determination of damages. A proposed class satisfies the commonality requirement of Rule 23(a)(2) if the class members’ claims “depend on a common contention” and that common contention is “of such a nature that it is capable of classwide resolution.” *Wal-Mart Stores, Inc.*, 564 U.S. at 350. Stated another way, a

---

Plaintiffs extrapolate that approximately half of the incarcerated population are infected with HCV. *Id.*

proposed class satisfies the commonality requirement if there exists a “common issue the resolution of which will advance the litigation.” *Sprague v. GMC*, 133 F.3d 388, 397 (6th Cir. 1998). Although there may be many common issues of law or fact, Rule 23(a)(2) only requires that a single issue of law or fact be common to all members of the class. *Am. Med. Sys., Inc.*, 75 F.3d at 1080. Factual discrepancies between class members are not fatal to a showing of commonality as long as the common questions predominate over questions affecting only individual class members. *See id.*; *see also In re Whirlpool Corp. Front-Loading Washer Products Liab. Litig.*, 722 F.3d 838, 858 (6th Cir. 2013). The commonality requirement of Fed. R. Civ. P. 23(a)(2) is satisfied if there is at least one question of law or fact common to all members of the class and its resolution will advance the litigation.

Plaintiffs satisfy Rule 23(a)(2) because there are questions of both law and fact that pertain to all members of the Inmate Class and are capable of class-wide resolution such that it will advance the litigation. The central legal question at issue in this case is whether the failure to diagnosis and treat HCV in inmates with the most recent and generally accepted standard of treatment violates the Eighth Amendment to the United States Constitution. This question is common to all Class members because all are incarcerated and subject to treatment protocols and policies regarding treatment for HCV. This question can be resolved with respect to all Class members at the same time. *Id.* ¶¶ 44-47; *see Sprague*, 133 F.3d at 397.

Questions of fact further satisfy the commonality requirement. The factual question of whether the Department treatment protocols and policies adequately screen for, diagnose and treat inmates with HCV applies to all proposed Class members. Questions regarding the standard of care for treating HCV likewise apply to all Class members. Resolution of these

questions, and others, will involve facts common to all members of the Class and will materially advance the litigation.

Even though there may be factual discrepancies among the Class members regarding when they were diagnosed with HCV, to what degree the disease has progressed, what treatment they may have received in the past, and what other treatment or monitoring may be indicated based on the progression of the disease, these discrepancies do not defeat a showing of commonality. *See Am. Med. Sys., Inc.*, 75 F.3d at 1080; *see also Whirlpool Corp. Front-Loading Washer Products Liab. Litig.*, 722 F.3d at 858. Such factual discrepancies are not central or essential to the remedy sought by the complaint.

The central facts relevant to all Class members are that the Department has failed to adopt a medically sound treatment protocol and that Department facilities have failed utterly to screen, diagnose and treat inmates for HCV. Of approximately 22,000 inmates in the system in 2015, including 11,000 entering the system and 5,000 exiting, the Department screened only 901 inmates. Despite almost half of those screened testing positive, no additional screening was implemented. Of the approximately 3,400 inmates currently diagnosed with the disease, only **eight** are receiving treatment at all. No inmate is receiving the generally accepted DAA treatment for HCV, which had been found to cure the disease in 90+% of cases. *Id.* ¶ 14.

Plaintiffs satisfy the commonality requirement of Fed. R. Civ. P. 23(a)(2). Multiple issues of both law and fact are common to all members of the Inmate Class. These questions can be uniformly resolved on a class-wide basis such that judicial economy is achieved.

**C. Plaintiffs satisfy Rule 23(a)(3) because their claim is typical of the class they seek to represent.**

Plaintiffs satisfy Rule 23(a)(3) because their claim—that Defendants’ failure to diagnose and provide medically accepted treatment of HCV to infected inmates violates the Eighth

Amendment to the United States Constitution —is typical of the Class that they seek to represent. Rule 23(a)(3) requires that the “claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Typicality does not require the claims of the class representative to be identical to the claims of other class members. *See Falcon*, 457 U.S. at 155. A claim is typical if it: (1) arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and (2) is based on the same legal theory as their claims. *Craft v. Vanderbilt Univ.*, 174 F.R.D. 396, 404 (M.D. Tenn. 1996) (citations omitted).

