No. _____

In The Supreme Court of the United States

WEXFORD HEALTH SOURCES, INC.,
Petitioner,

v.

LAUREN SPURLOCK, ET AL.,
Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This petition involves a nationwide prisoner class, brought under Section 1983 and seeking damages for thousands of inmates due to alleged "deliberate indifference" to treating their opioid use disorders. The district court and the Fourth Circuit recognized that such a sweeping personal injury class includes inmates with no constitutional injury and no damages. Neither the plaintiffs nor the courts offered a plan for separating the uninjured inmates short of trying their individual claims. Even so, the Fourth Circuit—deepening an acknowledged circuit split—found no Article III or Rule 23(b) problems with such a class and no obligation to look beyond the named plaintiffs' standing at the class-certification stage.

The questions presented are:

1. Whether a federal court may certify a damages class under Federal Rule of Civil Procedure 23(b)(3) when some members of the class lack any Article III injury.

2. Whether a federal court may certify a Rule 23(b)(3) damages class that includes a *de minimis* amount of uninjured class members without providing a viable method of separating those uninjured class members at the class-certification stage.

PARTIES TO THE PROCEEDING

The Petitioner is Wexford Health Sources, Incorporated, the defendant and appellant in the proceedings below.

Respondents are Lauren Spurlock, Heather Smith, and Shawn Zmudzinski, individually and as representatives of a class of inmates and detainees, the plaintiffs and appellees in the proceedings below.

CORPORATE DISCLOSURE STATEMENT

Wexford Health Sources, Incorporated is a private corporation organized under the laws of Florida, and is a wholly owned subsidiary of The Bantry Group Corporation, which is also a private corporation organized under the laws of Florida. No publicly held company owns 10% or more of The Bantry Group Corporation or Wexford Health Sources, Incorporated.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to the case within the meaning of Rule 14.1(b)(iii):

Lauren Spurlock, et al. v. Wexford Health Sources, Inc., No. 25-2038 (4th Cir.), judgment entered on May 4, 2026; petition for rehearing denied June 1, 2026.

Lauren Spurlock, et al. v. Wexford Health Sources, Inc., Civil Action No. 3:23-cv-00476 (S.D.W. Va.), order granting class certification entered on July 24, 2025.

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PETITION FOR WRIT OF CERTIORARI

This petition presents the question that this Court intended to resolve in *Laboratory Corp. of America Holdings v. Davis*, 145 S. Ct. 1133 (2025): "Whether a federal court may certify a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) when some members of the proposed class lack any Article III injury." That question continues to divide the circuit courts into roughly three camps. The issue is important, the split is entrenched, and the harms of allowing it to fester are well-documented in past and pending petitions for certiorari.[1]

This case presents an excellent vehicle to resolve that recurring question because it confirms that even courts occupying the middle ground of the split—applying the so-called "*de minimis* approach"—permit damages classes with potentially thousands of uninjured members in violation of Article III and Rule 23(b)(3). The *de minimis* approach is not a viable compromise, much less a constitutional one, because it can be stretched as far as the permissive approach applied in the Seventh, Ninth, and Eleventh Circuits.

While suggesting that uninjured members may be "outliers," the Fourth Circuit's formulation of the *de minimis* rule permits class certification no matter the

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[1] The circuit split has deepened since *Laboratory Corporation* was dismissed as improvidently granted, and the petitions keep coming to this Court. In addition to this one, three petitions from the Ninth Circuit are pending. *Nestlé USA, Inc., v. Falcone*, No. 26-400; *Bayer HealthCare LLC v. Drake*, No. 26-376; *The Kroger Co. v. Solano*, No. 26-244. Another from the Sixth Circuit is on hold pending confirmation of a settlement agreement. *City of Cleveland v. Pickett*, No. 25-677.

number. So long as "a Named Plaintiff has standing to bring the claim that is the subject of the class action, Article III standing is satisfied at the class certification stage." App. 31a. That formulation allows classes packed with uninjured members who will not be separated until trial, if the defendant has not succumbed to settlement pressure before then.

The Article III injury and Rule 23(b)(3) predominance problems with this approach are pronounced in a Section 1983 personal injury suit. The Fourth Circuit affirmed a nationwide prisoner class seeking millions of dollars from Wexford Health Sources, Inc., a private healthcare company, for allegedly failing to provide inmates with medications for opioid use disorder ("MOUD"), which plaintiffs say amounts to "deliberate indifference" in violation of the Eighth and Fourteenth Amendments. To recover damages, plaintiffs must prove that Wexford's treatment practices were subjectively reckless (not merely negligent), *Farmer v. Brennan*, 511 U.S. 825, 836–40 (1994), and trace an injury to that unconstitutional practice, *John and Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 633 (4th Cir. 2023) ("[J]ust because a policy or practice exists and is unconstitutional does not mean a particular plaintiff has been injured and has standing to challenge it.").

The fact and nature of any injury, of course, is personal to the inmate who did not receive MOUD, which uses controlled substances to treat opioid use disorder ("OUD"). Some patients suffer painful withdrawals, others might have unique complications due to preexisting conditions, and still others experience only mild flu-like symptoms. And some inmates, as the

courts below recognized, suffer no injury at all. A class member may not be injured for myriad reasons: (i) his constitutional rights were not violated because he was denied MOUD due to negligence in his individual case, rather than a practice of deliberate indifference; (ii) he suffered no actual harm from a constitutional violation because, although he was denied MOUD due to an unconstitutional practice, he would have refused it if offered; or (iii) his harm resulted not from a Wexford practice, but from a warden's refusal to permit MOUD—which involves dispensing controlled substances—due to security concerns.

Separating the uninjured class members requires individualized inquiries that should defeat class certification. *See Lab'y Corp. of Am. Holdings v. Davis*, 605 U.S. 327, 328–34 (2025) (Kavanaugh, J., dissenting). Not only did the courts below fail to reckon with this issue at the class-certification stage, they offered no method for identifying and excluding uninjured inmates at any point before a judgment. This is unsurprising given that Section 1983 creates a tort action for personal injuries and is meant to compensate parties for their "actual losses." *Price v. City of Charlotte*, 93 F.3d 1241, 1246 (4th Cir. 1996). There is no method for separating inmates who have constitutional injuries and actual losses from those who do not, short of trying each case.

The Fourth Circuit's lax approach to class certification violates both Article III and Rule 23(b)(3). A damages class that includes both injured and uninjured members violates Rule 23's commonality and predominance requirements. *See*, *e.g.*, *Lab'y Corp.*, 605 U.S. at 328–34 (Kavanaugh, J., dissenting from

order dismissing certiorari as improvidently granted). Certifying a damages class that does not separate uninjured members at the outset—and worse, providing no plan to remove them before judgment—also violates fundamental principles of Article III standing. "Every class member must have Article III standing in order to recover individual damages. Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) (cleaned up). Under the Fourth Circuit's decision, however, potentially thousands of inmates who lack standing will remain in the case and be used to leverage an in terrorem settlement. If no settlement is reached, the district court will ultimately adjudicate claims over which it lacks jurisdiction.

The Court should grant the petition, resolve the split, and establish national uniformity on whether and under what circumstances a damages class may include uninjured members.

OPINIONS BELOW

The Fourth Circuit's opinion, 175 F.4th 232, is reproduced at App. 1a-35a, and the unpublished order denying rehearing is reproduced at App. 85a. The district court's opinion, 2025 WL 2085053, is reproduced at App. 36a-84a.

JURISDICTION

The Fourth Circuit issued its opinion on May 4, 2026, and denied a petition for rehearing on June 1, 2026. Chief Justice Roberts extended the time to file a petition until October 29, 2026. This Court has jurisdiction under 28 U.S.C. 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article III, §§ 1-2 of the United States Constitution is reproduced at App. 86a-87a. Federal Rule of Civil Procedure 23 is reproduced at App. 88a-99a.

STATEMENT OF THE CASE

In this nationwide class action brought under 42 U.S.C. § 1983, three named plaintiffs seek personal injury damages on behalf of thousands of current and former inmates who were incarcerated in prisons and jails around the country. Plaintiffs did not sue the agencies that set policy for those facilities or the public officials who manage them. The sole defendant is Wexford, a private healthcare company that contracts to provide medical care to inmates in their custody.

A. The Deliberate Indifference Framework.

Plaintiffs, proceeding under Section 1983 and *Monell v. Department of Social Services*, 436 U.S. 658 (1978), allege that Wexford has an unconstitutional practice of denying a specific type of treatment for OUD. The treatment, known as Medication for Opioid Use Disorder ("MOUD"), treats OUD with FDA-approved controlled substances (opioids) that control cravings and prevent withdrawal symptoms. The class, comprised of prisoners and pretrial detainees, alleges that Wexford's treatment practices amount to deliberate indifference in violation of the Eighth and Fourteenth Amendments.

The Eighth Amendment, applicable to inmates, prohibits the infliction of "cruel and unusual punishment," which—in this context—prohibits "deliberate indifference" to an inmate's serious medical needs.

Estelle v. Gamble, 429 U.S. 97, 104 (1976). Deliberate indifference has an objective and subjective requirement. *Farmer*, 511 U.S. at 834; *see also* App. 69a-70a. First, the deprivation must be "objectively, sufficiently serious," such that it constitutes "denial of the minimal civilized measure of life's necessities." *Farmer*, 511 U.S. at 834 (cleaned up). Second, the defendant must have acted with "subjective recklessness as used in the criminal law" in response to a known risk of sufficiently serious harm. *Id.* at 840–41. A defendant is not liable if he "responded reasonably to the risk, even if the harm ultimately was not averted." *Id.* at 844.

The Fourteenth Amendment, applicable to detainees, provides a slightly different test for deliberate indifference. Plaintiffs must prove: "(1) they had a medical condition or injury that posed a substantial risk of serious harm; (2) the defendant intentionally, knowingly, or recklessly acted or failed to act to appropriately address the risk that the condition posed; (3) the defendant knew or should have known (a) that the detainee had that condition and (b) that the defendant's action or inaction posed an unjustifiably high risk of harm; and (4) as a result, the detainee was harmed." *Short v. Hartman*, 87 F.4th 593, 611 (4th Cir. 2023). This test requires more than proof of negligence; a plaintiff must "show that the defendant acted or failed to act 'in the face of an unjustifiably high risk of harm that is either known or so obvious that it should be known.'" *Id.* at 611–12 (quoting *Farmer*, 511 U.S. at 836).

Finally, a Section 1983 claim is a "tort action for the recovery of damages for personal injuries." *Wilson*

v. Garcia, 471 U.S. 261, 276 (1985). And "under Article III, an injury in law is not an injury in fact." *TransUnion*, 594 U.S. at 427. So a plaintiff must show that the unconstitutional practice caused an injury. *See John and Jane Parents 1*, 78 F.4th at 633. If injured, a plaintiff may recover compensatory damages for his "actual losses," *Price*, 93 F.3d at 1246, if those losses are "proven by competent, sufficient evidence," *Hicks v. Ferreyra*, 64 F.4th 156, 175 (4th Cir. 2023).

B. Factual Background

Wexford contracts with state and local correctional agencies to provide healthcare to inmates. Relevant here, Wexford has provided—and in some cases continues to provide—healthcare in approximately 100 correctional facilities across 11 states, including the state prison systems in Alabama, New Hampshire, Illinois, New Mexico, and West Virginia. App. 5a, 37a. These facilities range from small jails to state prisons housing more than 1,000 inmates. Each facility is unique, from its leadership and policies to its physical layout and inmate population. *Id.*; *see also* App. 9a. n.4 (listing facilities).

Wexford does not set policy for these prisons or jails, and it has no control over nonmedical prison operations that "inevitably influence the nature, timing, and form of medical care provided to inmates." *West v. Atkins*, 487 U.S. 42, 57 (1988). Traditionally, corrections agencies forbade the use of MOUD due to safety and security concerns associated with bringing controlled substances into prisons and jails. *See* D. Ct. Dkt. 180-1 (Report of Dr. Thomas Fowlkes), pp. 52–57. But the national opioid crisis and the widespread adoption of MOUD in the community led corrections

policymakers to reconsider their views on the treatment. *See* App. 3a-5a. Wexford has long been a proponent of MOUD in correctional settings and has provided MOUD to thousands of incarcerated individuals in facilities where the treatment is allowed. App. 38a-43a, 63a-65a. By December 2024, over 87 percent of the facilities Wexford services had adopted some form of MOUD program. App. 41a-42a.

Ultimately, however, the decision to allow MOUD resides with state and local officials. MOUD programs require buy-in from local policymakers, sufficient nonmedical staff to administer the programs, coordination with security personnel, training for correctional officers, and protocols to prevent diversion. D. Ct. Dkt. 180-1 (Fowlkes Report), pp. 53, 55–56. MOUD "medications are themselves opioids, so prisons with treatment programs typically do not let prisoners consume them alone." *Difraia v. Ransom*, 171 F.4th 622, 626 (3d Cir. 2026); *see also* App. 62a.

Even when policymakers allow MOUD in a prison or jail, it is not a "one size fits all" regime. Deciding whether to treat an individual with MOUD is a patient-specific inquiry. App. 56a, 73a-76a, 79a-81a. A provider must consider "[m]ultiple factors" when deciding whether to provide MOUD, "such as the exact [substance use disorder] diagnosis, co-morbid medical and psychiatric conditions, medication allergies, medication and drug interactions, length of abstinence, patient preferences, length of stay in the facility, whether the patient will be able to continue MOUD after release, which MOUD to use, what is the appropriate length of treatment, and other individual characteristics . . . ." D. Ct. Dkt. 180-1 (Fowlkes Report), pp. 56–57.

C. Procedural Background

In July 2023, three named plaintiffs, each of whom had been incarcerated in a facility where Wexford provided healthcare, filed this Section 1983 class action. App. 38a. The complaint estimated a class numbering in the thousands and sought "compensatory damages for pain and suffering under the Eighth and Fourteenth Amendments, punitive damages under the Eighth and Fourteenth Amendments, costs and attorneys' fees, and other relief." App. 52a; *see also* D. Ct. Dkt. 1 (Compl.), pp. 36, 43.

1. The Named Plaintiffs.

The three class representatives have varied corrections histories, medical conditions, and OUD treatment experiences. App. 47a-51a; *see also* D. Ct. Dkt. 180-1 (Fowlkes Report), pp. 16–44. Their personal injuries and damages, if any, are tied to their individual cases, as are those of the absent class members.

Plaintiff Spurlock was confined in a West Virginia jail for three months in 2023. App. 47a. When she was booked, she attempted to smuggle illegal drugs (including MOUD drugs) into the jail, resulting in additional charges of possession with intent to deliver a controlled substance. D. Ct. Dkt. 180-1 (Fowlkes Report), pp. 19, 60. She also tested positive for fentanyl and other illicit drugs, so she was sent to the hospital for medical clearance. *Id.* at 19.

After being cleared and returned to jail, Ms. Spurlock was observed for opiate withdrawal, but she did not develop any significant opiate or other withdrawal syndrome that required treatment. *Id.* at 19–20. While in custody, she requested and received medical

help, but her records do not indicate that she ever requested MOUD. *Id.* at 18–20, 59–61.

Plaintiff Smith has a history of substance abuse and OUD treatment in both community clinics and jails. *Id.* at 21–27. In December 2022, she completed treatment at a community center and left with an MOUD (Suboxone) prescription. App. 48a. Around that time, she learned there was a warrant for her arrest and turned herself in. *Id.* On January 10, 2023, before being taken into custody, she obtained a seven-day supply of Suboxone. She arrived at a West Virginia jail six days later. D. Ct. Dkt. 180-1 (Fowlkes Report), pp. 26–28.

Upon arrival, she denied withdrawal issues but reported her Suboxone prescription. *Id.* at 27. The day after her intake, a provider continued Ms. Smith's MOUD regimen, but Smith alleges she did not receive it. *Id.* at 29; *see also* App. 49a. During her first four days in jail, she was monitored for withdrawal symptoms and treated with Bentyl, clonidine, and Zofran (prescription medications) as well as folate, ibuprofen, multivitamins, and Pepto-Bismol. App. 49a. Upon her release on January 24, 2023, all prescription medications were returned to her. D. Ct. Dkt. 180-1 (Fowlkes Report), pp. 29. Seven days later, she returned to her MOUD clinic in the community and was continued on Suboxone. *Id.* at 29–30.

Plaintiff Zmudzinski's records show sporadic filling of MOUD prescriptions and other controlled substance prescriptions during the decade preceding his 2021 incarceration in New Mexico. *Id.* at 33. He was jailed three times in 2021, but only once at a facility where Wexford provided healthcare services. In April

2021, Mr. Zmudzinski was booked into a New Mexico jail for a parole violation; he was placed on an opiate withdrawal protocol but was not given MOUD. *Id.* at 36–40. He did not develop any significant withdrawal symptoms during his five-day incarceration. *Id*. at 40. In August 2021, he was booked again at the same facility. *Id.* at 41. Again, he was not given MOUD, but he never developed any documented medical problems. *Id.* Wexford was not the healthcare provider for Mr. Zmudzinski in either of these cases. App. 50a.

