UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

KEVIN LINDKE, MICHAEL SCHULTZ
and all those similarly situation,
Plaintiffs,

vs.

Case No. 22-cv-11767
Honorable Matthew F. Leitman

MAT KING, in his official and personal capacities,
TIMOTHY DONNELLON, in his official
and personal capacities, COUNTY OF ST. CLAIR,
TRACY DECAUSSIN, in her official and personal
capacities, and THOMAS BLISS, in his official and
personal capacities,
Defendants.

PHILIP L. ELLISON (P74117)
Outside Legal Counsel PLC
Attorney for Plaintiffs
P.O. Box 107
Hemlock, Michigan 48626
(989) 642-0055
pellison@olcplc.com

MATTHEW E. GRONDA (P73693)
Attorney for Plaintiffs
PO Box 70
St Charles, Michigan 48655
(989) 249-0350
matt@matthewgronda.com

TODD J. SHOUDY (P41895)
VICTORIA R. FERRES (P78788)
Fletcher Fealko Shoudy & Francis, P.C.
Attorneys for Defendants
1411 Third Street, Suite F
Port Huron, Michigan 48060
(810) 987-8444
tshoudy@fletcherfealko.com
vferres@fletcherfealko.com

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND FOR APPOINTMENT OF CLASS COUNSEL

NOW COME Defendants, County of St. Clair, Tim Donnellon, Mat King, Tracy DeCaussin and Thomas Bliss (hereinafter "Defendants"), by and through their attorneys, Fletcher Fealko Shoudy & Francis, P.C., and file the attached Brief in Support in response to Plaintiffs' Motion for Class Certification and For Appointment of Class Counsel (ECF No. 51).

FLETCHER FEALKO
SHOUDY & FRANCIS, P.C.
Attorneys for Defendants

By: /s/ Todd J. Shoudy
1411 Third Street, Suite F
Port Huron, Michigan 48060
(810) 987-8444
Michigan Bar #41895
tshoudy@fletcherfealko.com

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Attorney for Plaintiffs
PO Box 70
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matt@matthewgronda.com

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VICTORIA R. FERRES (P78788)
Fletcher Fealko Shoudy & Francis, P.C.
Attorneys for Defendants
1411 Third Street, Suite F
Port Huron, Michigan 48060
(810) 987-8444
tshoudy@fletcherfealko.com
vferres@fletcherfealko.com

DEFENDANTS' BRIEF IN SUPPORT OF RESPONSE TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND FOR APPOINTMENT OF CLASS COUNSEL

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I. INTRODUCTION

Plaintiffs asks this Court to certify this action as a class action under Fed. Rule Civ. Pro. 23(a) and 23(b)(3). Plaintiff Kevin Lindke filed the original lawsuit on August 1, 2022 against St. Clair County, former Sheriff Timothy Donnellon, and current Sheriff Mat King (ECF No. 1). On October 6, 2022, Plaintiffs filed an amended complaint which added Plaintiff Michael Schultz and Defendants Tracy DeCaussin and Thomas Bliss (ECF No. 13). In the amended complaint, Plaintiffs allege that they (and others) were improperly denied "good time" credit available to jail inmates by Michigan Statute (MCL 51.282), and, thus, they served longer periods of time in jail then they should have based upon a jail policy that they claim was unlawful.

However, if the Court allows Plaintiffs to pursue the Motion for Class Certification at this time, it should be denied because Plaintiffs do not meet the requirements of Rule 23(a) or Rule 23(b)(3) for a number of reasons:

1. Defendants request that this Court first rule upon Defendants' Motion for Summary Judgment (ECF No. 45), because, as argued in that motion, neither of the proposed class members have a viable cause of action;

2. Because the claims Plaintiffs' raise are entirely premised upon a state statute, the parameters and limitations of such a claim are governed by the state statue, which will require an individualized review of each claim; thus, the proposed class lacks commonality and typicality and common facts and issues do not predominate; and

3. Plaintiffs' also lack standing to pursue claims against several of the defendants.

4. Neither Plaintiff is a proper class representative.

As such, Defendants respectfully request that Plaintiff's Motion be denied.

