

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHELLE SEMELBAUER, PAULETTE BOSCH,
DENISE VOS, CRISA BROWN, LATRECE
BAKER, TAMMY SPEERS, LONDORA
KITCHENS, STASHIA COLLINS, ANDREA
DORN, JUDY PAULEY, and DELILAH
WICKLIFFE, individually and on behalf of all
similarly situated persons,

Plaintiffs,

vs.

MUSKEGON COUNTY, a municipal corporation;
DEAN ROESLER, in his official capacity as
Muskegon County Sheriff; LT. MARK BURNS, in his
official capacity as Jail Administrator;
CORRECTIONAL OFFICERS IVAN MORRIS,
GRIEVES, DEYOUNG, and DAVID GUTOWSKI, in
their individual capacities; and UNKNOWN
CORRECTIONAL OFFICERS, in their individual
capacities,

Defendants.

CASE NO: 1:14-cv-01245-JTN

HON. JANET T. NEFF

ORAL ARGUMENT REQUESTED

**REPLY BRIEF IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

Table of Contents

Table of Authorities iii

I. Class Certification Is Appropriate for the Injunctive Classes. 1

 A. Factual History Relevant to Class Certification..... 1

 B. Proposed Class Representatives Andrea Dorn and Judy Pauley Are Current MCJ
 Inmates and Can Adequately Represent the Injunctive Classes. 2

 C. Because Their Claims are Inherently Transitory, Plaintiffs Incarcerated When the
 Class Certification Motion Was Filed May Serve as Class Representatives..... 2

II. Class Certification Is Appropriate for the Damages Classes. 7

 A. Named Plaintiffs Are Typical of and Can Adequately Represent Both the Female
 Damages Class and Overcrowding Class. 7

 B. Defendants’ Objections Do Not Relate to Typicality or Adequacy..... 9

III. The Court Should Certify the Injunctive Classes So That It Can Rule on the Preliminary
 Injunction Motion..... 10

Table of Authorities

Cases

Ball v. Wagers, 795 F.2d 579 (6th Cir. 1986)..... 4

Beattie v. CenturyTel, Inc., 511 F.3d 554 (6th Cir. 2007) 7

Carrillo v. Schneider Logistics, Inc., 2012 WL 556309 (C.D. Cal. Jan. 31, 2012)..... 10

Carroll v. United Compucred Collections, 399 F.3d 620 (6th Cir. 2005)..... 7

County of Riverside v. McLaughlin, 500 U.S. 44 (1991)..... 4

Deposit Guaranty Nat. Bank v. Roper, 445 US. 326 (1980) 7

Flood v. Dominguez, 270 F.R.D. 413 (N.D. Ind. 2010) 8

Gerstein v. Pugh, 420 U.S. 103 (1975)..... 3

In re Am. Med. Sys., 75 F.3d 1069 (6th Cir. 1996)..... 8

Olson v. Brown, 594 F.3d 577 (7th Cir. 2010) 5, 6

Sosna v. Iowa, 419 U.S. 393 (1975) 2, 3

Swisher v. Brady, 438 U.S. 204 (1978)..... 4

Tyler v. Suffolk County, 253 F.R.D. 8 (D. Mass. 2008)..... 8

U.S. Parole Commission v. Geraghty, 445 U.S. 388 (1980) 4

Wade v. Kirkland, 118 F.3d 667 (9th Cir. 1997) 5, 10

Zurak v. Regan, 550 F.2d 86 (2d Cir. 1977)..... 5

Treatises

Newberg on Class Actions, § 2.13 (2013) 3

I. Class Certification Is Appropriate for the Injunctive Classes.

Defendants' primary objection to certification of the injunctive classes is that none of the plaintiffs can adequately represent the class because none is currently incarcerated. This argument fails because (a) plaintiffs Dorn and Pauley are currently incarcerated; and (b) where the claims of a class are inherently transitory, mootness of the named plaintiffs' individual claims does not prevent class certification.

A. Factual History Relevant to Class Certification

Plaintiffs filed their motion for class certification on December 4, 2014, the same day as their complaint. Dkt 1, 5, 7. At that time, plaintiff Stashia Collins was incarcerated at the Muskegon County Jail (MCJ). Collins Inmate Log, Dkt 16-28. Her anticipated release date was April 23, 2015. Collins Inmate Profile¹, Exh 23. After this litigation was filed, Ms. Collins was released more than three months early, on January 12, 2015. Collins Release Order, Dkt 16-29.

Pursuant to Fed. R. Civ. P. 15(a)(1), which permits the filing of an amended pleading once as a matter of course, plaintiffs filed a First Amended Complaint on February 6, 2015, which added Andrea Dorn, Judy Pauley and Delilah Wickliffe as plaintiffs and proposed representatives of the injunctive classes. Dkt 18. Plaintiffs' attorney Marc Allen had interviewed all three women on February 3, who at that time were incarcerated at MCJ. *See* Allen Decl., 24; Dorn Decl., Exh 25; Pauley Decl., Exh 26; Wickliffe Decl., Exh 27. On February 4, the day after Mr. Allen met with Ms. Wickliffe, defendants released her. *Id.* Her estimated release date had been February 27, 2015. Wickliffe Inmate Profile, Exh 28. Plaintiffs' counsel did not learn of Ms. Wickliffe's release until February 9. Allen Decl., Exh 24.

