At an IAS Term, Part 19 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 30 day of May, 2025.

P R E S E N T:

HON. HEELA D. CAPELL,
Justice.

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MAURICE ANTHONY, COREY ALLEN, ANNA ADAMS, ANDY GNECO, ANDRE GREENE, ERIC LEE, STEPHANIE PEÑA, and ALTEREAK WITHERSPOON, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, DANIEL F. MARTUSCELLO III, Acting Commissioner, New York State Department of Corrections and Community Supervision, NEW YORK STATE OFFICE OF MENTAL HEALTH, and ANNE MARIE SULLIVAN, Commissioner, New York State Office of Mental Health,

Defendants.

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Index No.: 512871/2024

Decision/Order

MS # 1, 4

The following e-filed papers read herein:	NYSCEF Doc Nos.:
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	21-72, 77, 98-106
Opposing Affidavits (Affirmations)	113, 114-128,
Affidavits/Affirmations in Reply	138-149, 150

Upon the foregoing papers, plaintiffs Maurice Anthony, Corey Allen, Anna Adams, Andy Gneco, Andre Greene, Eric Lee, Stephanie Peña and Altereak Witherspoon

(collectively, "Plaintiffs") move for an order (motion sequence number 1) certifying the following proposed classes pursuant to CPLR 901 (a) and 902:

> (1) A practice class, defined as all persons in the custody of defendant New York State Department of Corrections and Community Supervision (DOCCS) with a disability, as defined in Executive Law § 292 (21) (a), who, since March 31, 2022, have been, are, or will be subjected to segregated confinement, as defined in Correction Law § 2 (23); and
>
> (2) A policy class, defined as all persons in DOCCS custody with any disability, as defined in Executive Law § 292 (21) (a), that is omitted from the DOCCS and defendant New York State Office of Mental Health (OMH) solitary policies.

Defendants Daniel F. Martuscello III, Acting Commissioner of DOCCS, Anne Marie Sullivan, Commissioner of the OMH, as well as DOCCS and OMH (collectively, "Defendants") move to change venue from Kings County to Albany County pursuant to CPLR 510 (1) and (3) (motion sequence number 4).

Plaintiffs' motion (motion sequence number 1) is granted.

Defendants' motion (motion sequence number 4) is denied.

BACKGROUND

Overview

Plaintiffs, eight incarcerated individuals with alleged disabilities who claim to have been subjected to solitary confinement, brought the present putative class action on behalf of themselves and two overlapping proposed classes of disabled people. They maintain that they were held in solitary confinement in violation of the Humane Alternatives to Long-Term Solitary Confinement Act (HALT). HALT provides as follows pursuant to Correction Law § 137 (6) (h): "Persons in a special population as defined in subdivision thirty-three of section two of this chapter shall not be placed in segregated confinement for any length of time . . . ." (HALT's Disability Exclusion). Plaintiffs posit that Defendants have violated HALT through their practices and policies of imposing solitary confinement[1] on people with disabilities amidst New York's prison system.

Plaintiffs contend that the proposed classes pass muster under the requirements of CPLR 901 and the considerations delineated in CPLR 902, as set forth below (*see* NYSCEF Doc No. 22, memo. of law, ¶ I). Further, Plaintiffs opine that proceeding as a class action constitutes the most efficient method to address Defendants' violations of HALT (*id.*). Specifically, Plaintiffs assert that a class action will resolve questions common to each class, promote efficiency and benefit all members of the proposed classes through a declaration that Defendants' practices and policies are in derogation of the law, coupled with an injunction barring Defendants from violating HALT (*id.*).

[1] The term "solitary confinement" is used herein as the functional equivalent of "segregated confinement," which latter term is defined in Correction Law § 2 (23) as "the confinement of an incarcerated individual in any form of cell confinement for more than seventeen hours a day . . . ."

The Proposed Classes

Plaintiffs request that the court certify the following proposed classes: A practice class ("Practice Class"), consisting of all persons in DOCCS custody with a disability - as defined in Executive Law § 292 (21) (a)[2] - who, since March 31, 2022, have been, are, or will be subjected to segregated confinement, as defined in the above-quoted Correction Law § 2 (23). Plaintiffs assert that named Plaintiffs Maurice Anthony, Corey Allen, Anna Adams, Andy Gneco, Andre Greene, Eric Lee, Stephanie Peña and Altereak Witherspoon are adequate representatives of the Practice Class.

And, a policy class ("Policy Class"), consisting of all persons in DOCCS custody with any disability, as defined under Executive Law § 292 (21) (a), that is omitted from the DOCCS and OMH solitary policies (the DOCCS and OMH Solitary Policies).[3] Named Plaintiffs Corey Allen, Anna Adams, Andy Gneco, Andre Greene and Stephanie Peña aver that they are adequate representatives of the Policy Class.

Plaintiffs' Position as to the Adverse Effects Attendant to the Solitary Confinement of People Afflicted with Disabilities

Plaintiffs allege in the complaint that solitary confinement takes a toll on the incarcerated from a psychological and physical standpoint, including leading to increased risk of suicidal ideation, depression, cognitive deterioration, hypertension, insomnia and muscle atrophy (*see* NYSCEF Doc No. 1, complaint, ¶¶ 35 and 43-46). Plaintiffs contend

[2] The term "disability" is defined under Executive Law § 292 (21) (a) as "a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques . . . ."

[3] The DOCCS and OMH Solitary Policies consist of: (i) DOCCS Directive 4933, dated June 28, 2022 (*see* NYSCEF Doc No. 25); (ii) DOCCS Directive 4933D (*see* NYSCEF Doc No. 26); (iii) DOCCS SHU Exclusion Policy (*see* NYSCEF Doc No. 27); and (iv) OHM Central New York Psychiatric Center Corrections-Based Operations Policy 6.0 (*see* NYSCEF Doc No. 28).

that the physiological and psychological trauma associated with solitary confinement is more pronounced for those in the disability cohort (*id.* at ¶¶ 45-46).

