SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

ALFONSO SMALLS, KARIEM TOMLIN, JEROME LESLIE, TARON JACKSON, SAIWON ROBBINS, and MICHAEL WILLIAMS, on behalf of themselves and all similarly situated individuals, Plaintiffs-Petitioners, v. DANIEL F. MARTUSCELLO III, as Commissioner of the New York State Department of Corrections and Community Supervision, Defendant-Respondent.	Index No. 903926-25

AFFIRMATION OF KATHERINE E. HAAS
IN SUPPORT OF CLASS CERTIFICATION

I, Katherine E. Haas, hereby affirm:

1. I am an attorney for The Legal Aid Society Prisoners' Rights Project ("PRP") and am admitted to practice law in the State of New York.

2. I serve as counsel for the Plaintiffs-Petitioners in this putative class action and am fully familiar with the facts and circumstances of this proceeding.

3. I submit this affirmation in support of Plaintiffs-Petitioners' Motion for Class Certification.

4. Founded in 1971, proposed class counsel PRP has decades of experience litigating complex class actions, in state and federal court, related to the rights of incarcerated people.

5. PRP has successfully litigated a host of complex class-action cases related to jail and prison conditions. These include *Benjamin v Maginley-Liddle*, 75-CV-3073 [SD NY]

[challenging conditions in New York City jails]; *Clarkson v Annucci*, 91-CV-1792 [SD NY] [challenging the State of New York's failure to accommodate the needs of people in its custody with hearing disabilities]; *Handberry v Thompson*, 96-CV-6161 [SD NY] [challenging the City of New York's failure to provide general and special education to students in its custody]; *Nunez v City of New York*, 11-CV-5845 [SD NY] [challenging systemic officer-on-incarcerated person brutality in the New York City jails]; *Medina v Fischer*, 11-CV-176 [SD NY] [challenging the State of New York's failure to accommodate the needs of people in its custody with vision disabilities]; *Jones v Annucci*, 16-CV-1473 [SD NY] [challenging systemic sexual abuse and harassment of women prisoners in New York]; *Agnew v City of New York*, 813431-21E [Sup Ct, Bronx County] [challenging the City of New York's failure to fulfill its ministerial duty to provide detainees with access to medical care]; and *Harper v Cuomo*, 21-CV-19 [ND NY] [challenging COVID-19-related conditions at Adirondack Correctional Facility].

6. The PRP attorneys litigating this matter have significant experience serving as class counsel in class action lawsuits, and include Antony P. F. Gemmell, a Supervising Attorney; three Staff Attorneys, Riley D. Evans, Lauren P. Stephens-Davidowitz, and myself; and a recent law graduate, Samantha R. Coulson. Mr. Gemmell, who previously served as the Director of Detention Litigation at the New York Civil Liberties Union, has served as class counsel in several class actions involving jails and prisons systems, including *M.C. v Jefferson County, New York*, 22-CV-190 [ND NY] [class action on behalf of individuals seeking access to opioid addiction treatment while incarcerated], and *Fields v Annucci*, 902997-23 [Sup Ct, Albany County] [class action on behalf of individuals in extensive periods of segregated confinement in DOCCS in violation of HALT]. Ms. Haas is class counsel in *Nunez*, and Ms. Stephens-Davidowitz is class counsel in *Handberry* and *Benjamin*.

7. Proposed class counsel, PRP, is committed to serving the interests of the class and has the resources and expertise to do so. Before filing this class-action lawsuit, counsel spent significant time researching DOCCS's obligations under HALT, investigating DOCCS's practices, identifying and interviewing people who are being subjected to DOCCS's challenged policies and practices, and researching and investigating the legal claims in this matter.

8. PRP is willing and able to provide adequate staffing and funding to see this case through to its conclusion.

I affirm this 18th day of April, 2025, in New York, New York, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

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CERTIFICATE OF COMPLIANCE WITH 22 NYCRR § 202.8-b

I hereby certify that this affirmation complies with the word-count limitation of 22 NYCRR § 202.8-b because the total word count of all printed text in the body of the affirmation, excluding the parts exempted by section 202.8-b, is 572 words according to the word-count function Microsoft Word, the word processing program used to prepare this document.

Dated: April 18, 2025
New York, New York

/s/ Katherine E. Haas
Katherine Haas

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

ALFONSO SMALLS, KARIEM TOMLIN, JEROME LESLIE, TARON JACKSON, SAIWON ROBBINS, and MICHAEL WILLIAMS, on behalf of themselves and all similarly situated individuals,

Plaintiffs-Petitioners,

-against-

DANIEL F. MARTUSCELLO III, as Commissioner of the New York State Department of Corrections and Community Supervision,

Defendant-Respondent.

Index No. 903926-25

MEMORANDUM OF LAW IN OPPOSITION TO PETITIONERS' MOTION FOR CLASS CERTIFICATION

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Defendant-Respondent Daniel F. Martuscello III, in his capacity as Commissioner of the New York State Department of Corrections and Community Supervision ("DOCCS" or "Department"), respectfully submits this memorandum of law in opposition to Plaintiffs-Petitioners'[1] motion for class certification (NYSCEF Nos. 43-45) under Article 9 of the Civil Practice Law and Rules ("CPLR"). Respondent respectfully submits that the motion should be denied because Petitioners fail to satisfy any of the requirements for class certification.

PRELIMINARY STATEMENT

Petitioners are six incarcerated individuals who, on behalf of themselves and two putative classes of incarcerated individuals, bring this hybrid proceeding to challenge DOCCS' temporary pause of certain aspects of the Humane Alternatives to Long-Term Solitary Confinement Act ("HALT"), otherwise referred to as the "HALT Suspension."[2] The two putative classes described by Petitioners are the "(j)(ii) Class" and the "2(23) Facility-Wide Emergency Class." NYSCEF No 44 at 9. The classes consist of "all individuals in DOCCS custody who are or will be": (1) subject to disciplinary confinement or confinement in a specialized housing unit, *e.g.*, Residential Rehabilitation Unit ("RRU") or Special Housing Unit ("SHU"); or (2) otherwise subject to cell confinement in excess of seventeen hours per day. *Id*.

Petitioners' request for class certification under CPLR Article 9 should be denied. First, class certification should be denied under the government operations rule because a class action is not the superior method of resolving alleged controversies underlying Petitioners' claims against

[1] For ease of reference, this memorandum will refer to Petitioners-Plaintiffs as "Petitioners," and to Respondent-Defendant as "Respondent."

[2] To maintain consistency with Petitioners' submissions, Respondent will refer to the "HALT Suspension" throughout its memorandum. However, Respondent never "suspended" any statutory provision of HALT. The term "suspension" refers to the temporary pause in certain out-of-cell programming and recreational elements of HALT that are authorized under HALT's own language during an emergency.

DOCCS. Alternatively, the motion should be denied because Petitioners fail to establish the prerequisites for class certification under CPLR § 901, including the commonality, typicality, and adequacy requirements. To that end, Petitioners allege that DOCCS lacks sufficient factual justification to invoke a "facility-wide emergency" under Correction Law 2(23). This claim is fundamentally at odds with class treatment due to factual differences concerning the scope and basis of the HALT Suspension at DOCCS' numerous facilities across the State. In short, claims by the proposed class members do not share common issues of law or fact, nor are the claims of the individual Petitioners typical of the class. Finally, as a further consequence of the notable and consequential variations between putative class members' individual interests and claims, the factors under CPLR § 902 weighs heavily against class certification.

ARGUMENT

POINT I

THE COURT SHOULD DENY CLASS CERTIFICATION

A. *Class Certification Standard*

CPLR § 901(a) provides that one or more members of a class may sue or be sued as representative parties on behalf of all if: (1) the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; (2) there are questions of law or fact common to the class which predominate over any questions affecting only individual members; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; (4) the representative parties will fairly and adequately protect the interests of the class; and (5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. CPLR § 901(a).

"Each requirement is an essential prerequisite to class action certification[.]" *Alix v. Wal-Mart Stores, Inc.*, 57 A.D.3d 1044, 1045 (3d Dep't 2008); *see also* CPLR § 902 ("[an] action may be maintained as a class action only if the court finds that the prerequisites under section 901 have been satisfied."). The parties seeking class certification bear the initial burden of establishing these prerequisites "by tender of evidence in admissible form." *Pludeman v. N. Leasing Sys., Inc.*, 74 A.D.3d 420, 422 (1st Dep't 2010). "General or conclusory allegations in the pleadings or affidavits are insufficient to sustain this burden." *Rallis v. N.Y.C.*, 3 A.D.3d 525, 526 (2d Dep't 2004). Rather, "class action certification must be founded upon an evidentiary basis." *Id*.

In addition, under CPLR § 902, courts consider five factors when deciding whether to grant class certification, including: (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the impracticability or inefficiency of prosecuting or defending separate actions; (3) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (4) the desirability or undesirability of concentrating the litigation of the claim in the particular forum; and (5) the difficulties likely to be encountered in the management of a class action.

