

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

WILLIAM THORPE, *et al.*,

Plaintiffs,

v.

VIRGINIA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

Civil Case No. 2:20-cv-00007-JPJ-PMS

**UNOPPOSED MOTION FOR LEAVE TO FILE AMENDED CLASS CERTIFICATION
MATERIALS AND FOR EXTENSION OF TIME**

Plaintiffs, by and through their undersigned counsel, hereby respectfully move the Court for leave to amend their class certification briefing and certain exhibits to account for additional class counsel and edits to the affidavit filed on behalf of Plaintiff Gary Wall in support of class certification.

Additionally, pursuant to Rule 16(b) of the Federal Rule of Civil Procedure, Plaintiffs and Defendants hereby jointly move the Court to extend the current deadlines for Defendants' Response to Class Certification and Plaintiffs' Reply as set forth in the Court's Amended Scheduling Order dated December 27, 2021 (ECF No. 135).

In support of this motion, Plaintiffs state as follows:

AMENDED CLASS CERTIFICATION MATERIALS

1. Plaintiffs filed a Motion to Certify Class on June 20, 2022 (ECF No. 166).
2. On June 28, 2022, Plaintiffs' Corrected Memorandum of Law in Support of Motion for Class Certification ("Class Certification Brief") and attendant exhibits were entered on the docket (ECF No. 174 et seq.).

3. Since the time of filing the class certification motion, the law firms of Hogan Lovells US LLP and Ali & Lockwood LLP have joined as additional counsel on behalf of Plaintiffs. Plaintiffs therefore seek leave to amend the Motion for Class Certification (ECF No. 166), the Proposed Order Granting Plaintiffs' Motion for Class Certification (ECF No. 166-1), and Sections III.A.4, IV.A.4, and V of the Memorandum of Law in Support of Motion for Class Certification (ECF No. 174) to add references to Hogan Lovells US LLP and Ali & Lockwood LLP as additional class counsel under Rule 23(a)(4) and (g) of the Federal Rules of Civil Procedure. The amended materials are attached hereto as Exhibits 1-3.

4. Plaintiffs also seek leave to file two additional exhibits in support of the amended motion—a Declaration of Jon Talotta in support of the appointment of Hogan Lovells US LLP as class counsel, and a Declaration of Kathryn Ali in support of the appointment of Ali & Lockwood LLP as class counsel. These materials are attached hereto as Exhibits 4 and 5.

5. After filing, Plaintiff Gary Wall alerted Plaintiffs' counsel that the as-filed version of his affidavit in support of class certification (ECF No. 174-28) contained inadvertent errors in paragraphs 5, 6, 16, and 28.

6. Thus, Plaintiffs also seek leave to file a corrected version of Mr. Wall's affidavit (ECF No. 174-28), attached hereto as Exhibit 6, and to include a correction to page 20, Section III.C of the Class Certification Brief (ECF No. 174), as set forth in Exhibit 3, attached hereto. Mr. Wall has approved the changes to his affidavit over the phone but has not yet had an opportunity to receive, sign, and return a hard-copy version of the affidavit through the prison mail system. Plaintiffs' counsel will mail the corrected version of the affidavit to Mr. Wall for his signature immediately after filing and will submit Mr. Wall's signature as soon as it is received.

EXTENSION OF TIME

7. Plaintiffs and Defendants jointly seek leave to extend the deadlines for Defendants' Response to Class Certification and Plaintiffs' Reply in ECF No. 135 by one week to allow Defendants sufficient time to take the expert deposition of Dr. Craig Haney, who submitted an expert report in support of class certification (ECF No. 174-18).

8. Currently, Defendants' Response to Class Certification is due on August 19, 2022, and Plaintiffs' Reply is due on September 19, 2022 (ECF No. 135). The Court has set the Motion to Certify Class for hearing on September 30, 2022 (ECF No. 177).

9. Due to preexisting professional and personal commitments as well as an illness, Dr. Haney's schedule has been extremely limited, such that he was not available for a deposition until August 17.

10. In order to provide Defendants additional time between the deposition of Dr. Haney and the deadline for Defendants' Response to Class Certification, and to maintain the September 30 hearing date, the Parties request that the Court amend the class certification briefing schedule set forth in ECF No. 135 as follows:

Event	Date
Defendants' Response to Class Certification	August 26, 2022
Plaintiffs' Reply in Support of Class Certification	September 23, 2022

Dated: August 12, 2022

Respectfully submitted,

/s/ Tara Lee

Tara M. Lee (VSB No. 71594)

Daniel Levin (*pro hac*)

WHITE & CASE LLP

701 Thirteenth Street, NW
Washington, DC 20005
T: (202) 626-3600
F: (202) 639-9355
tara.lee@whitecase.com
daniel.levin@whitecase.com

Vishal Agraharkar (VSB No. 93265)
Eden B. Heilman (VSB No. 93554)
Matthew Callahan (*pro hac*)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF VIRGINIA
701 E. Franklin St., Suite 1412
Richmond, Virginia 23219
T: (804) 523-2151
F: (804) 649-2733
vagraharkar@acluva.org
eheilman@acluva.org
mcallahan@acluva.org

Counsel for Class Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August, 2022, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system.

/s/ Tara Lee

Tara M. Lee (VSB No. 71594)
WHITE & CASE LLP
701 Thirteenth Street, NW
Washington, DC 20005
T: (202) 626-3600
F: (202) 639-9355
tara.lee@whitecase.com