¹ To avoid confusion, the exhibits referenced here are those filed with plaintiffs' Motion for Preliminary Injunction. Several new exhibits, which are numbered consecutively from the prior exhibits, and an updated index are attached hereto.

Before this litigation was filed, plaintiffs' counsel interviewed many MCJ inmates. In identifying plaintiffs who could represent the injunctive classes, counsel sought individuals who still had considerable time to serve. However, almost all of the potential class representatives were released before counsel could file this action. In numerous instances, defendants released inmates shortly after they were visited by plaintiffs' counsel, well in advance of their anticipated release dates. Allen Decl., Exh 24. Defendants will likely release Ms. Dorn and Ms. Pauley as soon as it is legal to do so. Accordingly, it is quite possible that by the time the Court considers this motion, these women will also have been released.

B. Proposed Class Representatives Andrea Dorn and Judy Pauley Are Current MCJ Inmates and Can Adequately Represent the Injunctive Classes.

The claims of Ms. Dorn and Ms. Pauley are typical of the injunctive classes, and they will adequately protect the interests of those classes. Both women are routinely viewed naked or partially naked by male guards while they are showering, changing, or using the toilet (Count I); are denied regular out-of-cell exercise (Count II); are denied access to adequate hygiene products (Count III); and suffer under the same abysmal conditions and severe overcrowding (Count IV) that affect all inmates. *See* Dorn Decl., Exh 25; Pauley Decl., Exh 26.

C. Because Their Claims are Inherently Transitory, Plaintiffs Incarcerated When the Class Certification Motion Was Filed May Serve as Class Representatives.

Defendants argue that because they released plaintiff Collins after this lawsuit was filed, she cannot represent the injunctive classes, citing the general rule that a litigant must be a member of the class. *Sosna v. Iowa*, 419 U.S. 393, 403 (1975). However, the Supreme Court, in articulating that general principle, also emphasized an important exception:

There may be cases in which the controversy involving the named plaintiffs is such that it becomes moot as to them before the district court can reasonably be expected to rule on the certification motion. In such instances, whether the certification can be said to 'relate back' to

the filing of the complaint may depend upon the circumstances of the particular case and especially the reality of the claim that otherwise the issue would evade review.

Sosna, 419 U.S. at 402 n.11.

Where, as here, plaintiffs' claims are *inherently transitory*, mootness of their individual claims does not prevent class certification. The seminal treatise on class actions explains:

One of the central advantages of the class action device is its ability to preserve transitory claims for judicial review. One way in which the class action accomplishes this end is that it permits a named plaintiff whose claim is moot to continue to litigate for a certified class so long as class members have a continuing live claim in the case. However, a significant problem arises when the claim at issue is so inherently transitory that individual plaintiffs cannot even expect to maintain it long enough to obtain a decision on, or even file a motion for, class certification. Mooting of the named plaintiff's individual claims before class certification might technically moot the action because, in the absence of a properly certified class, no legal entity has a live claim against the defendant. But strict application of this principle would substantially undermine one of the central purposes of the class action device in precisely those cases that most require its protection. Courts have therefore responded by creating a substantive exception to the mootness doctrine for "inherently transitory claims" in the class context.

Newberg on Class Actions § 2.13 (5th ed. 2013) (footnotes and emphasis omitted). While proposed class representatives must have standing at the time their complaint is filed, "the class certification decision in inherently transitory settings is simply 'related back' to the time of the filing of the complaint with class allegations, at which point the named plaintiff's claims were live." *Id.* The principle applies to "any situation where composition of the claimant population is fluid, but the population as a whole retains a continuing live claim." *Id.* Class certification under this principle is "particularly common in the area of criminal justice class actions due to the inherently transient nature of many ... jail terms." *Id.*

The Supreme Court has repeatedly applied the "inherently transitory" doctrine to class certification in criminal justice cases. For example, in *Gerstein v. Pugh*, 420 U.S. 103, 111 n.11 (1975), prisoners brought a class action regarding the right to probable cause hearings for pretrial

detention, and the Court held that class certification was proper, even if the named plaintiffs' claims were moot at the time of certification:

The length of pretrial custody cannot be ascertained at the outset and it may be ended at any time by release It is by no means certain that any given individual, named as plaintiff, would be in custody long enough for a district judge to certify the class. Moreover, in this case the constant existence of a class of persons suffering the deprivation is certain.