II. BACKGROUND

A. Plaintiffs' Claims

Plaintiffs' claim that they had a constitutional liberty interest as a result of a state statute, referred to as the Michigan Good Time statute, MCL. 51.281 et seq. Defendants have maintained that this statute does not apply to contempt sentences arising out of civil cases (see ECF No. 45) and that they were following a judge-approved policy that stated "Goodtime is NOT given on sentences for Contempt or to inmates sentenced to serve weekends" (see ECF No. 45-5 and ECF No. 13-1 and 13-2; PageID.1277-1280).

In each and every one of the contempt sentences raised in Plaintiffs' complaint, but not in all of the contempt sentences for the proposed class members, the contempt sentencing orders specifically directed the jail that the inmate was not to be provided with good time credit (Compare PageID.2029 and documents referenced therein, with PageID.2028).

Even if it is assumed *arguendo* that the good time statute did apply to contempt sentences as Plaintiffs claim in their lawsuit, under the express terms of the statute, an inmate is "entitled" to a sentence reduction of 1 day for each 6 days

of the sentence if a "prisoner . . . record shows that there are no violations of the rules and regulations [of the jail]" MCL 51.282(2). The statute does not provide any guidance to a Sheriff on what he or she must do in the case of a prisoner who does in fact have an adjudicated violation of the rules and regulations of the jail, but says a Sheriff "may" establish rules to that effect. MCL 51.282(2).

The statute further provides "it shall be the duty of each prisoner entitled to release with the credit for good behavior allowance to call to the attention of the sheriff or any of his deputies the fact that he is entitled to release . . . ." MCL 51.283. The statute also provides that an inmate denied good time does not have a claim for damages, MCL 51.283, and, thus, as a practical matter, if an inmate desires to enforce their rights under the good time statute, they must seek the state equivalent of a writ of habeas corpus.

B. Plaintiffs' Proposed Class

Plaintiffs' proposed class includes, "All individuals confined to the St. Clair County jail for criminal contempt for a period in excess of what is permitted by Michigan law due [to] the failure to respect 'good time' credit pursuant to M.C.L. § 51.282(1) from April 22, 2019 to January 10, 2022." Plaintiff estimates the class size to be several hundred individuals.

Plaintiff Lindke's original complaint was filed on August 1, 2022, but he reaches the date of April 22, 2019 by adding 102 days based upon the alleged

COVID-19 era tolling of the statute of limitations (from March 10, 2020 to June 20, 2020). Whether April 22, 2019 or August 1, 2019 (three years prior to the filing of the first complaint in this case) is the proper application of the statute of limitations is an issue currently pending before the Michigan Supreme Court. See *Carter v DTN Mgmt Co*, No. 360772, 2023 Mich App LEXIS 628 (issued Jan. 26, 2023), lv. granted 511 Mich. 1025 (June 30, 2023). This case was argued in January 2024 and is awaiting a ruling.

Defendant Sheriff King replaced Defendant Sheriff Timothy Donnellon as St. Clair County Sheriff on November 9, 2020, and Defendant Tracy DeCaussin replaced Defendant Tom Bliss as Jail Administrator on January 1, 2020 (ECF No. 45, PageID.2027). During the time period covering the only sentencing orders challenged in the lawsuit by Plaintiffs (by Lindke --sentencing orders dated March 30, 2021, June 22, 2021, and July 29, 2021 [see ECF No. 13, PageID.1266, ¶22] and by Schultz – sentencing order dated August 11, 2021 [ECF No. 45-11]), Defendants Bliss and Sheriff Donnellon were no longer employed by the County.