More than a month after his August 2021 booking, Mr. Zmudzinski was transferred to a Wexford-serviced New Mexico jail. App. 50a. He reported being on a "Suboxone program prior to county jail," App. 50a, but he completed a drug abuse screening document that denied all drug use except for "Suboxone program – 2013." D. Ct. Dkt. 180-1 (Fowlkes Report), pp. 41–42. On the day that he was discharged, he told a provider that he had been clean from opioids for five years. App. 51a. He refused to take Narcan (an overdose-reversing medication) with him upon release. *Id.*

The experiences of these named plaintiffs confirm that the class intermingles injured and uninjured inmates. An inmate who cannot receive MOUD due to diversion risks was not injured by Wexford's policy (Spurlock); an inmate whose MOUD was withheld by a mistake at her particular facility was not injured by Wexford's policy (Smith); and an inmate who did not require MOUD was not injured at all (Zmudzinski). And the three named plaintiffs are the tip of the iceberg in this class of thousands (or tens of thousands) of inmates, each with his or her own unique medical conditions and OUD treatment experience, and many without a constitutional injury or actual damages.

2. The Class Certification Order.

Plaintiffs moved for certification of a nationwide damages class, which Wexford opposed on several grounds, including that the proposed class would sweep in scores of uninjured inmates. *See* App. 54a-62a. The district court agreed that Plaintiffs' proposed class included uninjured members, App. 61a-62a, and attempted to address that dilemma with a revised class definition:

> **Damages Class:** All individuals who were confined at a Listed Facility during the applicable Relevant Time Period, who (1) (a) had a diagnosis of Opioid Use Disorder (OUD) at the time of intake, and reported that diagnosis during intake, or were diagnosed during such incarceration, (b) had a prescription for FDA-approved Medication for Opioid Use Disorder (MOUD) at the time of intake, or (c) were monitored for opioid withdrawal during such incarceration; and (2) who were not continued on MOUD, if already prescribed MOUD, or screened for MOUD induction; and (3) who were thereafter released from the Listed Facility.

App. 82a-83a.

The Listed Facilities comprise a nationwide patchwork of prisons and jails for which Wexford provided healthcare services. App. 83a n.7. The Relevant Time Period is facility-specific, reaching back to July 2021 in many cases, and runs until the date Wexford

stopped providing services at a facility or until the date of a judgment. App. 38a-41a, App. 83a n.7.[2]

The Damages Class easily encompasses tens of thousands of current and former inmates. As the district court recognized, more than one-third of the inmate population in the Listed Facilities had OUD. App. 65a-66a, 83a. In West Virginia alone, nearly 50,000 inmates were processed in 2018 and 2019, and the state's jails "housed several thousand inmates" per day. App. 65a-66a. Wexford's director of addiction medicine testified that it was "treating probably over 6,000 people with MOUD" in January 2025. App. 66a.

The district court acknowledged that "there may be benign reasons why any given individual did not receive MOUD." App. 56a. "A provider may determine that an individual is not a good candidate for MOUD, or an individual may have a preference against MOUD." *Id.*; *see also* App. 74a ("To be sure, scenarios exist where providers will not and should not offer MOUD due to patient preference, potential interactions with other drugs in a patient's system, or some other medical reason."). The district court's revised class definition attempted to carve out some uninjured inmates, App. 61a-62a, but failed to address others, suggesting that concerns over individualized injury and damages issues could be confronted after class certification, App. 78a-81a.

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[2] The district court also certified an injunctive relief class to pursue policy relief against Wexford. App. 77a-84a. The Fourth Circuit reversed the injunctive relief class and remanded those claims to the district court to assess the named plaintiffs' standing to seek that relief, given that they are no longer incarcerated. App. 16a-18a, 34a-35a.

In a class of this breadth, even a *de minimis* number of uninjured inmates—those with no constitutional injury or actual damages—would reach into the thousands. Yet, neither Plaintiffs nor the district court quantified the uninjured members or devised a means of separating them, despite their independent obligations to do so. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–51 (2011) (discussing plaintiffs' burden to establish Rule 23 prerequisites and district court's duty to conduct "rigorous analysis").

3. The Fourth Circuit Decision.

Wexford sought immediate review of the class-certification order under Rule 23(f). The Fourth Circuit granted Wexford's petition, App. 13a, recognized that the class included uninjured members, App. 32a-33a, but affirmed it anyway, App. 35a.

The affirmance was based, in part, on the named plaintiffs disclaiming personal injury damages on appeal. In district court, Plaintiffs pursued two types of class-wide damages: (i) "model[ed] economic damages based on the number of days a class member was denied adequate treatment;" and (ii) "noneconomic damages based on pain and suffering." App. 26a. After the Fourth Circuit accepted Wexford's appeal, Plaintiffs "disclaimed" pain-and-suffering damages and urged the court to consider only their modeled economic damages theory. *Id.*

To support that theory, Plaintiffs offered a damages model that, as the district court described it, employed "a common methodology that can be used to calculate economic damages based on estimated MOUD pharmaceutical and nursing costs that would have been incurred by Wexford had it implemented

universal screening and induction." App. 80a. The Fourth Circuit described the model as calculating damages "based on the number of days each class member was denied constitutionally adequate medical care." App. 26a-27a.

Wexford objected to this pivot as violating *Comcast Corporation v. Behrend*, 569 U.S. 27 (2013), which requires plaintiffs to show that "damages are susceptible of measurement across the entire class" based on a methodology that is not "arbitrary," but calculates damages that individual class members would be entitled to recover, *id.* at 35. In a Section 1983 tort suit, plaintiffs may recover personal injury damages for "actual losses." *Price*, 93 F.3d at 1246. The modeled damages theory—which assigns a daily rate of recovery based on assumptions about the costs of providing MOUD—is divorced from the personal injury damages available under Section 1983. But the Fourth Circuit found the daily-rate model "sufficiently linked" to the named plaintiffs' theory of liability to permit class certification. App. 27a.

The Fourth Circuit went on to affirm the Damages Class but acknowledged "a growing split in the circuits" on including uninjured class members, App. 29a n.6, and recognized "the potential that the class includes uninjured individuals implicates both Article III and Rule 23(b)(3)'s requirements," App. 28a.

On Article III, the Fourth Circuit adopted a permissive rule that ignores the presence of uninjured class members: "[W]here as here, a Named Plaintiff has standing to bring the claim that is the subject of the class action, Article III standing is satisfied at the class certification stage." App. 31a. It agreed that

"[e]ach class member must possess Article III standing to recover damages." App. 30a. Members with no injury, the court said, "will properly be excluded from the class when their lack of standing becomes apparent." App. 31a n.7. The court did not say when or how a lack of standing will become "apparent" in a Section 1983 suit without trying an individual inmate's case.

On Rule 23(b)(3), the Fourth Circuit acknowledged that the class encompassed uninjured members and held: "If a class includes *some* percentage of uninjured class members, then the proposed class *may* lack predominance." App. 32a (emphasis added). The court then—flipping the Rule 23 burden—faulted Wexford for failing to show that uninjured members "would be anything but outliers." *Id.* In the Fourth Circuit's view, identifying uninjured class members could wait until discovery was completed. App. 32a-33a. Like the district court, the court of appeals provided no plan for separating uninjured inmates before trial.

REASONS FOR GRANTING THE PETITION

This Court has made clear that "every class member must have Article III standing in order to recover individual damages." *TransUnion LLC*, 594 U.S. at 431. It has yet to answer the conspicuous next question, left open in *TransUnion*, "whether every class member must demonstrate standing *before* a court certifies a class." *Id.* at 431 n.4 (emphasis in original). That question has vexed lower courts for years, creating a three-way circuit split and evading this Court's resolution. *See Lab'y Corp.*, 605 U.S. at 328; *Tyson Foods, Inc.*, 577 U.S. at 460–61. The question continues to be put to this Court in consumer classes, disability rights classes, fair housing classes, and others.

This petition presents the question in yet another high-stakes context, a nationwide prisoner damages class seeking millions of dollars in compensatory and punitive damages from a private healthcare company for "deliberate indifference" to medical needs associated with opioid dependency. The class includes thousands of inmates with no constitutional injury and no actual damages. Both lower courts recognized that the class included uninjured inmates, but neither court offered a way to separate them from the class. So, their nonjusticiable claims will inflate the class and skew settlement calculations.

Certifying oversized damages class actions that sweep in uninjured persons and leverage "in terrorem settlements," *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011), should be intolerable in any context. It is particularly so in Section 1983 prisoner litigation, an area known for frivolous *pro se* suits. *See Jones v. Bock*, 549 U.S. 199, 203 (2007) ("Most of these cases have no merit; many are frivolous."); *Crawford-El v. Britton*, 523 U.S. 574, 601 (1998) (Kennedy, J., concurring) (noting "many of these suits invoke our basic charter in support of claims which fall somewhere between the frivolous and the farcical and so foster disrespect for our laws"). Under the Fourth Circuit's rule, thousands of meritless prisoner claims—which would be dismissed if brought *pro se*—can be smuggled into Article III courts as uninjured class members, used to leverage settlements, and even paid under a class-wide settlement.

The Court should grant this petition, resolve the split, and reverse the Fourth Circuit's decision as violating Article III and Rule 23(b)(3).

I. The Circuits Remain Divided Over Whether Courts May Certify a Damages Class That Includes Uninjured Members.

All agree that Article III forbids federal courts from awarding damages to uninjured class members. *TransUnion LLC*, 594 U.S. at 431. But the circuits remain divided on whether courts may certify a damages class that includes uninjured members. The circuits do not agree on which source—Article III or Rule 23—controls the uninjured-class-member analysis, and even when circuits agree on the source, they cannot agree on the analytical approach. The result is a "circuit scoreboard" that defies "neat groupings." 1 Joseph M. McLaughlin, McLaughlin on Class Actions § 4:28 (22d ed. 2025); *see also* 1 William B. Rubenstein, Newberg and Rubenstein on Class Actions § 2:6 (6th ed. 2022); William G. Beatty, *Winnowing the Wheat from the Chaff: The Continuing Controversy over Article III Standing and the Certification of Rule 23(b)(3) Damages Classes Containing "Uninjured" Members*, 17 Wm. & Mary Bus. L. Rev. 253 (2026).

A. The Circuits Apply Three Different Tests.

Broadly speaking, the circuits take one of three approaches to the question of whether a damages class may include uninjured members: (i) Article III strictly bars the inclusion of any uninjured members; (ii) Rule 23(b)(3)'s predominance requirement tolerates only a "*de minimis*" number of uninjured members; or (iii) a predominance problem arises only if there are a "great many" uninjured members.

Approach One – Article III Courts. The Second and Eighth Circuits view the issue through a constitutional lens, recognizing that "[t]he filing of suit as a

class action does not relax [Article III's] jurisdictional requirement." *Denney v. Deutsche Bank AG*, 443 F.3d 253, 263 (2d Cir. 2006); *see also Avritt v. Reliastar Life Ins. Co.*, 615 F.3d 1023, 1034 (8th Cir. 2010). In these circuits, the class must "be defined in such a way that anyone within it would have standing," and "no class may be certified that contains members lacking Article III standing." *Denney*, 443 F.3d at 264; *see also Johannessohn v. Polaris Indus., Inc.*, 9 F.4th 981, 987–88 (8th Cir. 2021); *Halvorson v. Auto-Owners Ins. Co.*, 718 F.3d 773, 778 (8th Cir. 2013) ("In order for a class to be certified, each member must have standing . . . .").

Judges in other circuits have also recognized the Article III problems posed by certifying classes that included uninjured members. *E.g.*, *Speerly v. Gen. Motors, LLC*, 143 F.4th 306, 352 (6th Cir. 2025) (Nalbandian, J., concurring) ("When a proposed class has a significant number of unnamed members without a concrete injury, those individuals lacking Article III standing must be excluded . . . ."); *Flecha v. Medicredit, Inc.*, 946 F.3d 762, 770–71 (5th Cir. 2020) (Oldham, J., concurring) ("If anything, I'd think our standing analysis would be particularly rigorous at this stage, given the transformative nature of the class-certification decision.").

Approach Two – The "*De Minimis*" Test. The First, Third, Fourth, and D.C. Circuits occupy a middle ground, treating the question as one of Rule 23(b)(3) predominance and tolerating no more than a *de minimis* number of uninjured members. *See Huber v. Simon's Agency, Inc.*, 84 F.4th 132, 156–58 (3d Cir. 2023); *In re Rail Freight Fuel Surcharge Antitrust Litig.–MDL No. 1869*, 934 F.3d 619, 624–26 (D.C. Cir.

2019) (hereinafter "*Rail Freight II*"); *In re Asacol Antitrust Litig.*, 907 F.3d 42, 53–54 (1st Cir. 2018).

The First and D.C. Circuits have been the most explicit. As Judge Katsas put it, "[u]ninjured class members cannot prevail on the merits, so their claims must be winnowed away as part of the liability determination. And that prospect raises [the question]—when does the need for individualized proof of injury and causation destroy predominance?" *Rail Freight II*, 934 F.3d at 624. At the least, a class cannot be certified if it contains more than a "*de minimis* number" of uninjured class members. *Id.* at 625. And at that time, pre-*TransUnion*, the "few reported decisions" suggested "5% to 6% constituted the outer limits of a *de minimis* number." *Id.* Of course, the "raw numbers" are important, too. *Id.* at 625–26. The First Circuit has taken a similar approach, holding that a damages class cannot contain more than a "very small absolute number" of uninjured members. *In re Asacol Antitrust Litig.*, 907 F.3d at 53–54.

While the Third Circuit holds that, "so long as a named class representative has standing, a class action presents a valid 'case or controversy' under Article III," *Huber*, 84 F.4th at 155, it requires a rigorous predominance analysis to ensure that the number of uninjured class members can be determined at the class-certification stage, *id.* at 157–58. If that analysis confirms that "many class members appear likely to satisfy standing or if there is a plausible straightforward method to sort them out at the back end of the case," then the class may proceed. *Id.* (internal marks and citation omitted); *see also In re Lamictal Direct Purchaser Antitrust Litig.*, 957 F.3d 184, 194–

95 (3d Cir. 2020) (remanding class to determine number of uninjured members).

The published opinion in this case confirms the Fourth Circuit's adherence to this middle-ground approach. One named plaintiff with standing satisfies Article III at the class-certification stage. App. 30a-31a. Under Rule 23(b)(3), if a "class includes *some* percentage of uninjured class members, then the proposed class *may* lack predominance." App. 32a (citing *Mr. Dee's, Inc. v. Inmar, Inc.*, 127 F.4th 925, 933–34 (4th Cir. 2025)). The Fourth Circuit, like others staking out this middle ground, has not settled on the meaning of "*de minimis*" in the Rule 23(b)(3) predominance context.

Approach Three – The "Great Many" Test. The Ninth Circuit rejects the notion that a damages class must not "include[] more than a de minimis number of uninjured class members." *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 669 (9th Cir. 2022) (en banc); *see also id.* at 691–92 (Lee, J., dissenting) (acknowledging circuit split). The Seventh and Eleventh Circuits follow a similar rule. *See Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 825 (7th Cir. 2012) (referencing cutoff point as a "great many"); *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1277 (11th Cir. 2019) (same for a "large portion").

B. Courts Cannot Say How Many Uninjured Members Are Too Many.

Courts that do not apply a strict Article III approach, which prohibits any uninjured members in the class, cannot agree on how many uninjured members are too many for class certification. None of these

courts can say what constitutes a "very small absolute number," a "*de minimis*" number, a "great many," or a "large portion." Consequently, these "standard[s]" are "no standard[s] at all." Beatty, 17 Wm. & Mary Bus. L. Rev. 253 at 312, 314. This case, which treats potentially thousands of uninjured inmates as a *de minimis* amount, confirms the point.

After *TransUnion LLC*, the number of uninjured class members must be zero when the court renders a judgment. 594 U.S. at 431. Reacting to that holding, even circuits that preclude certification only for classes with a "large portion" of uninjured class members have emphasized the need for district courts to consider, at the certification stage, *how* they will separate the wheat from the chaff before trial. *See Green-Cooper v. Brinker Int'l, Inc.*, 73 F.4th 883, 891–892 & n.13 (11th Cir. 2023); *Huber*, 84 F.4th at 157–58. Such a "winnowing mechanism must be truncated enough to ensure that the common issues predominate, yet robust enough to preserve the defendants' Seventh Amendment and due process rights to contest every element of liability and to present every colorable defense." *Rail Freight II*, 934 F.3d at 625. Without it, "the need for individualized proof of injury and causation destroy[s] predominance." *Id.* In the Ninth Circuit, even this amorphous winnowing requirement is not required. *See Painters & Allied Trades District Council 82 Health Care Fund v. Takeda Pharm. Co.*, 2025 WL 1683472, at **4–5 (9th Cir. June 16, 2025).