Plaintiffs Claim that Defendants' Policies Violate HALT's Disability Exclusion

Plaintiffs assert that Defendants violate HALT's Disability Exclusion in two ways: (1) Defendants maintain policies that improperly exclude Policy Class members' disabilities from the list of disabilities that result in diversion from Special Housing Unit (SHU), a unit designated by DOCCS as segregated confinement; and (2) Defendants hold Practice Class members in solitary confinement in units throughout the prison system, including other units designated by DOCCS as solitary confinement in which they are denied at least seven hours of out-of-cell time per day (*see* NYSCEF Doc No. 22, memo. of law, ¶ III [B]).

As to Plaintiffs' position that Defendants maintain policies that violate HALT's Disability Exclusion, Plaintiffs claim that, albeit maintaining centralized policies that nominally enact HALT's Disability Exclusion, Defendants in fact deny people with disabilities such protection, resulting in hundreds of people with disabilities throughout the DOCCS system being placed in SHU (*id.*).

Plaintiffs assert that Defendants have enacted a set of policies – embodied in the DOCCS and OMH Solitary Policies – markedly more narrowly-circumscribed than the statutorily mandated HALT's Disability Exclusion (*see* NYSCEF Doc No. 1, complaint, ¶¶ 81-83). Specifically, Plaintiffs allege in the complaint that the DOCCS and OMH Solitary Policies omit certain disabilities, including certain vision and hearing disabilities, mental health conditions such as post-traumatic stress disorder or depression, as well as certain physical and speech disabilities, from the list of disabilities covered under HALT's

Disability Exclusion, even though such disabilities are covered pursuant to the New York State Human Rights Law (NYSHRL) (*id.* at ¶¶ 81-84).

As such, Plaintiffs contend that Defendants rely on the DOCCS and OMH Solitary Policies to confine Policy Class members in solitary confinement in SHU notwithstanding their disabilities, and that such policies impose on all members of the Policy Class the risk of future SHU placement (*see* NYSCEF Doc No. 22, memo. of law, ¶ III [B]). For instance, Plaintiffs aver, based on data compiled in the DOCCS HALT reports covering the May 2022 to April 2024 period, that as of the first of each month between May 2022 and April 2024, Defendants housed between 82 and 211 people with mental health disabilities in SHU, as well as scores of people with the highest level of medical needs (*id.*).

Likewise, Plaintiffs claim that, in the face of their disabilities, DOCCS placed them in solitary confinement following HALT's March 31, 2022 effective date. For illustration purposes, Plaintiffs allege that, although named Plaintiff Corey Allen suffers from a physical disability (to wit, paralysis in the left hand), DOCCS has repeatedly held him in solitary confinement at, among other facilities, Great Meadow Correctional Facility, where he was generally constrained to spend approximately 21 hours per day in cell confinement, typically permitted to leave for only one to two hours of recreation per day and for meal times (*see* NYSCEF Doc No. 1, complaint, ¶¶ 156-160).

Named Plaintiff Andy Gneco, for his part, alleges that notwithstanding his mental health disabilities, rooted in depression and anxiety, DOCCS has held him in solitary confinement in, inter alia, the SHU at Auburn Correctional Facility (*id.* at ¶ 11). Further, Plaintiffs contend that, while named Plaintiff Stephanie Peña is saddled with anti-social personality disorder and post-traumatic stress disorder, she has been held by DOCCS in

solitary confinement, including during multiple periods in the SHU at Albion Correctional Facility, where she has been incarcerated since September 2022 and has attempted suicide (*id.* at ¶¶ 14 and 185-186).

As to named Plaintiff Maurice Anthony, notwithstanding his legally blind status, it is alleged that DOCCS subjected him to solitary confinement from October 2021 to May 2023 while he was in the step-down program at Mid-State Correctional Facility, confining him to his cell approximately 19 to 23 hours per day (*id.* at ¶¶ 149-150). Named Plaintiff Eric Lee, who is purportedly afflicted with mental health disabilities for which he has been prescribed antipsychotic and antidepressant medications, was nonetheless held in solitary confinement in, among other units, the SHU at Shawangunk Correctional Facility for two weeks after HALT went into effect (*id.* at ¶¶ 178-179).

Plaintiffs Contend that Defendants Hold People with Disabilities in Solitary Confinement in Violation of HALT

Plaintiffs assert that Defendants hold people with disabilities in solitary confinement - cell confinement for more than 17 hours per day - including in non-SHU units throughout the prison system. Plaintiffs allege that Practice Class members are held in solitary confinement in SHUs, as well as in Residential Rehabilitative Units (RRUs), Residential Mental Health Treatment Units (RMHTUs), Regional Medical Units (RMUs), step-down units, general population and other units. For instance, in the March 2023 Correctional Association of New York Report (CANY Report), it is indicated that "DOCCS appears to be operating step-down units outside the requirements of the HALT Law" and that at the Midstate Correctional Facility's step-down unit, DOCCS is holding people in conditions

tantamount to segregated confinement, including people in special populations (*see* NYSCEF Doc No. 30, CANY Report at 35).

Plaintiffs argue that, irrespective of the nomenclature used to identify a unit, HALT bans solitary confinement for people with disabilities (*see* NYSCEF Doc No. 22, memo. of law, ¶ III [B] [2]). As to the Practice Class members, Plaintiffs contend that Defendants subject such individuals to solitary confinement in units bearing a variety of names by denying them at least seven hours of out-of-cell time per day (*id.*). Plaintiffs assert that even the out-of-cell time that Defendants offer is analogous to solitary confinement conditions (*id.*) For example, it is alleged that Defendants subject some Practice Class members to solitary confinement by permitting recreation only in diminutive single-person recreation pens, which consist of enclosed semi-outdoor portions of their cell (*id.*) For instance, the CANY Report published in March 2023 describes "recreation pens that are an extension of people's cells" at Upstate Correctional Facility and Orleans Correctional Facility, while outdoor recreation at Coxsackie Correctional Facility's RRU is said to have taken place in previous SHU recreation pens where "individuals are placed alone" (*see* NYSCEF Doc No. 30, CANY Report at 32).