III. ARGUMENT

A. THIS COURT SHOULD STICK WITH THE ORIGINAL PLAN AND ONLY ADDRESS THE CLASS CERTIFICATION REQUEST UNTIL AFTER A RULING ON DEFENDANTS' MOTION

This Court has already indicated a preference that Plaintiffs hold off on the present motion until the Court rules on Defendants' Motion for Summary Judgment (ECF No. 45) [see ECF No. 35, PageID.1938 and discussion that occurred during virtual proceedings on November 1, 2023]. Defendants believe that is still the best course for an orderly proceeding of these claims.

This course of action also complies with Sixth Circuit precedent, which has held that the Court has discretion to address the parties' summary judgment motions prior to determining the appropriateness of class certification. *Thompson v. County of Medina, Ohio*, 29 F.3d 238, 240-41 (6th Cir. 1994). As the Sixth Circuit has held, "It is reasonable to consider a Rule 56 motion first [(before ruling on a motion for class certification)] when early resolution of a motion for summary judgment seems likely to protect both the parties and the court from needless and costly further litigation." *Id.* at 241 (quoting *Wright v Schock*, 742 F.2d 541, 544 (9th Cir. 1984)). Because Defendants have a Motion for Summary Judgment [ECF No. 45] pending, Defendants ask the Court to resolve that Motion before ruling on the instant Motion for Class Certification.

B. CLASS CERTIFICATION IS NOT PROPER

"The class action is 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'" *Wal-Mart Stores, Inc., v. Dukes*, 131 S. Ct. 2541, 2550 (2011) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700-01 (1979)). "A class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Id*. Courts have recognized that class certification often causes "blackmail settlements"—settlements that are driven by the magnitude of risk even though the probability of an adverse judgment is low. *See In the Matter of Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1298 (7th Cir. 1995; *see also Castano v. Am. Tobacco Co.*, 84 F.3d 734, 746 (5th Cir. 1996) ("The risk of facing an all-or-nothing verdict presents too high a risk, even when the probability of an adverse judgment is low . . . . These settlements have been referred to as judicial blackmail.") (citing *Rhone-Poulenc*, 51 F.3d at 1298).

A district court must perform a rigorous analysis to ensure that the Rule 23(a) class-certification prerequisites have been satisfied. *See Dukes*, 564 U.S. at 350-51; *In re American Medical Sys., Inc.*, 75 F.3d 1069, 1082 (6th Cir. 1996); *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982). Inevitably, there will be some overlap with the merits of the claim. *In re American Medical Sys., Inc.*, 75 F.3d 1069, 1078 (6th Cir. 1996); *Gen. Tel. Co.*, 457 U.S. at 160 ("[T]he class

determination generally involves considerations that are 'enmeshed in the factual and legal issues comprising the plaintiff's cause of action.'") (citation omitted).

Plaintiff has the burden to prove the Rule 23 certification requirements. *In re Am. Med. Sys., Inc.*, 75 F.3d at 1079. A class must satisfy all four of the Rule 23(a) prerequisites—numerosity, commonality, typicality, and adequate representation—and fall within one of the three types of class actions listed in Rule 23(b). *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 397 (6th Cir. 1998).

1. <u>Plaintiffs do not meet the Rule 23(a) requirements</u>

One of the obvious problems with Plaintiffs' attempt to lump all inmates who were not provided good time credit while serving contempt sentences into a single class is the claimed entitlement to good time credit under the good time statute (assuming it even applies to contempt sentences) necessarily requires an individualized inquiry of each inmate's entitlement to good time credit.

As set forth above, this first requires an inquiry into whether the sentencing order specifically barred a party from receiving good time credit.

Second, the parties agree that there is no constitutional right to good time credit, and the entire premise of Plaintiffs' lawsuit and proposed class action is that the entitlement is created by the Michigan Good Time Statute. Where a state statute is the premise behind a claimed property or liberty interest, the limitations and parameters of that right are controlled by the state statute. *See Bd. of Regents*

v. Roth, 408 U.S. 564, 577 (1972) (a state law that grants a property interest defines the boundaries and rules or understandings of that property interest, including claims of entitlement to those benefits); *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 462-65 (1989) (same as to liberty claim). As the United States Supreme Court recognized in *Thompson,* 490 U.S. at 461-65: "the fact that certain state-created liberty interests [including good time statutes] have been found to be entitled to due process protection, while others have not, is not the result of this Court's judgment as to what interests are more significant than others; rather, our method of inquiry in these cases always has been to examine closely the language of the relevant statutes and regulations." *Id.* at 461.

