IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

DAVID HAMILTON; ELON PERRY; ANTHONY MOMAN; TIMOTHY CAMPBELL; RICHARD KAY; and JERAMY TAYLOR, on behalf of themselves and a class of similarly situated persons,

Petitioners,

v.

TREVOR FOLEY, in his official capacity as Director of the Missouri Department of Corrections ("MoDOC"); MYLES STRID, in his official capacity as Director of Division of Adult Institutions, and CRAIG CRANE, in his official capacity as warden of Algoa Correctional Center ("Algoa"),

Respondents.

Case No. _____

Division: _____

CLASS PETITION

PETITIONERS' MOTION FOR CLASS CERTIFICATION
AND SUGGESTIONS IN SUPPORT

Petitioners, individually and on behalf of the proposed classes defined below, challenge Respondents' failure to take reasonable measures to protect people detained at Algoa Correctional Center ("Algoa") from hazardously hot conditions in the summertime and plainly preventable harms associated with those inhumane conditions. Every human incarcerated at Algoa by the Missouri Department of Corrections ("MoDOC") is subject to substantial risk of serious harm in violation of their Missouri constitutional rights. The

extreme heat puts all people at risk of heat-related illness, and possibly death, but particularly those taking certain medications; people with chronic medical conditions and disabilities; people with mental illness; elderly people; and those housed in solitary confinement units. The risks include, but are not limited to, serious illness including heart attacks, heatstroke, and death. The situation is worst for those detained in solitary confinement, where individuals fear for their lives while trapped in a "scorching hot, claustrophobic box"[1] with no way to seek emergency assistance.

Petitioners hereby move pursuant to Missouri Supreme Court Rule 52.08 to certify two classes: a Heat Sensitive Class and a Solitary Confinement Class. Petitioners also seek to certify a subclass of the Heat Sensitive Class: the Disability Subclass. As detailed below, the named Petitioners satisfy the requirements for class certification under Missouri Supreme Court Rule 52.08(a) and (b).

BACKGROUND

Petitioners' suit for injunctive and declaratory relief under Article I, Section 21 of the Missouri Constitution and the Americans with Disabilities Act arises out of Respondents' failure to take necessary steps to protect vulnerable populations at Algoa from serious risk of harm associated with extreme heat exposure. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *State v. Barnett*, 598 S.W.3d 127, 130 (Mo. 2020). Algoa, located in Jefferson City, Missouri, is nearly 93 years old. Of all Missouri prisons, it has one of the

[1] Declaration of Kenneth Barrett, attached as Exhibit 2.

hottest summer average daily maximum outdoor temperatures, with heat indices regularly exceeding hazardous thresholds.

This case is ideally suited to proceed as a class because all members of the class have the same legal theory as to why their rights under the Missouri Constitution are being violated; rely on the same evidence relating to policies, practices, and customs of MoDOC; and seek the same relief of ensuring safe and humane conditions of confinement. This relief necessarily includes implementation of a comprehensive heat mitigation policy.

While prolonged exposure to hazardous temperatures poses the risk of heat-related illness even for young and healthy individuals, those with heat sensitivities have an increased risk of heat-related illnesses, sometimes fatal. The older you are, the more likely you are to die from a heat-related illness. Heat-related illness, including heat stroke, can occur within just a few hours and with little to no warning. Respondents are well aware of this risk yet do almost nothing to mitigate it. The measures they do take provide no detectable cooling effect. In Housing Unit 3, individuals trapped in their solitary confinement cells are provided even fewer ways to cool off. People incarcerated in Housing Unit 3 also do not have a way to ask for help when they experience a heat-related medical emergency, of which they are necessarily at higher risk because of the lack of opportunity to cool down. Worse, Respondents have no formalized heat mitigation policy. Put simply, Respondents are putting all people incarcerated at Algoa at risk of extreme harm, especially those with heat sensitivities and those detained in solitary confinement in Housing Unit 3. In doing so, Respondents act with deliberate indifference to the significant risk of harm posed by the threat of the extreme heat in the summer.