"The proposed class action must also meet the prerequisites of CPLR 902(1)-(5)." *Globe Surgical Supply v. Geico Ins., Inc*., 59 A.D.3d 129, 136 (2d Dep't 2008); *Rife v. Barnes Firm, P.C.*, 48 A.D.3d 1228, 1229 (4th Dep't 2008) ("The party or parties seeking class certification have the burden of establishing compliance with every requirement of both CPLR 901 and 902"). Conclusory statements are inadequate to make the required showings. *See Feder v. Staten Island Hosp.*, 304 A.D.2d 470, 471 (1st Dep't 2003); *Katz v. NVF Co*., 100 A.D.2d 470, 473 (1st Dep't 2000). Further, "[o]n a motion for class certification, the court must be convinced that the proposed class is capable of being identified." *Globe Surgical Supply*, 59 A.D.3d at 137. *See* CPLR § 903.

B. *Class Certification Should be Denied Under Government Operations Rule*

Petitioners' motion for class certification should be denied under the government operations rule. Petitioners must demonstrate that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." CPLR § 901(a)(5). "It is well settled that a class action is not considered the superior method for the fair and efficient adjudication of a controversy against a governmental body." *Jones v. Board of Educ. of Watertown City School Dist*., 30 A.D.3d 967, 970 (4th Dep't 2006) (quoting *Board of Education of City School District of New Rochelle v. County of Westchester*, 282 A.D.2d 561, 562-63 [2d Dep't 2001]).

"[W]here governmental operations are involved, and where subsequent petitioners will be adequately protected under the principles of *stare decisis*, ... class action relief is not necessary." *Baumes v. Lavine*, 38 N.Y.2d 296, 305 (1975) (quoting *Jones v. Berman*, 37 N.Y.2d 42, 57 [1975] [internal citation omitted]). This "governmental operations rule . . . presumes that the government will abide by court rulings in future cases involving similarly situated petitioners, under principles of *stare decisis*." *Jamie B. v. Hernandez*, 274 A.D.2d 335, 336 (1st Dep't 2000). "[T]he governmental operations rule states that a class action is usually unnecessary because *stare decisis* and the uniformity of governmental operations ensure that all similarly situated persons will receive the relief ordered by the court." *Mitchell v. Barrios-Paoli*, 253 A.D.2d 281, 292 (1st Dep't 1999).

The governmental operations rule applies here because Petitioners seek to compel DOCCS Commissioner Martuscello to comply with the HALT Act, a state statute. Resolution of the individual Petitioners' claims is pertinent to DOCCS' operations across the State, principles of *stare decisis* affords relief to any similarly situated incarcerated individuals.

Further, none of the exceptions to the government operations rule apply to these circumstances. The exceptions to the governmental operations rule may be applicable where:

i. the governmental entity has repeatedly failed to comply with court orders affecting the proposed class, rendering it doubtful that *stare decisis* will operate effectively (*see Lamboy v. Gross*, 126 A.D.2d 265, 273–274 [1st Dep't 1987]; *see also Varshavsky v. Perales*, 202 A.D.2d 155, 156 [1st Dep't 1994]);

ii. the entity fails to propose any form of relief that purports to protect the plaintiffs (*see Seittelman v. Sabol*, 217 A.D.2d 523, 526 [1st Dep't 1995], *aff'd as modified*, 91 N.Y.2d 618 [1998]);

iii. the plaintiffs' ability to commence individual suits is highly compromised, due to indigency or otherwise (*see Tindell v. Koch*, 164 A.D.2d 689, 695 [1st Dep't 1991]; *Lamboy v. Gross*, *supra*; *Davis v. Perales*, 137 Misc.2d 649, 655 [Sup.Ct. Kings Co. 1987]); or

iv. the condition sought to be remedied by the plaintiffs poses some immediate threat that cannot await individual determinations (*Lamboy v. Gross*, *supra*; *see also New York City Coalition to End Lead Poisoning v. Giuliani* [*NYCCELP*], 245 A.D.2d 49, 51 [1st Dep't 1997]).

First, the "narrow" exception for failure to adhere to a court order does not apply here. *See Legal Aid Society v. New York Police Dep't*, 274 A.D.2d 207, 213 (1st Dep't 2000). Petitioners do not claim that DOCCS flouted any prior judicial orders concerning application of the HALT Suspension.

Second, Respondent has not been directed to submit any kind of plan for relief addressing the issues raised in this case. *See Chalfin v. Sabol*, 247 A.D.2d 309, 310 (1st Dep't 1998). This exception does not apply.

Third, Petitioners cannot show that the commencement of individual suits would be unduly burdensome because of indigency or otherwise. *See NYCCELP*, 245 A.D.2d at 51. Due to incarceration, many putative class member are likely indigent, however unlike other indigent populations, incarcerated individuals are frequent litigators. *See Gomez v. Evangelista*, 290 A.D.2d 351 (1st Dep't 2002) (upholding constitutionality of CPLR § 1101(f), which provides for reduced but generally mandatory filing fee for incarcerated suits); *Nicholas v. Tucker*, 114 F.3d 17 (2d Cir. 1997) (upholding an equivalent federal statute noting that "federal courts spend an inordinate amount of time on prisoner lawsuits, only a very small percentage of which have any merit"); *Ancrum v. St. Barnabas Hosp.*, 301 A.D.3d 474, 474 (1st Dep't 2003) (exhaustion requirement of Federal Prison Litigation Reform Act "designed to reduce the amount of prisoner litigation" among other things). DOCCS provides incarcerated individuals with specially stocked law libraries, and individuals subject to cell confinement may request materials (and tablets, if available) for use in their cells. *See* DOCCS Directive 4483 (available at https://doccs.ny.gov/system/files/documents/2022/05/4483.pdf [last accessed Sept. 6, 2024]); *see also* 7 N.Y.C.R.R. § 304.7.

Fourth, the condition at issue does not present an immediate threat that cannot await individual determinations. Here, as discussed below, class-wide injunctive relief would be an inappropriate remedy for addressing alleged noncompliance with HALT. Petitioners argue that, while DOCCS may invoke Correction Law §2(23)'s emergency exception, it may only do so where a "facility-wide emergency" exists. Consequently, claims challenging the HALT Suspension

should be resolved on a *facility-by-facility* basis, not via class-wide relief. The need for localized and individualized determinations as to the scope and basis for the HALT Suspension cuts against the notion that a class-wide injunction is the most expeditious manner of resolving the issues in this case.

In sum, the classes should not be certified because the governmental operations rule applies here.

C. *Petitioners Fail to Establish Commonality Under CPLR § 90l(a)(2)*

Separately, Petitioners' motion should be denied because the proposed class action does not satisfy the commonality requirement under CPLR § 901(a)(2). Under CPLR § 901(a)(2), Petitioners must show that "there are questions of law or fact common to the class which predominate over any questions affecting only individual members." "[T]he decision as to whether there are common predominating questions of fact or law so as to support a class action should not be determined by any mechanical test, but rather, 'whether the use of a class action would 'achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated.'" *Friar v. Vanguard Holding Corp*., 78 A.D. 83, 97 (2d Dep't 1980) (citations omitted).

"[I]t is not enough for [Petitioners] to prove that issues exist that are common to the entire class, or even that they are substantial and significant; [Petitioners] must show that these issues predominate over unique circumstances that may well characterize each aggrieved [individual's] complaint." *Alix v. Wal-Mart Stores, Inc.,* 57 A.D.3d 1044, 1047 (3d Dep't 2008.) (internal citations omitted). In evaluating Petitioners' proof, courts conduct a "rigorous analysis" to determine not only whether common questions exist, but also whether the class action has "the capacity ... to generate common answers apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350-51 (2011) (emphasis removed); *see also Comcast Corp.*

v. Behrend, 569 U.S. 27, 33 (2013).

The requirement is not met where fact-intensive individualized inquiries are required to determine whether a particular individual is a class member. *See Geiger v. American Tobacco Co.*, 277 A.D.2d 420, 420 (2d Dep't 2000). Indeed, class certification should be denied where the fact-finder would need to establish liability by reviewing individualized proof or engaging in a series of mini-trials for each putative class member's claim. *See Pludeman v. Northern Leasing Sys., Inc.*, 74 A.D.3d 420, 422 (1st Dep't 2010). *See also Carni v. Cont'l Home Loans, Inc.*, 44 Misc. 3d 788, 799 (Sup. Ct., Nassau Cty., Jul. 3, 2014).

Here, Petitioners argue that the putative classes satisfy the commonality requirement because all class members are challenging a "single policy," *i.e.*, the HALT Suspension. NYSCEF No. 44 at 19. Petitioners contend that their common objection to the HALT Suspension predominates over any variations in the harm to particular class members, making this action well-suited for class treatment. *Id*. at 13-14. This is a misleading framing of the true nature of Petitioners' claims, and insufficient to satisfy the commonality prerequisite. While it is true that, at the highest level of generality, all putative class members take issue with the HALT Suspension, such generic disagreement does not predominate over questions affecting the individual members.