DISCUSSION

HALT Statutory Scheme

HALT, which took effect on March 31, 2022, bars Defendants from placing individuals with a disability in solitary confinement for any length of time, which statutory scheme rests on an interplay amongst various statutory provisions. Specifically, Correction Law § 137 (6) (h) provides that "[p]ersons in a special population . . . shall not be placed in segregated confinement for any length of time . . . ." In turn, pursuant to Correction Law § 2 (33) (c), the term "special populations" includes any person "with a disability as defined in paragraph (a) of subdivision twenty-one of section two hundred ninety-two of the executive law . . . ." Notably, the term "disability" is broadly defined pursuant to the NYSHRL, Executive Law § 292 (21) (a), as "a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques . . . ."

The scope of HALT's Disability Exclusion protecting persons afflicted with a disability uniformly encompasses units throughout DOCCS prisons, including the Special Housing Unit (SHU) - a unit designated by DOCCS as segregated confinement - as the term "segregated confinement" is broadly defined pursuant to Correction Law § 2 (23) (c) as "the confinement of an incarcerated individual in any form of cell confinement for more than seventeen hours a day . . . ."

Standard on a Motion for Class Certification

It is within the above factual context that the court must consider Plaintiffs' motion for class certification. Pursuant to CPLR 902, a class action may only be maintained if each of the prerequisites enunciated under CPLR 901 (a) have been satisfied (*see Medina v Fairway Golf Mgt., LLC*, 177 AD3d 727, 728 [2d Dept 2019]; *see also Cooper v Sleepy's, LLC*, 120 AD3d 742, 743 [2d Dept 2014]; *Pludeman v Northern Leasing Sys., Inc.*, 74 AD3d 420, 421 [1st Dept 2010]). Pursuant to CPLR 901 (a), those prerequisites are: (1) that the class is so numerous that joinder of all members is impracticable; (2) questions of law or fact common to the class predominate over questions of law or fact affecting individual class members; (3) the claims or defenses of the class representatives are typical of those in the class; (4) the class representatives will fairly and adequately protect the interests of the class; and (5) a class action represents the superior method of adjudicating the controversy (*see Jenack v Goshen Operations, LLC*, 222 AD3d 36, 41 [2d Dept 2023]); *see also Moreno v Future Health Care Servs., Inc.*, 186 AD3d 594, 595-596 [2d Dept 2020]; *Hurrell-Harring v State of New York*, 81 AD3d 69, 71-72 [3d Dept 2011]).

The Putative Classes Meet the Prerequisites for Class Certification

The court find that the prerequisites for class certification pursuant to CPLR 901 (a) have been met. In gauging the merits of Plaintiffs' motion for class certification, the court is mindful of our state's policy broadly to construe CPLR 901 (a) in favor of granting class certification. The Court of Appeals articulated this concept in a decision charting a stark line of demarcation between the current statutory framework governing class actions and its more restrictive antecedent:

> "The legislature adopted CPLR article 9 (§§ 901-909) in 1975 to replace CPLR 1005, the prior class action provision . . . In 1975, the Judicial Conference proposed a new article 9, which was designed to set up a flexible, functional scheme whereby class actions could qualify without the present undesirable and socially detrimental restrictions . . . Courts have recognized that the criteria set forth in CPLR 901 (a) should be broadly construed not only because of the general command for liberal construction of all CPLR sections (see CPLR 104), but also because it is apparent that the Legislature intended article 9 to be a liberal substitute for the narrow class action legislation which preceded it . . . ."

(*City of New York v Maul*, 14 NY3d 499, 508-509 [2010] [internal citations and quotation marks omitted]; *see also Dank v Sears Holding Mgt. Corp.*, 59 AD3d 584 [2d Dept 2009]; *Globe Surgical Supply v GEICO Ins. Co.*, 59 AD3d 129, 135 [2d Dept 2008]).

In keeping with the courts' flexible approach to the class certification inquiry, the determination of whether a lawsuit qualifies as a class action under the statutory criteria rests within the sound discretion of the trial court (*see Small v Lorillard Tobacco Co.*, 94 NY2d 43, 52 [1999]; *see also Nicholson v KeySpan Corp.*, 65 AD3d 1025 [2d Dept 2009]; *Tosner v Town of Hempstead*, 12 AD3d 589, 590 [2d Dept 2004]).

The Proposed Classes Are Sufficiently Numerous to Render Joinder Impracticable

With respect to the numerosity requirement set forth in CPLR 901 (a) (1), Defendants' statistical data support the notion that the proposed classes consist of a substantial number of members, rendering joinder impracticable. Specifically, on any given day at the start of each month between May 2022 and April 2024, Defendants held between 82 and 211 people with documented mental health disabilities (namely, people with mental health service levels 1 to 4) in SHU (*see* NYSCEF Doc No. 29, DOCCS HALT monthly reports). Further, as of the first of each month between May 2022 and April 2024,

Defendants also held between 471 and 731 people on the mental health caseload (to wit, levels 1 to 4) in RRUs, in which units Defendants frequently maintain solitary confinement conditions (*id.*).

While no mechanical test has been adopted in this context, the proposed classes satisfy the numerosity requirement (*see Borden v 400 E. 55th St. Assoc., L.P.*, 24 NY3d 382, 399 [2014]; *see also Chua v Trim-Line Hitech Constr. Corp.*, 225 AD3d 565, 566 [1st Dept 2024] [plaintiffs' motion for class certification granted as they established, inter alia, the numerosity of the class by identifying at least 39 prospective class members as "[t]here is no requirement that [a] plaintiff must identify at least 40 members to demonstrate numerosity"]; *Lewis v Hallen Constr. Co., Inc.*, 193 AD3d 511, 512 [1st Dept 2021] [trial court's grant of plaintiffs' motion to certify the action as a class action affirmed since plaintiffs established the existence of least 30 to 50 potential class members, thereby satisfying the numerosity requirement]).