The named Petitioners and the putative class share legal claims, common questions of fact, and requested remedies: (1) an order declaring Respondents' current practices unlawful, and (2) an injunction requiring Respondents to implement a plan to protect the health and safety of Petitioners and putative class members who are exposed to hazardously hot temperatures at Algoa and maintain a safe indoor temperature between 65 to 85 degrees Fahrenheit inside each of Algoa's housing units.

STANDARDS FOR CLASS CERTIFICATION

In Missouri, "a class action is designed to promote judicial economy by permitting the litigation of the common questions of law and fact of numerous individuals in a single proceeding." *State ex rel. Union Planters Bank, N.A. v. Kendrick*, 142 S.W.3d 729, 735 (Mo. 2004). Rule 52.08 governs class actions. "[B]ecause Rule 52.08 is a procedural and not a substantive rule, the courts do not conduct an inquiry into the merits of the lawsuit when class certification is at issue." *Hale v. Wal-Mart Stores, Inc.*, 231 S.W.3d 215, 222 (Mo. App. W.D. 2007). Rather, the named Petitioners' allegations are accepted as true for purposes of class certification. *Id.* at 227; *see also Lucas Subway MidMo, Inc. v. Mandatory Poster Agency, Inc.*, 524 S.W.3d 116, 129 (Mo. App. W.D. 2017). In determining whether to certify a proposed class, "a court should err in favor of, and not against, allowing maintenance of the class action" because "class certification is subject to later modification." *Hale*, 231 S.W.3d at 222-224 (noting that the court "must look only so far as to determine whether, given the factual setting of the case, if the [Petitioner's] general allegations are true, common evidence *could* suffice to make out a prima face case for the class"). Federal Rule of Civil Procedure 23 and Missouri Rule 52.08 are identical;

therefore, courts regularly rely upon federal interpretations of Federal Rule 23 in interpreting Missouri Rule 52.08. *State ex rel. Union Planters Bank,,* 142 S.W.3d at 735 n.5; *Koehr v. Emmons*, 55 S.W.3d 859, 864 n.7 (Mo. App. E.D. 2001).

The prerequisites for class certification are set forth in Supreme Court Rule 52.08(a). They require that:

1. The class is so numerous that joinder of all members is impracticable ("numerosity");
2. There are questions of fact common to the class ("commonality");
3. The claims of representative parties are typical of the claims of the class ("typicality"); and
4. The representative parties will fairly and adequately protect the interests of the class ("adequacy").

Mo. Sup. Ct. R. 52.08(a); *see also Hootselle v. Mo. Dep't of Corrections*, 624 S.W.3d 123, 133 (Mo. banc 2021).

In addition to the Rule 52.08(a) requirements, Petitioners seeking class certification must also satisfy one of the three requirements of Rule 52.08(b). *Id.* As discussed below, the Proposed Classes meet the requirements of both Rule 52.08(b)(1) and (b)(2).[2]

[2] Rule 52.08(b (1-2) reads as follows: "An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

ARGUMENT

I. The Classes are Sufficiently Definitive

As a threshold matter, the classes are sufficiently definite, as implicitly required for certification, so "that it is administratively feasible to identify members of the class." *State ex rel. Coca-Cola Co. v. Nixon*, 249 S.W.3d 855, 861 (Mo. 2008). The primary concern here is ensuring that the proposed class is not "amorphous, vague, or indeterminate." *Id.* A sufficiently definite class exists "if its members can be ascertained by reference to objective criteria." *Dale v. Daimler Chrysler Corp.*, 204 S.W.3d 151, 178 (Mo. App. W.D. 2006). "However, the class 'need not be so ascertainable from the definition that every potential member can be identified at the commencement of the action.'" *Craft v. Philip Morris Companies, Inc.*, 190 S.W.3d 368, 388 (Mo. App. E.D. 2005) (citation omitted). Here, Petitioners' classes are adequately defined to facilitate easy identification of class members through Respondents' own records.