The typicality requirement determines whether there exists a “sufficient relationship” between the injury to the named plaintiffs and the conduct affecting the class such that there is a “collective nature” to the challenged conduct. *Stout v. J.D. Byrider*, 228 F.3d 709, 717 (6th Cir. 2000) (quoting *Sprague*, 133 F.3d at 399). In other words, “[a]s goes the claim of the named plaintiff, so go the claims of the class.” *Id.* (citations omitted). The typicality requirement of Rule 23(a)(3) is satisfied if the plaintiff’s claim arises from a common practice, conduct, or event as gives rise to potential claims by other class members and plaintiff’s claim is based on the same legal theory as the claims of the other class members.

Plaintiffs’ claims satisfy Rule 23(a)(3). Plaintiffs’ claims are typical of – indeed identical to – the Class claims because all claims involve the constitutionality of the Department’s treatment protocols, policies, and practices regarding HCV. Plaintiffs’ claims involve the same legal theory as the Class claims. If Plaintiffs establish that the Department’s treatment, or lack thereof, of HCV is unconstitutional, and that they are entitled to injunctive and declaratory relief, the claims of the Class will necessarily succeed and the Class members will reap the benefits of the same injunctive and declaratory relief.

**D. Plaintiffs satisfy Rule 23(a)(4) because they are members of the Class with common interests to the unnamed Class members and will vigorously prosecute the interests of the Class through qualified counsel.**

Finally, Plaintiffs satisfy Rule 23(a)(4) because their interests are synonymous with the interests of the Class and they have a strong, life-or-death incentive to litigate this issue to the fullest extent possible. Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). There are two criteria for determining whether a class will be adequately represented: (1) the class representative must have common interests with unnamed members of the class, and (2) the class representative will vigorously prosecute the interests of the case through qualified counsel. *Rutherford v. City of Cleveland*, 137 F.3d 905, 909 (6th Cir. 1998); *Am. Med. Sys., Inc.*, 75 F.3d at 1083 (citing *Senter*, 532 F.2d at 525).

A plaintiff’s interests must be coextensive with, and not antagonistic to, the interests of the class on all issues which relate to the class; otherwise, the interests of unnamed class members may not be adequately protected. *Senter*, 532 F.2d at 525; *see, e.g., Hansberry v. Lee*, 311 U.S. 32, 85 (1940). The adequate representation requirement is interrelated with the typicality requirement because, without the class representative having a typical claim, he has no incentive to pursue the claims of other class members. *Am. Med. Sys., Inc.*, 75 F.3d at 1083. Rule 23(a)(4) is satisfied if the class representative’s interests are synonymous with the unnamed class members and the class representative will vigorously prosecute the interests of the class through qualified counsel.

Plaintiffs satisfy the requirements of Rule 23(a)(4) because their interests are identical to the unnamed Class members’ interests. They have an incentive to vigorously litigate their claims to the fullest extent possible – indeed, their lives literally depend on it. Plaintiffs are currently

incarcerated in Department facilities. Compl. ¶¶ 4, 5. Both will be incarcerated for a long time. Declaration of Thomas Castelli, filed contemporaneously (“Castelli Decl.”), ¶ 5. While incarcerated, Plaintiffs are subjected to the treatment protocols and policies as proscribed by the Defendants. They are both completely reliant on the Department for their medical care. Plaintiffs’ interest in the present litigation is to obtain declaratory and injunctive relief that will compel the Department to properly treat, if not cure, their otherwise fatal disease in accordance with relevant current medical standards. Compl. ¶¶ 40, 64, 78, 89.

The unnamed Class members are also subject to the same treatment protocols and policies as Plaintiffs. Plaintiffs’ interests are coextensive to the unnamed Class members’ interests. Favorable relief in this case will provide relief to all Class members. Plaintiffs seek the same relief as the unnamed Class members, namely to protect their constitutional rights to receive adequate medical care and treatment for a chronic, painful condition that can, and often will, lead to death. Because Plaintiffs’ physical health is at stake, they have the highest incentive to vigorously litigate this case to achieve favorable relief from the Court.