This standardless approach leaves courts and class-action defendants in an ad hoc regime that yields inconsistent results even within circuits that purport to apply a "*de minimis*" requirement. The Fourth Circuit experience proves the point. Just a

year ago, the Fourth Circuit refused to accept a named plaintiff's standing as sufficient for the entire class in a consumer-protection suit; instead, the court scrutinized plaintiffs' theory of injury to determine if it supported class-wide standing under Article III. *Alig*, 126 F.4th at 974–76. In another 2025 case, the court held plaintiffs to their class-certification burden and—citing *plaintiffs' evidence* that 32% of a proposed class (2,533 out of 7,813 class members) were not injured—held that number was "much too high" to satisfy Rule 23(b)(3)'s predominance requirement in an antitrust suit. *Mr. Dee's Inc.*, 127 F.4th at 933–34.

But, in this Section 1983 personal injury case, the Fourth Circuit deemed a named plaintiff's standing sufficient to certify a class and, without requiring any proof from plaintiffs, brushed off an unknown number of uninjured inmates (among a class of tens of thousands) as "outliers" that did not defeat predominance. App. 31a-32a.[3] Plaintiffs and the lower courts failed to identify a method for separating the uninjured class members at any time prior to a trial. Instead, dismissing as "conjecture" the obvious reality that, in a nationwide deliberate indifference class, many inmates will have neither a constitutional injury nor actual damages, the Fourth Circuit relegated the issue to one that can be "revisited" after discovery. App. 32a-33a.

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[3] Perhaps these shifting standards account for prior petitioners' confusion over where to place the Fourth Circuit. *See*, *e.g.*, Pet. at 18 n.5, *Lab'y Corp. of Am. Holdings v. Davis*, No. 24-304 (suggesting most permissive camp); Pet. at 15 n.1, *Takeda Pharm. Co.*, No. 25-625 (suggesting middle-ground camp); Pet. at 10, *Nissan N. Am., Inc. v. Johnson*, No. 24-1289 (placing court in most restrictive camp).

The Fourth Circuit's decision exposes the middle "*de minimis*" ground as illusory. Calculating percentages of injured and uninjured members means little in a class this size. If just 10% of this deliberate-indifference class has no injury (a modest estimate), then the district court is proceeding with a federal action that includes several thousand uninjured members, "all of whom would need individualized adjudications of causation and injury." *Rail Freight II*, 934 F.3d at 625. The "*de minimis*" rule only works if courts can develop a clear, workable plan for separating the uninjured members well before trial. *Id.*; *accord In re Asacol Antitrust Litig.*, 907 F.3d at 51–54. Under the Fourth Circuit's "*de minimis*" formulation, however, even personal injury suits can be certified with no plan for removing thousands of uninjured members. That is functionally no different than the permissive test applied in the Seventh, Ninth, and Eleventh Circuits.

This case, and the Fourth Circuit's shifting, panel-specific applications of the *de minimis* test, confirm the need for guidance from this Court.

II. The Fourth Circuit's Decision Is Wrong.

The Fourth Circuit's approach to class certification cannot be reconciled with Article III or Rule 23(b)(3). Article III's threshold standing inquiry should bar uninjured inmates from joining a personal injury class seeking damages for deliberate indifference. Alternatively, a rigorous analysis of Rule 23(b)(3)'s predominance requirement should preclude certification of a damages class that includes both injured and uninjured inmates because "if there are members of a class that aren't even injured, they can't

share the same injury with the other class members." *Lab'y Corp.*, 605 U.S. at 332 (Kavanaugh, J., dissenting).

A. Article III Forbids Certification of Classes Containing Uninjured Members.

Rule 23 is a procedural rule. It cannot manufacture jurisdiction where Article III would otherwise not allow it. As the Court explained 30 years ago, "a healthy inmate who had suffered no deprivation of needed medical treatment" cannot "claim violation of his constitutional right to medical care simply on the ground that the prison medical facilities were inadequate . . . ." *Lewis v. Casey*, 518 U.S. 343, 350 (1996) (citation omitted). If courts allow such claims by uninjured plaintiffs, "the essential distinction between judge and executive would have disappeared: it would have become the function of the courts to assure adequate medical care in prisons." *Id.*

As this Court recently confirmed: "Every class member must have Article III standing in order to recover individual damages," because "Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not." *TransUnion*, 594 U.S. at 431 (quotation omitted). Standing "is not dispensed in gross," *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006), and every litigant "must demonstrate standing for each claim that they press and for each form of relief that they seek," *TransUnion*, 594 U.S. at 431. Those requirements cannot be relaxed merely because a case is captioned as a class action. "That a suit may be a class action adds nothing to the question of standing." *Lewis*, 518 U.S. at 357 (quotation omitted).

The Fourth Circuit disputed none of this. Yet it held that a single Named Plaintiff can "anchor th[e] court's jurisdiction at the class certification stage," and that absent members without standing "will properly be excluded from the class when their lack of standing becomes apparent." App. 30a-31a & n.7. That wait-and-see approach to determining standing cannot be reconciled with this Court's precedents.

Rule 23 provides a procedural device for aggregating colorable claims, no different from other procedural tools like joinder, consolidation, or intervention. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 406–08 (2010). A litigant who wants to intervene in a pending suit to pursue "separate monetary relief" must "establish [his] own Article III standing in order to" do so. *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 440, 442 (2017). Class certification adds new parties pursuing claims for individual monetary relief. If an intervenor must have Article III standing at intervention, so too must an absent class member at class certification.

Standing is a "threshold" question that must be answered before a court may "proceed at all," *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998), and the manner and degree of proof required rises with each "successive stage[] of the litigation," *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). Certification is such a stage. Indeed, it is the one that matters most in class action litigation. "For many damages class actions, certification is the whole ball game." *Speerly*, 143 F.4th at 351 (Nalbandian, J., concurring) (citing authorities on the risks and pressures associated with damages class actions). There is no point calling strikes after the game is over.

Class certification joins new parties to the case, binds them to whatever judgment follows, and gives them rights of their own. *See Devlin v. Scardelletti*, 536 U.S. 1, 7-10 (2002); *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 75 (2013) (certification "join[s] additional parties to the action"); *United States v. Sanchez-Gomez*, 584 U.S. 381, 387 (2018). As Judge Oldham put it, certification "is the thing that gives an Article III court the power to 'render dispositive judgments' affecting unnamed class members." *Flecha*, 946 F.3d at 770 (Oldham, J., concurring) (quotation omitted). The named plaintiffs cannot borrow standing from absent class members. *Lewis*, 518 U.S. at 357. The same logic applies here: absent members cannot borrow the injuries alleged by the named plaintiffs to establish standing. A litigant cannot attach his own claim for damages to a plaintiff who has standing when his claim "would be tossed out of federal court if presented on [its] own." *Cuno*, 547 U.S. at 351 (quotation omitted).

In short, it is only "where the district court has jurisdiction over the claim of each individual member of the class" that "Rule 23 provides a procedure by which the court may exercise that jurisdiction over the various individual claims in a single proceeding." *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979). Enforcing these standing requirements ensures that federal courts do not claim a "roving commission" to decide hypothetical disputes for uninjured parties. *TransUnion*, 594 U.S. at 423.

In this "era of frequent litigation, class actions, sweeping injunctions with prospective relief, and continuing jurisdiction to enforce judicial remedies, courts must be more careful to insist on the formal

rules of standing, not less so." *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 146 (2011). Now, more than ever—and in this personal injury class-action more than any other—courts should ensure that "[s]tanding cannot be acquired through the back door of a class action." *Allee v. Medrano*, 416 U.S. 802, 829 (1974) (Burger, C.J., concurring in part and dissenting in part). The Fourth Circuit's decision violates these fundamental Article III principles.

B. Rule 23 Forbids Certification of Classes Containing Uninjured Members.

Having acknowledged that the class contains uninjured members, the panel faulted Wexford for "present[ing] no concrete evidence" that those members "would be anything but outliers," and dismissed Wexford's arguments as "[m]ere conjecture." App. 32a.

That reverses the established burden. "Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule." *Wal-Mart*, 564 U.S. at 350. There was nothing conjectural about Wexford's concerns over the inclusion of uninjured inmates in this personal injury class. Indeed, it has always been common ground that the class included uninjured members. The only question—which *plaintiffs* never answered—was how many. As Wexford has explained, both here and below, the damages class likely includes thousands of uninjured inmates.

Even if Article III did not resolve the question presented, Rule 23 does. Justice Kavanaugh explained why in *Laboratory Corporation*: "Rule 23 authorizes damages class certification only when common questions of law and fact predominate. A damages class

consisting of both injured and uninjured members does not meet that requirement. . . . [I]f there are members of a class that aren't even injured, they can't share the same injury with the other class members." *Lab'y Corp.*, 605 U.S. at 332 (internal marks and quotation omitted) (collecting cases).

To satisfy Rule 23(a)'s commonality requirement, all class members must "have suffered the same injury." *Wal-Mart*, 564 U.S. at 350. If variation in the *type* of injury precludes certification, then variation in the *fact* of injury does too. That conclusion rings louder for damages classes, as Rule 23(b)(3) imposes a "far more demanding" degree of sameness than Rule 23(a)'s requirements of commonality, typicality, and adequacy. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 624 (1997); *accord Comcast Corp.*, 569 U.S. at 34. Common issues must "predominate" over individual issues, and the class vehicle must be the "superior" means of "fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

The predominance analysis must begin with the elements of the claim to see whether class members will "prevail or fail in unison." *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 465–66 (2013). To recover compensatory damages, each class member must prove a serious medical need, a Wexford policy or practice constituting deliberate indifference to that need, and an actual injury caused by the Wexford policy. *Supra* at pp. 5–7. But the lower courts never conducted the required "rigorous" analysis of the predominance requirement in the context of plaintiffs' proposed deliberate indifference claims.

As the Fourth Circuit put it, "[t]he alleged injury is that of being denied medical care for a serious medical need and therefore being subjected to the harm of withdrawal in contravention of prevailing standards of medical care." App. 23a. That mistakenly treats the constitutional question as an objective one, akin to a medical malpractice claim. But the deliberate indifference test requires proof of subjective recklessness. Moreover, treating OUD is "not a one-size-fits-all approach," D. Ct. Dkt. 180-1 (Fowlkes Report), pp. 49, and OUD "can be treated in many ways" that are consistent with constitutional standards, *Difraia*, 171 F.4th at 631. So, even if Wexford's treatment practice was declared unconstitutional in the abstract, the class would include many inmates who had no injury or damages attributable to the practice.

For example, an inmate has not suffered an injury simply because he is "monitored for opioid withdrawal" and "not . . . screened" to receive methadone or some other FDA-approved opioid. App. 12a (quoting class definition). That inmate may not have OUD, or other medical contraindications may make MOUD a nonstarter. Even if he does have OUD, the fact that he did not receive MOUD does not mean he suffered an Eighth or Fourteenth Amendment violation. If the inmate leaves jail and without suffering harm, he has suffered no economic injury, which appears to be the only injury for which class members *now* seek damages. *Supra* at pp. 14–15. That is true even if studies based on the average OUD patient show that MOUD might have decreased his "risk of future harm." *TransUnion LLC*, 594 U.S. at 435. Yet another example is an inmate with OUD who prefers to quit *all* opioids in jail, including MOUD; he suffers no injury

simply because the jail failed to consider giving him more opioids. These members have "suffered no injury and have no colorable constitutional claim." *McFields v. Dart*, 982 F.3d 511, 518 (7th Cir. 2020) (drawing similar examples and denying class certification).

When confronted with this dilemma, a court must either do the "dirty work" of separating the uninjured members, *Speerly*, 143 F.4th at 351 (Nalbandian, J., concurring), or it must deny class certification under Rule 23(b)(3)'s predominance requirement. It cannot "refuse to entertain" Wexford's arguments "simply because those arguments would also be pertinent to the merits determination," *Comcast*, 569 U.S. at 34, which is what the Fourth Circuit did here, *see* App. 31a-34a.

This certify-now, ask-questions-later approach violates Rule 23(b)(3). Even if a "*de minimis* exception" exists, courts should take seriously the condition that "some identified mechanism exists to manageably remove those uninjured members from the class." *Laboratory Corp.*, 605 U.S. at 332 n.1 (citing *Rail Freight II*, 934 F.3d at 624–26; *In re Asacol Antitrust Litig.*, 907 F.3d at 53–54). Here, no court has identified such a mechanism because none exists. Without trials on injury and damages, there is no way to determine if Wexford's alleged practice caused a constitutional injury or inflicted actual damages on any given inmate. So, like other class-action claims for damages based on alleged constitutional violations, common issues do not predominate. *See* 7AA Charles A. Wright, *et al.*, *Federal Practice and Procedure* § 1778 & n.36.

III. The Questions Presented Are Important, and This Case Is the Right Vehicle.

The consequences of "overbroad and incorrectly certified damages class actions" are "widespread and significant." *Lab'y Corp.*, 605 U.S. at 333 (Kavanaugh, J., dissenting). "Even in the mine-run case, a class action can result in 'potentially ruinous liability'" such that the district "court's decision to certify a class . . . places pressure on the defendant to settle even unmeritorious claims." *See Shady Grove*, 559 U.S. at 445 n.3 (Ginsburg, J., dissenting) (quoting Fed. R. Civ. P. 23(f) advisory committee's note to 1998 amendment).

Padding a class with uninjured members generates maximum pressure to settle or bet the company in extremely risky litigation. This nationwide prisoner class-action, aggregating tens of thousands of deliberate indifference claims—including many thousands of uninjured inmates—and seeking untold millions of dollars in personal injury damages epitomizes these problems. The Named Plaintiffs' post-appeal tactic of disclaiming pain-and-suffering damages does not change the personal-injury nature of their class-wide Section 1983 claims. Instead, it reinforces that the "ball game" is class certification, even if it must be won by foregoing significant pain-and-suffering damages that some class members could claim.

This case presents an ideal and unique vehicle to address these issues.

It is ideal because it arrives in this Court following interlocutory review of a certification order under Rule 23(f). The Fourth Circuit's remand of the injunctive-relief class has no potential to muddy the waters.

That remand concerns a different class, certified under a different subsection, on the question of whether named plaintiffs have standing to seek forward-looking relief. The damages class is fixed and affirmed. So, the obstacles in *Tyson Foods* and *Laboratory Corporation* are not present here. Moreover, the decision below is published, authored, and provides a binding rationale that this Court can address. The decisions underlying the other pending petitions are unpublished, as was the decision in *Laboratory Corporation* itself. *See Davis v. Lab'y Corp. of Am. Holdings*, No. 22-55873, 2024 WL 489288 (9th Cir. Feb. 8, 2024).

This case presents the same question that the Court intended to resolve in *Laboratory Corporation*. And, because it arises from a circuit that applies the "*de minimis*" approach, it also presents the additional issue noted in Justice Kavanaugh's dissent. *See Lab'y Corp.*, 605 U.S. at 332 n.1. If Article III and Rule 23(b)(3) tolerate some *de minimis* number of uninjured class members at the class-certification stage, what steps must courts take, or what standards must they apply, to ensure that uninjured members are separated well before trial and without the need for individualized damages proceedings?

Finally, this case demonstrates just how important it is to resolve these issues at the class-certification stage, rather than leaving them for resolution later in the case. The Fourth Circuit found no obstacle to certifying a nationwide prisoner damages class to try personal injury claims for deliberate indifference to serious medical needs, even though the class definition sweeps in thousands of inmates who were not harmed by the allegedly unconstitutional policy. Even the Ninth Circuit has acknowledged that "*Monell* is

not a magic word that allows a plaintiff to cast aside all the Rule 23 requirements for class certification," and held that plaintiffs "must show that the policies caused every class member's injury." *Black Lives Matter Los Angeles v. City of Los Angeles*, 113 F.4th 1249, 1263 (9th Cir. 2024). In the Fourth Circuit, however, uninjured inmates may drive up the settlement value and collect settlement proceeds without ever making that showing.

This Court recognized the importance of this issue ten years ago in *Tyson Foods* and meant to decide it two years ago in *Laboratory Corporation*. The lower courts remain at odds, and this Court's intervention is needed now more than ever.

CONCLUSION

This Court should grant the petition.

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED MAY 4, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-2038

LAUREN SPURLOCK; HEATHER SMITH; AND SHAWN ZMUDZINSKI, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiffs-Appellees,

v.

WEXFORD HEALTH SOURCES, INC.,

Defendant-Appellant.

Argued: December 9, 2025
Decided: May 4, 2026

OPINION

Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. Robert C. Chambers, District Judge. (3:23-cv-00476)

Before BENJAMIN and BERNER, Circuit Judges, and John A. GIBNEY, Jr., Senior United States District Judge for the Eastern District of Virginia, sitting by designation.

Appendix A

Affirmed in part and remanded in part by published opinion. Judge Berner wrote the opinion, in which Judge Benjamin and Judge Gibney joined.