The proposed Classes are defined as follows:

- The Heat Sensitive Class: All current and future people detained at Algoa who 1) have a medical condition that places them at increased risk of heat-related illness, injury, or death (including but not limited to diabetes, hypertension,

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(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole"

cardiovascular disease, psychiatric conditions, chronic obstructive pulmonary disease, Parkinson's disease, respiratory conditions such as chronic obstructive pulmonary disease and asthma; 2) have mental illness as defined by the National Institute of Health[3]; 3) are prescribed a medication that increases the risk of heat-related illnesses and morbidity; or 4) are 65 years old and older.

- The Disability Subclass: All members of the Heat Sensitive Class who are qualified individuals suffering from a recognized disability that substantially limits one or more of their major life activities, or substantially limits their access to benefits at Algoa which they are otherwise entitled to. These individuals are at increased risk of heat-related illness, injury, or death due to their disabilities.
- The Solitary Confinement Class is defined as all current and future people detained in Housing Unit 3 (the housing unit for solitary confinement, also known as administrative segregation, disciplinary segregation, or "the hole") at Algoa.

The classes and subclass are identifiable and sufficiently definite. Members of the Heat Sensitive Class and Disability Subclass can be identified from medical records maintained by MoDOC and Algoa. Members of the Solitary Confinement Class can readily be identified by housing and classification records maintained by MoDOC.

[3] Mental Illness, National Institute of Mental Health, available at: Mental Illness - https://www.nimh.nih.gov/health/statistics/mental-illness#part_2538 (last visited May 8, 2025).

II. The Prerequisites of Rule 52.08(a) are Satisfied.

A. Numerosity

Rule 52.08(a)(1) requires that the proposed class be so numerous that joinder of all members is impracticable, although not necessarily impossible. *Dale*, 204 S.W.3d at 167 (citation omitted). Joinder is "impracticable" for purposes of Rule 52.08(a) "when it would be inefficient, costly, time-consuming and probably confusing." *Id*.

Numerosity here is easily satisfied. There are *at least* 403 people incarcerated at Algoa, not counting future class members, who would be members of the Heat Sensitive Class.[4] *See* MoDOC Sunshine Response re: Algoa Chronic Care Clinic, Age, and Housing Unit 3, attached as Exhibit 4 (calculating that there are 27 people over the age of 65 years old; 247 people enrolled in the cardiovascular chronic care clinic; 65 in the pulmonary chronic care clinic; 64 in the endocrine chronic care clinic currently incarcerated at Algoa). The size of the Heat Sensitive Class is likely much larger, as the above referenced records do not consider the number of people who are taking specified medications and people with mental illnesses who would also be members of the class. The true size of the class is identifiable using MoDOC's administrative and medical records.

Given the likelihood that conditions held by members of the Heat Sensitive Subclass also qualify as disabilities, this information can also be used to identify members of the Disability Subclass. *See* 28 C.F.R. § 35.108(d)(2)(iii) (listing conditions, including

[4] As of March 21, 2025, there are 490 incarcerated people enrolled in one or more chronic case clinic at Algoa. MoDOC Sunshine Response re: Algoa Chronic Care Clinic, Age, and Housing Unit 3, attached as Exhibit 4.

disabilities, that will "virtually in all cases" result in a finding of disability). According to MoDOC records, there are at least 86 individuals currently incarcerated at Algoa, not counting future class members, who would be members of the Solitary Confinement Subclass as of March 2025. *See* MoDOC Sunshine Response re: Algoa Chronic Care Clinic, Age, and Housing Unit 3, attached as Exhibit 4.

Class certification has been authorized where the proposed class is comprised of far fewer people. *See Paxton v. Union Nat. Bank*, 688 F.2d 552, 561 (8th Cir. 1982) (collecting cases); *Arkansas Educ. Ass'n v. Bd. of Educ. v. Portland Ark. Sch. Dist.*, 446 F.2d 763, 765-766 (8th Cir. 1971) (holding a class of 20 members is sufficient to establish numerosity); *Zeffiro v. First Penn. Banking & Trust Co.*, 96 F.R.D. 567, 569 (E.D.Pa. 1983) (holding a class of 51 class members sufficient); *Phila. Elec. Co. v. Anaconda Am. Brass Co.*, 43 F.R.D. 452, 463 (E.D. Pa. 1968) (holding 25 class members sufficient); *Bublitz v. E.I. du Pont de Nemours & Co.*, 202 F.R.D. 251, 256 (S.D. Iowa 2001) (holding that a class of 17 sufficient); *Kulins v. Malco*, 121 Il l.App.3d 520 (1984) (holding 19 class members sufficient); *Riordan v. Smith Barney*, 113 F.R.D. 60, 62 (N.D. Ill. 1986) (holding 29 class members sufficient); *Cypress v. Newport News Gen. & Nonsectarian Hosp. Assn.*, 375 F.2d 648, 653 (4th Cir. 1967) (holding 18 class members sufficient).