Similarly, in *County of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991), which concerned the right to prompt judicial determination of probable cause, the Court held that because the claims were inherently transitory, the fact that “the class was not certified until after the named plaintiffs’ claims had become moot does not deprive us of jurisdiction.” And in *U.S. Parole Commission v. Geraghty*, 445 U.S. 388, 399 (1980), the Court held that an action brought on behalf of a prisoner class challenging parole release guidelines did not become moot upon expiration of the named plaintiff’s claim, explaining that “[s]ome claims are so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative’s individual interest expires.” Finally, in *Swisher v. Brady*, 438 U.S. 204, 213 n.11 (1978), which concerned juvenile court practices, the Court approved of class certification even though none of the named plaintiffs had live claims, because the district court could not reasonably be expected to rule on the certification motion before the claims of the named plaintiffs became moot, but a “live controversy presently exists between the unnamed class members and the State.”

The lower courts have likewise regularly applied the “inherently transitory” doctrine to certify prisoner classes, despite the fact that the named plaintiffs were no longer incarcerated. For example, in *Ball v. Wagers*, 795 F.2d 579, 581 (6th Cir. 1986), the Sixth Circuit reversed an order denying certification to a class of inmates challenging jail conditions where the named

plaintiff's individual claim for injunctive relief has become moot before the lower court decided on certification. The Sixth Circuit explained that jail conditions claims "may be of the kind that could evade judicial review absent class certification," and that therefore mootness of the named plaintiff's injunctive claims does not necessarily moot the potential class action. *Id.* at 581.

Likewise, in *Olson v. Brown*, 594 F.3d 577 (7th Cir. 2010), an inmate filed both a class action complaint challenging jail procedures and a motion for class certification. However, after the plaintiff was transferred from the jail, the district court dismissed the suit as moot. *Id.* at 579. The Seventh Circuit, in an opinion that thoroughly canvasses the "inherently transitory" exception, reversed. The exception applies where "(1) it is uncertain that a claim will remain live for any individual who could be named as a plaintiff long enough for a court to certify the class; and (2) there will be a constant class of persons suffering the deprivation complained of in the complaint." *Id.* at 582. With respect to the first factor, "the length of incarceration in a county jail generally cannot be determined at the outset and is subject to a number of unpredictable factors, thereby making it inherently transitory." *Id.* at 582. With respect to the second factor, the court held that "all [the named plaintiff] must show is that the claim is likely to recur with regard to the class, not that the claim is likely to recur with regard to him."² *Id.* at 584. Because the record contained numerous affidavits outlining problems similar to those raised by the named plaintiff, this requirement was met. *Id.*³

² The Seventh Circuit explained that the "inherently transitory" doctrine, which concerns whether there is a constant class of persons suffering the same deprivation as the plaintiff, is distinct from the "capable of repetition yet evading review" doctrine, which concerns whether the claim is capable of repetition as to the named plaintiff. *Olson*, 594 F.3d at 583.

³ See also *Zurak v. Regan*, 550 F.2d 86, 91-92 (2d Cir. 1977) (case was not moot even though inmates representing class had all been released prior to class certification because the relatively short periods of incarceration created a significant possibility that named plaintiffs would be released prior to certification and because there was a constant class of persons suffering from the same alleged violations); *Wade v. Kirkland*, 118 F.3d 667, 670 (9th Cir. 1997) (inmate who

Here, the inherently transitory doctrine clearly applies. Plaintiff Stashia Collins was an inmate when the complaint and certification motion were filed, but was suddenly released early before defendants' response brief was even due and long before this court could rule on certification. In the case of plaintiff Delilah Wickliffe, counsel filed an amended complaint on her behalf three days after meeting with her. But that was not fast enough, as defendants unexpectedly released her the day after she met with counsel.

Moreover, as numerous declarations,⁴ the expert report (Dkt 4), the Department of Corrections (DOC) inspection report (Dkt 4-3), and media reports (Dkt 4-7 to 4-10) make clear, there is a "constant class of persons suffering the deprivation complained of in the complaint." *Olson*, 594 F.3d at 582. If the inherently transitory doctrine did not apply, then plaintiffs would be forced to continually amend their complaint to add current inmate after current inmate as previously-added inmates are released, in an effort to ensure that one of those inmates is still incarcerated on whatever date the court has the opportunity to decide the certification motion. Such filings would be highly inefficient and would defeat the purpose of the class action device.

Invocation of the "inherently transitory" exception is particularly appropriate here because the chronology suggests that defendants may be "picking off" prospective class representatives, making their jail terms even more transitory than they otherwise would be. Ms. Collins was released early, shortly after this lawsuit was filed. Ms. Wickliffe was also released early, the day after she was visited by ACLU counsel. Several other inmates who had hoped to represent the injunctive classes were likewise released early under similar circumstances. Allen

was transferred to a different facility prior to ruling on class certification presented a "classic example" of an inherently transitory claim).

⁴ In addition to the initial eight plaintiffs, Dkt 3-2 to 3-9, plaintiffs attach hereto declarations of the three new plaintiffs, as well as that of Shantiara Randle, who was recently incarcerated and prepared to serve as a plaintiff, but was also released prior to filing. *See* Dorn Decl., Exh 25; Pauley Decl., Exh 26; Wickliffe Decl., Exh 27; Randle Decl., Exh 29.