Moreover, the state statue must actually create an "entitlement" to constitute a protectable property or liberty interest. *Id.* at 462-65. To create such a constitutional "entitlement", the statute "must contain 'explicitly mandatory language,' i.e., specific directives to the decisionmaker that if the regulations' substantive predicates are present, a particular outcome must follow, in order to create a liberty interest." *Id.* at 463 (quoting *Hewitt v. Helms*, 459 U.S. 460, 471-472 (1983)). If the statutory language on the other hand leaves receipt of a benefit to the discretion of the assigned decisionmaker, there is no property or liberty interest in the benefit unless the statute places "substantive limitations on the official discretion." *Id.* at 462, 465 (rejecting liberty claim because "the

regulations at issue here, however, lack the requisite relevant mandatory language" and, thus, "do not establish a liberty interest entitled to the protections of the Due Process Clause"); *see also Med Corp., Inc. v. City of Lima,* 296 F.3d 404, 409 (6th Cir. 2002); *Roth*, 408 U.S. at 577 (an expectation or hope is not enough, "He must, instead, have a legitimate claim of entitlement to it"); *Olim v. Wakinekona*, 461 U.S. 238, 249-51 (1983) (same); *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005)("a benefit is not a protected entitlement if government officials may grant or deny it in their discretion").

Based upon these principles, each of the individual inmates "entitlement" to good time credit will only exist if they have (1) a clean jail record (see MCL 51.282(2), which specifically uses the word "entitled") and (2) the individual specifically requested of the Sheriff or his/her Deputies to be released based upon earned good time credit (MCL 51.283).

Each of these three issues necessarily requires an individualized review of the facts.

a. **Because there is no commonality amongst the class, the Court does not need to address the typicality requirement**

"[T]he commonality and typicality requirements of Rule 23(a) tend to merge." *Dukes*, 564 U.S. at 349 n.5. If the Court finds a clear failure of proof on the issue of commonality, "it is unnecessary to resolve whether [Plaintiffs] have

satisfied the typicality and adequate-representation requirements of Rule 23(a)." *Id.*

Issues of fact and law common to the class must predominate over those issues subject to individualized proof. This "common contention . . . must be of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 350.

In *Dearduff v. Washington*, this Court determined that two proposed classes did not satisfy the one-stroke requirement because the policy challenged by the class did not expose each member to a similar risk of harm and, therefore, "the door to individualized inquiry would be left ajar." 330 F.R.D. 452, 466 (E.D. Mich. 2019); *see also Kensu v. Mich. Dep't of Corr.*, No. 18-cv-10175, 2020 U.S. Dist. LEXIS 61590, at **33-35 (E.D. Mich. Apr. 8, 2020) (lack of commonality in case involving the adequacy of prison meals because the same proof could not be used for each class member given each prisoner's unique diet and health).

The proposed class cannot prove through common proof that they were entitled to receive good time credit. Individualized inquiries would be required for each absent class member, as an analysis would need to be done for three separate inquiries: (1) whether the court order barred good time credit, (2) whether the class member had an "entitlement" to good time credit under MCL 51.282, which is

determined by whether the inmate had any adjudicated rule violations during his or her jail stay; and (3) whether the inmate requested to be released based upon good time as required by MCL 51.283 ("it shall be the duty of each prisoner entitled to release with the credit for good behavior allowance to call to the attention of the sheriff or any of his deputies the fact that he is entitled to release").