Notably, there is no specified number of class members required to maintain a suit in a class action. This is because numbers alone are not determinative of the numerosity requirement: "[T]he court may also consider the nature of the action, the size of the individual claims, the inconvenience of trying individual suits, and any other factor relevant to the practicability of joining all the putative class members." *Paxton,* 688 F.2d

552, 559-60 (8th Cir. 1982). Here, all of these factors, especially where the class size is fluid, weigh in favor of finding that numerosity is satisfied. At Algoa, the population experiences turnover as people are transferred in and out of the prison or released (on parole or otherwise). *Jones v. Gusman*, 296 F.R.D. 416, 465 (E.D. La. 2013) (certifying a settlement class of all people who are currently or will be incarcerated at the Orleans Parish Prison even when the population is "constantly in flux."); *see also Green v. Johnson*, 513 F. Supp. 965, 975 (D. Mass. 1981) ("evidence of numerosity, considered in light of the fact that the inmate populations at these facilities is constantly revolving, establishes sufficient numerosity"). Additionally, the Solitary Confinement Class is particularly fluid, as people may be assigned to segregation for 30 or 60 days before being released back into general population. The inclusion of future class members, as is the case in the correctional context, makes joinder of all class members impracticable. *See Phillips v. Joint Legis. Comm. On Performance & Expenditure Review of Miss.*, 637 F.2d 1014, 1022 (5th Cir. 1981) (noting that future class members are necessarily unidentifiable and therefore joining them is impracticable).

Given the size of the proposed classes, the fluid nature of both classes, and the judicial inefficiency of litigating hundreds of claims individually, despite the fact that they stem from the same conditions, the proposed classes meet the numerosity requirement.

B. Commonality

Rule 52.08(a)(2) requires that there be at least one question of law or fact common to the class. The Rule does not require that all issues be common, but only that common questions or answer exists. *Elsea v. U.S. Eng'g Comp.*, 463 S.W.3d 409, 419 (Mo. App.

W.D. 2015) ("[E]ven a single [common] question will do.") (citation omitted). "This requirement imposes a light burden on the [Petitioner] seeking class certification and does not require commonality on every single question raised in a class action." *In re Aquila ERISA Litig.*, 237 F.R.D. 202, 207 (W.D. Mo. 2006) (citing *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995)). In fact, classes are certified even when there are "numerous remaining individual questions." *Elsea*, 463 S.W.3d at 419 (citations omitted). Further, courts in Missouri have gone out of their way to point out that the commonality requirement "is written in the disjunctive, and hence, the common question may be one of fact *or* law and need not be one of each." *Id.* at 418. Here, there are both common questions of fact and law, easily satisfying the commonality requirement.

Proposed class members are subjected to the same unconstitutional conditions. They are all incarcerated in dormitories that reach extreme heat indices that are harmful to human health. Petitioners' legal claim is that Respondents, acting with deliberate indifference, have exposed Petitioners and class members to a substantial risk of serious harm to their health and safety. *Farmer v. Brennan*, 511 U.S. 825, 843 (1994); *see also Helling v. McKinney*, 509 U.S. 25, 35 (1993) (finding that the Eighth Amendment prohibits conditions that "pose an unreasonable *risk* of serious damage to [a Petitioner's] future health.") (emphasis added). Prolonged exposure to heat indices above 88 degrees Fahrenheit exposes all class members to an intolerable risk of serious health consequences. Expert Report of Dr. Susi Vassallo, attached as Exhibit 1. In these circumstances, even if the physical symptoms each class member experiences vary, the questions each class member asks are susceptible to common resolution because the relevant policy or practice

poses an unconstitutional risk of serious harm to *all* class members. *See Postawko v. Missouri Dep't of Corr.,* 910 F.3d 1030, 1038–39 (8th Cir. 2018) (affirming certification of statewide prisoner class alleging, *inter alia*, deficient medical care).