Named Plaintiffs have HCV and both are committed to receiving treatment before their prison terms expire. Castelli Decl., ¶ 3. Plaintiffs are both personally and morally committed to this cause and have expressed to the undersigned a strong commitment to pursuing this litigation. Named Plaintiffs are meticulous and well informed; they have pursued grievances and other available outlets, made persuasive arguments to Departmental authorities, documented those grievances, and independently researched many aspects of their disease and its treatment. *Id.* ¶¶ 3-5. In fact, Plaintiff Graham works at the prison law library and is knowledgeable regarding judicial processes. *Id.* ¶ 4.

Finally, the proposed Class counsel is qualified to litigate this case and will adequately protect the interests of the Class. Plaintiffs' attorneys have extensive experience litigating complex civil rights matters in federal court. Castelli Decl. ¶¶ 1-2. Proposed Class counsel has the time and resources to vigorously litigate this case and are familiar with the federal laws and procedures that will be relevant during the course of the litigation. *Id.* Rule 23(a)(4) is therefore satisfied because Plaintiffs have the same interests as the unnamed Class members and will vigorously litigate the case through experienced counsel to secure appropriate relief for all members of the Inmate Class.

## **II. PLAINTIFFS SATISFY THE REQUIREMENT OF 23(b)(2) BECAUSE INJUNCTIVE AND DECLARATORY RELIEF WOULD PROVIDE RELIEF TO ALL CLASS MEMBERS**

Plaintiffs, in addition to satisfying the requirements of Rule 23(a), also satisfy the requirements of Rule 23(b)(2) because final injunctive and declaratory relief would be appropriate for the entire Class. Indeed, certification under Rule 23(b)(2) is for injunctive classes. *See, e.g., Thrope v. Ohio*, 173 F.R.D. 483, 490-491 (S.D. Ohio 1997); *Bremiller v. Cleveland Psychiatric Inst.*, 879 F. Supp. 782, 797 (N.D. Ohio 1995). Favorable injunctive relief in this case would eliminate the unconstitutional withholding of adequate medical care to Plaintiffs and all Class members, making certification under this Rule appropriate.

Once the Court determines that the requirements of Rule 23(a) are met, the Court should certify a class under Rule 23(b)(2) if “the party opposing the class has acted... on grounds that apply generally to the class, so that final injunctive relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). Cases are particularly well-suited for 23(b)(2) treatment if they contain a common claim that is susceptible to a single proof and are subject to a single injunctive

remedy. *See Senter*, 532 F.2d at 525. Rule 23(b)(2) is satisfied when final injunctive relief would be appropriate to the class as a whole based on the facts of the case.

In the present case, Defendants have acted in the same way towards all of the Class members. Plaintiffs and all members of the Class are being denied the constitutionally mandated medical treatment for HCV. Compl. ¶¶ 29, 31, 41. Defendants' treatment protocols, policies, and behavior towards all members of the Class is susceptible to a single proof in the same way that the common questions of law and fact can be resolved with respect to the Class as whole. If Plaintiffs show Defendants have violated the Class members' constitutional rights, then favorable injunctive and declaratory relief would provide appropriate relief to all Class members simultaneously, namely the institution of proper screening and treatment for their disease. The declaratory and injunctive relief sought satisfies the requirements of Rule 23(b)(2) for class certification. Indeed, the Ninth Circuit recently approved of certification under Rule 23(b)(2) in a case in which a class of inmates sought injunctive relief for inadequate medical care. *Parsons v. Ryan*, 754 F.3d 657, 678, 686-87 (9th Cir. 2014).

### **III. ALTERNATIVELY, THE CLASS SHOULD BE CERTIFIED UNDER RULE 23(b)(1) BECAUSE DEFENDANTS MUST TREAT ALL INFECTED INMATES**

While Named Plaintiffs believe that Rule 23(b)(2) certification is appropriate and adequate, the Inmate Class also satisfies the requirements of Rule 23(b)(1)(A). Rule 23(b)(1)(A) covers cases in which separate actions by individual class members would pose the risk of establishing "incompatible standards of conduct for the party opposing the class." Fed. Rule Civ. Proc. 23(b)(1)(A). Rule 23(b)(1)(A) generally applies where the defendant is obliged by law to treat the members of the class alike. *See Amchem Products, Inc.*, 521 U.S. at 614. Incompatible standards of conduct arise where different results in separate actions would impair the defendant's "ability to pursue a uniform continuing course of conduct." *In re Telectronics*

*Pacing Sys., Inc.*, 172 F.R.D. 271, 284 (S.D. Ohio 1997) (quoting Charles A. Wright, et al., 7A Federal Practice & Procedure, § 1773 at 431 (2d ed.1986)).

