IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALLEN WOODS, *et al*.	:	
	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No. 2:17-cv-4443
	:	
SEAN MARLER,	:	
	:	
	:	
Defendant.	:	

REPLY MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

In his Memorandum in Opposition to Plaintiffs' Motion for Class Certification ("Opp'n Br."), Warden Marler challenges the cohesiveness of the Proposed Class, as well as the Plaintiffs' adequacy of representation and typicality. But at bottom, he advances just one argument: that the personal situations of the Plaintiffs and other Proposed Class members vary too much for class certification. This asks the Court to peer through the wrong end of the telescope. The proper question before the Court is whether a single policy injures each member of the Proposed Class, not whether each of those injuries is exactly the same. Here, a blanket policy—Warden Marler's policy barring pre-trial inmates from social visitation with anyone but immediate family members—injures all Proposed Class members by blocking them from visits with their children. This is a classic Rule 23(b)(2) situation, and Plaintiffs' Motion should be granted.

LEGAL STANDARD

"If the claims of the named plaintiffs and putative class members involve the same conduct by the defendant, typicality is established regardless of factual differences." *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 183–84 (3d Cir. 2001). "[T]he typicality and adequacy inquiries often 'tend[] to merge' because both look to potential conflicts and to '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.'" *Beck v. Maximus, Inc.*, 457 F.3d 291, 296 (3d Cir. 2006) (quoting *Amchem Prods. v. Windsor*, 521 U.S. 591, 626 n.20 (1997)) (second alteration in original). Similarly, when declaratory and injunctive relief concerning a blanket policy would end the injuries to the Proposed Class members, there are no "disparate factual circumstances" destroying cohesion. *See, e.g., Sourovelis v. City of Phila.*, 320 F.R.D. 12, 25 (E.D. Pa. 2017).

ANALYSIS

Warden Marler's focus on the non-identical situations of inmates would preclude almost any Rule 23(b)(2) challenge to a prison policy. *See, e.g., Williams v. City of Phila.*, 270 F.R.D. 208, 217 (E.D. Pa. 2010) (noting that a focus on the unique aspects of each inmate's injury "would have the practical effect of preventing certification of *any* class of prisoners who seek to contest the conditions of their confinement"). To the contrary, different individual factual circumstances among proposed class members seeking to enjoin a common prison policy that affects them in the same way cannot defeat adequacy or typicality. *E.g., Richardson v. Kane*, No. 11-cv-2266, 2017 U.S. Dist. LEXIS 100273, *18–22 (M.D. Pa. June 16, 2017); *see also Hagan v. Rogers*, 570 F.3d 146, 158–59 (3d Cir. 2009) (in case alleging prison officials' failure to

contain and treat a serious and contagious skin condition, reversing denial of class certification that was premised on the varying medical needs and injuries of the inmates).

Courts regularly certify classes of prisoners challenging blanket policies despite adequacy, typicality, and cohesiveness objections by prison defendants. In *Shelton v. Bledsoe*, 775 F.3d 554 (3d Cir. 2015), the Court of Appeals vacated the denial of class certification when plaintiffs alleged a pattern, practice, or policy of placing inmates who were hostile toward each other in the same cell, even though the relationships between cellmates involve case-by-case determinations. In *Williams*, the Court certified a class challenging a prison policy that allowed triple-celling, over defendants' contention that each individual inmate's circumstances must be assessed. 270 F.R.D. at 215–17. In *Clarke v. Lane*, a case about inadequate medical and mental health care for halfway-house inmates, the correctional defendants unsuccessfully objected to class certification on the basis of different medical evidence for different class members. 267 F.R.D. 180, 197–98 (E.D. Pa. 2010). *Richardson* recommended certifying a class of plaintiffs challenging a practice of forcing inmates to accept dangerous cell assignments with known hostile inmates over defendants' objections that dangerousness could be assessed only on an individualized, cellmate-by-cellmate basis. 2017 U.S. Dist. LEXIS 100273, at *15, *19.

Warden Marler suggests that the named Plaintiffs are not adequate or typical class members because they will focus on their unique "logistical problems" and "the tensions between the mothers of their respective children and the 'immediate family members.'" Opp'n Br. at 11. But Plaintiffs do not seek any relief that is unique to their situations or that is unique to inmates whose family members have transportation difficulties or intrafamilial conflicts. To the contrary, they seek a change in policy that would allow them the opportunity to see their children

on a par with the opportunity that Warden Marler extends to sentenced inmates. This relief would benefit all Proposed Class members alike.

* * *

For all the reasons stated above and in Plaintiffs' opening brief, the Court should grant Plaintiffs' Motion and certify the class proposed by the Plaintiffs.

Respectfully submitted,

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Dated: March 21, 2018

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2018, I caused the foregoing Reply Memorandum in Support of Plaintiffs' Motion for Class Certification to be filed and served on all counsel of record by operation of the CM/ECF system for the United States District Court for the Eastern District of Pennsylvania.

/s/ Benjamin D. Geffen
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