Resolving the question of liability for exposing the class to these conditions will resolve the claims of all class members with a common answer. Indeed, most questions of fact and law that will arise in this suit are common across the proposed classes. The most central common questions include:

a. Do all members of the Heat Sensitive Class face a substantial risk of serious harm and other heat-related risks when exposed to excessive heat at Algoa in light of Respondents' inadequate heat mitigation measures?

b. Do all members of the Solitary Class face a substantial risk of serious harm and other heat-related risks when exposed to excessive heat at Algoa in light of Respondents' inadequate heat mitigation measures?

c. Does exposing members of the Heat Sensitive Class and Solitary Class to extreme heat violate their rights under Article 1, Section 21 of the Missouri Constitutions?

d. Are the members of the Heat Sensitive Class and Solitary Class entitled to declaratory and injunctive relief?

The same is true for the Disability Subclass claims under the ADA. The question for the Subclass is whether Respondents, by failing to take steps to modify living conditions or provide adequate heat mitigation measures, fail to reasonably accommodate or modify Algoa's programs, services, activities, conditions, or otherwise discriminate against the

class in a manner that subjects people with disabilities to a greater risk of harm. *See Bumgarner v. NCDOC*, 276 F.R.D. 452, 456 (E.D. N.C. 2011) ("In a lawsuit wherein individuals with varying disabilities challenge policies and practices that affect all of the putative class members, factual differences regarding their disabilities does not defeat commonality"); *Clarke v. Lane*, 267 F.R.D. 180, 196 (E.D. Pa. 2010) (same). The fact that Disability Subclass members have different disabilities does not defeat commonality. Questions of law and fact are common to the claims of all members, and these questions will be answered by reference to common proof.

Common questions raised by the Disability Subclass include:

a. Do members of the Disability Subclass face a substantial risk of heat-related illness due to their disability, or the treatment they receive for it?

b. Do Respondents have ADA-compliant policies and practices in place that adequately and reliably identify and accommodate persons with qualifying disabilities vis-à-vis exposure to extreme heat?

c. Does exposing members of the Disability Subclass and extreme heat violate their rights under Article 1, Section 21 of the Missouri Constitution?

The Fifth Circuit affirmed certification of classes nearly identical to those Petitioners propose here. *Yates v. Collier*, 868 F.3d 354 (5th Cir. 2017). In *Yates*, a proposed class of people incarcerated in a Texas prison unit brought Eighth Amendment and ADA claims, alleging that they were held in non-air-conditioned housing areas that reached extremely high temperatures, subjecting them to a substantial risk of serious harm. *Id.* at 358. They sought to certify three classes with definitions similar to Petitioners' proposed

classes: a General Class for everyone incarcerated in the unit, a Heat Sensitive Subclass, and a Disability Subclass. *Id.* at 359. The Fifth Circuit found that all class members faced a substantial risk of serious harm due to exposure to extreme temperatures. *Id.* at 360-65. This argument prevailed despite the Texas Department of Corrections' preexisting practice of offering various heat-mitigation measures and despite the class members' varied ages. *Id.* at 362; *see also Gates v. Cook*, 376 F.3d 323, 339 (5th Cir. 2004) (upholding a class-wide injunction requiring heat mitigation measures in Mississippi prison). These cases challenged broad prison conditions that were uniformly imposed, but naturally impacted all prisoners differently. The commonality here is even more narrowly drawn than in *Yates* and *Gates*, as the class members are a subsection of the general population who are at increased risk of harm. And, just as in those cases, Missouri DOC subjects the class members to the same conditions that expose each of them to a substantial risk of serious harm, no matter their age, health, or the mitigation measures taken. This is sufficient to satisfy commonality. *See also Postawko v. Mo. Dept. of Corr'n*, 910 F.3d 1030, 1038-39 (8th Cir. 2018) (finding commonality where "the physical symptoms eventually suffered by each class member may vary, but the question asked by each class member is susceptible to common resolution") (citing *Yates v. Collier*, 868 F.3d 354, 363 (5th Cir. 2017).