Decl., Exh 24. The law does not permit defendants to “frustrate the objectives of class actions” and “waste judicial resources” by intentionally mooting out the individual claims of the named plaintiffs. *Deposit Guaranty Nat. Bank v. Roper*, 445 U.S. 326, 339 (1980). *See also Carroll v. United Compucred Collections*, 399 F.3d 620, 625 (6th Cir. 2005) (defendant’s actions with respect to named plaintiffs while a class certification motion is pending should not moot the class claims because then the question of whether the court ever reaches the merits “is at the mercy of a defendant, even in cases where a class action would be most clearly appropriate”).

In sum, even if none of the named plaintiffs is incarcerated by the time this court has the opportunity to rule on this motion, under the “inherently transitory” doctrine the court should certify the injunctive classes and name plaintiffs Collins, Dorn and Pauley⁵ class representatives.

II. Class Certification Is Appropriate for the Damages Classes.

Of the four Rule 23 requirements, defendants’ objections to class certification focus on typicality and adequacy. They concede numerosity and leave commonality virtually undiscussed.

A. Named Plaintiffs Are Typical of and Can Adequately Represent Both the Female Damages Class and Overcrowding Class.

Plaintiffs’ claims meet the typicality requirement because they “arise from the same event *or practice or course of conduct* that gives rise to the claims of other class members, and [because their] claims are based on the same legal theory.” *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007) (emphasis added). Defendants’ practice and course of conduct is to incarcerate inmates as a group under systemically unconstitutional conditions of confinement, namely unsanitary and dangerous facility conditions (all inmates), routine and unchecked cross-gender viewing (female inmates), a lack of reasonable access to hygiene products (female

⁵ Because Ms. Wickliffe was released prior to filing of the amended complaint, she asks that the court name her as a representative of the damages classes.

inmates), and a lack of adequate out-of-cell exercise opportunities (female inmates).⁶ The issue is not whether each individual inmate has a different personal experience while incarcerated, but rather whether there is a general unconstitutional practice that affects inmates as a group.

Unconstitutional jail conditions are textbook examples of claims that meet the typicality requirement because all inmates are subject to the same general, systemic conditions that comprise the constitutional violations. *See, e.g., Flood v. Dominguez*, 270 F.R.D. 413, 418 (N.D. Ind. 2010) (certifying class seeking damages for jail's policies and widespread practices of overcrowding, poor sanitation, and other unconstitutional conditions of confinement); *Tyler v. Suffolk County*, 253 F.R.D. 8, 10-11 (D. Mass. 2008) (certifying class seeking damages for jail's systemic failure to provide inmates with bathroom access even though individual class members had varying personal experiences under that system). Here plaintiffs have submitted twelve declarations from women describing the unsafe conditions, systemic cross-gender viewing, lack of access to sanitary products, and denial of regular exercise, as well as an expert report, a Michigan Department of Corrections inspection report, and media accounts, all of which describe the same horrific conditions. Dkt 3-2 to 3-9, 4, 4-3, 4-7 to 4-10; Exhs 25 – 27, 29.

The plaintiffs also meet the adequacy requirement, which necessitates that: “1) the representative must have common interests with unnamed members of the class, and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel.” *In re Am. Med. Sys.*, 75 F.3d 1069, 1083 (6th Cir. 1996). Plaintiffs satisfy the first criterion for the same reasons they satisfy the typicality requirement. Defendants do not dispute that plaintiffs satisfy the second criterion.

⁶ Defendants misread plaintiffs' complaint and motions as seeking class certification on medical neglect and as alleging a constitutional right to a grievance system. Neither is the case. Rather, evidence on these issues demonstrates defendants' deliberate indifference, as well as the fact that there is no mechanism within MCJ through which plaintiffs and class members can obtain relief.

B. Defendants' Objections Do Not Relate to Typicality or Adequacy.

In arguing that plaintiffs are not typical or adequate class representatives, defendants claim that the harm plaintiffs experienced does not rise to the level of a constitutional violation, or that the harm did not in fact occur. For example, defendants claim that cross-gender privacy violations do not occur, that only an absolute deprivation of feminine hygiene products is unlawful, that access to the day room constitutes sufficient exercise, and that the unsanitary and overcrowded conditions are not so bad as to violate the Constitution. Response at 12-20.

But the questions of whether plaintiffs' claims are typical and whether they can adequately represent the class are different questions from whether the facts they allege are true or whether the conditions at MCJ are unconstitutional. Those arguments are not relevant to certification, but rather go to the merits and are addressed in plaintiffs' preliminary injunction reply brief.

Defendants also argue that female class representatives cannot adequately represent all inmates with respect to conditions of confinement that generally affect all inmates regardless of gender. This argument must be rejected because, although the named plaintiffs happen to be female, there is nothing about the claims of the all-inmates damages class (Count IV) that is unique to female inmates. Indeed, the expert report, DOC inspection report⁷, and media reports filed by the plaintiffs demonstrate that the overall abysmal and unsanitary conditions of the jail facility, exacerbated by chronic overcrowding, are systemic problems that are common to all inmates, not just female inmates. Dkt 4, 4-3, 4-7 to 4-10. Defendants have introduced absolutely no contrary evidence. Therefore, plaintiffs' gender cannot disqualify them from serving as class representatives for a claim regarding jail conditions that affect all inmates.