BERNER, Circuit Judge:

Lauren Spurlock, Heather Smith, and Shawn Zmudzinski suffer from opioid use disorder and allege that they were denied access to medical screening and treatment for opioid dependence while incarcerated. They seek to represent two classes of similarly situated individuals in this class action lawsuit against Wexford Health Sources, Inc. Wexford, a medical services corporation, contracts with prisons and jails throughout the United States to provide comprehensive medical care services to incarcerated individuals.

Spurlock, Smith, and Zmudzinski allege that Wexford violated their rights under the Eighth and Fourteenth Amendments by failing to screen for and treat opioid dependence. They assert that Wexford maintains a policy exempting medical care for opioid dependence from the otherwise comprehensive medical care it provides to incarcerated individuals. As a result, individuals who suffer from opioid dependence are forced to undergo painful opioid withdrawal.

The district court certified two classes of plaintiffs. The first class seeks a court order requiring Wexford to provide screening and treatment to individuals with opioid use disorder who are incarcerated in institutions where Wexford provides comprehensive medical care. The second

class seeks damages for Wexford's past failure to provide this screening and treatment. For the reasons set forth below, we remand for the district court to consider in the first instance whether Spurlock, Smith, and Zmudzinski have standing to represent the class seeking injunctive relief. We affirm the district court's order certifying the class seeking damages.

I.

The tragedy of opioid dependence has led to "an extraordinary public health crisis that started at least two decades ago and has accelerated over the past decade." *City of Huntington v. AmerisourceBergen Drug Corp.*, 96 F.4th 642, 647 (4th Cir. 2024) (internal citations omitted). Our nation's jails and prisons have been at the forefront of grappling with this crisis. *See Criminal Justice Drug Facts*, Nat'l Inst. on Drug Abuse (June 2020), https://nida.nih.gov/publications/drugfacts/criminal-justice [https://perma.cc/YN46-7ASM]. Studies suggest that sixty-five percent or more of incarcerated individuals suffer from moderate to severe substance use disorder, including opioid use disorder (OUD). OUD is a progressive brain disease characterized by uncontrollable cravings for and/or dependence upon opioids. This case raises constitutional challenges to the medical treatment provided by Wexford to individuals suffering from OUD in carceral settings. We will first detail the generally accepted medical protocols for treatment of OUD before reciting the facts of this case.

Appendix A

A. Medical treatment for opioid use disorder

In 2002, the federal Food and Drug Administration (FDA) first approved the current medically accepted treatment protocol for OUD, known as medications for opioid use disorder or MOUD.[1] Under this protocol, patients are prescribed small doses of opioids in a controlled manner, thereby allowing them to manage their dependence and relieve withdrawal symptoms. Like insulin for a diabetic, these medications can be used daily throughout an individual's lifetime to treat OUD. MOUD has proved to be highly effective, drastically reducing the risk of relapse and death from opioid overdose.

The broadly accepted evidence-based medical standard of care for OUD calls for screening for and, where medically appropriate, prescribing MOUD. The World Health Organization, National Institute on Drug Abuse, Substance Abuse and Mental Health Services Administration, National Sheriffs' Association, Centers for Disease Control and Prevention, American Medical Association, and the American Academy of Pediatrics all recommend that medical providers follow this protocol. *See, e.g.*, Am. Soc'y of Addiction Med., *The ASAM National Practice Guideline for the Treatment of Opioid Use Disorder: 2020 Focused Update* 11 (2020), https://sitefinitystorage.blob.core.windows.net/sitefinity-production-blobs/docs/default-source/guidelines/npg-

1. Earlier forms of medication-assisted treatment for OUD were first approved by the FDA in the 1960s.

jam-supplement.pdf?sfvrsn=a00a52c2_2 [https://perma.cc/7EVU-RQ6Z].

Notably, the process of withdrawal from opioids, also known as detoxification, is not even considered to be a medical treatment for OUD. Symptoms of withdrawal can cause significant suffering and even lead to death. Withdrawal carries with it both short-term and long-term consequences. In the short-term, individuals may experience "uncontrolled pain, psychological distress, suicidal ideation, and suicide attempts." *Investigation of the Cumberland County Jail (Bridgeton, New Jersey)*, U.S. Dep't of Just., C.R. Div. (Jan. 14, 2021), https://www.justice.gov/usao-nj/press-release/file/1354736/dl [https://perma.cc/6BS4-4BYC]. In the long-term, individuals may face an increased risk of relapse, overdose, and death. *Id.* For those already prescribed MOUD, sudden cessation of the medication can cause withdrawal symptoms similar to opioid withdrawal itself.

B. Factual background

Wexford is a private medical corporation that contracts with nearly one hundred jails and prisons around the country to provide comprehensive medical care services to detained and incarcerated individuals.[2] Wexford's Corporate Addiction Program Manager estimates that

2. Wexford contracts to provide comprehensive medical care both for state-wide correctional systems and individual institutions. During the time period relevant to the complaint, Wexford provided services in the state prison systems in Alabama, New Hampshire, Illinois, New Mexico, and West Virginia.

at least thirty-five percent of the individuals incarcerated at Wexford-contracted institutions meet the criteria to receive MOUD.

Lauren Spurlock, Heather Smith, and Shawn Zmudzinski (collectively the Named Plaintiffs) are three such individuals. All three have struggled with OUD for years. Spurlock and Smith were detained in jails in West Virginia, and Zmudzinski was incarcerated in a New Mexico prison. Wexford contracted with all three of these carceral institutions to provide comprehensive medical care. The Named Plaintiffs allege that, as a cost-saving measure, Wexford maintains a policy of excluding screening for OUD and MOUD treatment from the comprehensive medical care services it contracts to provide at jails and prisons. The Named Plaintiffs further allege that Wexford excludes these services despite its awareness of the medical standards of care for OUD, the substantial needs of the population it serves, and the risk that categorically depriving incarcerated individuals of MOUD treatment may violate the Eighth and Fourteenth Amendments.

The allegations in the operative complaint cover the time period beginning in July 2021 and continue to the present. In support of their allegation that Wexford maintains a policy exempting OUD screening and MOUD treatment from its otherwise comprehensive medical care services, the Named Plaintiffs point to both Wexford's medical guidelines and its contracting process.

Appendix A

Prior to 2022, Wexford's medical guidelines expressly precluded providing MOUD treatment to individuals suffering from OUD. Rather, such individuals were forced to undergo withdrawal. This protocol applied to everyone—even to individuals like Named Plaintiff Heather Smith who arrived at the institution with a valid MOUD prescription.

In 2022, Wexford revised its medical guidelines. The revised guidelines outlined the dangers of withdrawal and the benefits of MOUD. Wexford recognized that "a comprehensive MOUD program that includes all three FDA-approved medications" is the medical standard of care and encouraged MOUD treatment. Parties' Joint Appendix (J.A.) 1048, 1026. The guidelines, however, also provided a caveat that Wexford was "required to follow the [individual institution's] policies." *Id.* In 2024, after this lawsuit was filed, Wexford once again updated its medical guidelines. The updated guidelines again recognize the seriousness of withdrawal and recommend the provision of MOUD treatment "if acceptable to [the individual institution's] leadership." J.A. 1140; *see also* 1162.

Despite these changes, the Named Plaintiffs assert that Wexford maintains its policy of excluding OUD screening and treatment with MOUD from the otherwise comprehensive medical care services it provides in many institutions. The Named Plaintiffs assert that Wexford—not the individual institutions—bears responsibility for this policy.

Appendix A

Prisons and jails contract with Wexford to provide comprehensive medical services to detained and incarcerated individuals. At many of the institutions with which it contracts, Wexford is the sole provider of medical care and often assumes liability for constitutional violations on behalf of those institutions. Under a comprehensive medical services contract, Wexford assumes responsibility for providing medical care for the incarcerated individuals' medical needs. Comprehensive medical care services are generally understood to include OUD treatment, as Wexford's Corporate Addiction Program Manager stated in her deposition. Yet Wexford excludes this screening and treatment from the otherwise comprehensive medical care services that it contracts to provide.[3] Unless an institution enters into an additional optional contract to provide these services, Wexford does not provide OUD screening and MOUD treatment for individuals suffering from opioid dependence, thereby forcing all such individuals to undergo withdrawal. In contrast, Wexford's Corporate Addiction Program Manager testified that Wexford always includes treatment for other serious health conditions including, for example, cancer, heart disease, or diabetes, in all of its contracts.

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3. Although Wexford advocates for and provides MOUD treatment in certain institutions, the Named Plaintiffs allege that Wexford's policy excludes screening for and treatment of OUD unless the contracting institution enters into an additional contract for MOUD services. Wexford concedes that, at the institutions included in the Damages Class, it contracted to provide comprehensive medical care services but excluded OUD screening and MOUD treatment. Wexford also concedes that failure to provide this care contravenes medical standards of care.

C. Procedural background

The Named Plaintiffs filed this class action lawsuit under 42 U.S.C. § 1983. They allege that Wexford, acting under color of state law, violated their constitutional rights and those of other similarly situated individuals through its policy of excluding screening for OUD and provision of MOUD treatment from the otherwise comprehensive medical care services that it provides at nineteen institutions (collectively the Listed Institutions).[4] According to the Named Plaintiffs, this policy forces individuals suffering from OUD to undergo withdrawal rather than receiving medically necessary treatment. The Named Plaintiffs claim that the failure to provide such screening and treatment constitutes deliberate indifference to serious medical needs in violation of the Eighth and Fourteenth Amendments.[5] Fundamentally, as

4. The Listed Institutions include: Alabama Department of Corrections, Butler County Prison, Douglas County Jail, Erie County Prison, Illinois Department of Corrections, Mohave County Adult Detention Center, Navajo County Detention Center, State of New Mexico Corrections Department, Nueces County Jail Facilities, Orleans Parish Jail, Pinal County facilities, St. Clair County Jail, St. Lucie County Jail, Southwest Virginia Regional Jails, West Virginia Division of Corrections & Rehabilitation Prisons and Jails; Western Virginia Regional Jail at Roanoke; Westmoreland County Prison; and Yavapai County Jail Facilities.

5. The Eighth Amendment applies to individuals incarcerated after their conviction. *Heyer v. U.S. Bureau of Prisons*, 849 F.3d 202, 209–10 (4th Cir. 2017). The Fourteenth Amendment applies to individuals detained pretrial. *Short v. Hartman*, 87 F.4th 593, 612 (4th Cir. 2023). Both Amendments protect an individual's right

the district court recognized, the Named Plaintiffs "contest whether Wexford can agree to provide comprehensive medical services but carve out treatment for certain chronic conditions—whether MOUD for OUD or insulin for diabetes." *Spurlock v. Wexford Health Sources, Inc.*, No. 3:23-0476, 2025 WL 2085053, at *3 (S.D. W. Va. July 24, 2025).

Shortly after filing their lawsuit, the Named Plaintiffs asked the district court to certify two classes of plaintiffs: 1) pursuant to Federal Rule of Civil Procedure 23(b)(2), a class seeking to require Wexford to provide screening and, where appropriate, treatment for individuals suffering from OUD (the Injunctive Relief Class); and 2) pursuant to Federal Rule of Civil Procedure 23(b)(3), a class seeking damages for their past injuries caused by Wexford's policy against providing this treatment at the Listed Institutions (the Damages Class). In support of their motion for class certification, the Named Plaintiffs submitted voluminous materials, including proposed class definitions; declarations of the Named Plaintiffs' attorneys; depositions of Wexford's Corporate Addiction Program Manager, Director of Addiction Medicine, and Director of Jail Operations; Wexford's medical guidelines; evidence regarding the medical standard of care for treating OUD; internal Wexford presentations on MOUD; and an expert report setting forth the Named Plaintiffs' theory of damages. In total, the Named Plaintiffs filed

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to treatment for serious medical needs during incarceration and detention.

more than 2,000 pages in support of their motion for class certification.

Wexford opposed certification of both classes. Wexford asserted that the proposed classes failed to meet the requirements of Federal Rule of Civil Procedure 23(a), namely that common questions did not unite the classes, that the Named Plaintiffs' claims were not typical of the classes, and that the Named Plaintiffs therefore could not adequately represent the classes. Wexford claimed that it did not have a policy or practice of excluding MOUD screening and treatment, pointing to its contracts with specific institutions to provide these services. Furthermore, with respect to the Injunctive Relief Class, Wexford asserted that it lacked any final policymaking authority over the provision of MOUD and therefore would be unable to comply with the requested injunction, if granted. Finally, Wexford asserted that the Damages Class failed to meet Rule 23(b)(3)'s predominance requirement because individual inquiries overwhelmed questions common to the class members.

In response to Wexford's motion, the district court expressed concern that the Named Plaintiffs' proposed class definitions were overly broad and ordered the Named Plaintiffs to narrow them. After reviewing the Named Plaintiffs' revised definitions, the district court narrowed the class definitions further. The district court ultimately certified two classes of plaintiffs, defined as follows:

Appendix A

Damages Class: All individuals who were confined at a Listed Facility during the applicable Relevant Time Period, who

(1) (a) had a diagnosis of Opioid Use Disorder (OUD) at the time of intake, and reported that diagnosis during intake, or were diagnosed during such incarceration[;] (b) had a prescription for FDA-approved Medication for Opioid Use Disorder (MOUD) at the time of intake[;] or (c) were monitored for opioid withdrawal during such incarceration[;] and

(2) who were not continued on MOUD, if already prescribed MOUD, or screened for MOUD induction[;] and

(3) who were thereafter released from the Listed Facility[.]

Injunctive Relief Class: All persons who are currently, or will in the future, be confined at a carceral facility for which Wexford provides comprehensive medical and/or healthcare services, who have a diagnosis of Opioid Use Disorder (OUD) at the time of intake, and report that diagnosis during intake, or are diagnosed during such incarceration, test positive for opioids during such incarceration, or are monitored for opioid withdrawal during such incarceration.

Spurlock, 2025 WL 2085053, at *19.

In a well-reasoned opinion, the district court concluded that these classes satisfy the requirements of Rule 23(a). The district court found that the classes are numerous; they present common questions regarding Wexford's liability and the constitutional injury alleged by the class members; the Named Plaintiffs' interests are typical so as to advance the interests of other class members; and the unnamed class members will be adequately represented. *Id.* at *12–19. The district court also determined that the revised definitions permit class members to be readily ascertained on the basis of Wexford's own records, thereby eliminating the need for individualized fact-finding. *Id.* at *9–10. The district court further found that both classes met one of the categories of Rule 23(b), as required for class certification. While acknowledging that Wexford disputes the Named Plaintiffs' account of both its alleged policy regarding MOUD and whether it has ultimate policymaking authority, the district court concluded that, at the class certification stage, it would "not [be] appropriate . . . to decide whether Wexford's or [the Named] Plaintiffs' account of Wexford's policymaking authority is the accurate one." *Id.* at *17. The district court found the Named Plaintiffs' evidence on these two points sufficient for purposes of class certification.

Wexford timely appealed, and this court granted Wexford's interlocutory petition to appeal class certification under Federal Rule of Civil Procedure 23(f). *See* 28 U.S.C. § 1292(e).

II.

Class certification is governed by Federal Rule of Civil Procedure 23. To be certified, a proposed class must satisfy all of the requirements of Rule 23(a) and one category of Rule 23(b). *Krakauer v. Dish Network, LLC*, 925 F.3d 643, 654–55 (4th Cir. 2019). "Rule 23 does not set forth a mere pleading standard." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 131 S.Ct. 2541, 180 L.Ed.2d 374 (2011). District courts must "rigorously examine whether plaintiffs have met the prerequisites of Rule 23(a)[.]" *Brown v. Nucor Corp.*, 785 F.3d 895, 903 (4th Cir. 2015). As a threshold requirement, this Court also requires that members of a class be "readily identifiable[.]" *Career Counseling, Inc. v. AmeriFactors Fin. Grp., LLC*, 91 F.4th 202, 206 (4th Cir. 2024) (quoting *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014)). Where a "court cannot identify class members without extensive and individualized fact-finding or mini-trials," then the class cannot be certified because class membership cannot be ascertained. *Krakauer*, 925 F.3d at 658 (quoting *EQT Prod. Co.*, 764 F.3d at 358) (internal quotation marks omitted).

Rule 23(a)'s requirements ensure that the Named Plaintiffs are appropriate representatives of unnamed class members such that those class members will be "fairly and adequately protect[ed]" in their absence. Fed. R. Civ. P. 23(a). The requirements are as follows: first, the numerosity requirement calls for the proposed class to be so numerous that joinder of all parties is impracticable; second, the commonality requirement mandates that

there be questions of law and fact common to the class members' claims; third, the typicality requirement calls for the claims or defenses of the named plaintiffs to be typical of the class; and fourth, the adequacy requirement mandates that those seeking to represent the class be able to do so adequately. *See Berry v. Schulman*, 807 F.3d 600, 608 (4th Cir. 2015). While each requirement must be met, the inquiries often overlap. *See Dukes*, 564 U.S. at 349 n.5, 131 S.Ct. 2541.