Accordingly, the commonality requirement is satisfied.

C. Typicality

The named Petitioners' claims are also typical of other members of the proposed classes. Rule 52.08(a)(3) requires that "class members share the same interest and suffer the same injury," and "is designed to preclude class certification of actions involving legal

or factual positions of the representative class which are markedly different from those of other class members." *Hale*, 231 S.W.3d at 223 (internal citations and quotations omitted). Factual variances usually will not preclude class certification if the claim arises from the same course of conduct as the class claims and gives rise to the same legal theory. *Id.* Thus, the "typicality prerequisite is met despite factual variances if (1) the named representatives' and the class members' claims arise from the same event or course of conduct by the respondent, (2) the conduct gives rise to the same legal theory, and (3) the underlying facts are not markedly different."' *Mitchell v. Residential Funding Corp.*, 334 S.W. 3d 477, 491 (Mo. App. W.D. 2010) (internal quotations omitted). The burden of demonstrating typicality is "*fairly easily met* so long as other class members have claims similar to the named [Petitioner]." *Hale*, 231 S.W.3d at 223 (emphasis added).

In this case, the named Petitioners and putative class members' claims arise from Respondents' same course of conduct: exposing incarcerated people at Algoa to a substantial risk of serious harm during prolonged, inadequately mitigated extreme heat exposure. All class members share the same claim: Respondents' policy or custom of failing to properly mitigate Algoa's extreme heat violates their Missouri constitutional rights.

Specifically, Petitioners Hamilton, Perry, Campbell, and Moman's claims are typical of the other members of the Heat Sensitive Class and Disability Subclass. Petitioner Hamilton is 65 years old and has a physiological condition and also takes medications that places him at increased risk of heat-related illness, injury, or death. Expert Report of Dr. Susi Vassallo at ¶ 78, attached as Exhibit 1. Petitioners Perry and Moman also have

physiological conditions and also take medications that place them at increased risk of heat-related illness, injury, or death. *Id. at* ¶¶ 76-81. And Petitioner Campbell has mental health disorders that constitutes a mental illness and is prescribed medication that increases his risk of heat-related illnesses and morbidity. *Id. at* ¶77*; see also* Declaration of Timothy Campbell, attached as Exhibit 2. Petitioners Hamilton, Perry, Campbell, and Moman's above-referenced physiological and/or mental health illnesses constitute disabilities that substantially limit one or more of their major life activities. Expert Report of Dr. Susi Vassallo, attached as Exhibit 1. Therefore, their claims are also typical of the Disability Subclass.

Petitioners Kay and Taylor's claims are typical of the Solitary Confinement Class members. Both reside in segregation in Housing Unit 3 at Algoa. *See* Fessler Affidavit, attached as Exhibit 5. They both have Opioid Use Disorder which manifests in opioid cravings and remains untreated. If any incarcerated person in Missouri DOC is found in possession of non-prescribed opiates, they receive a Rule 11 conduct violation and are sent to disciplinary administrative segregation, putting Petitioners Kay and Taylor at high risk of being detained in segregation in Housing Unit 3 while at Algoa Correctional Center.

The class representatives' claims are based on the same legal theories and seek the same relief for the class: an injunction requiring heat mitigation measures and to lower the heat indices within Algoa to safe levels.

Accordingly, the typicality requirement is satisfied.

D. Adequacy

The named Petitioners and their counsel will fairly and adequately protect the interests of the class in accordance with Rule 52.08(a)(4). "In evaluating the adequacy of representation, courts determine whether class counsel or the named representatives have conflicts of interest that will adversely affect the interests of the class." *State ex rel. Union Planters Bank*, 142 S.W.3d at 729 (citations omitted).

No major conflicts between the proposed class representatives and the class exist; the proposed class representatives have no interests antagonistic to or in conflict with the interests of the class members. Petitioners and the proposed classes share the common goal of ending Respondents' unconstitutional practice of subjecting prisoners at Algoa to extreme, unmitigated heat. Thus, there is no likelihood of conflicts or antagonistic interests developing between the class representatives and the class.