⁷ Exhibit 30 is a chart summarizing conditions issues in the men's cells that were identified by the Department of Corrections in its inspection report. Dkt 4-3. Defendants identified cells 35, 36, 37, 38, 39 and the 2nd and 3rd Floor East Dayrooms as areas of the jail where women are held. Def Brief Opp. Class Cert., Dkt 16 at 2. The chart covers conditions in other cells.

III. The Court Should Certify the Injunctive Classes So That It Can Rule on the Preliminary Injunction Motion.

Defendants have put forward no evidence to contradict plaintiffs' showing that they meet the Rule 23 requirements. Therefore it is appropriate for the court to certify all four classes now.

Most critical, however, is that the court immediately certify the injunctive classes. Because plaintiffs seek to "represent short-term inmates in a county jail," their case "cries out for a ruling on certification as rapidly as possible." *Wade*, 118 F.3d at 667. In order for the court to rule on plaintiffs' motion for preliminary injunction and order appropriate class-wide relief, certification of the injunctive classes is necessary. The incarcerated plaintiffs and the inmates they seek to represent are suffering ongoing harms -- deprived of exercise, toiletries, minimal privacy, and safe and sanitary living conditions. The court need not and should not allow these unconstitutional conditions to continue any longer.

Should the court wish to grant defendants discovery, despite their failure to produce any evidence creating a factual dispute on the issues relevant to class certification, the court should at a minimum provisionally certify the injunctive classes for the purpose of granting a preliminary injunction. Provisional certification is a mechanism that allows this court to address class-wide issues without issuing a final ruling. "Pursuant to Rule 23 and the Court's general equitable powers, the Court has authority to provisionally certify a class for purposes of entering preliminary injunctive relief [C]ourts routinely grant provisional class certification for purposes of entering injunctive relief." *Carrillo v. Schneider Logistics, Inc.*, 2012 WL 556309, at *8-9 (C.D. Cal. Jan. 31, 2012), *aff'd*, 501 F. App'x 713 (9th Cir. 2012). The mechanism is appropriate here. Provisionally certifying the class in order to grant a preliminary injunction would prevent the class from continuing to suffer severe ongoing harm, while allowing defendants to pursue discovery and to request that the court later revisit its certification decision.

Respectfully submitted,

By: /s/ Miriam J. Aukerman

Miriam J. Aukerman (P63165)
Marc S. Allen (NY 5230008)
American Civil Liberties Union Fund
of Michigan
1514 Wealthy Street SE, Suite 242
Grand Rapids, MI 49506
(616) 301-0930
maukerman@aclumich.org
mallen@aclumich.org

Michael J. Steinberg (P43085)
Daniel S. Korobkin (P72842)
Kary L. Moss (P49759)
American Civil Liberties Union Fund
of Michigan
2966 Woodward Avenue
Detroit, MI 48201
(313) 578-6806
msteinberg@aclumich.org
dkorobkin@aclumich.org

PITT, MCGEHEE, PALMER & RIVERS, P.C.
Cooperating Attorneys, American Civil
Liberties Union Fund of Michigan
Michael L. Pitt (P24429)
Beth M. Rivers (P33614)
Kevin M. Carlson (P67704)
Andrea J. Johnson (P74596)
117 West Fourth Street, Suite 200
Royal Oak, MI 48067
(248) 398-9800
mpitt@pittlawpc.com
brivers@pittlawpc.com
kcarlson@pittlawpc.com
ajohnson@pittlawpc.com

Attorneys for Plaintiffs

Dated: February 17, 2015

Semelbauer et al v. Muskegon County et al

Exhibit List

1. Semelbauer Declaration
2. Bosch Declaration
3. Vos Declaration
4. Brown Declaration
5. Baker Declaration
6. Speers Declaration
7. Kitchens Declaration
8. Collins Declaration
9. Wilson Expert Report and Declaration
10. MCJ Population Chart and Declaration of Katherine Hopkins
11. MCJ Floor Plan
12. MCJ Inspection Report 2012
13. Muskegon County Sheriff Memo, Aug. 17, 2011
14. Muskegon County Sheriff Memo, Aug. 22, 2012
15. Muskegon County Sheriff Memo, Aug. 29, 2012
16. Muskegon Chronicle Article (Peters), July 8, 2009
17. Muskegon Chronicle Article (Gaertner), Feb. 20, 2011
18. Muskegon Chronicle Article (Gaertner), Oct. 17, 2012
19. Muskegon Chronicle Article, Oct. 4, 2014
20. Letter to Williams Hughes, Aug. 8, 2013
21. Letter from Douglas Hughes to Kevin Carlson, March 11, 2014
22. MCJ Rules and Regulations for Inmates
23. Collins Inmate Profile
24. Allen Declaration
25. Dorn Declaration
26. Pauley Declaration
27. Wickliffe Declaration
28. Wickliffe Inmate Profile