In fact, Plaintiff Schultz cannot establish that he requested to be released based upon good time as required by the Michigan statute.[1] Each individual in the proposed class would need to have a similar individualized inquiry into these matters to determine what good time—if any—they were entitled. Accordingly, the individual issues predominate over the common issues.

b. <u>In the alternative, Plaintiff cannot establish typicality</u>

"The typicality requirement goes to the heart of a representative parties' ability to represent a class," and "the requirements of commonality, typicality, and adequacy of representation tend to merge." *Reeb v. Ohio Dep't of Rehab. & Corrs.*, 81 F. App'x 550, 557 n.10 (6th Cir. 2003). "In order to conduct a typicality analysis a court must compare 'the plaintiffs' claims or defenses with those of the absent class members.'" *Ealy v. Pinkerton Governmental Servs.*, 514 F. App'x 299,

[1] Plaintiff Lindke did but on September 27, 2021. The Sentencing orders challenged in the lawsuit by Lindke are only the sentencing orders dated March 30, 2021, June 22, 2021, and July 29, 2021 (see ECF No. 13, PageID.1266, ¶22). Since the March 30, 2021 and June 22, 2021 sentencing orders were already served as of that date, Lindke had no entitlement to good time credit under the statute for either of those two sentences.

305 (4th Cir. 2013) (quoting *Deiter*, 436 F.3d at 467). "The premise of the typicality requirement is simply stated: as goes the claim of the named plaintiff, so go the claims of the class." *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 399 (6th Cir. 1998). When the plaintiffs' claims depend on individual facts, the typicality requirement is not met. 3 Newberg on Class Actions § 17.24; *Sprague*, 133 F.3d at 399. Typicality is lacking where "a class definition encompasses many individuals who have no claim at all to the relief requested, or where there are defenses unique to the individual claims of the class members." *Romberio v. Unumprovident Corp.*, 385 Fed. Appx. 423, 431 (6th Cir. 2009) (plaintiff challenged a variety of insurance policies; however, the putative class definition would have included some plaintiffs who had their claims paid and had no claim at all).

The purported class's claims depend on individual facts. Proving Plaintiff Lindke's case, for example, will not resolve the purported class members' claims because their claims will depend on each person's individual interactions at the St. Clair County Jail, including whether they had any rule infractions during their stay that make them ineligible for good time and whether they fulfilled their statutory obligation to request release based upon good time, and the language of each person's sentencing order. In Lindke's case, he was found guilty of violating "jail rules and regulations" on numerous occasions, and he has not had any set aside. Significantly, he committed a major rule violation on October 7, 2021, while

serving the July 29, 2021 sentence, and before he would have otherwise have been eligible for good time credit (October 13, 2021). The Court would be required to make similar inquiries into each individual's claims; therefore, typicality is lacking.

2. Plaintiff cannot satisfy Rule 23(b)(3)'s requirements

Plaintiffs claim that their proposed class falls within Rule 23(b)(3), which must meet predominance and superiority requirements, i.e., "questions of law or fact common to class members [must] predominate over any questions affecting only individual members" and class treatment must be "superior to other available methods." (ECF No. 51, PageID.2526). Rule 23(b)(3) classes must also meet an implied ascertainability requirement, i.e. "'a class description [that is] sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member.'" *Cole v. City of Memphis*, 839 F.3d 530, 541 (6th Cir. 2016) (quoting *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 850 (6th Cir. 2013)). Plaintiff cannot satisfy Rule 23(b)'s predominance and superiority requirements.

a. Predominance

Rule 23(b)(3) requires the Court to find that "questions of law or fact common to class members predominate over any questions affecting only individual members." This requires Courts to take a "close look" at whether this

"demanding" prerequisite has been met." *Comcast Corp. v. Behrend*, 569 U.S. 27, 34 (2013). "Rule 23(b)(3)'s predominance criterion is even more demanding" than the rigorous standard for satisfying the requirements of 23(a). *Id.* When evaluating whether there is predominance, a Court analyzes the elements of the parties' claims and defenses and the nature of the evidence and make a prediction as to how issues would play out at trial. *In re New Motor Vehicles Canadian Exp. Antitrust Litig*., 522 F.3d 6, 20, 27 (1st Cir. 2008.