DOCCS generally has authority to implement a temporary pause under HALT and whether the same is appropriate depends upon conditions are a particular facility. *See* Correction Law §2(23). At the preliminary injunction stage, the Court held that, under Section 2(23), DOCCS many continue to suspend elements of HALT where it provides evidence of a "facility-wide emergency." NYSCEF No. 67. As explained in the Martuscello Affirmations, each DOCCS facility faces different conditions and, as such, there is substantial variation in the degree to which DOCCS facilities may safely restore HALT requirements. NYSCEF Nos. 52, 69. There is not and,

consistent with Correction Law § 2(23), cannot be a "common litigation-driving" answer to whether DOCCS lawfully continues to suspend HALT. That is because compliance turns on facility-specific conditions, not a one-size-fits-all determination encompassing claims by all putative class members.

Petitioners do not dispute the general proposition that HALT allows DOCCS to suspend certain requirements under Correction Law § 2(23) (*see, e.g.*, NYSCEF No. 49 at 2-3), but rather, that particular DOCCS facilities do not face conditions that constitute a "facility wide emergency." Therefore, Petitioners' claims turn on predominantly localized inquiries into the conditions within each DOCCS facility and individualized questions concerning confinement of a specific class member, not questions of law or fact that are common to all putative class members. Class members within one DOCCS facility may face very different conditions than those in another facility, making it impossible to identify a "common answer[] apt to drive resolution of the action." *Wal-Mart Stores, Inc.* 564 U.S. at 350-51.

D. *Petitioners Fail to Establish Typicality and Adequacy*

Typicality often merges with commonality such that "similar considerations animate analysis of both." *Gardner v. Western Beef Props., Inc.*, 2011 WL 6140518, *4 (E.D.N.Y. Sept. 26, 2011) (internal quotation omitted). Similar to commonality, a class representative's claims are not typical of the class when they arise out of unique circumstances and require individualized proof. *Corsello v. Verizon N.Y., Inc.*, 18 N.Y.3d 777, 792 (2012) (affirming denial of class certification where there was evidence showing that there was plaintiff-specific proof "not common to the class" that was relevant to the case and that it was "fair to infer that there [would] also be" specific evidence relating to "many other members of the putative class.").

Here, as outlined above, individualized considerations abound. The putative class members

are housed at numerous different facilities with different (and wide-ranging) conditions bearing on dispositive or otherwise significant issues (*e.g.*, staffing levels and composition at Coxsackie have little to no bearing on whether emergency conditions exist at Clinton; an increased need to allocate resources for coverage of medical or legal trips at Green Haven has no significance to whether compliance with programming requirements at Mid-State may be properly excused). In fact, this incongruence exists between and amongst the individual Petitioners.

Further, this lack of typicality presents an insurmountable obstacle to a finding of adequacy because " '[Petitioners'] interests might not be aligned with those of the class, and [Petitioners] might devote time and effort to [issues unique to their claims] at the expense of issues that are common and controlling for the class.' " *Globe Surgical Supply v. GEICO Ins. Co.*, 59 A.D.3d 129, 145 (2d Dep't 2008) (quoting *Beck v. Maximus, Inc.*, 457 F.3.d 291, 297 [3d Cir 2006]). *See also Alix*, 57 A.D.3d at 859-60. The Department has only limited resources, and the individual Petitioners' interests would be in direct conflict with other putative class members insofar as Petitioners prioritize resolution at their facilities more so than that of any other class member.[3] *See Egan v. Telomerase Activation Scis., Inc.*, 127 A.D.3d 653, 653 (1st Dep't 2015) (affirming denial of class certification noting that there was a question whether the named plaintiff's "would pursue their own agenda, contrary to the interests of the class").

There are at least two more grounds precluding a finding of adequacy. First, Petitioners would be poor representatives because they cannot credibly profess familiarity with circumstances at DOCCS facilities where they were never or are not housed. *See Cooper v. Sleepy's, LLC*, 120

[3] In addition, Respondent's prior submissions demonstrate that some facilities were never affected by the HALT Suspension while others have already resumed normal operations to varying degrees. See NYSCEF Nos. 52, 65, 69. This further undermines Petitioners' efforts to satisfy prerequisites under CPLR § 901 including but not limited to commonality, typicality, and adequacy.

A.D.3d 742, 743-44 (2d Dep't 2014). Second, Petitioners failed to adduce sufficient proof demonstrating class-wide motivation to compel the Department to reallocate resources in a manner that prioritizes HALT compliance over other services or considerations. To the contrary, the record before the Court reflects circumstances where (arguably) similarly situated incarcerated individuals may disagree. For example, an individual with medical issues might be content that staffing assignments favor coverage for medical appointments rather than facilitating out-of-cell time for particular units or an entire facility. Petitioners fail to show that they could adequately represent such varied and diverse interests.

Accordingly, Petitioners failed to satisfy their burden of establishing typicality and adequacy under CPLR § 901(a)(3) and (4).

E. *Petitioners Fail to Show that the Factors Under CPLR § 902 Support Class Action*

The first, second, and fifth factors under CPLR § 902 (interest in individual control of litigation, feasibility of separate actions, and difficulties with class management) implicate the same considerations as the prerequisites to class certification under CPLR § 901. *See, e.g., Pino Alto Partners v. Erie County Water Auth.*, 873 N.Y.S.2d 236 (Sup. Ct., Erie County, 2008). Therefore, each of these factors weigh heavily against class certification.

As discussed above, there are notable and consequential variations between putative class members' individual interests and claims. While claims of alleged noncompliance concerning one individual class member may bear a passing resemblance to claims by another, resolution of either claim (whether meritorious or not) would not be dispositive or otherwise significant to the other. *See, e.g., Rife v. Barnes Firm, PC*, 48 A.D.3d 1228, 1230 (4th Dep't 2008) ("[s]eparate wrongs to separate persons, though committed by similar means and even pursuant to a single plan . . . do not alone create a common or general interest in those who are wronged." (internal quotation marks

omitted) (alteration in the original)) (quoting *Gaynor v, Rockefeller*, 15 N.Y.2d 120, 129 (1965)). Without limitation, the fact-finder would need to repeatedly evaluate out-of-cell time for each individual class member; which entails consideration of the time that each individual spent in programming, recreational spaces, visitation, meals, libraries, medical trips, and legal trips. There would also need to be serial assessments based on an array of facility-specific peculiarities (*e.g.*, varying staffing levels and composition at each facility; safety and security concerns at a particular facility in relation to its unique physical layout as well as the varying make-up and volume of incarcerated individuals in various housing units therein).

Putative class members would have significant interest in individually controlling litigation of their claims. Further, separate actions by individual members is not only a feasible manner of adjudication but a more-efficient alternative to class treatment. A class action would be completely unmanageable because resolving individual claims requires a series of mini-trials involving highly individualized inquiries and facility-specific peculiarities.

Accordingly, Petitioners failed to satisfy their burden with respect to the factors at CPLR § 902.

CONCLUSION

For the reasons set forth above, Petitioners' motion for class certification should be denied.

Dated: Albany, New York
August 22, 2025

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TO: Counsel of record (*Via NYSCEF*)

STATEMENT PURSUANT TO 22 NYCRR 202.8-b

I, Brian P. Henchy, affirm under penalty of perjury pursuant to CPLR 2106, that the total number of words in the foregoing memorandum of law, inclusive of point headings and footnotes and exclusive of pages containing the caption, table of contents, table of authorities, and signature block, does not exceed 3,488. The foregoing memorandum of law complies with the word count limit set forth in 22 NYCRR 202.8-b. In determining the number of words in the foregoing memorandum of law, I relied upon the word count of the word-processing system used to prepare the document.

By: *s/Brian P. Henchy*
Brian P. Henchy

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

ALFONSO SMALLS, et al., on behalf of themselves and all similarly situated individuals,

Plaintiffs-Petitioners,

v.

DANIEL F. MARTUSCELLO III, as Commissioner of the New York State Department of Corrections and Community Supervision,

Defendant-Respondent.

Index No. 903926-25

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION FOR CLASS CERTIFICATION

THE LEGAL AID SOCIETY
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Dated: September 4, 2025
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TABLE OF AUTHORITIES

Cases

Other Authorities

PRELIMINARY STATEMENT

This case is ideal for class certification. Plaintiffs seek to represent two overlapping classes consisting of thousands of incarcerated people subject to extreme isolation in their cells throughout the state who collectively challenge the legality of Defendant's suspension of HALT.

At the root of Plaintiffs' claims are common questions about the rationality and lawfulness of the HALT Suspension, the answers to which will drive the resolution of this case for all class members. That class members seek identical class-wide relief and, given the realities of incarceration, cannot feasibly litigate individually, underscores the appropriateness of class treatment. Courts have recognized as much in similar cases: Indeed, two other New York State courts have certified classes of incarcerated individuals challenging violations of HALT in the past two years (*see Anthony v DOCCS*, 2025 WL 1673230, *1 [Sup Ct, Kings County May 30, 2025]; *Fuquan F. v Annucci*, 81 Misc3d 517, 523-24 [Sup Ct, Albany County 2023]).

Defendant resists class certification by recasting this litigation as an amalgam of claims about individuals' conditions at individual facilities. It is not. The claims before the Court do not require individualized determinations because they concern a systemic failure rooted in common issues of law and fact, best resolved through class-wide relief. Because the proposed classes satisfy every requirement of CPLR Article 9, this Court should certify them.