29. Randle Declaration

30. Chart of Conditions Issues in Men's Cells

EXHIBIT 23


Collins Inmate Profile



HOME | EVENT SEARCH | INMATE INQUIRY |

Home

INMATE DETAIL

Name:	COLLINS, STASHIA SHAWKIA	
Age:	25 YEARS OLD	
Race / Sex:	BLACK / FEMALE	
Arrest Date:	8/5/2014	
Release Date:	<u>4/23/2015</u> (Estimated)	
Next Court Date:		

Charge	Status	Docket #	Bond Amount
FRAUD: OTHER	SENTENCED TO JAIL	14-65177-FH	NO BOND
LARCENY (OTHER)	CHARGED RELEASED	14-161119-SM	PAID

Total Bond Amount: NO BOND

powered by Sungard Public Sector OSSI 's P2C engine

EXHIBIT 24

Allen Declaration

DECLARATION OF MARC ALLEN

I, Marc Allen, declare as follows:

1. I am an attorney with the American Civil Liberties Union of Michigan.
2. I have been involved in investigating, and subsequently litigating *Semelbauer et al. v. Muskegon County et al.*, a putative class action lawsuit against the Muskegon County Jail (MCJ).
3. I began meeting with female inmates of MCJ in April of 2014. Since then, I have met with many current and former MCJ inmates. I would estimate that I have interviewed approximately twenty-five current and former inmates.
4. My co-counsel have also interviewed many current and former MCJ inmates. When visiting MCJ to meet with inmates, I identified myself to MCJ staff as an attorney with the ACLU of Michigan. Because the attorney-client visiting areas at MCJ are not soundproof, staff at MCJ may have heard my conversations with inmates.
5. During my meetings with clients I have overheard jail staff talk about the ACLU and the lawsuit against the jail in connection with my presence there.
6. One of my tasks was to find inmates who would make good class representatives for the injunctive classes.
7. When evaluating which inmates to interview as potential representatives for the injunctive classes, one major consideration was the amount of time left on the inmate's sentence. I sought out inmates with a significant amount of time left to serve.
8. I used the jail's website, which shows an anticipated release date for each inmate, to identify how much time an inmate had left to serve.
9. Despite my efforts to identify prospective class representatives who would remain incarcerated for longer periods of time, almost all of the prospective representatives for the

injunctive classes were released before it was possible for the litigation team to do the necessary research and document drafting in order to file this action.

10. For example, I interviewed Crisa Brown, Tammy Speers, Londora Kitchens, Shantiara Randle, and Christine Thoma while they were incarcerated, and all agreed to be plaintiffs and representatives of the proposed injunctive classes. However, they were all released before the complaint could be filed.
11. In several cases the inmates I interviewed were released significantly in advance of the anticipated release dates indicated on the jail website. In several cases they were released shortly after I met with them.
12. For example, I met with an inmate named Christine Thoma on September 16, 2014. When I met with her, Ms. Thoma was scheduled to be released on February 11, 2015.
13. Ms. Thoma agreed to be a plaintiff and a representative of a class of incarcerated inmates on September 16, 2014.
14. On approximately November 19, 2014, I became aware that Ms. Thoma had been released from MCJ, about three months ahead of her scheduled release date.
15. Similarly, an inmate named Shantiara Randle agreed to serve as a representative of the injunctive classes. She was scheduled to be released on April 11, 2015. She was released about five months early.
16. I met with Stashia Collins on November 21, 2014. When I met with Ms. Collins, she was scheduled to be released on April 23, 2015.
17. Ms. Collins agreed to be a plaintiff and a representative of a class of incarcerated inmates on November 21, 2014. She signed a declaration describing the conditions at MCJ that same day.

18. This action was filed shortly thereafter, on December 4, 2014.
19. On January 15, 2014, I found out Ms. Collins had been released, about three months ahead of her scheduled release date.
20. On February 3, 2015, I met with Delilah Wickliffe at Muskegon County Jail. Ms. Wickliffe was scheduled to be released on February 27, 2014.
21. On February 3, 2015, Ms. Wickliffe agreed to be a plaintiff and a representative of a class of incarcerated inmates. She signed a declaration describing the conditions at MCJ that same day.
22. I spoke with Ms. Wickliffe via telephone on February 9, 2015. She informed me that she had been released on February 4, 2015, the day after I met with her. She was released over three weeks before her scheduled release date.
23. I also interviewed Andrea Dorn and Judy Pauley at MCJ on February 3, 2015. Ms. Dorn is scheduled to be released on March 22, 2015 and Ms. Pauley is scheduled to be released on May 11, 2015. Both women agreed to be plaintiffs and serve as representatives of the injunctive classes.
24. To my knowledge, both Ms. Dorn and Ms. Pauley remain incarcerated at this time.

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury under the laws of the United States that the above statements are true and correct to the best of my knowledge, information, and belief.

Dated: 2/17/15

A handwritten signature in black ink, appearing to read 'Marc Allen', written over a horizontal line.