Further Defendants did not address the issue in their opposition papersand wived their challenge (*see Globe Surgical*, 59 AD3d at 13 [Second Department held that, insofar as on plaintiff's motion for class certification Defendant did not address the numerosity issue, it waived any challenge as to this requirement]; *see also Musillo v Marist Coll.*, 306 AD2d 782, 783 [3d Dept 2003]).

Questions of Law or Fact Common to the Proposed Classes Predominate Over Questions Affecting Individual Class Members

Defendants opine that the proposed classes fail to satisfy the commonality requirement to class certification under CPLR 901 (a) (2), "as membership in both proposed classes require [sic] individualized determinations in identifying class members"

(*see* NYSCEF Doc No. 113, memo. of law, ¶ I [C] [1]). In particular, Defendants contend that "determining whether an incarcerated individual is a class member will, in many cases, require a fact-intensive, searching inquiry based on non-conclusory evidence specific to the individual" (*id.*). Defendants in opposition, however, have not provided any evidence in support of this contention beyond their counsel's memorandum of law, a vehicle ill-suited to adduce evidence (*see Wolfson v Rockledge Scaffolding Corp.*, 67 AD3d 1001, 1002 [2d Dept 2009]; *see also Amato v Lord & Taylor, Inc.*, 10 AD3d 374, 375 [2d Dept 2004] [court held that a bare attorney affirmation is of no evidentiary value]; *Moran v Man-Dell Food Stores*, 293 AD2d 723, 724 [2d Dept 2002] [motion granted as "opposition consisted only of her counsel's bare affirmation"]).

Further, the notion that the proposed classes fail to meet the commonality prerequisite to class certification conflicts with the evidence. Various common questions exist for both the Practice and Policy Classes with respect to Defendants' alleged violations of HALT's Disability Exclusion. Several common questions of law and fact predominate over any questions affecting individual Practice Class members, including: (i) whether Defendants maintain a policy or practice of subjecting class members to cell confinement, irrespective of the name of the unit, for more than 17 hours per day; (ii) whether any such policy violates HALT; and (iii) whether class members, due to their solitary confinement, have been denied the rights and benefits afforded to them as members of a "special population" under HALT (*see* NYSCEF Doc No. 1, complaint, ¶ 209).

The Policy Class shares common questions of law and fact, including: (i) whether defendants excluded Policy Class members' disabilities from their policies, the answer to which question ostensibly lies amidst common evidence, including the DOCCS and OMH

Solitary Policies; (ii) whether defendants' policies exclude disabilities, as defined under Executive Law § 292 (21) (a); (iii) whether defendants violate HALT by omitting class members' disabilities from their policies; and (iv) whether members of the Policy Class have been denied the rights provided to them as members of a "special population" under HALT (*id.* ¶ 210).

In these circumstances, the Defendants' position that Plaintiffs do not satisfy the commonality requirement is misplaced as New York courts have repeatedly held that policies or practices of alleged systemic violations are well suited for class action status (*see Maddicks v Big City Props., LLC*, 34 NY3d 116, 125-126 [2019] [Court of Appeals held that "the commonality requirement was satisfied since "the complaint addresses harm effectuated through a variety of approaches but within a common systematic plan"]; *see also Andryeyeva v New York Health Care, Inc.*, 33 NY3d 152, 184 [2019] [court underscored that "[c]laims of uniform systemwide violations are particularly appropriate for class certification"]; *Maul*, 14 NY3d at 512-513 [affirming certification of class in action involving alleged practices that, "if true, would tend to establish a de facto policy" on the part of defendant New York City Administration for Children's Services of delaying services for children in the foster care system]).

Defendants' contention that the proposed classes do not satisfy the commonality requirement because membership in the classes necessitates individualized determinations in identifying class members is not persuasive as courts have determined that factual differences in class members' circumstances do not vitiate commonality (*see Brown v Mahdessian*, 206 AD3d 511, 512 [1st Dept 2022]; *see also Krobath v South Nassau Communities Hosp.*, 178 AD3d 805, 806 [2d Dept 2019] [the commonality requirement of

CPLR 901 (a) (2) cannot be determined by a mechanical test and the fact that questions peculiar to each individual may remain after resolution of common questions is not fatal to a class action]; *Friar v Vanguard Holding Corp.*, 78 AD2d 83, 98 [2d Dept 1980] ["[t]he fact that there may have been differences in the manner in which Vanguard exacted money from sellers at each closing does not mean that individual questions predominate: the rule requires predominance, not identity or unanimity, among class members"].

The Claims of the Class Representatives are Typical of those in the Proposed Classes

Plaintiffs satisfy the typicality requirement embedded in CPLR 901 (a) (3), pursuant to which the claims of the class representatives must be typical of the claims of the members of the proposed classes. To establish typicality, the claims of the class representatives and the other proposed class members must arise from the same allegedly wrongful course of conduct and be predicated on the same legal theories (*see Globe Surgical*, 59 AD3d at 143 [Second Department held that the typicality requirement is satisfied in circumstances where the class representatives' claims "arise from the same facts and circumstances as the claims of the class members"]; *see also Ackerman v Price Waterhouse*, 252 AD2d 179, 201 [1st Dept 1998] [the court determined that since the class representatives' claims against defendant arose out of the same course of conduct and are based on the same theories as the other putative class members, such claims are typical of the entire class]; *Pruitt v Rockefeller Ctr. Props.*, 167 AD2d 14, 22 [1st Dept 1991]).

In the present matter, the claims of the Practice Class and Policy Class representatives arise from the same conduct on the part of Defendants at issue for the class members of the two proposed classes. For the Practice Class, the claims of both the class representatives and the other proposed class members stem from Defendants' alleged

placement of people with disabilities in solitary confinement. In short, the class representatives and the other proposed class members of the Practice Class share the same claims and seek the same relief (*see* NYSCEF Doc No. 1, complaint, ¶ 211).