ARGUMENT

I. The Government Operations Rule Does Not Preclude Class Certification.

DOCCS argues that the government operations rule bars class certification (*see* Defendant's Mem of Law in Opp to Class Certification, NYSCEF Doc No. 89 [hereinafter "Opp"] at 4–7). But that rule has never been categorical: It applies only "where subsequent petitioners will be adequately protected under the principles of stare decisis" (*Martin v Lavine*, 39 NY2d 72, 75 [1976]). Where stare decisis cannot provide such protection, the rule does not apply (*see e.g. Pena v Doar*, 2012 WL 4335191, *8 [Sup Ct, NY County Sept. 14, 2012] ["Courts retain the discretion to determine whether certification is proper where the government is involved."]).

Consistent with this principle, courts routinely have certified classes in systemic challenges, recognizing a range of contexts in which stare decisis is no substitute for class relief (*see e.g. Andryeyeva v New York Health Care, Inc.*, 33 NY3d 152, 184 [2019] ["Claims of uniform systemwide violations are particularly appropriate for class certification."]; *Hurrell-Harring v State of New York*, 81 AD3d 69, 75 [3d Dept 2011] ["[N]ot insignificantly, our research has failed to identify a single case involving claims of systemic deficiencies which seek widespread, systematic reform that has not been maintained as a class action."]). And in just the last two years, courts twice have certified classes in challenges to DOCCS's violation of HALT, each time rejecting essentially the same government operations argument DOCCS raises here (*see Anthony*, 2025 WL 1673230, *1 [granting class certification over DOCCS's objections under the government operations rule]; *Fuquan F.*, 81 Misc3d at 523-24 [same]). No different result is warranted here, where the same agency again invokes the rule to resist class certification in a case concerning systemic violations of the same statute.

Courts decline to apply the government operations rule where an agency shows reluctance to extend court-ordered relief beyond the named plaintiffs (*see New York City Coalition to End*

Lead Poisoning v Giuliani, 245 AD2d 49, 51 [1st Dept 1997] [affirming class certification against City officials partially because the agencies failed to follow court orders]; *Lamboy v Gross*, 126 AD2d 265, 273–74 [1st Dept 1987] [same]). DOCCS denies such reluctance, claiming Plaintiffs "do not claim that DOCCS flouted any prior judicial orders concerning application of the HALT Suspension" (Opp at 5). That is false. Plaintiffs raised concerns over DOCCS's compliance with the Court's preliminary injunction on July 21 (NYSCEF Doc No. 74), and moved to enforce that order on August 19, before DOCCS filed its opposition to this motion (*see* NYSCEF Doc No. 81).

Nor are concerns over DOCCS's willingness to comply with HALT confined to this case: DOCCS has a documented history of violating HALT and defying court orders requiring compliance (*see* Motion for Contempt, in *Fields v Martuscello*, NYSCEF Doc No. 115, Sup Ct, Albany County, index No. 902997/2023; *Peterkin v DOCCS*, 2025 WL 1657349, *3 [3d Dept, June 12, 2025] [holding DOCCS violated HALT by imposing excessive SHU sanctions as its "hearing officers have no authority to disregard the HALT Act's statutory limitations and requirements by substituting their own judgment"]; *see also Anthony v DOCCS*, Sup Ct, Kings County, Capell, J., index No. 512871/24 [challenging DOCCS's systemic practice of placing people with disabilities in segregated confinement in violation of HALT]; Ex. 4,[1] Off of the Inspector Gen, *Review of the First Two Years of HALT* [Aug. 2024] [finding that DOCCS violated HALT in numerous ways, including that it lacked "justification for holding people in segregated confinement" and "held people in segregated confinement for periods exceeding mandated limits"]; Ex. 2, Letter from Sen. Julia Salazar et al. [Feb. 27, 2023] [expressing "grave concerns" over DOCCS's continuing HALT violations]). This consistent pattern of defiance exemplifies precisely the sort of "reluctance" that

[1] Cited exhibits are attached to the April 17, 2025 Affirmation of Antony Gemmell (NYSCEF Doc No. 5).

warrants a departure from the government operations rule (*see Varshavsky v Perales*, 202 AD2d 155, 155–56 [1st Dept 1994] [affirming class certification, "notwithstanding the governmental entity doctrine, in view of defendants' demonstrated reluctance to extend . . . relief to individuals other than the named plaintiffs"] [internal citations omitted]).

Further, courts decline to apply the rule where government action threatens immediate harm that cannot await individual litigation (*see New York City Coalition to End Lead Poisoning*, 245 AD2d at 51 [deeming the government operations rule "no bar to class certification" where plaintiffs, children exposed to lead poisoning, presented "a serious health hazard requiring immediate action"]; *see also Lamboy*, 126 AD2d at 274 [affirming certification of a class of homeless families against New York City administrators in recognition of "the realities of the condition of homeless, destitute families desperately seeking shelter"]). Contrary to DOCCS's claim, that is precisely the case here: Thousands of putative class members have been subjected to months of highly restrictive confinement under the HALT Suspension, with no end in sight (Mem of Law in Support of Motion for Preliminary Injunction, NYSCEF Doc No. 49, at 13–19). This Court has already recognized the irreparable harm that DOCCS's practice inflicts on putative class members (Decision and Order, NYSCEF Doc No. 67 [hereinafter "Order"], at 8–9). Requiring separate suits in every prison by every person subject to the Suspension would only prolong that harm for thousands (*see e.g. Brad H. v City of New York*, 185 Misc2d 420, 425 [Sup Ct, NY County 2000] [finding that, without relief, "class plaintiffs . . . [would] face the immediate threat of psychological relapse, with a greater likelihood of the concomitant return to lives of drug and/or alcohol abuse, homelessness, lawlessness, and danger to themselves and/or others"]).

In addition, courts decline to apply the government operations rule where systemic barriers make individual litigation impracticable for many class members (*see Tindell v Koch*, 164 AD2d

689, 695 [1st Dept 1991]). Attempting to sidestep this exception, Defendant brands incarcerated people writ large as "frequent litigators" (Opp at 6).[2] But that label ignores the obvious: Class members are indigent, and confined in highly restrictive conditions that keep them locked in their cells most of the day with little or no law library access.[3] They face risks of retaliation for speaking out and are scattered across remote prisons that make securing counsel—especially for injunctive claims—extraordinarily difficult. The individuals in this class are thus precisely those whom this exception to the government operations rule is intended to protect (*see Onadia v City of New York*, 56 Misc3d 309, 322 [Sup Ct, Bronx County 2017] [certifying class of detained individuals, as "[m]any of the purported class members may be low-income and marginalized members of society who lack knowledge and familiarity with the court system"]; *Brad H.*, 185 Misc2d at 424 [certifying class of incarcerated individuals with mental illness "likely [] unable to file suit to protect themselves"]).

II. Defendant Resorts to Misconstruing Plaintiffs' Claims to Defeat a Finding of Commonality.

DOCCS argues that Plaintiffs cannot satisfy CPLR 901[a][2]'s commonality requirement because this case "turn[s] on predominantly localized inquiries" into the conditions at particular facilities and the circumstances of individual class members (Opp at 8–9). But that argument fundamentally misunderstands Plaintiffs' arbitrary-and-capricious claim under Article 78. That

[2] Defendant cites promulgation of the Prison Litigation Reform Act to support the notion that incarcerated individuals are frequent litigators, but the mere existence of that statute, which does not even apply to this case, does not mean that class members enjoy unimpeded access to the courts (*see* Opp at 6).

[3] Defendant asserts that because "DOCCS provides incarcerated individuals with specially stocked law libraries," class members can file individual suits (Opp at 6). But the existence of a law library does not necessarily mean that incarcerated people actually have access to it. Defendant in fact recently informed the Court that DOCCS has limited law library access at numerous prisons (Affirmation of Daniel F. Martuscello III, NYSCEF Doc No. 69, ¶¶ 50 (Cayuga), 98 (Five Points), 156 (Sing Sing), 192 (Bare Hill), 199 (Cape Vincent), 252 (Riverview)).

claim does not depend on individual outcomes at specific prisons; it "centers on the reasonableness—or rationality—of [Defendant's] decision-making" process in imposing the HALT Suspension across the putative classes (*see* Mem of Law in Support of Article 78 Petition, NYSCEF Doc No. 4, at 11). That systemic inquiry alone raises common questions, such as whether DOCCS considered rational factors in implementing the Suspension, and whether it adequately explained its decision to implement the Suspension by reference to facility-specific facts.[4]

Nor are the common questions here confined to Plaintiffs' arbitrary-and-capricious claim. Defendant ignores Plaintiffs' constitutional and mandamus claims, which raise further questions common to all class members, including whether the Suspension violates the separation of powers; and, for the j[ii] Class, whether DOCCS has statutory authority to suspend programming and recreation in RRU, as opposed to suspending only the congregate nature of recreation.

In short, this lawsuit presents a host of common questions that "will 'generate common answers apt to drive the resolution of the litigation'" (*Burdick v Tonoga, Inc.*, 179 AD3d 53, 56 [3d Dept 2019] [quoting *Wal-Mart Stores, Inc. v Dukes*, 564 US 338, 350 [2011]]). Each of these questions is "capable of classwide resolution" because its "truth or falsity will resolve an issue that is central to the validity" of every class member's claims "in one stroke" (*see Burdick*, 179 AD3d at 56).

