

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**JOHN BAXLEY, JR., ERIC L. JONES,
SAMUEL STOUT, AMBER ARNETT,
EARL EDMONDSON, JOSHUA HALL,
DONNA WELLS-WRIGHT,
ROBERT WATSON, HEATHER REED,
and DANNY SPIKER, JR.,
on their own behalf and on behalf
of all others similarly situated,**

Plaintiffs,

v.

**Civ. Act. No. 3:18cv01526
(Chambers, J.)**

**BETSY JIVIDEN, in her official capacity as
Commissioner of the WEST VIRGINIA
DIVISION OF CORRECTIONS AND
REHABILITATION, the WEST VIRGINIA
DIVISION OF CORRECTIONS AND
REHABILITATION, and SHELBEY SEARLS, in his
official capacity as the Superintendent of WESTERN
REGIONAL JAIL AND CORRECTIONAL FACILITY,**

Defendants.

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

NOW COME the named Plaintiffs, by counsel, and pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), move this Honorable Court to certify this proceeding as a class action.¹ Based upon this motion, the complaint, and the authorities and principles discussed in Plaintiffs' Memorandum in Support of Plaintiffs' Motion for Class Certification, Plaintiffs ask this Court to certify a Plaintiff class for declaratory and injunctive relief, defined as follows:

¹ Plaintiffs file this preliminary motion for class certification while class discovery is ongoing to uphold their responsibilities to aggressively pursue and protect the interests of the class. Plaintiffs anticipate filing an amended motion for class certification as class discovery progresses, and do not suggest that Defendants' response is necessary prior to the deadlines set forth by this Court.

All persons who were at any time on or after December 18, 2018, or who will be, admitted to a jail in West Virginia with a discernable, treatable medical and/or mental health problem.

Plaintiffs further ask this Court to certify a Plaintiff subclass for declaratory and injunctive relief, defined as follows:

All persons who were at any time on or after December 18, 2018, or who will be, admitted to a jail in West Virginia who meet the definition of being a “qualified individual with a disability” under the ADA.

As set forth in the accompanying Memorandum of Law in Support of Plaintiffs’ Motion for Class Certification, the named Plaintiffs meet the requirements for certification of a class under Federal Rule of Civil Procedure 23(a), including numerosity, common questions of law and fact, common claims, and that “the representative parties will fairly and adequately protect the interests of the class.” Moreover, this class is appropriate for certification under Federal Rule of Civil Procedure 23(b)(2), as the defendant “has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2).

Undersigned counsel also request to be appointed as counsel for the class pursuant to Federal Rule of Civil Procedure 23(g), based upon the facts set forth in Plaintiffs’ Memorandum in Support of Plaintiffs’ Motion for Class Certification, and in class counsel’s individual supporting declarations. *See* Decl. of Lydia C. Milnes, attached as Ex. 1; and Decl. of Jennifer S. Wagner, attached as Ex. 2.

WHEREFORE, Plaintiffs, who bring this action to address widespread, systemic failures by Defendants West Virginia Division of Corrections and Rehabilitation and Betsy Jividen,

Commissioner, to provide adequate, timely medical and mental health treatment to inmates in jail facilities, respectfully request that this Court certify the class and subclass as stated above.²

Respectfully submitted,

**JOHN BAXLEY, JR., ERIC L. JONES,
SAMUEL STOUT, AMBER ARNETT,
EARL EDMONDSON, JOSHUA HALL,
DONNA WELLS-WRIGHT, ROBERT
WATSON, HEATHER REED, and
DANNY SPIKER, JR., on behalf of
themselves and others similarly situated,**

By Counsel:

/s/ Lydia C. Milnes
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² Plaintiffs' complaint additionally raises claims relating to the conditions at Western Regional Jail and Correctional Facility, designated in the complaint as the "Class B" claim. Plaintiffs will seek certification of that class in a separately filed motion. The instant motion seeks class certification strictly of the "Class A" and the "Class A Subclass" claims.