Marc Allen

EXHIBIT 25

Dorn Declaration

DECLARATION OF ANDREA DORN


I, Andrea Dorn, declare as follows:

1. I am a 2009 graduate of Grand Valley State University. I earned a B.S. in Human Resources.
2. I am also the mother of a six-month-old boy.
3. I have been incarcerated in Muskegon County Jail since November 16, 2014.
4. I also served a short, approximately 30-day, sentence earlier in March and April of 2014.
5. I have spent time in the jail's cell blocks and in the day room surrounded by small cells. In both of these settings, male guards were able to see me and other female inmates changing, showering, and using the toilet.
6. I have attempted to temporarily protect my privacy when changing or using the toilet by placing sheets or paper on the small window of my cell, but guards immediately rip them down.
7. The curtain that covers the shower in the day room is old and beat up. It does not provide women privacy when they are using the shower.
8. During my current incarceration, I have ~~never been to the jail's gym~~ ^{been to the jail's gym twice AD}. During my previous incarceration, I was taken to the gym one time while the jail attempted to fix a toilet in my cell block. AD
2/2/15
9. I recently gave birth, and I would like to be able to exercise, for both my physical and mental health. I am worried about the toll that lack of exercise is taking on my body and my emotional well-being.
10. I have asthma and am therefore especially sensitive to mold, dust, and rodent droppings. The jail is filthy. The showers are covered in mold and full of small flying insects. There are also mouse droppings throughout the jail.
11. The plumbing in the jail is often broken. Toilets back up, hot water either shuts off completely or runs constantly, and pools of standing water collect on the floors.
12. Guards routinely ignore women's requests for toilet paper, pads, and other toiletries. I was once denied toilet paper for ten hours. I have also witnessed female inmates forced to beg other inmates for feminine hygiene products because guards ignored their requests.

13. Jail guards use sexist, racist, and other abusive language when talking to female inmates.
14. For example, once I was taken out of my cell by Ivan Morris, but not told where I going. I asked Mr. Morris what was going on, and he told me "I guess even pieces of shit get medical." Mr. Morris also uses racial slurs in front of African American inmates.

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury under penalty of perjury that the foregoing is true and correct.

Dated: 2/3/15



Andrea Dorn

EXHIBIT 26

Pauley Declaration

DECLARATION OF JUDY PAULEY

I, Judy Pauley, declare as follows:

- 1) I have been incarcerated at Muskegon County Jail since July 15, 2014.
- 2) When I first arrived, I was placed in the holding tank with approximately 17 other women for about three days.
- 3) While I was in the holding tank, guards refused to provide any of the inmates with tissue or pads. They also did not give us any blankets or mats. We were forced to sleep on the concrete benches and floor.
- 4) After spending time in the holding tank, I was assigned to the 3rd floor east day-room.
- 5) When women use the shower in day-room, male guards are able to see them entering and exiting the shower. A guard told me that I would just have to "get used to it."
- 6) When I first arrived at MCTJ, I was forced to wear a one-piece jumpsuit. Every time I had to use the toilet, I would have to completely disrobe, and male guards would often walk by and be able to see me naked.
- 7) When using the toilet or changing in my small cell, I try to put up magazine pages over parts of the window to protect my privacy. Guards will often rip these papers down or barge into my cell unannounced.

- 8) During my incarceration I have only been to the gym three times, and all only in the last month.
- 9) I have nine screws in my left ankle from an accident in 2014. I need regular exercise to keep it from getting stiff and painful.
- 10) Some guards say that we waste pads and refuse to give them to us when we asked for them.
- 11) I have filed several greivances about the above issues, but staff have not responded.
- 12) The jail is covered in dark mold and full of small flying insects. The insects bite, and they have left marks on my skin. I sleep with a blanket over my face because I don't want insects in my face at night. There are also other insects like silverfish.

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury under penalty of perjury that the foregoing is true and correct.

Dated: 02-04-2015

X Judy Pauley!
Judy Pauley

EXHIBIT 27

Wickliffe Declaration

DECLARATION OF DELILAH WICKLIFFE

I, Delilah Wickliffe, declare as follows:

- 1) I have been incarcerated at Muskegon County Jail since December 16, 2014.
- 2) I was assigned to the third floor east day room. I spent a little over a month in a small cell, but I am now on a bunk in the common area.
- 3) Because I am in the common area, I have no privacy when I change. The shower curtain in the day room is old and beaten up, it does not cover me while I shower. Male guards in the guard station are able to see me and other women showering and changing.
- 4) During my incarceration, I have been to the gym only twice, while my cell was being searched.
- 5) I am locked down for 24 hours every other day, and have almost no opportunities to exercise.
- 6) Jail staff often ignore requests for toiletries, including pads.
- 7) On December 27, 2014, I was having my period and I asked guards for feminine hygiene products. Guards ignored my requests for approximately 24 hours. I bled into my uniform. I then asked for a new uniform, and was not provided one for another 24 hours, I was told it was "my own fault."