Plaintiffs argue that predominance exists because this case presents questions of law that are common to all putative class members and no questions of fact. To the contrary, the individualized claims predominate because they require a case-by-case inquiry to determine whether the purported class member was incarcerated from contempt of court order that did not allow for good time, whether the purported class member was entitled to good time because of the purported class member's behavior in the jail, and whether the purported class member requested to be released based upon good time. This cannot be determined at the class level.

b. <u>Superiority</u>

The Court must make a finding of superiority and ensure that the class will "achieve economies of time, effort, and expense, and promote…uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or

bringing about other undesirable results." *Amchem Products. v. Windsor*, 521 U.S. 591, 615 (1997).

Here, each inmate's jail behavior records would need to be reviewed to determine how the inmate was impacted, if at all, by the good time policy. Thus, a class action cannot be resolved quickly and conclusively because the individualized nature of each class member's allegations cannot be resolved in a general manner. Superiority cannot be met, therefore, because there are individualized questions of liability. Plaintiffs cannot satisfy Rule 23(b)(3).

3. This Court cannot grant class certification because Plaintiffs do not have standing to sue Defendants Tim Donnellon and Thomas Bliss.

This Court has no power to certify a class when standing is lacking. *Fox v. Saginaw Cnty.*, 67 F.4th 284, 288 (6th Cir. 2023). Plaintiffs lack standing against two Defendants in this case; therefore, Plaintiffs' proposed class cannot be certified.

In *Fox*, the plaintiff sued Gratiot County after Gratiot County foreclosed on his property due to a tax delinquency. *Id.* at 291-92. Fox sued twenty-seven other counties and moved to certify a class based upon the other counties' "common practice of keeping all surplus equity in the properties of delinquent taxpayers," which he alleged constituted an unconstitutional taking. *Id.* The District Cout certified the class, relying upon the "juridical link doctrine," which created an

exception to standing in class actions in that a plaintiff could pursue a class action against defendants who did not harm the plaintiff if those defendants were "'juridically related in a manner that suggests a single resolution of the dispute would be expeditious.'" *Id.* at 296 (quoting *La Mar v. H & B Novelty & Loan Co.*, 489 F.2d 461, 466 (9th Cir. 1973)). The Sixth Circuit flatly rejected this doctrine, finding that such does not comport with the Supreme Court's standing cases. *Id.* at 294.

Plaintiffs sued five defendants in this case: St. Clair County, current St. Clair County Sheriff Mat King in his individual and official capacities, former St. Clair County Sheriff Tim Donnellon in his individual and official capacities, current St. Clair County Jail Administrator Tracy DeCaussin in her individual and official capacities, and former St. Clair County Jail Administrator Thomas Bliss in his individual and official capacities. While the official capacity suits against the current and former County Sheriffs and Jail Administrators are suits against the municipality, the individual capacity suits against these parties are not. *Kentucky v. Graham*, 473 U.S. 159, 165-67 (1985) (individual capacity claims attach personal liability to the government official, whereas official capacity claims attach liability only to the governmental entity).

Both Plaintiffs' claims arose in 2021 when Defendant King was the St. Clair County Sheriff and Defendant DeCaussin was the Jail Administrator at the St. Clair

County Jail. (ECF No. 13, Page.ID 1266). Plaintiffs have no cognizable claims against Defendants Donnellon or Defendant Bliss—who both retired in 2020. Like in *Fox*, Plaintiffs would clearly not have standing individually to bring claims against Defendants Donnellon and Bliss. *Fox*, 67 F.4th at 292-93. Like in *Fox*, class certification is similarly inappropriate here because Plaintiffs cannot show that they have standing against all Defendants.

4. Neither Plaintiff is a Proper Class Representative

If the Court reaches the proposed class representative and counsel issue, Defendants generally (outside of some concerns that can be addressed by the Court if necessary) do not object to the proposed class counsel, as Mr. Ellison is a well-qualified attorney to pursue the case.