The claims of Class members in this suit are connected not only because of common factual and legal issues, but also because they arise from a system of medical treatment that is applied to all Department inmates. The central legal question at issue in this case is whether Defendants' failure to diagnose and treat HCV in inmates with the most recent and generally accepted standard of treatment falls below constitutional standards. Named Plaintiffs and Class members are, literally, a captive audience. They all rely exclusively on Defendants to provide medical treatment for their illness; they cannot seek alternative treatment. Because constitutional standards require Defendants to provide medical treatment equally to all infected inmates, Defendants' policies and treatment protocols are generally applicable to all Class members. In fact, separate lawsuits on this issue would pose the very real risk of establishing varying standards of treatment and applying differing protocols to individual inmates. This would thwart the very purpose of this lawsuit – to require Defendants to provide adequate and undiscriminating medical care to all HCV-positive inmates. For this reason, Rule 23(b)(1)(A) certification is appropriate in the alternative.

#### **IV. THE INMATE CLASS IS APPROPRIATELY DEFINED**

In addition to complying with Rule 23, the Sixth Circuit requires that the class definition be “sufficiently definite” so that it is administratively feasible for the court to determine whether a particular individual is a member of the proposed class or not. *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 537-38 (6th Cir. 2012) (citations omitted). To assist the court in making this determination, the class must be defined using “objective criteria” such that when a person

presents him- or herself, the court can determine whether or not he or she is a class member. *Id.* at 538 (citations omitted).

The Inmate Class is definite and objectively measured such that the Court can easily determine whether a particular individual is a member of the Class. Compl. ¶ 33. The Class is limited in time to persons who are presently incarcerated in a facility operated or supervised by the Department and who have a current diagnosis of HCV or who are diagnosed with the virus after proper screening by the Department. Essentially, inmates either have the virus or they do not. If they have contracted the virus, they are part of the Class. An inmate who meets the objective criteria would be a Class member because they are subject to unconstitutionally deficient medical care by the Department for their HCV. As such, the Inmate Class should be certified as consistent with the requirements of Fed. R. Civ. P. 23.

### CONCLUSION

For the reasons set forth in this memorandum, the Court should permit this matter to proceed as a class action under Fed. R. Civ. P. 23(b)(2) and 23(b)(1). Plaintiffs respectfully request that the Court grant Plaintiffs' Motion to Certify Class by certifying the Inmate Class. Plaintiffs also ask that their counsel of record be approved as counsel for the Class.

Dated: September 16, 2016

Respectfully submitted,

/s/ Karla M. Campbell  
Karla M. Campbell (BPR 27132)  
BRANSTETTER, STRANCH  
& JENNINGS, PLLC  
The Freedom Center  
223 Rosa L. Parks Avenue, Suite 200  
Nashville, TN 37203  
Phone: (615) 254-8801  
Fax: (615) 255-5419  
karlac@bsjfirm.com

Thomas H. Castelli (BPR 24849)  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF TENNESSEE  
P.O. Box 120160  
Nashville, Tennessee 37212  
Phone: (615) 320-7142  
Fax: (615) 691-7219  
tcastelli@aclu-tn.org

Elizabeth S. Logsdon (BPR 32066)  
DISABILITY RIGHTS TENNESSEE  
2 International Plaza, Suite 825  
Nashville, Tennessee 37217  
Phone: (615) 298-1080  
Fax: (615) 298-2046  
lizl@disabilityrightstn.org

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been served by ECF upon the following counsel for defendants, on this the 16<sup>th</sup> day of September, 2016.

Madeline Bertasi Brough  
Pamela S. Lorch  
Office of the Attorney General & Reporter  
P.O. Box 20207  
Nashville, TN 37202-0207

*Attorneys for Defendants*

/s/ Karla M. Campbell  
Karla M. Campbell