Absent proof to the contrary, courts presume that Class counsel is competent and sufficiently experienced to vigorously prosecute the class action. *See Morgan v. United Parcel Serv. Of America, Inc.,* 169 F.R.D. 349, 357 (E.D. Mo 1996). Here, Petitioners are represented by attorneys from the Missouri office of the Roderick and Solange MacArthur Justice Center ("MJC"), a nonprofit civil rights organization that regularly handles complex class action matters involving civil rights claims for incarcerated people. *See, e.g., Postawko v. MODOC*, 16-cv-NKL-P (U.S. Dist. Ct., W.D.Mo.) (representing a class of incarcerated prisoners challenging MODOC's denial of life-saving medication); *Brown v. Precythe*, 17-cv-4082 (U.S. Dist. Ct., W.D.Mo) (representing a class challenging Missouri Parole Board's disregard for due process); *Gasca v. Precythe*, 17-cv-4149-SRB (U.S. Dist.

Ct., W.D.Mo.) (same). Undersigned counsel have significant litigation experience and are committed and qualified attorneys.

Accordingly, the adequacy requirement is satisfied.

III. The Requirements of Rule 52.08(b) are Satisfied.

In addition to the prerequisites of Rule 52.08(a), a class must also satisfy one of the three requirements of Rule 52.08(b). Here, Petitioners meet the criteria for two independent subsections of Rule 52.08(b): subsection (1)(B) and subsection (2). Satisfying either would be sufficient to warrant class certification.

A. *Certification under Rule 52.08(b)(2) is appropriate.*

This case meets the requirements of subsection Rule 52.08(b)(2). Rule 52.08(b)(2) is satisfied where "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Rule 52.08(b)(2) allows for certification of a class when "a single injunction or declaratory judgment would provide relief to each member of the class." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S 338, 360 (2011).[5] The key analysis here is whether Respondents' conduct generally applies to the class. *Yates*, 868 F.3d at 367 (emphasis in original; quoting Rule 23(b)(2)). Since the purpose of Federal Rule 23(b)(2) is to enable lawsuits vindicating civil rights, the rule is "read liberally in the context of civil rights suits." *Coley v. Clinton*, 635 F.2d 1364, 1378

[5] As previously stated, Rule 52.08(b)(2) and Rule 23(b)(2) are essentially identical and Missouri courts consider federal interpretations in interpreting Rule 52.08. *State ex rel. Union Planters Bank,* 142 S.W.3d at 735 n.5.

(8th Cir. 1980) (citation omitted); *see also Amchem Prods., Inc.* v. Windsor, 521 U.S. 591, 614 (1997); 5-23 *Moore's Federal Practice - Civil* § 23.43(1)(b) (2018) ("Rule 23(b)(2) was promulgated . . . essentially as a tool for facilitating civil rights actions"). The same reasoning should apply here.

Petitioners' proposed class meets the plain text of Rule 23(b)(2): Respondents have "acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2). First, Respondents' policies, practices, and absence of policies affect the class as a whole. Specifically, Respondents are responsible for the dangerously hot and unmitigated conditions at Algoa, notwithstanding their awareness of the danger and the preventability of the risks. Those harms can be remedied by one injunction requiring Respondents to implement effective heat mitigation measures that will benefit all class members. In fact, in affirming a Rule 23(b)(2) class certification of incarcerated individuals in an Eighth Amendment challenge to excessive heat, the Fifth Circuit found there was "no serious question that [Respondents] have engaged in common behavior that 'appl[ies] generally to the class[es]." *Yates*, 868 F.3d at 367-68 (quoting Fed. R. Civ. P. 23(b)(2)).

Second, injunctive and declaratory relief are appropriate precisely because the only adequate relief requires injunctive and declaratory relief to address the harms Respondents' systemic actions and inactions inflict upon members of the Heat Sensitive and Solitary Confinement Classes and Disability Subclass. Because this is a civil rights lawsuit

challenging unconstitutional prison practices that can be remedied on a class-wide basis, it is appropriate for certification under Rule 52.08(b)(2).