To be certified, a proposed class must also satisfy one of three categories enumerated in Rule 23(b). *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 423 (4th Cir. 2003). The district court certified the Injunctive Relief Class pursuant to Rule 23(b)(2), which permits class certification where "final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole[.]" Fed. R. Civ. P. 23(b)(2). The district court certified the Damages Class pursuant to Rule 23(b)(3), which permits class certification where common questions of law or fact predominate over questions affecting only individual members (the predominance requirement), and class certification is superior to other available methods of adjudication (the superiority requirement). Fed. R. Civ. P. 23(b)(3).

For the reasons explained below, we remand to the district court to consider whether the Named Plaintiffs have standing to represent the Injunctive Relief Class, and we affirm certification of the Damages Class.

Appendix A

A. Certification of the Injunctive Relief Class

Wexford argues, for the first time on appeal, that the Named Plaintiffs lack standing to represent the Injunctive Relief Class, and that therefore there is no federal court jurisdiction over their injunctive relief claim.

At class certification, standing is analyzed "based on the allegations of personal injury made by the named plaintiffs." *Hutton v. Nat'l Bd. of Exam'rs in Optometry, Inc.*, 892 F.3d 613, 620 (4th Cir. 2018) (quoting *Beck v. McDonald*, 848 F.3d 262, 269 (4th Cir. 2017)). Class representatives "must be part of the class and 'possess the same interest and suffer the same injury' as the class members." *Sharp Farms v. Speaks*, 917 F.3d 276, 297 (4th Cir. 2019) (quoting *Amchem Prods., Inc., v. Windsor*, 521 U.S. 591, 594, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997)). To have standing to seek injunctive relief, a plaintiff's asserted injury must be ongoing. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 96, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983). Even those "who have suffered a past harm . . . cannot seek injunctive relief against future [harm] unless a recurrence is likely." *Carolina Youth Action Project v. Wilson*, 60 F.4th 770, 779 (4th Cir. 2023). A plaintiff who suffered past harm can demonstrate standing to pursue injunctive relief only if she faces a "real or immediate threat" of being "wronged again." *Lyons*, 461 U.S. at 111, 103 S.Ct. 1660.

Wexford argues that, because the Named Plaintiffs are no longer detained or incarcerated, they lack standing and their claim for injunctive relief is not justiciable.

The Named Plaintiffs maintain that, although they are no longer incarcerated, they have standing to represent the Injunctive Relief Class because they face a real and immediate threat of being incarcerated again and thus are likely to be subjected again in the future to Wexford's policy of excluding screening for OUD and treatment with MOUD. *See Gerstein v. Pugh*, 420 U.S. 103, 110 n.11, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975) (holding that pretrial detention is "by nature temporary" and therefore such claims falls within the category of "capable of repetition, yet evading review" (internal quotation marks omitted)); *Jonathan R. ex rel. Dixon v. Justice*, 41 F.4th 316, 325–26 (4th Cir. 2022) (explaining this inquiry). Indeed, one of the Named Plaintiffs was already reincarcerated at a Wexford-contracted institution during the pendency of this appeal. Response Br. at 46–47.

Because standing "is a jurisdictional issue of constitutional dimensions, . . . it may be raised and addressed for the first time on appeal." *Davison v. Randall*, 912 F.3d 666, 677 (4th Cir. 2019) (quoting *Hodges v. Abraham*, 300 F.3d 432, 443 (4th Cir. 2002)). District courts may, however, be best suited to consider standing in the first instance, particularly where the standing inquiry is fact-specific and therefore necessitates fact finding. *See Pub. Int. Legal Found., Inc. v. Wooten*, 164 F.4th 362, 366 (4th Cir. 2026) (remanding to the district court to consider subject-matter jurisdiction where standing was first raised on appeal and necessitated factfinding). That is the case here. The fact-intensive arguments put forth by the parties demonstrate the wisdom of this approach. Because standing was raised for the first time on appeal,

the district court had no opportunity to address these arguments or to find relevant facts, including the Named Plaintiffs' likelihood of again being subjected to Wexford's policy. We therefore remand to the district court to consider whether the Named Plaintiffs possess standing to represent the Injunctive Relief Class.

B. Certification of the Damages Class

Wexford argues that the district court abused its discretion in finding that the Damages Class satisfies this Court's ascertainability requirement; the commonality, typicality, and adequacy requirements of Rule 23(a); and both Rule 23(b)(3)'s requirements.

i. Standard of review

"We have long recognized that district courts possess 'broad discretion in deciding whether to certify a class.'" *Mr. Dee's, Inc. v. Inmar, Inc.*, 127 F.4th 925, 929 (4th Cir. 2025) (quoting *Lienhart v. Dryvit, Sys., Inc.*, 255 F.3d 138, 146 (4th Cir. 2001)). Accordingly, class certification decisions are reviewed for abuse of discretion. *In re Marriott Int'l, Inc.*, 78 F.4th 677, 685 (4th Cir. 2023). Our review is guided by an understanding of "both the considerable advantages that our district court colleagues possess in managing complex litigation and the need to afford them some latitude in bringing that expertise to bear." *Krakauer*, 925 F.3d at 654.

A district court abuses its discretion where its factual findings are clearly erroneous such that the reviewing

court is "left with the definite and firm conviction that a mistake has been committed." *Williams v. Martorello*, 59 F.4th 68, 86 (4th Cir. 2023) (citation omitted). A district court also abuses its discretion when it "materially misapplies the requirements of Rule 23." *Brown*, 785 F.3d at 902.

ii. Ascertainability and the requirements of Federal Rule of Civil Procedure 23(a)

The district court determined as a threshold matter that the Damages Class was ascertainable, as required under our court's precedent. It also found that the Damages Class met the four requirements of Rule 23(a): numerosity, commonality, typicality, and adequacy. *Spurlock*, 2025 WL 2085053, at *12–17. We discern no abuse of discretion.

As to ascertainability, Wexford argues that mini-trials will be necessary to identify the members of the Damages Class. Under the district court's revised class definition, however, each individual must have had a documented OUD diagnosis, presented a prescription for MOUD to Wexford employees, or have been placed on supervision for withdrawal by Wexford employees. The district court found that, applying this definition, members of the Damages Class could be readily identified through examination of Wexford's own patient records. This finding was not an abuse of discretion.

Next, the district court found that the Damages Class meets the numerosity requirement. Wexford's own

estimates suggest that thirty-five percent of incarcerated individuals in any given facility satisfy the criteria for MOUD treatment. Wexford does not contest this numerosity finding.

Among Wexford's primary contentions on appeal is that the Damages Class fails to meet Rule 23(a)'s commonality requirement, which requires "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Common questions suffice for class certification where the "determination of [their] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Dukes*, 564 U.S. at 350, 131 S.Ct. 2541. The district court found that a number of common questions unite the members of the Damages Class. *Spurlock*, 2025 WL 2085053, at *14–15, *18. The common questions of fact include: whether screening for and treatment with MOUD is the medically accepted standard of care for individuals with OUD; whether Wexford was aware of a substantial risk to its patients caused by withdrawal; whether Wexford had policymaking authority to provide MOUD through its contracting process with the Listed Institutions; and whether Wexford maintained a policy of excluding screening for OUD and provision of MOUD in that process. *Id.* at *13–15. The district court also identified a common question of law, specifically, whether Wexford's alleged policy constituted deliberate indifference to a serious medical need in violation of the Eighth and Fourteenth Amendments. *Id.* at *13–14. We conclude that the district court did not abuse its discretion in finding these common questions of fact and law to be sufficient for class certification under Rule 23(a).

Wexford next argues that the Named Plaintiffs' claims are not sufficiently typical to those of absent class members, thereby defeating typicality. Typicality, however, does not require that a class representative's claim "be perfectly identical or perfectly aligned" to the claims of other class members. *Deiter v. Microsoft Corp.*, 436 F.3d 461, 467 (4th Cir. 2006). The district court found that, while some class members' circumstances may differ, the differences do not "strike at the heart of a deliberate indifference claim" if Wexford in fact maintained the alleged policy. *Spurlock*, 2025 WL 2085053, at *16. The Named Plaintiffs are sufficiently typical of the class. The parties largely agree that deprivation of this treatment for those with opioid dependence leads to withdrawal symptoms. The district court did not abuse its discretion in concluding that the fact that symptoms may vary does not defeat typicality because all the class members experienced the same alleged constitutional injury. *See generally Parsons v. Ryan*, 754 F.3d 657, 678 (9th Cir. 2014) (affirming class certification where "although a presently existing risk may ultimately result in different future harm for different inmates . . . every inmate suffers exactly the same constitutional injury when he is exposed to a single . . . policy or practice that creates a substantial risk of serious harm"); *Postawko v. Mo. Dep't of Corr.*, 910 F.3d 1030, 1034, 1038–39 (8th Cir. 2018) (upholding class certification where plaintiffs "assert[ed] that the failure of the [d]efendants to screen properly for a life-threatening disease and provide appropriate treatment expose[d] all inmates suffering from [a chronic condition] to the *same* unconstitutional injury").

Finally, Wexford argues that the district court erred in finding that the Named Plaintiffs "fairly and adequately protect the interests of the class," as required by Federal Rule of Civil Procedure 23(a)(4). Adequacy serves to "uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Prods. Inc.*, 521 U.S. at 625, 117 S.Ct. 2231. Wexford reiterates its commonality and typicality arguments under this prong. For the reasons above, we reject these arguments. We find no abuse of discretion in the district court's determination that the Named Plaintiffs adequately represent the class members and that their interests do not conflict.

Having found that the district court did not abuse its discretion in finding the Rule 23(a) requirements satisfied, we now turn to its analysis of the additional requirements imposed by Rule 23(b).

iii. The requirements of Federal Rule of Civil Procedure Rule 23(b)(3)

Wexford argues that the district court abused its discretion in finding that the Damages Class meets Rule 23(b)(3)'s predominance and superiority requirements. We address each requirement in turn.

1. Rule 23(b)(3) predominance

Rehashing its arguments regarding commonality, Wexford asserts that individualized questions of injury and liability defeat the Named Plaintiffs' ability to satisfy Rule 23(b)(3)'s predominance requirement.

Predominance is designed to "test[ ] whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods.*, 521 U.S. at 623, 117 S.Ct. 2231. The predominance inquiry "focuses not only on the existence of common questions, but also on how those questions relate to the controversy at the heart of the litigation." *EQT Prod. Co.*, 764 F.3d at 366. Rule 23(b)(3)'s predominance inquiry is similar to, but more stringent than, the commonality requirement of Rule 23(a). *Id.*

First, Wexford asserts that the district court abused its discretion in finding that the alleged class is sufficiently cohesive because each class member will be required to prove a deprivation of medical care and resulting harm. According to Wexford, liability will turn on the symptoms suffered by each individual class member. This argument misinterprets the alleged constitutional injury. The alleged injury is that of being denied medical care for a serious medical need and therefore being subjected to the harm of withdrawal in contravention of prevailing standards of medical care.

The Named Plaintiffs allege that Wexford maintained a policy excluding screening for OUD and provision of MOUD treatment at the Listed Institutions. They also assert that Wexford knew that its policy contravened prevailing medical standards of care and would force individuals to undergo withdrawal, thereby posing a serious risk to their health and wellbeing. Wexford's Director of Addiction and Corporate Addiction Program Manager testified in their depositions that screening for OUD and treatment involving MOUD is the medically

accepted standard of care. At a number of institutions, Wexford concedes that it did not screen for OUD or provide MOUD treatment. Rather, it maintained a policy of placing any individuals suffering from opioid dependence on a medically managed withdrawal plan in contravention of the medically accepted standard of care. Despite these concessions, Wexford argues that class certification is not appropriate because the injury each potential class member suffered from forced withdrawal may have differed. The record does not, however, support Wexford's conclusory assertion that these differences were so significant as to defeat predominance.

Second, Wexford argues that state and local laws as well as policies in some of the Listed Institutions altogether preclude it from providing MOUD, thereby requiring individualized determinations of liability with respect to each Listed Institution. Wexford only points to a single Listed Institution that allegedly prevented Wexford from providing this care, however. Wexford's Director of Jail Operations refuted this point, suggesting that this was not the "hard no" that Wexford alleges, but more akin to "apathy" on the part of the institution. Wexford failed to identify a single state or local law that would preclude it from providing medical treatment for OUD where appropriate. Either way, the question regarding whether Wexford possessed policymaking authority is common to the class claims. *See, e.g., Ross v. Gossett*, 33 F.4th 433, 438–39 (7th Cir. 2022) (finding that common questions predominated with respect to an alleged uniform practice).

Third, Wexford argues that it lacks policymaking authority over whether to provide MOUD within the Listed Institutions. The question of whether Wexford can be found liable ultimately turns on whether to credit the Named Plaintiffs' or Wexford's account. The Named Plaintiffs allege that Wexford maintains a policy of excluding screening for OUD and treatment with MOUD at the Listed Institutions. Wexford argues that it can only encourage, not require, the Listed Institutions to provide MOUD. The district court concluded, however, that there was sufficient evidence in the record to support the Named Plaintiffs' account that Wexford had policymaking authority through its contracting process over the treatments that it provided. On the basis of the record evidence, the district court did not abuse its discretion in finding that "Wexford takes an active role in determining what programming is available under its contracts." *Spurlock*, 2025 WL 2085053, at *12. When Wexford contracts with individual institutions, it agrees to provide "comprehensive" medical care to people who are incarcerated at the contracting institutions. J.A. 567–68, 2607. Wexford itself, however, does not include MOUD as part of its otherwise comprehensive medical care. Instead, it offers MOUD only as a service to be contracted for at an additional cost. Importantly, Wexford does not deny that it could include such care within its comprehensive services package, even if an institution ultimately declined to accept it. The district court explained that the question of whose account to credit—the Named Plaintiffs' or Wexford's—is a question more appropriately resolved at the merits stage, rather than at class certification. We agree.

Wexford further challenges the district court's finding that the Named Plaintiffs' theory of damages is sufficiently linked to their theory of liability, thereby undermining predominance. Damages determinations implicate predominance because "the efficiencies of the class action mechanism would be negated if [q]uestions of individual damages calculations . . . overwhelm questions common to the class." *In re Zetia (Ezetimibe) Antitrust Litig.*, 7 F.4th 227, 237 (4th Cir. 2021) (internal quotation marks and citation omitted). Furthermore, the Named Plaintiffs must identify a theory of class-wide damages tied to their theory of liability to support class certification. *Comcast Corp. v. Behrend*, 569 U.S. 27, 35, 133 S.Ct. 1426, 185 L.Ed.2d 515 (2013).

Before the district court, the Named Plaintiffs urged two theories of damages. First, they provided an expert report modeling economic damages based on the number of days a class member was denied adequate medical treatment. Second, they asserted noneconomic damages based on pain and suffering. On appeal, the Named Plaintiffs seemingly disclaimed their noneconomic damages model. Our inquiry focuses, therefore, on the district court's findings with respect to the economic model. The district court considered the methodology for determining economic damages proposed by the Named Plaintiffs' expert and found that damages could be resolved on a class-wide basis. The Named Plaintiffs' theory of liability is that they were unconstitutionally denied adequate medical care. The expert's damages model was based on the number of days each class member was denied constitutionally adequate medical

care. We conclude that, at this stage in the litigation, the district court did not abuse its discretion in finding that this damages model was sufficiently linked to the Named Plaintiffs' theory of liability.

2. Rule 23(b)(3) superiority

Wexford raises no new contentions in challenging the district court's finding that the superiority requirement was met. Rule 23(b)(3) requires class representatives to demonstrate that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). In evaluating superiority, courts must consider the "class members' interests in individually controlling the prosecution or defense of separate actions; the extent and nature of any litigation concerning the controversy already begun by or against class members; the desirability or undesirability of concentrating the litigation of the claims in any particular forum; and the likely difficulties in managing the class action." Fed. R. Civ. P. 23(b)(3)(A)–(D).

The district court considered each of these factors before concluding that the requirement of superiority was met. *Spurlock*, 2025 WL 2085053, at *18. The district court relied on another case, *Taylor v. Wexford Health Sources, Inc.*, to demonstrate the superior advantages of class certification. *Id.* (citing 737 F. Supp. 3d 357 (S.D.W. Va. 2024)). In *Taylor*, a single plaintiff sued Wexford after being denied his prescription for MOUD while he was detained at West Virginia's Central Regional Jail. 737 F. Supp. 3d at 365–66. Taylor suffered withdrawal symptoms

similar to those alleged by the Named Plaintiffs here. *Id.* As the district court noted, *Taylor* involved "many similar issues, similar discovery, and testimony by at least one of the same individuals deposed for this case," suggesting considerable efficiencies could be achieved through class certification. *Spurlock*, 2025 WL 2085053, at *18. Again, we find no abuse of discretion in the district court's determination that "consolidation is likely to have benefits such as conserving judicial resources and reducing litigation costs." *Id.* A denial of class certification could potentially result in hundreds of lawsuits, all considering whether the same policy maintained at the Listed Institutions caused the same constitutional injury.