Defendants, however, believe that neither Plaintiff is a proper class representative. FRCP 23(a)(4) provides that "One or more members of a class may sue or be sued as representative parties on behalf of all members **only** if: … the representative parties will fairly and adequately protect the interests of the class". FRCP 23(a)(4)[emphasis added].

First, Plaintiff Schulz suffers from verbal apraxia (ECF No. 45-29; PageID.2205), a neurological disorder caused by childhood brain damage. Given his mental disabilities, not only did he need assistance at his deposition in this case,

he is regularly under an adult guardianship in probate court and thus is a not a proper class representative.

Second, Plaintiff Lindke has a lengthy criminal history which has been provided to this court in other litigation. He has been convicted of numerous felonies, including as recently as 2021, including convictions for fraud and cyberstalking. He has violated numerous court orders, has publicly stated that he will not follow the orders of the court, and continues to violate court orders even as recently as today's date. He provided an Affidavit in this case that directly contradicted his sworn deposition testimony, and he signed that statement while he was serving a 40 day sentence for assaulting a County employee at a County Board of Commissioners meeting. Finally, on today's date, he once again became a fugitive from justice by intentionally failing to show up for his sentencing hearing in a domestic relations case and has declared "waldo's back", a reference to the last time he became a fugitive from justice and wore a "where's waldo" outfit.

Under the fugitive disentitlement doctrine, he is not even entitled to pursue his own claims let alone the claims of others. See *In re Prevot,* 59 F.3d 556, 562-567 (6th Cir. 1995)(plaintiff unable to enlist the aid of the American justice system when he, himself, was a fugitive of justice in a connected matter); *Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970)("while such an escape does not strip the case of

its character as an adjudicable case or controversy, we believe it disentitles the defendant to call upon the resources of the Court for determination of his claims").

Whether Plaintiff Lindke remains a fugitive from justice or is captured and sentenced to additional jail time or not, given his dishonesty and lack of trustworthiness, he is not an appropriate fiduciary for the absent class members. *Gooch v. Life Investors Ins. Co. of America*, 672 F.3d 402, 431 (6th Cir. 2012)("To judge the adequacy of representation, courts may consider the honesty and trustworthiness of the named plaintiff"); *Davis v. Magna Int'l of Am., Inc.,* No. 20-11060, 2023 U.S. Dist. LEXIS 51654, *12 (E.D. Mich. Mar. 27, 2023) (collecting "many cases . . . in which courts found prior fraud convictions troubling" and rejecting all of the proposed class representatives based upon prior convictions); *Utopia Entm't, Inc. v. Parish*, 2006 U.S. Dist. LEXIS 11956, *3-4 (S.D. La. 2006)("this Court is not prepared to hold that a twice convicted drug distribution felon is an appropriate class representative. Such a pattern of illicit conduct clearly indicates a person who does not meet the qualifications for a class representative: Johnson is simply not a trustworthy fiduciary. Thus, if a class were to be certified in this case, Par-La is not an appropriate class representative").

CONCLUSION

For the aforementioned reasons, Defendants ask this Court to deny Plaintiffs' Motion in its entirety.

FLETCHER FEALKO
SHOUDY & FRANCIS, P.C.
Attorneys for Defendants

By: /s/ Todd J. Shoudy
1411 Third Street, Suite F
Port Huron, Michigan 48060
(810) 987-8444
Michigan Bar #41895
tshoudy@fletcherfealko.com

DATED: February 29, 2024

The undersigned certifies that a copy of the foregoing instrument was served upon attorneys for Plaintiff on February 29, 2024 by electronically filing this document using the Court's ECF system.

/s/ Theresa A. Messing
Fletcher Fealko Shoudy & Francis, P.C.
1411 Third Street Suite F
Port Huron, Michigan 48060
(810) 987-8444
tmessing@fletcherfealko.com