As to the Policy Class, the claims asserted by the class representatives, as well as the other putative class members, arise from Defendants' purported omission of people afflicted with certain disabilities from the DOCCS and OMH Solitary Policies. Therefore, the class representatives and the other proposed class members of the Policy Class share the same claims and seek the same relief (*id.* at ¶ 212). The claims interposed by the class representatives and the other proposed class members of the Policy Class stem from the identical alleged wrongful conduct (to wit, Defendants' alleged omission of people with certain disabilities from the DOCCS and OMH Solitary Policies). Further, the subject claims are premised on the same legal theory, namely, that Defendants' omission in question contravenes HALT and places the class representatives, as well as the other proposed class members of the Policy Class, at risk of placement in SHU, leading such class representatives and proposed class members to seek indistinguishable injunctive and declaratory relief (*id.*).

As in the commonality context, discrete differences in class members' claims, or modest factual differences between the named Plaintiffs and the proposed class members, do not operate to defeat typicality (*see Borden*, 24 NY3d at 399; *see also Pludeman,* 74 AD3d at 423 ["[t]ypicality does not require identity of issues and the typicality requirement is met even if the claims asserted by class members differ from those asserted by other class members"]; *Branch v Crabtree*, 197 AD2d 557 [2d Dept 1993] [court found that the typicality requirement was satisfied in that it "is not necessary that the claims of the named

plaintiff be identical to those of the class"]; *Super Glue Corp. v Avis Rent A Car Sys.*, 132 AD2d 604 [2d Dept 1987]).

In sum, since the Practice and Policy Class representatives allegedly experience similar harm, advance overlapping legal theories and seek the same relief as members of the respective classes, the proposed classes satisfy the typicality requirement. Importantly, Defendants did not address the typicality requirement in their opposition papers, thereby waiving the issue (*see Debennedetto v Chetrit*, 190 AD3d 933, 936 [2d Dept 2021]; *see also Fairchild v Servidone Constr. Corp.*, 288 AD2d 665, 667 [3d Dept 2001]).

Plaintiffs and their Counsel Can Be Expected to Adequately Represent the Interests of the Classes

The named Plaintiffs and their counsel have established that they will fairly and adequately represent the interests of the putative classes, satisfying CPLR 901 (a) (4). Specifically, the named Plaintiffs, who allege to have been held in solitary confinement despite their disabilities, in violation of HALT, have proffered evidence that they are familiar with the lawsuit, able to assist counsel in litigating this matter at the behest of the proposed classes and have no known conflicts of interest (*see* NYSCEF Doc No. 22, memo. of law, ¶ IV [A] [4]).

In addition, Plaintiffs' counsel, Winston & Strawn LLP, The Legal Aid Society Prisoners' Rights Project and Disability Rights Advocates, have submitted evidence that they are well-versed in class action litigation, including in the carceral context, and are well-qualified to represent the Plaintiffs through the complexities of the class action process (*see* NYSCEF Doc No. 70, Cole Aff ¶¶ 6-7; *see also* NYSCEF Doc No. 69, Short Aff ¶¶ 5-7; NYSCEF Doc No. 68, Rosenthal Aff ¶¶ 6-8).

In light of the foregoing, Plaintiffs and their counsel meet the adequacy requirement of CPLR 901 (a) (4), which hinges on the consideration of various factors satisfied in this proceeding such as the absence of conflicts of interest between the representatives and the class members, the representatives' familiarity with the case and ability to assist counsel, the competence of class counsel, and the financial resources available to prosecute the action (*see Pesantez v Boyle Envtl. Servs.*, 251 AD2d 11, 12 [1st Dept 1998]; *see also Pruitt*, 167 AD2d at 24; *Super Glue*, 132 AD2d at 607; *Norwalk v Manufacturers & Traders Trust Co.*, 80 AD2d 745, 746 [4th Dept 1981]).

Further militating in favor of a determination that Plaintiffs and their counsel satisfy the adequacy requirement under CPLR 901 (a) (4), Defendants have not addressed this requirement in their opposition papers (*see Palomeque v Capital Improvement Servs., LLC*, 145 AD3d 912, 914 [2d Dept 2016]; *see also Globe Surgical*, 59 AD3d at 137).

A Class Action Is Superior to Other Methods for the Fair and Efficient Adjudication of this Matter

The named Plaintiffs and their counsel have shown that a class action is the superior vehicle to fairly and efficiently adjudicate the claims that lie at the heart of the present action, as required under CPLR 901 (a) (5). Given the anticipated magnitude of the classes, individual actions would likely prove to be inefficient and burdensome to putative class members, Defendants and judiciary alike. Indeed, in circumstances where, as here, the number of class members is likely to be significant, courts have proven inclined to find the superiority requirement set forth in CPLR 901 (a) (5) to be satisfied (*see Pruitt*, 167 AD2d at 24 [court determined that, in light of, among other factors, the large number of class members, consolidation would be unworkable, rendering a class action not only superior,

but the sole practical method of adjudication]; *see also Super Glue*, 132 AD2d at 607-608 [Second Department determined that a class action was the only viable mechanism to address the claims of the members of the proposed class in light of, inter alia, the number of claimants, which would render consolidation unfeasible]; *Weinberg v Hertz Corp.,* 116 AD2d 1, 5-6 [1st Dept 1986]).

Further weighing in favor of a finding that the superiority requirement is satisfied, where, as here, putative class members are likely to be indigent, courts are amenable to find that the superiority requirement has been met (*see Matter of Stewart v Roberts*, 163 AD3d 89, 94 [3d Dept 2018]) [class actions are deemed a superior method for adjudication of a controversy in circumstances where the members of a proposed class are, inter alia, indigent individuals for whom commencement of individual actions would prove burdensome]; *see also Hurrell-Harring*, 81 AD3d at 74-75; *Tindell v Koch,* 164 AD2d 689, 695 [1st Dept 1991]).