3. Possible uninjured class members

Wexford argues on appeal, as it did before the district court, that the Damages Class definition is overbroad because the class may contain uninjured class members. Wexford contends that, for certification to be appropriate, each member of the Damages Class must be found to possess standing. Absent such a finding, Wexford argues both that the case is nonjusticiable under Article III and that the Rule 23 requirements cannot be met. Not so.

Although the potential that the class includes uninjured individuals implicates both Article III and Rule 23(b)(3)'s requirements, these inquiries are separate. *Krakauer*, 925 F.3d at 652; *see also* William B. Rubenstein, 1 Newberg and Rubenstein on Class Actions § 2:1 (6th ed. 2025) ("[T]he standing inquiry should simply focus on the class representative's individual standing while

representational inquiries should be made through the lens of Rule 23, not standing."). We address each below.

We begin with Article III standing. Because federal courts are courts of limited jurisdiction, there are certain "irreducible constitutional minimum[s]" that must be met for a federal court to hear a case. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). This concept is broadly known as justiciability. *Id.* Standing is one such constitutional prerequisite to our jurisdiction. *Id.* The "strictures of Article III standing apply with no less force in the context of class actions." *Fernandez v. RentGrow, Inc.*, 116 F.4th 288, 295 (4th Cir. 2024).

We disagree with Wexford's contention that the district court must find that every potential class member possesses Article III standing before certifying a class.[6] The Named Plaintiffs, as representatives of the class,

6. The Supreme Court has declined to reach "the distinct question [of] whether every class member must demonstrate standing *before* a court certifies a class." *TransUnion, LLC v. Ramirez*, 594 U.S. 413, 431 n.4, 141 S.Ct. 2190, 210 L.Ed.2d 568 (2021). Following *TransUnion*, the Supreme Court granted certiorari in *Laboratory Corporation of America Holdings v. Davis* to settle this question amidst a growing split in the circuits. 605 U.S. 327, 328, 145 S.Ct. 1608, 221 L.Ed.2d 948 (2025). It subsequently, however, dismissed the case as improvidently granted. *Id.* The Court also recently denied certiorari in a case raising the same question. *Painters & Allied Trades Dist. Council 82 v. Takeda Pharm. Co.*, No. 23-55742, 2025 WL 1683472, at *4 (9th Cir. June 16, 2025), *cert. denied*, No. 25-625, — U.S. —, — S.Ct. —, — L.Ed.2d —, 2026 WL 795106 (Mar. 23, 2026).

anchor this court's jurisdiction at the class certification stage. *See Baehr v. Creig Northrop Team, P.C.*, 953 F.3d 244, 252–53 (4th Cir. 2020). Where a class representative has standing, "'the case is justiciable and the proponent of the class suit need not demonstrate that each class member has standing' to obtain class certification." *Carolina Youth Project*, 60 F.4th at 779 (quoting 1 Rubenstein *supra*, § 2:3 & n.15 (citing cases)); *see also Fernandez*, 116 F.4th at 295 ("[W]e have analyzed standing in the early stages of a class action based on the allegations of personal injury made by the named plaintiffs[.]" (internal quotation marks and citation omitted)). At the class certification stage, district courts therefore need not find that all of the unnamed class members possess Article III standing. This conclusion does not suggest that unnamed class members are exempted from Article III's standing requirement. To the contrary. Each class member must possess Article III standing to recover damages. *TransUnion, LLC v. Ramirez*, 594 U.S. 413, 431, 141 S.Ct. 2190, 210 L.Ed.2d 568 (2021); *see also Holmes v. Elephant Ins. Co.*, 156 F.4th 413, 431 (4th Cir. 2025).[7]

7. Wexford argues that this court's ruling in *Alig v. Rocket Mortgage, LLC*, stands for the proposition that standing must be found for each class member as a precondition of class certification. Opening Br. at 55 (citing 126 F.4th 965, 974 (4th Cir. 2025)). Wexford's reading of *Alig* is incorrect. As this court noted, following *Alig*, neither the Supreme Court nor our own circuit has held that every class member must demonstrate standing at the time of class certification. *Mr. Dee's, Inc.*, 127 F.4th at 934. In accordance with Article III's requirements, *Alig* held that "to recover damages from the defendants, [e]very class member must have Article III standing for each claim that they press." 126 F.4th at 974 (internal quotation marks and citation omitted). Thus, if,

Standing is a "doctrine rooted in the traditional understanding of a case or controversy." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S.Ct. 1540, 194 L.Ed.2d 635 (2016). It "ensure[s] judges attend to actual harms rather than abstract grievances." *Wells v. Johnson*, 150 F.4th 289, 298 (4th Cir. 2025) (quoting *United States v. Texas*, 599 U.S. 670, 686, 143 S.Ct. 1964, 216 L.Ed.2d 624 (2023) (Gorsuch, J., concurring in judgment)). Evaluating the class representative's Article III standing at class certification fulfills this constitutional obligation without unnecessarily overburdening the judicial system. Wexford's approach, by contrast, would require district courts to identify each unnamed class member and determine whether each suffered a cognizable injury *prior* to class certification. This practice would "put[ ] the cart before the horse in a way that would vitiate the economies of class action procedure; in effect the trial would precede the certification." *Kohen v. Pac. Inv. Mgmt. Co.*, 571 F.3d 672, 676 (7th Cir. 2009). Accordingly, where as here, a Named Plaintiff has standing to bring the claim that is the subject of the class action, Article III standing is satisfied at the class certification stage. Accordingly, the district court did not abuse its discretion in certifying the Damages Class without making individualized determinations about the standing of each unnamed class member.

We therefore turn to predominance. Concerns about potential uninjured, unnamed class members are more

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as Wexford contends, some members of the class are ultimately found to lack Article III standing, such individuals will properly be excluded from the class when their lack of standing becomes apparent.

appropriately addressed in the context of analyzing whether the proposed class meets Rule 23(b)(3)'s predominance requirement. If a class includes some percentage of uninjured class members, then the proposed class may lack predominance. *Mr. Dee's, Inc.*, 127 F.4th at 934 (upholding denial of class certification for failure to meet the predominance requirement where approximately one-third of class members lacked a cognizable injury); *see also Huber v. Simon's Agency, Inc.*, 84 F.4th 132, 156–58 (3d. Cir. 2023) (holding that a disproportionate percentage of uninjured members can "affect the balance of common versus individual issues for purposes of predominance" under Rule 23's requirements).

The district court acknowledged that some uninjured individuals may be encompassed within the proposed class, but noted that such class members would be "[o]utliers" and therefore would not defeat predominance. *Spurlock*, 2025 WL 2085053, at *10–11. Notably, the district court narrowed the class definition to reduce or eliminate altogether the potential for uninjured class members. Under the district court's class definition, all members of the Damages Class must have been denied their own MOUD prescription or consideration for MOUD treatment. Wexford presents no concrete evidence to support its contention that uninjured class members would be anything but outliers. Mere conjecture about hypothetical uninjured class members cannot defeat predominance. *See Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 276, 134 S.Ct. 2398, 189 L.Ed.2d 339 (2014) ("That the defendant might attempt to pick off the occasional class member here or there through

individualized rebuttal does not cause individual questions to predominate."). If discovery reveals that uninjured class members are more than mere outliers, the district court could then revisit whether the class meets the requirements of Rule 23. *See* Fed. R. Civ. P. 23(c)(1)(C).

iv. Separating class certification from the merits analysis

Finally, Wexford contends that the district court abused its discretion by failing to delve sufficiently into the merits before certifying the Damages Class. We disagree.

While class certification analysis may "entail some overlap with the merits of the plaintiff's underlying claim," *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 465–66, 133 S.Ct. 1184, 185 L.Ed.2d 308 (2013) (quoting *Dukes*, 564 U.S. at 351, 131 S.Ct. 2541), it is not appropriate to treat class certification as a merits-determination or to delve into the merits further than necessary to satisfy the requirements of Rule 23. *See Williams*, 59 F.4th at 91 (declining to consider defendant's arguments because "at the class certification stage, courts may not engage in free-ranging merits inquiries" (internal citations and quotation marks omitted)).

The district court declined to reach several of Wexford's arguments, finding them premature. This was not an abuse of discretion. Wexford's argument with respect to it had ultimate policymaking authority or whether the class members suffered a constitutional injury, are merits determinations. As we have said, at the

class certification stage, the court need only determine "whether the Rule 23 requirements have been satisfied without considering whether the proposed class is likely to prevail on the merits." *Elegant Massage, LLC v. State Farm Mut. Auto. Ins. Co.*, 95 F.4th 181, 188 (4th Cir. 2024). A district court should only reach merits questions "to the extent 'that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied.'" *Glover v. EQT Corp.*, 151 F.4th 613, 618 (4th Cir. 2025) (quoting *Amgen*, 568 U.S. at 466, 133 S.Ct. 1184). The district court did not abuse its discretion here.

In considering the motion for class certification, the district court studied the copious materials submitted by the parties to determine whether each requisite element of Rule 23 was satisfied. Furthermore, the district court expressly signaled the possibility of further narrowing the class definitions—or reassessing class certification altogether—upon completion of discovery. *Spurlock*, 2025 WL 2085053, at *8–10, *18. Determinations of class certification "are not frozen once made," rather, "Rule 23 empowers district courts to 'alte[r] or amen[d]' class certification orders based on circumstances developing as the case unfolds." *Amgen*, 568 U.S. at 479 n.9, 133 S.Ct. 1184 (quoting Fed. R. Civ. P. 23(c)(1)(C)). We find no abuse of discretion in the district court's certification of the Damages Class at this stage.

III. Conclusion

We remand for the district court to consider, in the first instance, whether the Named Plaintiffs have standing

to represent the Injunctive Relief Class and affirm the district court's certification of the Damages Class.

AFFIRMED IN PART AND REMANDED IN PART

APPENDIX B — MEMORANDUM OPINION & ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA, FILED JULY 24, 2025

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CIVIL ACTION NO. 3:23-0476

LAUREN SPURLOCK; HEATHER SMITH; AND SHAWN ZMUDZINSKI, INDIVIDUALLY AND ON BEHALF OF ALL OTHER SIMILARLY SITUATED,

Plaintiffs,

v.

WEXFORD HEALTH SOURCES, INCORPORATED,

Defendant.

Filed July 24, 2025

MEMORANDUM OPINION & ORDER

Before the Court is Plaintiffs' Motion for Class Certification, ECF No. 137. Plaintiffs request the Court certify a Damages Class pursuant to Rule 23(b)(3) and an Injunctive Relief Class pursuant to Rule 23(b)(2). For the reasons that follow, the Court **GRANTS** Plaintiffs'

Motion for Class Certification but modifies the proposed class definitions.

BACKGROUND

"[T]he opioid epidemic has led to 'an extraordinary public health crisis that started at least two decades ago and has accelerated over the past decade.'" *City of Huntington v. AmerisourceBergen Drug Corp.*, 96 F.4th 642, 647 (4th Cir. 2024) (citing *City of Huntington v. AmerisourceBergen Drug Corp.*, 609 F. Supp. 3d 408, 419 (S.D.W. Va. 2022) (Faber, J.)). This case centers on a correctional health care company's response to that acceleration.

Wexford Health Sources has contracted with state and local authorities to provide comprehensive health care services in approximately 100 correctional facilities across 11 states. Def.'s Resp. at 3. More than a third of Wexford's patients suffer from Opioid Use Disorder (OUD), according to the company's representative. Pls.' Ex. 8 (Matus Dep.) at 74-76. Plaintiffs allege that Wexford had a uniform policy and practice of denying medication for Opioid Use Disorder (MOUD) to those patients in violation of the medical standard of care. Compl. ¶¶ 6, 10.

The Court's "class-certification analysis must be 'rigorous' and may 'entail some overlap with the merits of the [Plaintiffs'] underlying claim,'" although this is not a "license to engage in free-ranging merits inquiries at the certification stage." *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 465-66 (2013) (quoting

Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 351 (2011)). "Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Id.* A brief discussion of the merits and the evidence already developed in this case is necessary before the Court evaluates Rule 23 prerequisites.

I. Wexford's Guidelines on OUD and MOUD

Plaintiffs initiated this action on July 7, 2023. Compl. at 43. Plaintiffs seek to certify two classes: a forward-looking Injunctive Relief Class and a backward-looking Damages Class. The Damages Class looks back to July 2021. Until September 2022, Wexford had a policy of supervised withdrawal for patients with OUD. Pls.' Ex. 7 (Mitcheff Dep.) at 170-71. Wexford's 2022 guidelines explained the difference between this protocol and MOUD treatment: "Medically supervised opioid withdrawal should NOT be confused with medications for opioid use disorders (MOUD). Medically supervised opioid withdrawal involves treatment of withdrawal symptoms with medications usually over a short period of time while MOUD is a maintenance treatment of opioid use disorders." Pls.' Ex. 11 (2022 Medical Guidelines) at 29. MOUD does not only lessen withdrawal symptoms. As discussed below, MOUD has long-term benefits such as reducing "cravings that can result in return to [drug] use, overdose and overdose death." Pls.' Ex. 12 (2024 Medical Guidelines) at 35.

Providers were directed to monitor patients using the Clinical Opiate Withdrawal Scale (COWS), which scores

the severity of withdrawal based on gastrointestinal upset, tremors, anxiety, bone or joint aches, tears, dilation of pupils, restlessness, sweating, and other symptoms. Pls.' Ex. 10 (2017 Medical Guidelines) at 13, 18. Wexford's director of addiction medicine, Dr. Michael Mitcheff, testified that providers treated symptoms with "Tylenol, ibuprofen, anti-diarrheal agent, anti-nausea vomiting agent, something to help [patients] sleep, [and] Clonidine to help with some of the symptoms." Mitcheff Dep. at 176. The policy had one major exception: Pregnant women received MOUD treatment "ASAP" to prevent withdrawal. Pls.' Ex. 10 (2017 Medical Guidelines) at 13; Mitcheff Dep. at 177-78; *see also* Pls.' Ex. 11 (2022 Medical Guidelines) at 10 (explaining that withdrawal may result in miscarriage, stillbirth, or pre-term labor).

Wexford issued Medically Supervised Withdrawal Guidelines in September 2022. *See* Pls.' Ex. 11 (2022 Medical Guidelines). This policy recognized that patients dependent on opioids "experience particularly intense withdrawal symptoms" for five to seven days, and "post-acute withdrawal syndrome (PAWS) can last over a year." *Id.* at 11. Primary treatment considerations were: "Symptomatic medications such as Clonidine, Zofran, Tylenol and Imodium AD." *Id.* at 13. The policy encouraged MOUD "if a patient comes in on this treatment" and for new patients with OUD "if acceptable to client leadership." *Id.* at 11. The guidelines advised that opioid withdrawal "results in significant symptomatology, which can be markedly reduced with targeted therapies or prevented with continuation or initiation of medications for opioid use disorder (MOUD)." *Id.* at 30. The 2022 guidelines

included comparisons of four types of MOUD treatment: buprenorphine, buprenorphine/naloxone, methadone, and naltrexone. *Id.* at 79-80.

The Food and Drug Administration (FDA) has approved three medications to treat OUD: buprenorphine, methadone, and naltrexone. *Information about Medications for Opioid Use Disorder (MOUD)*, FDA (Dec. 26, 2024), https://perma.cc/6HCU-BU9U. Buprenorphine/naloxone formulations contain naloxone to prevent abuse. *What are the treatments for heroin use disorder?*, National Institutes of Health (April 13, 2021), https://perma.cc/F9HL-VBD9.

Wexford updated its guidelines again during the pendency of this action. The 2024 policy "encourages continuation of MOUD if a patient comes in on this treatment" and recommends that patients with OUD "should be offered MOUD and not taken through the full withdrawal process unless the patient prefers using Naltrexone, or prefers abstinence." Pls.' Ex. 12 (2024 Medical Guidelines) at 13. The policy further provides that clinicians may provide "clinically appropriate medically supervised withdrawal" where MOUD is not available "based on facility rules." *Id.* On the next line, the policy states in bold text: "If a patient needs to go through medically supervised withdrawal, a tapering dosage of buprenorphine is recommended to treat the withdrawal." *Id.*; *see also* Mitcheff Dep. at 174 (explaining that in some facilities providers use buprenorphine to make withdrawal "smoother" and "much less symptomatic"). Primary treatment considerations were: "If actively

addicted, transition onto buprenorphine then taper off gradually (if unable or unwilling to stay on transmucosal buprenorphine)" and "Symptomatic medications such as Clonidine, Zofran, Tylenol and Imodium AD." Pls.' Ex. 12 (2024 Medical Guidelines) at 15. In a section titled "Opioid Withdrawal," the guidelines state:

> It should be noted that Wexford recommends a comprehensive MOUD program that includes all three FDA-approved medications but we also understand that we are required to follow the client's policies. . . . **It is Wexford Health's recommendation that consideration be given to initiating ongoing treatment for OUD with buprenorphine. This will prevent severe opioid withdrawal, help with cravings that can result in return to use, overdose and overdose death.**

Id. at 35.