B. Certification under Rule 52.08(b)(1) is also appropriate.

This lawsuit also meets the requirements of subsection (b)(1)(B) of Rule 52.08. Under Rule 52.08(b)(1), an action may be maintained as a class action if separate actions would create a risk of the following:

> (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or
>
> (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

See Mo. Sup. Ct. R. 52.08(b)(1).

Subsection (b)(1)(B) is concerned with prejudice to the members of the Proposed Class if certification is not granted. *See Doran v. Mo. Dep't of Soc. Servs.*, 251 F.R.D. 401, 407 (W.D. Mo. 2008). Here, resources dedicated to remedying harm tied to individual claims would result in resources deprived from members of the proposed classes and subclass, leaving them vulnerable to harm as they are continually exposed to extreme heat. Additionally, inconsistent adjudication leaves both parties subject to confusion and risk of future lawsuits. A class action is the only way to tackle the inhumane conditions at Algoa during the summer in a comprehensive and uniform way.

If Respondents oppose class certification in this matter, Petitioners request discovery and an evidentiary hearing on the issues at stake, where Petitioners can present documentary evidence affirming putative class members are at substantial risk of serious harm at Algoa.

CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioners respectfully request that this Court:

(1) Grant this motion and certify the following classes:

a. the Heat Sensitive Class, defined as people who are currently, or may in the future be, incarcerated at Algoa who: (1) have a medical condition that places them at increased risk of heat-related illness, injury, or death (including, but not limited to, diabetes, hypertension, cardiovascular disease, Parkinson's Diseases, and respiratory conditions like chronic obstructive pulmonary disease and asthma); (2) have a mental illness as defined by the National Institute of Health; (3) are prescribed medications that increase heat-related illnesses and morbidity; or (4) are 65 years old or older;

b. the Disability Subclass, defined as all members of the Heat Sensitive Class who are qualified individuals suffering from a recognized disability that substantially limits one or more of their major life activities, or substantially limits their access to benefits at Algoa which they are

otherwise entitled to. These individuals are at increased risk of heat-related illness, injury, or death due to their disabilities; and

c. the Solitary Confinement Class, defined as people who are currently, or may be in the future, incarcerated in Housing Unit 3 at Algoa, known as segregation, solitary confinement, or "the hole."

(2) Appoint Petitioners Hamilton, Perry, Campbell, and Moman as class representatives for the Heat Sensitive Class; Petitioners Kay, and Taylor as class representatives for the Solitary Confinement Class; and Petitioners Hamilton, Perry, Campbell, and Moman as class representatives for the Disability Subclass;

(3) Appoint Petitioners' counsel as class counsel; and

(4) Grant other such relief as is just and appropriate under the circumstances.

Respectfully submitted this 9th day of May, 2025.

/s/ Shubra Ohri

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Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on the 9th of May, 2025, a true and correct copy of the foregoing motion, suggestions, and attached exhibits were electronically filed using the Court's online case filing system, and that a copy of the petition, suggestions, and exhibits were also sent to the Office of the Missouri Attorney General via email at attorney.general@ago.gov.

/s/ Shubra Ohri

One of Petitioner's Attorneys

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

DAVID HAMILTON; ELON PERRY; ANTHONY MOMAN; TIMOTHY CAMPBELL; RICHARD KAY; and JERAMY TAYLOR, on behalf of themselves a class of similarly situated persons,

Petitioners,

v.

TREVOR FOLEY, in his official capacity as Director of the Missouri Department of Corrections ("MoDOC"), MYLES STRID, in his official capacity as Director of Division of Adult Institutions, and CRAIG CRANE, in his official capacity as warden of Algoa Correctional Center ("Algoa"),

Respondents.

Case No. _____

Division: _____

Index of Exhibits

Exhibit 1: MoDOC Sunshine Response re. Algoa Chronic Care Clinic, Age, and Housing Unit 3

Exhibit 2: Expert Report of Dr. Susi Vassallo

Exhibit 3: Declaration of Timothy Campbell

Exhibit 4: Affidavit of Leah Fessler

Exhibit 5: Declaration of Kenneth Barrett