

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DERRICK PHIPPS, et al.,)	
)	
<i>Plaintiffs,</i>)	
)	No. 07 CV 3889
-vs-)	
)	<i>(Judge Bucklo)</i>
SHERIFF OF COOK COUNTY)	
and COOK COUNTY, ILLINOIS,)	
)	
<i>Defendants.</i>)	

**PLAINTIFF’S MOTION TO CERTIFY
CASE AS A CLASS ACTION**

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, plaintiffs, by counsel, moves the Court to order that this case may be maintained as a class action on behalf of:

All former and current wheelchair bound inmates at the Cook County Department of Corrections who after July 11, 2005 were subjected to discrimination because of their disability in violation of §202 of the Americans with Disabilities Act of 1990(ADA) and §504 of the Rehabilitation Act of 1973.

Grounds for this motion are as follows:

1. Title II of the ADA, 42 U.S.C. §12132, provides in pertinent part that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."
2. Each member of the proposed class of "former and current wheelchair bound inmates" is a person with a "disability" under the ADA: a person

who is wheelchair bound is unable to perform the essential life function of walking and, as the Court recognized in *Barnes v. Gorman*, 536 U.S. 181 (2002), is "disabled" under the standards of the ADA and the Rehabilitation Act.

3. Plaintiffs have been unable to determine the precise number of wheelchair bound inmates who have been at the jail after July 11, 2005. Plaintiffs' counsel identified 14 additional class members in the four week period between August 29, 2007 to September 26, 2007, Affidavits from these members of the putative class are attached as Exhibit 1. Based on their experience in other class actions at the jail, plaintiffs' counsel expect that the class will include more than 50 wheelchair bound individuals and satisfy the numerosity requirement of Rule 23(a). *Hernandez v. Chase Bank USA, N.A.*, 243 F.R.D. 285, 287 (N.D.Ill. 2006) (citing *McCabe v. Crawford & Co.*, 210 F.R.D. 631 (N.D.Ill. 2002) for proposition that "a class of forty is generally sufficient to satisfy Rule 23(a)(1).")
4. Counsel for the parties will be able to determine the identity and number of class members by examining records maintained by the jail and by Cermak Hospital. Plaintiffs therefore request that the Court conditionally conclude that the proposed class satisfies the numerosity requirement of Rule 23(a), subject to reconsideration after counsel have examined the relevant records. See, e.g., *Kilgo v. Bowman Transp., Inc.*, 789 F.2d 859 (11th Cir. 1986).
5. Plaintiffs contend that the jail fails to provide appropriate shower facilities and appropriate toilet facilities for wheelchair bound persons.¹ As in *Love*

v. Westville, 103 F.3d 558 (7th Cir. 1996), these allegations present "a textbook example of a traditional ADA claim based on the denial of access to services, programs, and activities, based on his physical disability." *Id.* at 559.

6. Each of the named plaintiffs alleges that he was denied access to appropriate shower facilities and appropriate toilet facilities for wheelchair bound persons. (Amended Complaint, pars. 5-9 (Phipps), pars. 10-11 (House), pars. 12-13 (Courtney), and pars. 14-15 (Grant).)
7. The claims of the named plaintiffs are typical of those of the class:
 - a. Wheelchair bound prisoners are housed at the jail in its "RTU Unit" and in rooms in the Cermak Health Services building.
 - b. Plaintiff's expert, Ken Schoonover, P.E., has inspected the cells in which the named plaintiffs were housed in the "RTU Unit" and at Cermak Health Services. A copy of his report is attached as Exhibit 2.
 - c. Mr. Schoonover is a Professional Engineer who has worked with accessibility standards, codes and regulations for more than 30 years, and was a "Public Member" of the United States Architectural and Transportation Barriers Compliance Board (Access Board), from

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1. The complaint also alleges that the jail fails to provide appropriate "appropriate beds for wheelchair bound persons." (Amended Complaint, par. 5.) Plaintiffs do not seek class certification on this issue.

1998 to March 2005.

- d. Mr. Schoonover concluded that "RTU Units C2 and E1 are not readily accessible to and usable by people with disabilities because of inaccessible sinks, toilets, showers and tables." (Schoonover Report vii, reproduced *infra* at Exhibit 2.)
- e. Mr. Schoonover reached identical conclusion about the patient rooms in the Cermak Health Services building in which the named plaintiffs were housed (Schoonover Report vii):
 - i. Cermak Health Services 3N Rooms 3247, 3237, 3233, 3231, 3229, 3225, 3213 and 3205 are not readily accessible to and usable by people with disabilities because of inaccessible combination toilet/sink fixtures. Room 3243 has a different style toilet/sink fixture that is of a type designed to be accessible, but the installation is not fully compliant.
 - ii. Cermak Health Services 3N Shower Rooms 3242 and 3204 are not readily accessible to and usable by people with disabilities because of inaccessible shower units and soap dispensers.
 - iii. Cermak Health Services 3N Sitz bath room 3248 is not readily accessible to and usable by people with disabilities because of an inaccessible sitz bath fixture and an inaccessible control.
- f. The facilities provided to the four named plaintiffs are typical of those provided to the members of the proposed class: Plaintiffs attach to this motion as Exhibit 1 sworn declarations from fourteen

wheelchair bound persons who are, or were, confined at the jail and who were subject to discrimination because of their disability.

8. Plaintiffs' claims of discrimination presents common questions of fact and law, including the following:
 - a. Are wheelchair bound persons confined at the Cook County Jail denied access to shower facilities, wash basins, sinks, and toilet facilities which are appropriate for wheelchair bound persons?
 - b. Does any such denial of access to shower facilities, wash basins, sinks, and toilet facilities violate the ADA or the Rehabilitation Act?
9. Plaintiffs are represented by competent counsel and will fully and adequately represent each subclass.
10. Class certification is appropriate under Rule 23(b)(3) because common questions predominate over individual issues — questions about the adequacy of shower facilities, wash basins, sinks and toilet facilities for wheelchair bound persons are issues that "readily may be resolved for a class as whole," *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948, 956 (7th Cir. 2006) — and a class action is superior to other methods for the fair and effective adjudication of the controversy. See, e.g., *Robledo v. City of Chicago*, 444 F.Supp.2d 895, 908 (N.D.Ill. 2006); *Bullock v. Sheahan*, 225 F.R.D. 227, 230 (N.D.Ill. 2004).

It is therefore respectfully requested that the Court order that the case proceed as a class action under Rule 23(b)(3) on behalf of:

All former and current wheelchair bound inmates at the Cook County Department of Corrections who after July 11, 2005 were subjected to discrimination because of their disability in violation of §202 of the Americans with Disabilities Act of 1990(ADA) and §504 of the Rehabilitation Act of 1973.

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