Wexford concedes that MOUD is an appropriate treatment for OUD and often the best treatment for patients with OUD. Def.'s Resp. at 1. Wexford's corporate addiction program manager, Kayleigh Matus, testified that Wexford has some level of OUD screening, MOUD treatment, or both available "in 87 percent of [its] contracts."[1] Matus Dep. at 160. Some programs are rolled

1. Matus testified: "It's taken me 18 months to build programs in 87 percent of our contracts. Although they not -- may not all be inclusive of screening universally and inductions, they are -- came a heck of a long way from doing absolutely nothing." Matus

out in phases: "phase one is continuation [of MOUD for those already on MOUD], phase two is induction." *Id.* at 61-62. However, Plaintiffs argue, "Wexford's practice in the vast majority of facilities in which it operates continues to be to force significant portions of its patient population into painful withdrawal in contravention of all medical standards of care." Pls.' Mem. at 2. Wexford argues that it has "worked tirelessly to persuade local governments to adopt some form of MOUD program within their facilities" but "does not have carte blanche to offer MOUD" in every facility. Def.'s Resp. at 4-5. One facility gave Wexford "a hard no" on offering MOUD. Matus Dep. at 214.

Cost was also a concern. *Id.* at 69; *see also* Mitcheff Dep. at 48-49 (explaining that Wexford was a "low profit business" and providing MOUD "could break a company"). Wexford covers the "pharmaceutical costs" of MOUD in some facilities, while other facilities are seeking grants or opioid settlement funds to pay for OUD treatment. Matus Dep. at 38-39. In addition to pharmaceutical costs, additional staffing is a "huge component" of rolling out MOUD programs. *Id.* at 66; *see also id.* at 42, 62, 68. "A lot of" Wexford's clients are "attempting to obtain additional funding" before they move from phase one to phase two of OUD treatment programming. *Id.* at 62-63. Matus

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Dep. at 160. Earlier in the deposition, "induction" was defined as "treatment with MOUD . . . or offering treatment of MOUD with those diagnosed as OUD." *Id.* at 57. Deposition testimony did not further clarify what level of programming is included in 87 percent of contracts, except that most facilities "now have an MOUD program where patients are continued on their medications for opioid use disorder and screened." *Id.* at 28.

testified that Wexford understands that comprehensive OUD screening and treatment may not be available at a facility due to limitations "from lack of staffing, lack of security, lack of funding." *Id.* at 63

Plaintiffs argue that Wexford put profits ahead of the health of its patients—while transferring millions of dollars to its holding company, the Bantry Group Corporation, which then paid out shareholder distributions. Pls.' Mem. at 5 (citing Pls.' Exs. 15, 24-26). The motivations behind Wexford's policies are highly contested. So is the question of whether Wexford ultimately "had the power to enforce" a policy on MOUD. *See* Def.'s Resp. at 13; Pls.' Reply at 2-3. At a fundamental level, Plaintiffs contest whether Wexford can agree to provide comprehensive medical services but carve out treatment for certain chronic conditions—whether MOUD for OUD or insulin for diabetes. Pls.' Mem. at 8. As discussed in more detail below, these are questions better addressed at a later stage of these proceedings.

II. The Standard of Care

The parties agree that MOUD significantly reduces the odds of relapse, overdose, and death. Pls.' Ex. 12 (2024 Medical Guidelines) at 8, 35; Mitcheff Dep. at 175-76, 187. Wexford's 2022 policy noted: "Although opioid withdrawal rarely causes death directly, it can occur indirectly from suicidality, overdose or the stress that withdrawal can put on a comorbid condition such as heart disease." Pls.' Ex. 11 at 30.

Mitcheff offered the example of a patient with OUD and severe coronary disease who "could be put into an adrenergic state and could have a heart attack" without MOUD. Mitcheff Dep. at 187-88. Personally, he "never had anybody have a heart attack going through opioid withdrawal or had a stroke or anything like that" but saw "a lot of people very uncomfortable." *Id.* at 190. He testified that the prevalence of overdose in the weeks following release is "staggering." *Id.* at 119. In New Hampshire, Wexford instituted a MOUD program that "ha[s] been able to impact the post-discharge overdoses significantly." *Id.* He testified that MOUD could have helped reduce the number of overdoses in Alabama, where there was a "significant" number of overdose deaths. *Id.* at 192-93.

Mitcheff testified that Wexford recognizes other benefits of MOUD, including increasing employment and reducing illicit drug use. Mitcheff Dep. at 193-94. A 2023 presentation to Wexford executives by Wexford's assistant chief medical officer listed the following evidence-based benefits of MOUD: "Decrease illicit opioid use; Reduce transmission of Hepatitis C and HIV; Decrease criminal behavior; Reduce sexual risk behaviors (e.g., trading sex for money/drugs); Improve social functioning; Retain people in treatment; Decrease overdose and death; Increase employment; [and] Decrease in domestic violence." Pls.' Ex. 20 at 57.

Mitcheff testified that there "was evidence" supporting MOUD in 2017, but it was "nowhere near as robust" as it is in 2025. Mitcheff Dep. at 195-96. He said that since "maybe 2018, 2019, there's been a real push to make

it the community standard of care and really push it everywhere, including corrections." *Id.* at 196. Mitcheff and Wexford's chief medical officer prepared an internal "C-Suite" presentation advocating for MOUD as "the community standard" and warning that Wexford faced legal risk if it did not provide MOUD. Pls.' Ex. 6 at 51 ("Class action lawsuits are coming!!!").

Plaintiffs have presented substantial evidence that MOUD is the standard of care for OUD treatment. In 2015, the American Society of Addiction Medicine recommended pharmacotherapy (i.e., MOUD) for OUD patients in the criminal justice system. Pls.' Ex. 29 at 12. This treatment "ha[d] been shown to be effective and is recommended for prisoners and parolees regardless of the length of their sentenced term." *Id.* Plaintiffs point the Court to recommendations for MOUD from the following organizations, each of which issued the recommendations in 2021 or earlier: the National Council for Behavioral Health and Vital Strategies; the National Sheriffs' Association and the National Commission on Correctional Health Care (joint guidance); the American Medical Association; the Substance Abuse and Mental Health Services Administration; and the National Commission on Correctional Healthcare. Pls.' Ex. 25; Pls.' Mem. at 12-14.

A 2021 investigation by the U.S. Department of Justice (DOJ) found staff at a New Jersey jail "acted with deliberate indifference to inmates' serious medical needs by categorically denying" MOUD. Pls.' Ex. 16 at 6. In 2022, the DOJ published guidance explaining "how the Americans with Disabilities Act (ADA) protects people

with opioid use disorder (OUD) who are in treatment or recovery, including those who take medication to treat their OUD." *Justice Department Issues Guidance on Protections for People with Opioid Use Disorder under the Americans with Disabilities Act*, U.S. Department of Justice (April 5, 2022), https://perma.cc/7F7X-GT4E.

In 2023, Wexford sent a letter to a jail reaching the following conclusion after a review of relevant case law, federal guidelines and investigations, and articles:

> In addition to continuing MAT for inmates in active programs, it is our opinion that a prison must also screen, identify and offer MAT to both inmates and pretrial detainees with OUD, regardless of recent illegal drug use and regardless of current participation in a MAT/MOUD program. While incarcerated, the prison health system is the only treatment available to these individuals. Furthermore, in addition to the ADA, recent court decisions have found that the Fourteenth and Eighth Amendments of the U.S. Constitution require that those with OUD have access to MAT/MOUD when incarcerated.

Pls.' Ex. 18 at 3.

III. The Plaintiffs

The following summaries are drawn from Plaintiffs' Complaint, Plaintiffs' responses to interrogatories, and

Defendant's expert report. Defendant's physician expert reviewed Plaintiffs' allegations and medical records. Def.'s Ex. 1 at 2.

The Complaint and exhibits refer to medications by their brand names. Narcan is a prepackaged nasal spray designed to deliver naloxone, which is a medicine that rapidly reverses an opioid overdose. *Naloxone DrugFacts*, National Institutes of Health (Jan. 11, 2022), https://perma.cc/7FN8-W3US. This drug "is not a treatment for opioid use disorder." *Id.* Suboxone is a formulation of buprenorphine that also contains naloxone "to prevent attempts to get high by injecting the medication." *What are the treatments for heroin use disorder?*, National Institutes of Health (April 13, 2021), https://perma.cc/F9HL-VBD9.

a. Laura Spurlock

Laura Spurlock is a resident of Huntington, West Virginia. Compl. ¶ 12. She developed an opioid dependence after she was prescribed opioids to ease pain after surgery. Pls.' Ex. 31 at 22. Spurlock was incarcerated at Western Regional Jail (WRJ) in Barboursville, West Virginia for three months in spring 2023. Compl. ¶ 12. Wexford was the medical contractor for the jail. *Id.* ¶ 13. Spurlock had previously been diagnosed with OUD and treated with prescribed MOUD. *Id.* ¶ 14. When she arrived at WRJ, Spurlock told Wexford staff that she had OUD and needed treatment. *Id.* She had MOUD, including Suboxone, in her possession upon intake. Pls.' Ex. 31 at 18; *see also* Def.'s Ex. 1 at 19. She did not receive MOUD and suffered

"terrible withdrawal," including pain, difficulty sleeping, nausea, and other physical discomfort. Compl. ¶ 14.

b. Heather Smith

Heather Smith became addicted to opioids in early 2022 "following a car crash that totaled her car and led to the loss of her job, for which a working car was a requirement." Pls.' Ex. 32 at 22; Compl. ¶ 153. Medical records document Smith's statements that she never used opioids before 2022 but used heroin daily by the end of that year. *See* Def.'s Ex. 1 at 21-25 (reviewing medical records from 2014 to 2022). "Opioids were easily available to her in her small county in West Virginia, and she quickly became addicted. In order to get her life back on track, she entered a rehab facility that began prescribing her Suboxone, a type of MOUD." Pls.' Ex. 32 at 22. Smith graduated from that program on December 29, 2022. Def.'s Ex. 1 at 26. In January 2023, she learned there was a warrant out for her arrest and turned herself in to law enforcement. Compl. ¶ 16. She brought her Suboxone and other prescribed medications. *Id.*; *see also* Def.'s Ex. 1 at 27.

Smith was incarcerated at South Central Regional Jail (SCRJ) in Charleston, West Virginia for nine days. Compl. ¶ 16, 158; Def.'s Ex. 1 at 28-29. Wexford was the medical contractor for the jail. Compl. ¶ 16. "Wexford verified her prescriptions, including one for MOUD, but nevertheless refused to provide her with her prescribed MOUD." *Id.* Wexford initially continued to provide her other prescribed medications—Lexapro, Vistaril, and trazodone—before discontinuing Vistaril and trazodone

"as neither are used this dose, this setting."[2] Def.'s Ex. 1 at 28-29. For her first four days at the jail, Smith "was placed on an opiate medically supervised withdrawal protocol with prescribed medications of Bentyl, clonidine, folate, ibuprofen, multivitamins, Pepto-Bismol, and Zofran for opiate withdrawal symptoms." *Id.* at 28.

Defendant's expert report states that, the day after intake, a Wexford nurse received orders "to continue Ms. Smith on the MAT program while at the SCRJ." *Id.* at 29. It appears that she did not receive the treatment. Two days after intake, "Ms. Smith placed a sick call request which stated: 'I need my meds.'" *Id.* Medical records from the week after Smith's release document her statement that she did not receive MOUD in jail. *Id.* at 30.

In jail, Smith suffered "terrible withdrawal," including pain, difficulty sleeping, nausea, sweating, and "her arms and legs jerking to the extent that she could not sleep." Compl. ¶ 17. Her "cravings returned as powerfully as ever—and she knew that there were opioids available in the jail because another woman overdosed during her stay." *Id.*

Additionally, Smith alleged that she was "forced to remain in a 'quarantine' (solitary confinement) unit for

2. Lexapro, Vistaril, and trazodone are used to treat anxiety and depression. *Escitalopram (oral route)*, Mayo Clinic (July 1, 2025), https://perma.cc/HJ8F-QXZD; *Hydroxyzine (oral route)*, Mayo Clinic (July 1, 2025), https://perma.cc/2399-TBFN; *Trazodone (oral route)*, Mayo Clinic (July 1, 2025), https://perma.cc/38NS-7APH.

the first five days of her withdrawal," without access to showers, recreation, prescription medications other than MOUD, and non-prescription baby aspirin needed for reasons unrelated to OUD. Compl. ¶ 157-58.

c. Shawn Zmudzinski

Shawn Zmudzinski "became addicted to opioids as a teenager in Farmington, New Mexico after his doctor prescribed him opioids for various injuries he suffered as a competitive skateboarder." Compl. ¶ 18. He began taking Suboxone in 2012. Def.'s Ex. 1 at 33. He filled a Suboxone prescription weeks prior to his incarceration in late 2021. *Id.* at 40. "Zmudzinski was arrested for a technical probation violation for associating with another person with a felony conviction—an individual he was attending sobriety meetings with—and forced to withdraw from his MOUD while incarcerated[.]" *Id.* ¶ 20.

He was incarcerated for one month at a facility where Wexford did not provide medical services before he was transferred to a facility where Wexford provided services. Compl. ¶ 20; Def.'s Resp. at 9; Def.'s Ex. 1 at 41-42. He was in a Wexford-staffed facility for approximately three months. Def.'s Ex. 1 at 33-43. Notes from his intake into the Wexford-staffed facility document that he told a provider he "was on Suboxone program prior to county jail." *Id.* at 42. He denied all other drug use in the prior 12 months. *Id.*

"Throughout his incarceration, Plaintiff verbally requested his previously prescribed MOUD treatment

from Wexford employees." Pls.' Ex. 33 at 19. He suffered withdrawal symptoms including pain, diarrhea, constipation, chills, and cold sweats. Compl. ¶ 20. He was not able to sleep or eat. *Id.* "He also feared another heart attack, as he had previously had three heart attacks, all during opioid withdrawal." *Id.*

His opioid cravings returned when he was released in December 2021. *Id.* On the day he was released, he told a telemedicine provider that he had a history of OUD but had been clean for five years. Def.'s Ex. 1 at 43. According to medical records, he refused a dose of Narcan when he was released. *Id.* Less than two months later, he suffered a heroin overdose. *Id.* He resumed MOUD treatment in early 2023. *Id.* at 44.

IV. Plaintiffs' Claims

Plaintiffs bring *Monell* claims for violations of the Eighth and Fourteenth Amendments.[3] Compl. ¶¶ 179-200. "To state a claim for deliberate indifference to a medical need . . . a pretrial detainee must plead that (1) they had a medical condition or injury that posed a substantial risk of serious harm; (2) the defendant intentionally, knowingly, or recklessly acted or failed to act to appropriately address the risk that the condition posed; (3) the defendant knew or should have known (a) that the detainee had that condition and (b) that the defendant's action or inaction

3. Plaintiffs also brought claims for negligence on behalf of New Mexico and West Virginia subclasses. Compl. ¶¶ 201-212. They did not move to certify New Mexico and West Virginia subclasses. *See* Pls.' Mot.; Pls.' Mem.

posed an unjustifiably high risk of harm; and (4) as a result, the detainee was harmed." *Short v. Hartman*, 87 F.4th 593, 611 (4th Cir. 2023). A pretrial detainee's claim arises under the Fourteenth Amendment. *Id.* A "more demanding Eighth Amendment standard" applies to individuals incarcerated after a formal adjudication of guilt. *Id.* at 612. Those bringing claims under the Eighth Amendment must show "that the defendant had actual knowledge of the detainee's serious medical condition and consciously disregarded the risk that their action or failure to act would result in harm." *Id.* at 611. Plaintiffs seek compensatory damages for pain and suffering under the Eighth and Fourteenth Amendments, punitive damages under the Eighth and Fourteenth Amendments, costs and attorneys' fees, and other relief. Compl. at 43.

LEGAL STANDARD

The class action device is "'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'" *G.T. v. Bd. of Educ. of Cnty. of Kanawha*, 117 F.4th 193, 202 (4th Cir. 2024) (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 155 (1982)). "The premise is that 'litigation by representative parties adjudicates the rights of all class members.'" *G.T.*, 117 F.4th at 202 (quoting *Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 338 (4th Cir. 1998)).

Rule 23(a) of the Federal Rules of Civil Procedure provides that one or more members of a class may sue as representative parties on behalf of all members if: (1) the class is so numerous that joinder of all members

is impracticable; (2) there are questions of law or fact common to the class; (3) the claims of the representative parties are typical of the claims of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). In addition to these four prerequisites, the class action must fit within "one of the three categories enumerated in Rule 23(b)." *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 423 (4th Cir. 2003). Here, Plaintiffs move for certification of the proposed Injunctive Relief Class under Rule 23(b)(2) and for certification of the proposed Damages Class under Rule 23(b)(3). Pls.' Mem. at 32-34.