That the relief sought in the instant proceeding is injunctive and declaratory in nature lends further support for the notion that a class action constitutes a superior vehicle for this matter (*see Maul*, 14 NY3d at 511 [Court of Appeals relied favorably on federal precedent holding that in circumstances where plaintiffs sought only declaratory and injunctive relief in the complaint, as distinguished from monetary damages, such approach renders any differences among class members "largely irrelevant"]; *see also Matter of Colt Indus. Shareholder Litig.*, 77 NY2d 185, 195 [1991]).

Moreover, attempting to resolve the claims underlying the present proceeding via individual actions in courts scattered about the state would beget the specter of inconsistent determinations (*see Hurrell-Harring*, 81 AD3d at 75 [court found that denial of class

certification gives rise to the possibility of multiple lawsuits involving claims duplicative of those asserted in the action and inconsistent rulings by various courts in the state]; *see also Tindell,* 164 AD2d at 695).

In short, a class action constitutes the superior procedural device to adjudicate Plaintiffs' claims, afford the parties finality and designate a central forum to litigate such claims. Further reinforcing the notion that Plaintiffs satisfy the superiority requirement under CPLR 901 (a) (5), Defendants remained silent on this issue in their opposition papers, thus effectively waiving the matter (*see Pita v Roosevelt Union Free Sch. Dist.*, 156 AD3d 833, 835 [2d Dept 2017]; *see also Harsch v City of New York*, 78 AD3d 781, 783 [2d Dept 2010]). In sum, Plaintiffs satisfy the prerequisites for class certification set forth in CPLR 901 (a).

The Putative Classes Satisfy the Considerations Set Forth in CPLR 902

To the extent that, as in the present proceeding, the prerequisites to class action certification set forth in CPLR 901 (a) are met, it is incumbent on the court, in determining whether to grant class certification, to consider the additional factors promulgated under CPLR 902, namely: (1) the interest of class members in individually controlling the prosecution of separate actions; (2) the impracticability or inefficiency of prosecuting 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 of concentrating the litigation of the claim in the proposed class forum; and (5) the difficulties likely to be encountered in the management of a class action (*see* CPLR 902 [1] - [5]; *see also Rife v Barnes Firm, P.C.*, 48 AD3d 1228, 1229 [4th Dept 2008]; *Rallis v City of New York*, 3 AD3d 525, 526 [2d Dept 2004]; *Ackerman,* 252 AD2d at 191).

As set forth below, much like the CPLR 901 (a) class action requirements, Plaintiffs satisfy the related CPLR 902 considerations, thereby warranting certification of the putative classes.

The first two considerations set forth in CPLR 902 (to wit, the class members' interest in individual control over the action and the inefficiency attendant to pursuing individual actions) are parallel to the adequacy of representation and superiority of the class action model requirements under CPLR 901 (a) (4) and (5), and, as such, Plaintiffs satisfy the subject first two CPLR 902 considerations on the same grounds detailed above (*see Borden*, 24 NY3d at 399-400 [Court of Appeals affirmed grant of class certification based in part on its determination that, to preserve judicial resources, class certification is preferable to having plaintiffs' claims adjudicated individually]; *see also Chua*, 225 AD3d at 567 [plaintiffs' motion for class certification granted in that, inter alia, the "CPLR 902 factors also weigh in favor of class certification, given that the burden on litigants and on the courts would likely be significantly increased if aggrieved employees were forced to pursue individual lawsuits"]; *Jenack*, 222 AD3d at 46 [Second Department held that the discretionary considerations of CPLR 902 were satisfied since, among other factors, plaintiffs, confined to a nursing home, were presumably not inclined to individually control the prosecution of the action]).

As to the third consideration articulated in CPLR 902 - the "extent and nature of any litigation concerning the controversy already commenced by or against members of the class" (*see* CPLR 902 [3]) - while individual class members have initiated actions challenging solitary confinement, the mere existence of pre-existing litigation brought by individual class members does not ipso facto warrant denial of class certification (*see*

Ferrari v National Football League, 153 AD3d 1589, 1593 [4th Dept 2017] ["the fact that two putative class members exercised their right to pursue individual remedies does not controvert plaintiffs' position that class action is the superior vehicle for adjudicating the claims herein"]).

Turning to CPLR 902 (4) (that is, the desirability of concentrating the litigation in the selected forum), it is clear that anchoring the present proceeding in Kings County is beneficial, as it has one of the highest numbers of DOCCS commitments in the state (*see* NYSCEF Doc No. 71, DOCCS Incarcerated Profile Report – April 2024 [reflecting that 10.1% of total DOCCS commitments originated in Kings County and 34.3% of the population incarcerated in DOCCS facilities came from counties within the Second Department, with Kings County accounting for the highest share]). One may thus reasonably anticipate that Kings County is likely to yield a substantial number of class members.

Further bolstering Kings County's nexus to this proceeding, Plaintiffs Maurice Anthony, Corey Allen, Anna Adams and Stephanie Peña resided in Kings County before their incarceration commenced (*see* NYSCEF Doc No. 22, memo. of law, ¶ IV [A] [5]) (*see Iglesia v Iglesia*, 292 AD2d 424, 425 [2d Dept 2002] [holding that defendant's residence for venue purposes was Kings County, where he resided pre-incarceration, as distinguished from the county where he was incarcerated]; *see also Farrell v Lautob Realty Corp.*, 204 A.D.2d 597, 598 [2d Dept 1994] [holding that venue was proper in Kings County, where defendant resided before his incarceration, since "it is long-established law in New York that a person does not involuntarily lose his domicile as a result of imprisonment"]).

The fifth and final consideration – the difficulties likely to be encountered in the management of a class action (*see* CPLR 902 [5]) – also weighs in favor of certification, as this proceeding is readily manageable as a class action since Plaintiffs challenge continuing, uniform and statewide policies and practices, seek injunctive and declaratory relief on a class-wide basis and do not seek monetary damages (*see Andryeyeva*, 33 NY3d at 184 [Court of Appeals found that claims of uniform systemwide violations are particularly appropriate for class certification"]; *see also Maul*, 14 NY3d at 512-513 [affirming certification of class in proceeding involving purported practices that, "if true, would tend to establish a de facto policy" on the part of defendant municipal agency of delaying services for children in the foster care system]).