Variations in conditions across facilities or circumstances of individual class members do not defeat commonality (*City of New York v Maul*, 14 NY3d 499, 512 [2010] [finding commonality even where "each of the plaintiffs and putative class members possesses . . . unique factual

[4] Or, as this Court put it in granting a preliminary injunction, resolving Plaintiffs' claim requires analyzing whether DOCCS is "follow[ing] the procedures set forth in Correction Law ¶ 2(23) and mak[ing] rational determinations of emergencies on a facility-by-facility basis" (Order at 10–11).

circumstances"]). "[P]redominance, not identity or unanimity . . . is the linchpin of commonality" (*id.* at 514 [cleaned up]). And these common questions predominate here because they are central to each class member's claims and answering them will "achieve economies of time, effort, and expense, and promote uniformity of decisions as to persons similarly situated" (*see Friar v Vanguard Holding Corp.*, 78 AD2d 83, 97 [2d Dept 1980]).

III. Plaintiffs Satisfy Typicality.

Defendant's typicality argument relies on the same mischaracterization of Plaintiffs' claims as his commonality argument: because Plaintiffs may be held under differing conditions in various DOCCS facilities, their claims necessitate individualized determinations and are not typical of all class members (*see* Opp at 9). To the contrary, Plaintiffs' claims are typical of other class members because, like all other class members, they are subject to the HALT Suspension, challenge Defendant's actions on the same legal bases, and seek the same declaratory and injunctive relief, which will resolve the case for the entire class (*see supra* at 5–7 ; *see also* Petition, NYSCEF Doc No. 1, at 33). Because Plaintiffs seek the same relief as other class members, they satisfy CPLR 901(a)(3)'s typicality requirement (*see Dugan v London Terrace Gardens, L.P.*, 45 Misc3d 362, 377 [Sup Ct, NY County 2013] [finding typicality where named plaintiffs seek the same declaratory and injunctive relief sought by the class]).

IV. Plaintiffs Satisfy Adequacy.

In contesting the adequacy of Plaintiffs to represent the classes, Defendant again ignores the relevant facts in favor of distorting the relief Plaintiffs seek. He argues that Plaintiffs' interests may not be aligned with those of other class members due to possible conflicts over allocation of resources either among facilities or between ostensibly competing priorities of complying with HALT and provision of other services, such as medical care (Opp at 10–11). But Plaintiffs do not

ask the Court to review or intervene in Defendant's allocation of resources. Rather, they seek to have DOCCS engage in a fair, reasoned, and lawful decision-making process—a goal they share with other class members and in which their interests are therefore aligned (*see Marcondes v Fort 710 Assoc., L.P.*, 75 Misc3d 1214[A], *2 [Sup Ct, NY County 2022] [finding "no conflict between the representatives and class members because the class representatives are experiencing the type of [harms] that are emblematic of the systematic deprivation [at issue]"]). The sort of conflicts that courts have found sufficient to defeat adequacy are not present here (*see e.g. Globe Surgical Supply v GEICO Ins Co.*, 59 AD3d 129, 145 [2d Dept 2008] [representative inadequate where he may devote time and effort to address a defense unique to him at class's expense]; *Alix v Wal-Mart Stores, Inc.*, 57 AD3d 1044, 1046 [3d Dept 2008] [managerial class members with role implementing challenged labor practice had substantial conflict with employee class members]).

Defendant also argues that Plaintiffs cannot represent the class adequately because "they cannot credibly profess familiarity with circumstances at DOCCS facilities where they never were or are not housed" (Opp at 10). This is meritless. Defendant cites no case for the remarkable proposition that omniscience about the nuanced circumstances of other class members or every DOCCS facility is required for adequacy under CPLR § 901.[5] Nor could he, as courts have routinely certified classes in systemic prison litigation brought by named plaintiffs without personal knowledge about every facility or every individual in a correctional system (*see e.g. Anthony*, 2025 WL 1673230, *1; *Fuquan F.*, 81 Misc3d at 523–24). Indeed, in complex litigation, "it is not reasonable to expect that [lay plaintiffs] would have detailed knowledge of the matters at

[5] The case Defendant cites for this proposition, *Cooper v Sleepy's, LLC*, makes no reference to class representatives' familiarity with the circumstances of other class members, but rather involves conflicts of interest over commission payments among the representatives and members of the class (120 AD3d 742, 744 [2d Dept 2014]).

issue," as they must merely have a "general awareness of the claims" to adequately represent the class (*Brandon v Chefetz*, 106 AD2d 162, 170 [1st Dept 1985]). Because Plaintiffs are familiar with the central issues in this case and their role as class representatives, as reflected in their affirmations, they are adequate to represent the class (*see e.g.* Affirmation of Jerome Leslie, NYSCEF Doc No. 26, ¶¶ 13–17; *cf. Ackerman v Price Waterhouse*, 252 AD2d 179, 202 [1st Dept 1998] [deposition sufficient to demonstrate general awareness of claims]).

V. The CPLR 902 Considerations Favor Certifying the Classes.

As described in Plaintiffs' opening brief, each of CPLR 902's factors supports class certification (Plaintiffs' Mem of Law in Support of Class Certification, NYSCEF No. 44, at 19–20). Class members have expressed no interest in controlling prosecution of their individual claims; pursuing separate actions would be impractical and inefficient; few, if any, similar cases have been brought by individual class members; concentrating the litigation in Albany Supreme Court is desirable; and the lawsuit presents no apparent difficulties in manageability (*id.*)

Defendant's only arguments to the contrary again rely on the incorrect suggestion that this case is about each individual class member's circumstances, rather than the legality of a Department-wide decision-making process (Opp at 12 ["Without limitation, the fact-finder would need to repeatedly evaluate out-of-cell time for each individual class member . . . . There would also need to be a serial assessment based on an array of facility-specific peculiarities[.]"). That framing is wrong for the reasons already discussed (*see supra* at 5–7). Plaintiffs do not challenge discrete conditions in specific facilities; they challenge DOCCS's unlawful exercise of suspension

authority across the system as a whole. This Court should reject Defendant's claims to the contrary and find that Plaintiffs satisfy the 902 factors.

CONCLUSION

For these further reasons, the Court should grant this motion, certify the putative classes, appoint the named plaintiffs as class representatives, and appoint the undersigned as class counsel.

Dated: September 4, 2025
New York, New York

Respectfully submitted,

THE LEGAL AID SOCIETY
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CERTIFICATE OF COMPLIANCE WITH 22 NYCRR § 202.8-b

I hereby certify that this memorandum of law complies with the word-count limitation of 22 NYCRR § 202.8-b because the total word count of all printed text in the body of the memorandum, excluding the parts exempted by section 202.8-b, is 2,850 words according to the word-count function in Microsoft Word, the word processing program used to prepare this document.

Dated: September 4, 2025
New York, New York

/s/ Lauren Stephens-Davidowitz
Lauren Stephens-Davidowitz

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

ALFONSO SMALLS, KARIEM TOMLIN JEROME LESLIE, TARON JACKSON, SAIWON ROBBINS, and MICHAEL WILLIAMS, on behalf of themselves and all similarly situated individuals,

Plaintiffs-Petitioners,

-against-

DANIEL F. MARTUSCELLO III, as Commissioner of the New York State Department of Corrections and Community Supervision,

Defendant-Respondent.

DECISION AND ORDER
(Motions 2 & 4)
Index No: 903926-25

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LYNCH, J.:

This litigation arises from a dispute over the application of the Humane Alternatives to Long-Term Solitary Confinement Law (hereinafter referred to as "HALT"), which, as relevant

here, sets forth limitations on the amount of time incarcerated individuals can be confined to their cells. Plaintiffs-Petitioners (hereinafter referred to as "plaintiffs") are members of two putative classes of individuals incarcerated in facilities across the State of New York run by the Department of Corrections and Supervision (hereinafter referred to as "DOCCS"). Defendant-Respondent Daniel F. Martuscello (hereinafter referred to as "defendant") is the commissioner of DOCCS.

The specific facts leading up to the issues presented here are laid out more fully in the Court's July 1, 2025 Decision and Order, which granted plaintiffs' request for a preliminary injunction (hereinafter "the July Decision"). In sum, in February 2025, correction officers in 38 of the 41 facilities operated by DOCCS went on strike, causing Governor Kathy Hochul to declare a state of emergency and deploy the New York National Guard to assist DOCCS in operating its facilities. On February 20, 2025, defendant informed all DOCCS facility superintendents that he was "suspending the elements of HALT that cannot safely be operationalized under a prison wide state of emergency until [DOCCS] can safely operate the prisons" (NYSCEF Doc. No. 56, pg. 1). In March 2025, as part of a Memorandum of Agreement (hereinafter referred to as "the March 8 MOA") between the State and the New York State Correctional Officers and Police Benevolent Association, Inc., which set forth conditions to end the strike and addressed the concerns that led to it, defendant continued the suspension of HALT for a further 90 days from March 8, 2025.