- 8) There is mold and mildew everywhere in the jail, especially in the shower and toilets.
- 9) Toilets often back up and spill sewage into the cells, when this happens the entire day room smells like human waste. Toilets have overflowed approximately five times since I've been here.
- 10) I have filed about five grievances and not received any responses. Sometimes guards refuse to provide me grievance forms when I ask for them. Some guards simply throw grievance forms in the garbage.
- 11) Guards regularly use racist and sexist slurs in front of the inmates.
- 12) Just because I am incarcerated, doesn't mean I can be talked to or treated like I am not human.

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury under penalty of perjury that the foregoing is true and correct.

Dated 2-3-15

Delilah Wickliffe
Delilah Wickliffe

EXHIBIT 28

Wickliffe Inmate Profile



MUSKEGON CENTRAL DISPATCH


9-1-1

When Seconds Count

HOME | EVENT SEARCH | INMATE INQUIRY |

Home ▾

INMATE DETAIL

Name:	WICKLIFFE, DELILAH MONIQUE	
Age:	31 YEARS OLD	
Race / Sex:	BLACK / FEMALE	
Arrest Date:	12/16/2014	
Release Date:	2/27/2015 (Estimated)	
Next Court Date:		

Charge	Status	Docket #	Bond Amount
EMBEZZLEMENT: (OTHER)	SENTENCED TO JAIL	14-64558-FH	NO BOND

Total Bond Amount: NO BOND

powered by Sungard Public Sector OSSI's P2C engine

EXHIBIT 29

Randle Declaration

DECLARATION OF SHANTIARA RANDLE

I, Shantiara Randle, declare as follows:

1. I am an inmate at the Muskegon County Jail serving a 12 month sentence for Uttering and Publishing.
2. I was booked into the jail on June 17, 2014.
3. When I arrived at the jail I spent about 36 hours in a holding tank. At times there were as many as 14 other women in the holding tank with me.
4. The shower and toilet in my cell are poorly maintained and often broken. The shower is infested with mold. Women with infections and open wounds use the same shower and toilet as the rest of the population. We are not given adequate cleaning supplies to disinfect the facilities.
5. The jail is infested with several different types of insects.
6. The jail does not provide enough feminine hygiene products. When we ask for pads, the staff often takes hours or even days to respond to our requests. On one occasion, while I was menstruating, I requested pads from the jail staff and they did not provide them until approximately 8 to 10 hours later.
7. Jail staff members do not provide us with enough toilet paper, or respond to our requests for toilet paper in a timely manner.
8. Since my incarceration began, I have been to the jail's gym twice. I have not had any other opportunities to exercise.
9. In fact, I am usually locked in my cell for 23 hours every other day.

10. Because I cannot exercise, my physical health has suffered. If I am not permitted to exercise or only allowed to exercise infrequently for the remainder of my sentence, I am afraid I will gain a significant amount of weight and lose muscle.
11. I have filed two grievances about conditions and lack of supplies. I have also asked for grievance forms on a number of occasions and jail staff members have refused to provide them.
12. I have never received a response to any of my complaints.
13. The conditions at Muskegon County Jail are unsanitary and inhumane. The women here are treated disrespectfully and are denied necessary supplies.

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury under the laws of the United States that the above statements are true and correct to the best of my knowledge, information, and belief.

Dated: 9-17-14

Shantiara Randle
Shantiara Randle

EXHIBIT 30

Chart of Conditions Issues in Men's Cells

Summary of MDOC Report for Men's Cells at MCJ

Defendants identified cells 35, 36, 37, 38, 39 and the 2nd and 3rd Floor East Dayrooms as areas of the jail where women are held. Def Brief Opp. Class Cert., Dkt 16 at 2. This chart summarizes conditions issues in the rest of the cells (i.e. the men's cells) identified by the Michigan Department of Corrections in its inspection report. Dkt 4 - 3.

Location	Problems	Page of MDOC Report
Cell 1	Hot water not working	4
Cell 2	Hot water not working	4
Cell 3	Resilient flooring torn creating space for dirt to accumulate	3
Cell 7	Cold water not working, TV has exposed electrical wires	4
Cell 9	Hot water not working	4
Cell 14	Access panel not secure	4
Cell 23	Water leaking on floor from plumbing	3
Cell 24	Toilets leaking onto floors, peeling paint	3 - 4
Cell 25	Toilets leaking onto floors, peeling paint	3
Cell 26	Toilets leaking onto floors, peeling paint, shower drain covers are missing	3 - 4
Cell 27	Toilets leaking onto floors, peeling paint	3 - 4
Cell 28	Bad ventilation, black-colored mold or mildew	3
Cell 29	Bad ventilation, black-colored mold or mildew, peeling paint	3 - 4
Cell 33	Toilets leaking onto floors, peeling paint	3 - 4
2nd Floor East Wing	Gang symbols, graffiti	4
3rd Floor East Wing	Toilets are backed-up, sewage flows into other cells	4
Minimum Cell	Shower running for days, bugs in sleeping area, bunks missing bolts, sink is loose, Ceramic tile at base inside showers is broken, which allows water to seep and break the tiles	4 - 5
Work Release	Floor and toilets are soiled and stained, air vents in sleeping area and bathroom are covered in black substances suspected to be mold/mildew, two toilets not working, floor tile in shower broken, water fountain leaks	5