In short, based on the foregoing, insofar as Plaintiffs satisfy the prerequisites for class certification set forth in CPLR 901 (a), as well as the considerations set out in CPLR 902, Plaintiffs' motion for an order certifying the two proposed classes at issue herein pursuant to CPLR 901 (a) and 902 is granted (motion sequence number 1).

Defendants' Motion to Change Venue

Defendants have moved to change venue to Albany County on two independent bases pursuant to CPLR 510, which provides:

> "The court, upon motion, may change the place of trial of an action where:
>
> (1) the county designated for that purpose is not a proper county; or
>
> * * *

(3) the convenience of material witnesses and the ends of justice will be promoted by the change."

Based on the foregoing statutory scheme, Defendants posit that: (i) pursuant to CPLR 510 (1), the court should transfer venue of the present proceeding from Kings County to Albany County as venue in Kings County is improper; and (ii) the convenience of material witnesses and the interests of justice require that the trial be held in Albany County pursuant to CPLR 510 (3) (*see* NYSCEF Doc No. 98, notice of motion at 1).

Defendants' Venue Challenge Predicated on CPRL 510 (1)

In their two-pronged challenge to venue, Defendants first move to change venue on the basis that Kings County constitutes an improper venue in violation of CPLR 510 (1). Plaintiffs contend that venue is proper in Kings County pursuant to CPLR 503 (a), which provides that "the place of trial shall be in the county in which one of the parties resided when it was commenced" (*see* NYSCEF Doc No. 114, memo. of law, ¶ I).

"To prevail on a motion pursuant to CPLR 510 (1) to change venue, a defendant must show that the plaintiff's choice of venue is improper, and also that the defendant's choice of venue is proper." (*Williams v Staten Is. Univ. Hosp.*, 179 AD3d 869, 870 [2d Dept 2020] [internal citations omitted]). "Only if a defendant meets this burden is the plaintiff required to establish, in opposition, that the venue selected was proper." (*Id.* [internal citations omitted]).

Defendants challenge the propriety of Kings County venue throughout their motion by asserting that Plaintiffs do not presently reside in Kings County, did not reside in Kings County at the time the action was commenced, and did not reside in Kings County prior to incarceration.

Venue is generally proper if it is "the county in which one of the parties resided when it [the action] was commenced" (*see* CPLR 503 [a]; *see also Hamilton v Corona Ready Mix, Inc.*, 21 AD3d 448, 449 [2d Dept 2005]; *Graziuso v 2060 Hylan Blvd. Rest. Corp.*, 300 AD2d 627 [2d Dept 2002]; *Altidort v Louis*, 287 AD2d 669 [2d Dept 2001]).

In the class action context, the residence of the named representatives forms the basis for venue (*see Globe Surgical*, 59 AD3d at 136; *see also Kidd v Delta Funding Corp.*, 270 AD2d 81, 82 [1st Dept 2000]). An incarcerated plaintiff's residence for venue purposes is her or his residence prior to incarceration. Indeed, a person does not lose her or his residence due to imprisonment and, as a corollary, the location where an individual is incarcerated does not bear on such individual's residence (*see Matter of Corr v Westchester County Dept. of Social Servs.*, 33 NY2d 111, 115 [1973] ["a patient or inmate of an institution does not gain or lose a residence or domicile, but retains the domicile he had when he entered the institution"]; *see also Farrell*, 204 AD2d at 598 [Appellate Division determined that for venue purposes, a person does not lose her or his residence as a result of imprisonment, and, as such, a party incarcerated in Bronx County at the time of the commencement of the action is deemed to be a Kings County resident for venue purposes to the extent that she or he was a resident of Kings County before incarceration]).

The fact that the named Plaintiffs were not living in Kings County at the time the action was commenced - due to their incarceration elsewhere - thus does not render Kings County an improper venue.[4] Rather, the relevant inquiry here is limited to the named

[4] Notably, for venue to be proper in Kings County, Plaintiffs need merely establish that one named Plaintiff was a resident of Kings County when the action was commenced since, under CPLR 503 (a), a plaintiff may commence an action in any county where one of the parties resides when the action is commenced (*see Hamilton*, 21 AD3d at 449 ["[p]ursuant to CPLR 503 (a), the venue of an action is proper in the county in which any of the parties resided at the time of commencement"]; *see also Geraghty v CIGNA Prop. & Cas. Ins. Co.*, 216 AD2d 268 [2d Dept 1995]).

Plaintiffs' residences prior to incarceration. In support of the position that none of the named Plaintiffs resided in Kings County prior to incarceration, Defendants rely on the following: DOCCS documentation that some named Plaintiffs were convicted in other counties; a federal court decision that represents one named Plaintiff as homeless; and another federal court decision where the underlying events involving one named Plaintiff occurred at a residence in Queens County (*see* NYSCEF Doc No. 101-105).

In opposition, Plaintiffs submitted sworn affirmations from five of the eight named Plaintiffs (namely, Maurice Anthony, Corey Allen, Anna Adams, Andre Greene and Stephanie Peña) which state such Plaintiffs resided in Kings County before their incarceration (*see* NYSCEF Doc No. 118, Anthony aff, ¶¶ 2-9; *see also* NYSCEF Doc No. 116, Allen aff, ¶¶ 6-17; NYSCEF Doc No. 117, Adams aff, ¶¶ 4-6; NYSCEF Doc No. 120, Greene aff, ¶¶ 4-11; NYSCEF Doc No. 119, Peña aff, ¶¶ 7-10). Defendants content that these affidavits are not sufficient to establish Plaintiffs resided in Kings County prior to incarceration.