Plaintiffs thereafter commenced the instant hybrid CPLR article 78 proceeding and plenary action, asserting that these two documents – the February 20 Memorandum and the March 8 MOA – constitute an improper suspension by defendant of the protections accorded to incarcerated individuals under HALT. Accordingly, plaintiffs seek an order (1) certifying this action as a class action, (2) declaring defendant's suspension of HALT to be in violation of the New York Constitution, article III, § 1 and article IV, § 3, as well as Correction Law § 137 (6) (j) (ii), and (3)

vacating and annulling the suspension of HALT programming and recreation under CPLR article 78, asserting that the suspension is arbitrary and capricious and violates HALT's plain language. In July 2025, the Court granted petitioner's request for a preliminary injunction, enjoining defendant from suspending any provisions of HALT in DOCCS facilities without a finding of a facility-wide emergency as set forth in Correction Law § 2 (23), and ordering that any such finding be filed publicly to the docket of this case together with the sworn affirmation of a DOCCS employee with personal knowledge as to its scope and expected duration.

Defendant thereafter submitted a lengthy affirmation to the Court discussing the conditions at each of DOCCS' facilities across the state, and reiterating that a state of emergency existed in many of them that required the continued suspension of certain provisions of HALT. Plaintiffs disputed whether this affirmation was sufficiently detailed, and, following some communication between the parties, plaintiffs filed a motion to enforce the preliminary injunction or, in the alternative, hold defendant in civil contempt. Defendant opposes, asserting that he is in compliance with the preliminary injunction. Currently pending before the Court, then, are two separate motions: plaintiffs' motion for class certification and plaintiffs' motion to enforce the preliminary injunction. The Court heard oral argument regarding both motions on October 22, 2025.[1]

I. Plaintiffs' Motion for Class Certification

Plaintiffs seek to certify two classes: one of "[a]ll individuals in DOCCS custody who are or will be subject to cell confinement exceeding 17 hours per day under the HALT Suspension and

[1] The Court notes that defendant has not responded to the hybrid petition/complaint itself. In a letter to the Court on May 30, 2025, counsel for defendant informed the Court that the parties had agreed to stay the deadline to answer until the motion for a preliminary injunction was resolved. That motion was decided in July 2025, but defendant has yet to answer the petition/complaint. As the Court and parties failed to set a specific date by which defendant's answer was due, defendant is hereby ordered to submit an answer to the petition/complaint within 30 days of the date of this Decision and Order.

who are not, at the time of such confinement, subject to placement in segregated confinement as a disciplinary sanction," and one of "[a]ll individuals in DOCCS custody who are or will be in disciplinary confinement or housed in a setting whose conditions must at a minimum conform or be comparable to the requirements of RRUs under the Correction Law" (NYSCEF Doc. No. 43, pg. 1). Plaintiffs claim that these classes meet all the requirements for certification, as set forth in CPLR 901 and 902. Defendant responds that class certification should be denied under the governmental operations rule and that, even if it is not, plaintiffs have failed to establish either the prerequisites of commonality, typicality, or adequacy, or show that the factors set forth in CPLR 902 support the certification of the proposed classes.

In a class action, "[o]ne or more members of a class may sue . . . as representative parties on behalf of all if:

> 1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
> 2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members;
> 3. the claims or defenses of the representative parties are typical of the claims or defenses of the class;
> 4. the representative parties will fairly and adequately protect the interests of the class; and
> 5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

(CPLR 901 [a]; *see Stewart v Roberts*, 163 AD3d 89, 94 [3d Dept 2018]). Respectively, "[t]hese factors are commonly referred to as the requirements of numerosity, commonality, typicality, adequacy of representation and superiority" (*City of New York v Maul*, 14 NY3d 499, 508 [2010]). "If all of the CPLR 901 prerequisites are satisfied, the court must then consider the discretionary factors listed in CPLR 902" (*Jenack v Goshen Operations, LLC*, 222 AD3d 36, 44 [2d Dept 2023]; *see Morrissey v Nextel Partners, Inc.*, 72 AD3d 209, 216 [3d Dept 2010]). Those factors are:

> "1. The interest of members of the class in individually controlling the prosecution or defense of separate actions;
> 2. The impracticability or inefficiency of prosecuting or defending separate actions;
> 3. The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
> 4. The desirability or undesirability of concentrating the litigation of the claim in the particular forum;
> 5. The difficulties likely to be encountered in the management of a class action."

(CPLR 902; *see Jenack v Goshen Operations, LLC*, 222 AD3d at 44). "As proponents of the class action, plaintiffs [bear] the burden of demonstrating that [the] five prerequisites can be met" (*Burdick v Tonoga, Inc.*, 179 AD3d 53, 56 [3d Dept 2019] [citations omitted]); *see Olmann v Willoughby Rehabilitation & Health Care Ctr., LLC*, 186 AD3d 837, 855 [2d Dept 2020]). However, "these criteria must be liberally construed and any error, if there is to be one, should be in favor of allowing the class action" (*Hurrell-Harring v State of New York*, 81 AD3d 69, 72 [3d Dept 2011] [internal quotation marks, ellipsis and citations omitted]; *see Andryeyeva v New York Health Care, Inc.*, 33 NY3d 152, 183 [2019]).

The governmental operations rule does not preclude certification of the two classes proposed by plaintiffs. This rule "cautions against class certification where governmental operations are involved, since any relief granted to the named plaintiffs would adequately flow to and protect others similarly situated under principles of stare decisis" (*Hurrell-Harring v State of New York*, 81 AD3d at 74; *Stewart v Roberts*, 163 AD3d at 94). However, this is not an absolute rule, and classes may be certified even if governmental operations are involved when "the plaintiffs' ability to commence individual suits is highly compromised, due to indigency or otherwise" or "the condition sought to be remedied by the plaintiffs poses some immediate threat that cannot await individual determinations" (*New York City Coalition to End Lead Poisoning v Giuliani*, 245 AD2d 49, 51 [1st Dept 1997]; *see Hurrell-Harring v State of New York*, 81 AD3d at 75). Here, plaintiffs are indigent incarcerated individuals, and as such it is clear that their ability

to commence individual suits is compromised. Moreover, if the allegations here – that DOCCS is violating HALT and keeping them in their cells hours beyond the legal limit without a rational basis – are true, there is clearly an immediate threat to incarcerated individuals across the State which cannot await individual determinations. As such, the governmental operations rule does not bar the certification of a class here (*see New York City Coalition to End Lead Poisoning v Giuliani*, 245 AD2d at 51-52; *Brad H. v City of New York*, 185 Misc 2d 420, 424-425 [Sup Ct NY County 2000], *affd* 276 AD2d 440 [1st Dept 2000]).

Turning then to the requirements and factors in CPLR 901, the two classes proposed by plaintiffs should be certified. Plaintiffs have clearly satisfied the numerosity prong, given the number of incarcerated individuals across DOCCS' facilities who fall wtihin the ambit of the two proposed classes. Defendant challenges the issues of commonality, typicality, adequacy of representation, and superiority. The prerequisite of commonality "requires predominance of common questions over individual questions, not identity or unanimity of common questions, among class members" (*Ferrari v National Football League*, 153 AD3d 1589, 1591 [4th Dept 2017]; *accord Burdick v Tonoga, Inc.*, 179 AD3d at 56). "[C]ommonality cannot be determined by any mechanical test," and "the fact that questions peculiar to each individual may remain after resolution of the common questions is not fatal to the class action. Rather, it is predominance, not identity or unanimity, that is the linchpin of commonality" (*City of New York v Maul*, 14 NY3d at 514; *see Matter of Long Is. Power Auth. Hurricane Sandy Litig.*, 200 AD3d 1040, 1042 [2d Dept 2021], *lv dismissed* 39 NY3d 1175 [2023]).

Plaintiffs have met the requirement of commonality. One common question of law predominates over the individual questions presented by each putative class member's place of incarceration – namely, whether defendant's suspension of HALT since February 2025 is arbitrary

and capricious. Defendant argues that there is no commonality here because the suspension of HALT's protections requires a facility-by-facility analysis. This contention misses the mark, however, as plaintiffs contend that the challenged suspension was done at a statewide level. Accordingly, the analysis required to resolve this litigation is not a facility-by-facility one, but rather a single analysis of the rationality and constitutionality of the challenged determination. Because this one issue is integral to the instant action, a determination as to the propriety of defendant's challenged suspension of HALT would "resolve an issue that is central to the validity of each one of [plaintiffs'] claims in one stroke," and "generate common answers apt to drive the resolution of the litigation" (*Burdick v Tonoga, Inc.*, 179 AD3d at 56 [internal quotation marks and citation omitted]). Accordingly, plaintiffs have established the commonality prerequisite here (*see Jenack v Goshen Operations, LLC*, 222 AD3d at 45; *Hurrell-Harring v State of New York*, 81 AD3d at 72-73).

For similar reasons, plaintiffs have also established the prerequisite of typicality. "[T]he typicality requirement is satisfied if it is shown that a plaintiff's claims derive from the same practice or course of conduct that gave rise to the remaining claims of other class members and is based upon the same legal theory" (*Kozak v Kushner Vil. 329 E. 9th St. LLC*, 232 AD3d 542, 545 [1st Dept 2024] [internal quotation marks, brackets, and citation omitted]; *see Burdick v Tonoga, Inc.*, 179 AD3d at 60). While it is true that the putative class members are housed at different facilities, each of which has a different level of staffing, varying programming, and other unique challenges, these facility-by-facility considerations are not the dispositive analysis here. Instead, the issue presented is whether defendant's determinations in February and March 2025 were rational and constitutional, and the claims of the proposed classes are all based on the unifying legal theories that defendant's determinations were irrational and unconstitutional. Plaintiffs'

evidentiary submissions show that they were incarcerated when these determinations went into effect. Thus, plaintiffs have established that the claims of the representative parties are typical of the claims of the proposed classes (*see Ferrari v National Football League*, 153 AD3d at 1592; *Hurrell-Harring v State of New York*, 81 AD3d at 73).

The adequacy prerequisite has also been met. "The factors to be considered in determining adequacy of representation are whether any conflict exists between the representative and the class members, the representative's familiarity with the lawsuit and his or her financial resources, and the competence and experience of class counsel" (*Ackerman v Price Waterhouse*, 252 AD2d 179, 202 [1st Dept 1998] [citations omitted]; *see Globe Surgical Supply v GEICO Ins. Co.*, 59 AD3d 129, 143 [2d Dept 2008]). Again, defendant attempts to draw distinctions between the putative class members based on where they are incarcerated, contending that conflicts of interest will arise between class members as this lawsuit requires DOCCS to reopen or increase services at some facilities but not others. Again, this argument is unavailing. As noted above, there is a common legal question between putative class members in every DOCCS facility, and there is no indication that the vacatur of any improper statewide suspension would pit the plaintiffs against each other. Instead, all members of the proposed class share a common interest in the lifting of any improper suspension of HALT's protections. Plaintiffs' affidavits demonstrate that they are familiar with the lawsuit and willing to serve as class representatives, and there is no dispute that counsel at the Legal Aid Society are sufficiently competent and experienced to represent the proposed classes throughout this litigation. Therefore, plaintiffs have satisfied the requirement of adequacy (*see Ferrari v National Football League*, 153 AD3d at 1592-1593; *Pruitt v Rockefeller Ctr. Props.*, 167 AD2d 14, 24 [1st Dept 1991]).

Finally, plaintiffs have established that class action is the superior method to adjudicate the issue here. The challenged suspension of HALT impacts every incarcerated individual who is in segregated confinement, as defined by HALT, meaning that the number of potential plaintiffs in this action is likely in the thousands. If class certification is denied here, each one of those potential plaintiffs could institute an action challenging defendant's suspension of HALT, consuming a plethora of judicial resources. It would also require each of these plaintiffs to navigate the challenges of litigating from prison, which poses communication and cost concerns. This would also create the possibility of multiple inconsistent rulings on the propriety of defendant's determination. Therefore, provided that the members of the class were incarcerated at the time defendant issued his challenged determinations suspending HALT, a class action is clearly the superior method for the purpose of adjudicating this dispute, as it "will allow one action to do a job, or a good part of it, that would otherwise have to be done by many" (*Burdick v Tonoga, Inc.*, 179 AD3d at 60 [internal quotation marks and citation omitted] *see Stewart v Roberts*, 193 AD3d 121, 125 [3d Dept 2021]).

The factors set forth in CPLR 902 also weigh in favor of certifying plaintiffs' proposed classes. "Claims of uniform systemwide violations are particularly appropriate for class certification" (*Andryeyeva v New York Health Care, Inc.*, 33 NY3d at 184 [citation omitted]; *accord Moreno v Future Health Care Servs., Inc.*, 186 AD3d 594, 596 [2d Dept 2020]). Such a claim is presented here. There is no indication that class members are interested in controlling the prosecution of their own claims, nor has the Court been made aware of any other pending litigation concerning defendant's February and March 2025 suspension of HALT. For the reasons set forth above, it would be inefficient for every potential class member to prosecute separate actions for this claim, and this action is suited for a class action. Albany County is an adequate forum in which

to concentrate this litigation, as it is the county wherein defendant's principal office is located. Therefore, in light of the policy that "New York's statutory class certification provisions are to be liberally construed" (*Andryeyeva v New York Health Care, Inc.*, 33 NY3d at 183; *accord Stewart v Roberts*, 193 AD3d at 125), these factors support the certification of the two proposed classes (*see Jenack v Goshen Operations, LLC*, 222 AD3d at 46-47; *Ferrari v National Football League*, 153 AD3d at 1593; *Fleming v Barnwell Nursing Home & Health Facilities*, 309 AD2d 1132, 1134 [3d Dept 2003]).

II. Plaintiffs' Motion to Enforce the Preliminary Injunction

The other motion pending before the Court is plaintiffs' motion to enforce the preliminary injunction. Plaintiffs contend that defendant has not complied with the preliminary injunction issued by the Court in July 2025, as he has failed to identify which DOCCS facilities are experiencing a facility-wide emergency or provide sufficient information about the scope, existence and expected duration of such emergencies. As a result, plaintiffs ask the Court to order defendant to file a supplemental affirmation stating whether DOCCS is asserting a facility-wide emergency, the factors DOCCS relied on to make such a determination, whether staffing shortages are the primary basis for the emergency, the expected duration of such an emergency, and whether defendant is offering the out-of-cell time, programming, and congregate recreation mandated under HALT. Alternatively, plaintiffs ask the Court to hold defendant in contempt of court. Defendant opposes, contending that he has complied with the preliminary injunction and should not be held in contempt.

Under the relevant provisions of HALT, which was codified in amendments to the Correction Law that went into effect in March 2022, " '[s]egregated confinement' means the confinement of an incarcerated individual in any form of cell confinement for more than [17] hours

a day **other than in a facility-wide emergency**" (Correction Law § 2 [23] [emphasis added]). Additionally, "[p]ersons in segregated confinement shall be offered out-of-cell programming at least four hours per day, including at least one hour for recreation. Persons admitted to [RRUs] shall be offered at least six hours of daily out-of-cell congregate programming, services, treatment, recreation, activities and/or meals, with an additional minimum of one hour for recreation. Recreation in all [RRUs] shall take place in a congregate setting, unless exceptional circumstances mean doing so would create a significant and unreasonable risk to the safety and security of other incarcerated persons, staff, or the facility" (Correction Law § 137 [6] [j] [ii]).

In the preliminary injunction issued in July 2025, the Court ordered that "as of **July 11, 2025**, defendant Daniel F. Martuscello III [was] **preliminarily enjoined** from enforcing or implementing any suspension of the provisions of HALT in DOCCS facilities without a finding of a facility-wide emergency in each facility as set forth in Correction Law § 2 (23)," and that "if defendant Daniel F. Martuscello III makes a finding of such a facility-wide emergency, that finding shall be filed publicly to the docket in this case within two business days of the onset of such reliance and be accompanied by the sworn affirmation of a DOCCS employee with personal knowledge setting forth detailed facts describing the facility-wide emergency, including its scope and expected duration" (NYSCEF Doc. No. 67, pg. 11 [emphasis in original]).

Plaintiffs' motion to enforce the preliminary injunction is denied. First, the requirements to make a finding of civil contempt are not met, as plaintiffs have not demonstrated that defendant disobeyed the Court's July 2025 preliminary injunction. "To make a finding of civil contempt, it must be shown that, to a reasonable degree of certainty, a party has knowingly disobeyed a clear and unequivocal mandate of the court which results in prejudice to the rights of another party" (*Matter of New York State Off. of Victim Servs. v Robinson*, 151 AD3d 1515, 1516 [3d Dept 2017]

[internal quotation marks and citations omitted]; *see* Judiciary Law § 753 [A]; *Matter of Bemis v Town of Crown Point*, 121 AD3d 1448, 1452 [3d Dept 2014]).

Defendant has submitted multiple affirmations regarding DOCCS' attempts to comply with HALT's requirements. In July 2025, defendant submitted a 96-page affirmation, in which he gave a detailed analysis of conditions at the 35 DOCCS facilities across the State which have a residential rehabilitation unit ("RRU") or special housing unit ("SHU") and so are required to offer certain programming under HALT. In this affirmation, defendant summarized each facility's staffing levels, allocation of staff, reliance on the New York National Guard, limitations from staffing shortages, and progress in returning to compliance with HALT. Defendant concluded that all "DOCCS facilities remain under a 'facility-wide' emergency" due to insufficient staffing to both implement HALT's provisions and perform DOCCS' vital functions (NYSCEF Doc. No. 69, pg. 8). As set forth in defendant's affirmation, this facility-specific information was obtained after working with an executive team, which included the superintendent of each relevant facility. Defendant did not include a specific time horizon for the termination of the emergency conditions at each facility, but he did explain steps that DOCCS has taken to recruit further correction officers and detailed some facilities in which HALT programming had been partially reinstated. He added that the situation was fluid in every facility on a day-by-day basis (*see* NYSCEF Doc. No. 69). In a supplemental affirmation submitted in September 2025, defendant reported that 24 DOCCS facilities were compliant with HALT's RRU and SHU programming requirements, and that the other 11 facilities were in partial compliance (*see* NYSCEF Doc. No. 95).