However, the supporting evidence provided by Defendants does not sufficiently demonstrate that all of the named Plaintiffs did not actually reside in Kings County prior to their incarceration and thus that venue in Kings County is improper. Consequently, Defendants failed to meet their initial burden under CPLR 510 (1) (*see Williams v Staten Is. Univ. Hosp.*, 179 AD3d 869, 870 [2d Dept 2020]). Since Defendants did not meet this burden, whether or not Plaintiffs' affidavits in opposition sufficiently establish residence in Kings County prior to their incarceration is irrelevant, as the burden of demonstrating the propriety of their selected venue did not shift to Plaintiffs (*see id.*). This warrants denial of Defendants' motion on the basis of CPLR 510 (1).

Defendants' Alternative Venue Challenge Premised on the Convenience of Witnesses

As an alternative route to contest venue, Defendants move to change venue under CPLR 510 (3), pursuant to which provision the court "may change the place of trial of an action where . . . the convenience of material witnesses and the ends of justice will be promoted by the change." Defendants contend that a change of venue under CPLR 510 (3) is warranted on the following basis:

> "Defendants seek to change venue to Albany County for the convenience of the material witnesses and the interests of justice, considering the disruption of the business of governing the State of New York caused by requiring numerous officials to travel from Albany to Kings County for trial . . . ."

(NYSCEF Doc No. 100, memo. of law at 8).

Defendants' motion to change venue pursuant to CPLR 510 (3) based on the convenience of material witnesses is unavailing on two independent bases.

The change of venue relief sought under CPLR 510 (3) is drastic in nature as the subject provision permits a defendant to challenge venue in circumstances where venue has been properly designated by a plaintiff based on the residence of either party pursuant to CPLR 503 (a), and, as such, the Appellate Division has held that to secure a change of venue under CPLR 510 (3), the movant must submit an affidavit satisfying the following painstaking multi-prong factual predicate:

> "First, the affidavit in support of a motion under this section must contain . . . the names, addresses and occupations of the prospective witnesses . . . Second, a party seeking a change of venue for the convenience of witnesses is also required to disclose the facts to which the proposed witnesses will testify at the trial, so that the court may judge whether the proposed evidence of the witnesses is necessary and material . . . Third,

> the moving party must show that the witnesses for whose convenience a change of venue is sought are in fact willing to testify . . . Fourth, there must be a showing as to how the witnesses in question would in fact be inconvenienced in the event a change of venue were not granted . . . . "

(*O'Brien v Vassar Bros. Hosp.*, 207 AD2d 169, 172-173 [2d Dept 1995] [internal citations and quotations omitted]). The four-prong standard articulated by the Second Department in *O'Brien* in circumstances when a defendant moves to change venue based on the convenience of material witnesses under CPRL 510 (3) has repeatedly been echoed in *O'Brien*'s progeny (*see Schwartz v Walter*, 141 AD3d 641, 642 [2d Dept 2016]; *see also Gangi v DaimlerChrysler Corp.*, 14 AD3d 482 [2d Dept 2005]; *McGarry v Columbia Greene Med. Ctr.*, 260 AD2d 451 [2d Dept 1999]).

Defendants' motion to change venue fails to satisfy the core second requirement delineated by the Second Department in *O'Brien* to secure a change of venue on convenience of material witnesses grounds. Specifically, Defendants' do not provide the facts to which the proposed witnesses will testify at trial (*see* NYSCEF Doc No. 100, memo. of law, ¶ II; *see also* NYSCEF Doc No. 101, Schulman aff, ¶¶ 3-21), thereby the court cannot ascertain whether the proposed evidence of the witnesses is material, warranting the denial of Defendants' motion to change venue predicated on CPLR 510 (3) (*see Romero v Mitchelltown Apts.*, 281 AD2d 612 [2d Dept 2001] [the trial court providently exercised its discretion in denying defendant's motion to change venue based on the convenience of material witnesses under CPLR 510 (3) as defendant failed, inter alia, to disclose the nature and materiality of the anticipated testimony of the proposed non-party witnesses]; *see also Mallory v Long Is. R.R.*, 245 AD2d 493 [2d Dept 1997]).

Defendants' motion to change venue pursuant to CPLR 510 (3) based on the convenience of material witnesses is unfounded on a second ground. The motion is based on the assertion that a Kings County venue would inconvenience the Defendants' personnel, as stated in their affirmation in support of the motion. In this affirmation, nine of Defendants' employees are identified as being potentially inconvenienced if the venue is not changed to Albany County (*see* NYSCEF Doc No. 101, Schulman aff, ¶¶ 16-19). Defendants have, however, not identified any non-party witnesses whom they claim would be inconvenienced by a Kings County venue (*id.* at ¶¶ 3-21).

In these circumstances, the applicability of CPLR 510 (3) has not been triggered as such change of venue provision is narrowly restricted to the convenience of non-party material witnesses. As the Second Department held in denying a defendant's motion to change venue predicated on CPLR 510 (3), the convenience of a defendant's employees or agents "is not a factor in considering a motion for a change of venue pursuant to CPLR 510 (3)" (*see Lapidus v 1050 Tenants Corp.*, 94 AD3d 950, 951 [2d Dept 2012]; *see also Palermo v White*, 133 AD3d 834, 835 [2d Dept 2015] [motion for a change of venue pursuant to CPLR 510 (3) denied since "[t]he convenience of [defendant] himself, a party to this action, is not a factor in considering a change of venue based on CPLR 510 (3)"]; *O'Brien*, 207 AD2d at 173 [defendants' motion to change venue under CPLR 510 (3) denied in part as "the defendants themselves are not witnesses for the purpose of deciding a motion pursuant to CPLR 510 (3)"]).

Since Defendants failed to establish that this proceeding falls within the purview of CPLR 510 (1) and (3), their motion to change venue from Kings County to Albany County is denied (motion sequence number 4).

Any arguments not expressly addressed herein were considered and deemed to be without merit.

Accordingly, it is

ORDERED that Plaintiffs' motion is granted and the proposed classes are hereby certified; and it is further

ORDERED that Defendants' motion to change venue is denied.

This constitutes the decision and order of the court.

ENTER

HEELA D. CAPELL, J.S.C.