In November 2025, defendant submitted a third affirmation. In this affirmation, he reiterated that each of DOCCS' facilities were still operating under Governor Hochul's February 2025 state of emergency declaration, and stated that HALT programming was fully operational in

all SHUs throughout the State, and in 30 of 35 facilities with RRUs. He reiterated that the five RRUs not fully compliant with HALT programming continued to experience staffing shortages and other operational challenges. Defendant added that it was not possible for him to provide a precise date by which the emergency would end in each facility, based upon the fluid situation across DOCCS (*see* NYSCEF Doc. No. 143). In conjunction with this affirmation, defendant also submitted affirmations from the superintendents of the five facilities that had yet to restore full programming in their RRUs. These five superintendents explained that insufficient staffing at all five facilities caused them each to be in a facility-wide emergency, as, even with the National Guard, these facilities each had a vacancy rate between 29% and 47% of their expected staffing levels (*see* NYSCEF Doc. Nos. 144-148).

In December 2025 defendant submitted a final supplemental affirmation, explaining that DOCCS' 13 maximum-security prisons[2] remained under facility-wide emergencies, preventing them from meeting the seven-hour out-of-cell requirement in Correction Law § 2 (23) for individuals incarcerated in general population but housed in cells. In this affirmation, he provided analyses of the staffing levels at each of these 13 facilities, explaining the challenges posed by the security staff vacancies, which ranged from 25% to 50% of their expected levels at these facilities. In sum, defendant concluded that the security staff shortfalls at each facility constituted an emergency that necessitated a deviation from the requirements of Correction Law § 2 (23) (*see* NYSCEF Doc. No. 153).

[2] Defendant identified these facilities as: Attica Correctional Facility, Auburn Correctional Facility, Bedford Hills Correctional Facility, Clinton Correctional Facility, Coxsackie Correctional Facility, Eastern NY Correctional Facility, Elmira Correctional Facility, Five Points Correctional Facility, Green Haven Correctional Facility, Shawangunk Correctional Facility, Sing Sing Correctional Facility, Upstate Correctional Facility, and Wende Correctional Facility.

Taken together, these affirmations from defendant and the facility superintendents are sufficient to satisfy the requirements of the July 2025 preliminary injunction. Defendant has explained in multiple ways that every facility in the DOCCS system remains in a state of emergency, and has provided individualized breakdowns for each facility as required by the language of Correction Law § 2 (23) and the preliminary injunction. While plaintiffs dispute defendant's representation that HALT programming has been restored in SHUs and RRUs across the State via affidavits from incarcerated individuals, and assert that individuals in general population are confined to their cells for more than 17 hours a day, these arguments miss the mark – the facility-wide emergencies laid out by defendant and the facility superintendents in their affirmations provide a rational basis for a suspension of HALT's programming and cell confinement requirements under the exception in Correction Law § 2 (23). Defendant has provided affirmations identifying a facility-wide emergency at every facility in the DOCCS system, as well as both individualized assessments of each facility in support of this conclusion and more detailed analyses for other specific facilities. In light of these voluminous submissions, even if the inconsistences identified by plaintiffs were on-point, the Court cannot conclude that defendant knowingly disobeyed the Court's July 2025 preliminary injunction, and so will not hold him in civil contempt (*see Matter of Justice v Fischer*, 126 AD3d 1266, 1266 [3d Dept 2015]; *Tel Oil Co. v City of Schenectady*, 292 AD2d 725, 725-726 [3d Dept 2002]).

Plaintiffs also ask that the Court find defendant in violation of the preliminary injunction under the Court's general powers as the court of record under Judiciary Law § 2-b (3). The Court declines to do so. Refocusing on the allegations in the petition, this is a hybrid proceeding and action asserting that defendant acted arbitrarily and capriciously in suspending HALT in February and March 2025, or, in the alternative, that these suspensions violated the New York Constitution.

The preliminary injunction was granted based, in part, on the Court's finding that plaintiffs were likely to succeed on the merits of their CPLR article 78 claim. The question in a CPLR article 78 proceeding is whether the challenged action was "taken without sound basis in reason or regard to the facts," and "[w]hen a determination is supported by a rational basis, it must be sustained even if the reviewing court would have reached a different result" (*Matter of Evercare Choice, Inc. v Zucker*, 218 AD3d 882, 885 [3d Dept 2023] [internal quotation marks and citations omitted]; *accord Matter of John E. Andrus Mem., Inc. v Commissioner of Health of the N.Y. State Dept. of Health*, 225 AD3d 959, 961 [3d Dept 2024]).

This standard must be front and center in the Court's review of defendant's actions. The Court's role in the instant litigation is not to oversee DOCCS, monitor defendant's decision-making as he acts as the commissioner of DOCCS, or substitute its own discretion for defendant's reasoned judgments. Instead, it is to determine whether defendant acted rationally in suspending HALT in February and March 2025, and enjoin him from implementing that potentially irrational suspension during the pendency of this litigation. The relief plaintiffs request in the instant motion – which includes requiring defendant to file to the Court's docket prompt identification of every facility where a facility-wide emergency is asserted, sworn information describing the basis, scope and duration of each emergency, biweekly updates on each emergency, a mechanism to determine HALT compliance at other DOCCS facilities, and a process for addressing allegations of future noncompliance (*see* NYSCEF Doc. No. 154) – asks the Court to go well beyond its judicial role. Granting such relief would surpass the requirements of the July 2025 preliminary injunction, and, critically, exceeds the Court's purview under the text of Correction Law § 2 (23), which requires only the finding of a facility-wide emergency for the suspension of HALT, not regular updates on the resolution of such an emergency or a temporal limitation on it. Defendant has submitted

sufficient information to the Court to conclude that he has a rational basis for the facility-wide emergencies asserted in the summer and fall of 2025, which is all that was required by the July 2025 preliminary injunction. Accordingly, plaintiffs' motion to enforce the preliminary injunction is denied.

Any remaining arguments not specifically addressed herein have been considered and found to be lacking in merit or need not be reached in light of this determination.

Accordingly, it is hereby

ORDERED that plaintiffs' motion for class certification is granted; and it is further

ORDERED that the classes are (1) all individuals in DOCCS custody who are or will be subject to cell confinement exceeding 17 hours per day under the HALT Suspension and who are not, at the time of such confinement, subject to placement in segregated confinement as a disciplinary sanction, and (2) of all individuals in DOCCS custody who are or will be in disciplinary confinement or housed in a setting whose conditions must at a minimum conform or be comparable to the requirements of RRUs under the Correction Law; and it is further

ORDERED that plaintiffs' motion to enforce the July 2025 preliminary injunction is denied; and it is further

ORDERED that defendant submit responsive papers to the hybrid petition/complaint within 30 days of the date of this Decision and Order.

The foregoing shall constitute the Decision and Order of this Court. The signing of this Decision and Order shall not constitute filing, entry, service, or notice of entry under CPLR 2220 and § 202.5-b(h)(2) of the Uniform Rules for the New York State Trial Courts. The parties are not relieved from the applicable provisions of those rules with respect to service and notice of entry of the Decision and Order.

SO ORDERED.

ENTER.

Dated: February 17, 2026
Albany, New York

HON. DANIEL C. LYNCH
Supreme Court Justice

02/17/2026

Papers considered:

1. Notice of Motion for Class Certification, dated April 18, 2025;
2. Memorandum of Law in Support of Motion for Class Certification of Katherine E. Haas, Esq., dated April 18, 2025;
3. Affirmation in Support of Katherine E. Haas, Esq., dated April 18, 2025;
4. Affirmations in Support of Plaintiffs (NYSCEF Docs. No. 20 – 25);
5. Memorandum of Law in Opposition of Brian P. Henchy, Esq., dated August 22, 2025;
6. Memorandum of Law in Reply of Lauren Stephens-Davidowitz, Esq., dated September 4, 2025;
7. Notice of Motion to Enforce the Preliminary Injunction, dated August 19, 2025;
8. Memorandum of Law in Support of Riley D. Evans, Esq., dated August 19, 2025;
9. Affirmation in Support of Riley D. Evans, Esq., dated August 19, 2025, together with Exhibits A – E;
10. Memorandum of Law in Opposition of Ryan W. Hickey, Esq., dated September 26, 2025;
11. Affirmations of Daniel F. Martuscello, dated July 14, 2025, September 26, 2025, November 14, 2025, and December 3, 2025;
12. Affirmation of Ryan W. Hickey, Esq., dated September 26, 2025, together with Exhibit A;
13. Memorandum of Law in Reply of Antony P. F. Gemmell, Esq., dated October 2, 2025;
14. Oral argument, held in-person at the Albany County Courthouse on October 22, 2025;
15. Supplemental Submission in Support of Antony P. F. Gemmell, Esq., dated November 7, 2025, together with Exhibits 1 – 37;
16. Supplemental Submission in Opposition of Ryan W. Hickey, Esq., dated November 14, 2025, together with affirmations of Julie Wolcott, Thomas Gee, Leanne Latona, Mark Rockwood, and Aaron Torres; and
17. Reply Supplemental Submission of Antony P. F. Gemmell, Esq., dated December 3, 2025, together with Exhibits 1 – 5.