Certification under Rule 23(b)(2) is appropriate when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). "The key to the (b)(2) class is the indivisible nature of the . . . remedy warranted." *EQT Prod. Co. v. Adair*, 764 F.3d 347, 357 (4th Cir. 2014) (citing *Wal-Mart*, 564 U.S at 360). "In other words, Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class." *Wal-Mart*, 564 U.S. at 360. "Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples" of the Rule 23(b)(2) class action. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997).

Certification under Rule 23(b)(3) is appropriate when "the court finds that the questions of law or fact common to class members predominate over any questions affecting

only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

Parties seeking class certification "must present evidence that the putative class complies with Rule 23," not only plead compliance with the rule. *EQT*, 764 F.3d at 357. "It is the plaintiffs' burden to demonstrate compliance with Rule 23, but the district court has an independent obligation to perform a 'rigorous analysis' to ensure that all of the prerequisites have been satisfied." *Id.* at 358 (citing *Wal-Mart*, 564 U.S. at 351).

DISCUSSION

I. Ascertainability and Redefined Classes

Rule 23 contains an implicit threshold requirement of ascertainability: Members of the proposed class must "be 'readily identifiable.'" *EQT*, 764 F.3d at 358 (quoting *Hammond v. Powell*, 462 F.2d 1053, 1055 (4th Cir.1972)). A court must be able to identify the class members using "objective criteria." *EQT*, 764 F.3d at 358. Although plaintiffs need not be able to identify the class members at the time of certification, class members must be identifiable without "extensive and individualized fact-finding or 'mini-trials.'" *Id.* (quoting *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 593 (3d Cir. 2012)).

Plaintiffs proposed a new set of class definitions to address ascertainability issues discussed at oral argument. These definitions are:

Appendix B

Damages Class: All individuals who were confined at a Listed Facility during the applicable Relevant Time Period, who (1) (a) had a diagnosis of Opioid Use Disorder (OUD) at the time of intake or during such incarceration, (b) had a prescription for FDA-approved Medication for Opioid Use Disorder (MOUD) at the time of intake, or (c) were monitored for opioid withdrawal during such incarceration; and (2) who were not screened for OUD or offered MOUD; and (3) who were thereafter released from the Listed Facility.[4]

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4. The "Listed Facilities" along with their corresponding "Relevant Time Period" are as follows: Alabama Department of Corrections (7/7/2021 to 3/31/2023), Butler County Prison (7/7/2021 to 9/30/2021), Douglas County Jail (9/1/2024 to date of judgment), Erie County Prison (7/7/2021 to 12/31/2023), Illinois Department of Corrections (7/7/2021 to date of judgment), Mohave County Adult Detention Center (6/7/2022 to date of judgment), Navajo County Detention Center (3/8/22 to date of judgment), State of New Mexico Corrections Department (7/7/2020 to date of judgment), Nueces County Jail Facilities (12/1/2023 to date of judgment), Orleans Parish Jail (6/1/2024 to date of judgment), Pinal County facilities (7/7/2021 to date of judgment), St. Clair County Jail (7/7/2021 to date of judgment), St. Lucie County Jail (7/7/2019 to 3/31/2023), Southwest Virginia Regional Jails (7/7/2021 to date of judgment), West Virginia Division of Corrections & Rehabilitation Prisons and Jails (7/7/2021 to date of judgment), Western Virginia Regional Jail at Roanoke (7/1/2024 to date of judgment), Westmoreland County Prison (7/7/2021 to 8/30/2022), and Yavapai County Jail Facilities (7/7/2021 to date of judgment). Pls.' Suppl. Notice; Pls.' Ex. 1.

> **Injunctive Relief Class:** All persons who are currently, or will in the future, be confined at a carceral facility for which Wexford provides comprehensive medical and/or healthcare services, who are diagnosed with OUD, test positive for opioids, or are monitored for opioid withdrawal.

Pls.' Suppl. Notice.

Each of the criteria for class membership is tied to Wexford's own medical records and documentation. The parties do not contest section three of the Damages Class definition. Records exist to ascertain which individuals have been released from prisons and jails.

As to the second section of the Damages Class definition, Wexford has records of its own OUD screening and MOUD treatment. However, as Defendant argues, there may be benign reasons why any given individual did not receive MOUD. A provider may determine that an individual is not a good candidate for MOUD, or an individual may have a preference against MOUD. Def.'s Resp. at 19. This action is not about the cases where a provider makes a medical determination that MOUD is not appropriate for a given patient. It is centered around the complaint that Wexford does not allow providers to make individualized determinations about the best course of treatment—instead, providers must defer to Wexford's uniform policy limiting MOUD in the facility.

Thus, the Court finds that including every individual who was not "offered MOUD" is overbroad. This problem "can and often should be solved by refining the class definition rather than by flatly denying class certification on that basis." *Messner v. Northshore Univ. Health System*, 669 F.3d 802, 825 (7th Cir. 2012); *see also* 7A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 1760 (4th ed.) ("[A court] has discretion to limit or redefine the class in an appropriate manner to bring the action within Rule 23."). The Court strikes the current language of section two of the Damages Class definition and replaces it with "who were not continued on MOUD, if already prescribed MOUD, or screened for MOUD induction."

In section one of the Damages Class definition, most of the criteria flow from intake documentation. *See* ECF No. 164-1 (exemplar intake medical history and screening form documenting current medications and whether patient had "any medical problems we should know about," used drugs, previously experienced "withdrawal problems," and was "currently detoxing"); *see also* Matus Dep. at 144 (explaining that urine drug tests are part of the intake process). To foreclose any ambiguity as to which individuals "had a diagnosis of Opioid Use Disorder (OUD) at the time of intake," the class will only include individuals who had an OUD diagnosis prior to intake *and* reported that information during the intake process. If a Wexford provider diagnoses an individual with OUD during incarceration, the provider will document the new diagnosis. The same is true for providers who monitor opioid withdrawal and treat withdrawal symptoms.

Appendix B

It is logical that the criteria for class membership flow from Wexford's own records because Plaintiffs assert claims of deliberate indifference. An Eighth Amendment deliberate indifference claim "requires that a prison official actually know of and disregard an objectively serious condition, medical need, or risk of harm." *De'Lonta v. Angelone*, 330 F.3d 630, 634 (4th Cir. 2003). Well-defined classes ensure that Wexford had knowledge of each class member's serious medical condition, medical need, or risk of harm. Here, the risk of harm comes from the increased risks of withdrawal, relapse, overdose, and death for those who would benefit from MOUD if not for a policy limiting access to the treatment.

The criteria for membership in the Injunctive Relief Class similarly flow from Wexford's own records. Wexford maintains records of its current patients. Wexford providers document reported or new OUD diagnoses, positive test results, and monitoring for opioid withdrawal. Again, to foreclose any ambiguity, the class will only include individuals who have an OUD diagnosis prior to intake *and* report that information during the intake process; receive a diagnosis while incarcerated; test positive for opioids while incarcerated; or are monitored for opioid withdrawal while incarcerated.

The Court revises the class definitions as follows:

> **Damages Class:** All individuals who were confined at a Listed Facility during the applicable Relevant Time Period, who (1) (a) had a diagnosis of Opioid Use Disorder (OUD) at

> the time of intake, and reported that diagnosis during intake, or were diagnosed during such incarceration, (b) had a prescription for FDA-approved Medication for Opioid Use Disorder (MOUD) at the time of intake, or (c) were monitored for opioid withdrawal during such incarceration; and (2) who were not continued on MOUD, if already prescribed MOUD, or screened for MOUD induction; and (3) who were thereafter released from the Listed Facility.
>
> **Injunctive Relief Class:** All persons who are currently, or will in the future, be confined at a carceral facility for which Wexford provides comprehensive medical and/or healthcare services, who have a diagnosis of Opioid Use Disorder (OUD) at the time of intake, and report that diagnosis during intake, or are diagnosed during such incarceration, test positive for opioids during such incarceration, or are monitored for opioid withdrawal during such incarceration.

The revised class definitions solve the ascertainability problems of Plaintiffs' proposed class definitions. For example, the original class definition included those "who were diagnosed with OUD, tested positive for opioids, or were monitored for opioid withdrawal using the Clinical Opioid Withdrawal Scale (COWS) prior to or during such confinement, who were not screened for OUD or offered MOUD, and who were thereafter released from the Listed Facility." Pls.' Mem. at 2-3. Defendant argued,

correctly, that this definition could include individuals who did not have OUD but tested positive for opioids at some point years prior to incarceration. Def.'s Resp. at 18. Additionally, the original class definition could require a review of "lifelong medical records (and whatever other records may reveal a positive opioid test)." *Id.* at 19. This process would require extensive and individualized fact-finding.

Under the new class definitions, there is no need to review lifelong medical records. Class members can be identified using Wexford's own records. No individualized determinations are necessary. For some class membership criteria, Wexford providers make the relevant individualized determinations in the ordinary course of business: Wexford providers administer drug tests upon intake, verify prescription medications, note diagnoses, and in some cases diagnose serious medical conditions such as OUD.

II. Standing

"[A] person exposed to a risk of future harm may pursue forward-looking, injunctive relief to prevent the harm from occurring," but that person's "standing to seek injunctive relief does not necessarily mean that the plaintiff has standing to seek retrospective damages." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 435-36 (2021). "Every class member must have Article III standing in order to recover individual damages." *Id.* at 431. In *TransUnion*, the Supreme Court explicitly did not "address the distinct

question whether every class member must demonstrate standing *before* a court certifies a class." *Id.* at 431 n.4.

Wexford argued, correctly, that Plaintiffs' first proposed Damages Class definition included individuals who tested positive for an opioid but did not have OUD. Def.'s Resp. at 18. Wexford pointed the Court to a then-pending case at the Supreme Court concerning "whether Article III precludes certification of a damages class defined in a way that necessarily includes uninjured members," Def.'s Resp. at 18 n.6, which has since been dismissed as improvidently granted. *Lab'y Corp. of Am. Holdings v. Davis*, 145 S. Ct. 1608 (2025).

The Court's revision of the Damages Class definition addresses Wexford's standing concerns. No longer does the Damages Class include individuals who tested positive for opioids but did not have OUD. Neither does the class include "the hypothetical member who was diagnosed with OUD fifteen years before confinement and made a full recovery a decade ago." Def.'s Resp. at 18. The class includes those who had a diagnosis of OUD at the time of intake, and reported that diagnosis during intake, or were diagnosed during incarceration. The hypothetical person who was diagnosed with OUD in 2009, took Suboxone for some period of years, made a complete recovery by 2014, and was booked into the Western Regional Jail in 2025 is not included as a class member because that individual did not have an OUD diagnosis or a prescription for MOUD at the time of intake. That hypothetical person will not be diagnosed or monitored for withdrawal during incarceration. All members of the Damages Class suffered

from OUD and either (1) did not receive prescribed MOUD, or (2) did not receive individualized medical care involving consideration of MOUD as a course of treatment.

III. Liability

Wexford dedicates much of its brief to the argument that it cannot be held liable for a policy limiting MOUD because "the nature and extent of MOUD access in jails and prisons is determined by what local governments will accommodate." Def.'s Resp. at 5. Wexford cites a preliminary injunction order requiring a county jail in Maine to provide an incarcerated plaintiff "with her prescribed buprenorphine . . . in whatever way the Defendants deem most appropriate in light of the [jail's] security needs." *Smith v. Aroostook Cnty.*, 376 F. Supp. 3d 146, 162 (D. Me.), *aff'd*, 922 F.3d 41 (1st Cir. 2019). The jail in that case had a set of policies governing its contract with a health center that provided medical services at the jail. One of those policies provided: "we do not use opioid, or opioid replacements in the [jail]." *Id.* at 152. The health center "offered to have one of its providers certified to prescribe buprenorphine in the Jail," but "the Jail did not accept that proposal." *Id.* at 153. The health center was not a defendant. The jail instituted its policy for "security reasons," despite an "offer of significant funds from the State" to offer MOUD. *Id.* at 152, 160. "When asked whether she was aware of studies suggesting that forced withdrawal from [MOUD] can lead to long-term negative outcomes for patients with opioid use disorder, [defendants' 30(b)(6) representative] not only answered in the negative but stated that she tends not to read studies

because she 'find[s] them boring.'" *Id.* at 152. This decision did not involve the question of the health center's liability. Moreover, the Maine jail's explicit policy prohibiting MOUD highlights the lack thereof in the record before this Court.

Only one facility gave Wexford a "hard no" on offering MOUD: the St. Clair County Jail in Illinois. Matus Dep. at 214. Matus testified that the facility has been "very, very difficult to work with." Matus Dep. at 214. Mitcheff testified that Wexford "[hasn't] been able to get an audience with them, but [Wexford] did send a letter, and they clearly understand [Wexford's] position on" MOUD. Mitcheff Dep. at 268-69; *see also* Def.'s Ex. 2 (2023 letter from Wexford to St. Clair County Jail Superintendent). Douglas Mote, Wexford's director of jail operations, testified that he "would say it's more apathy, that, you know, there has really been no response yes or no from the county as to whether they're going to let us do this or not." Pls.' Ex. 9 (Mote Dep.) at 120-21. Mote testified that a security staff shortage was "probably the reason why they have not pursued it at this time. But yet, [Mote] really [has] not been told that, but [he] know[s] that to be a fact because [he's] there on a regular basis, and [he] know[s] how many vacancies they have." *Id.* at 121. Cost and staffing have been factors in Wexford's limited MOUD treatment at other facilities. *See, e.g.*, Matus Dep. at 38-39 (describing clients "trying to obtain funding to either have an MOUD program or expand their existing MOUD program"); Mote Dep. at 110 (describing lack of staffing as a roadblock "across the country"); Mitcheff Dep. at 42-47 (explaining that cost was a barrier for certain medications

but facilities "just simply did not have the staff to treat this many people").

Wexford takes an active role in determining what programming is available under its contracts. Matus described "a collaborative effort between Wexford and the client." Matus Dep. at 69. Mote testified that Wexford proactively educated and made recommendations to its clients, many of whom were "not educated on the topic" of MOUD. Mote Dep. at 104. In his view, few facilities would have MOUD programs "if [Wexford] would have waited on the client to come to [Wexford]." *Id.* Mitcheff testified that MOUD programs "would be something [Wexford] would have to go to the clients and say, can you get some of this -- this settlement money to help pay for this because this is not in the contract. It's not something we signed up for, but it's certainly something we recommend." Mitcheff Dep. at 47.

Another district court in the Fourth Circuit rejected Wexford's argument that contractual limits on its policymaking authority shielded it from liability on a *Monell* claim for inadequate medical care. *See Bost v. Wexford Health Sources, Inc.*, No. CV ELH-15-3278, 2022 WL 4290528, at *2, 34-38 (D. Md. Sept. 16, 2022) (denying Wexford's motion for summary judgment). As here, Wexford argued it did not have final policymaking authority. *Id.* at *34. The district court observed that "Wexford employees offered testimony consistent with the view that Wexford had authority to develop at least some policies pursuant to the Medical Contract," even if local authorities ultimately had the power to overrule those

policies. *Id.* at *37. The contract required local authorities to approve Wexford's policies. *Id.* at *38. The court held that a reasonable juror could determine that the local authority "delegated at least some final policymaking authority to Wexford with respect to the provision of medical care." *Id.* Here, Wexford's corporate representatives testified that Wexford has a "collaborative" contract negotiation process involving recommendations and education for clients. The evidence in the record suggests that Wexford has at least some role in the policymaking process. Whether Wexford ultimately had the power to enforce a policy on MOUD is a fact-intensive question better addressed at a later stage of these proceedings.

IV. The Rule 23(a) Prerequisites

a. Numerosity

Rule 23 requires that a proposed class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). There is no "mechanical test" or minimum class member requirement, *Holsey v. Armour & Co.*, 743 F.2d 199, 217 (4th Cir. 1984), but "courts generally find numerosity exists when a class has 40 or more members," *Baxley v. Jividen*, 338 F.R.D. 80, 86 (S.D.W. Va. 2020).

The numerosity requirement is easily met. Wexford does not contest the numerosity prerequisite. *See* Def.'s Resp. In another class action before this Court involving West Virginia's regional jails, the Court noted the defendant's estimate that West Virginia's regional jails processed nearly 50,000 inmates in 2018 and 2019 and

housed several thousand inmates on a single day in 2020. *Baxley*, 338 F.R.D. at 86. The Court found that joinder of all individuals who are, or will be, admitted to a jail in West Virginia was impracticable due to "the overwhelmingly large and continuously changing size of the class." *Id.* at 86-87.

Here, the proposed Damages Class includes individuals with OUD in those regional jails and more than a dozen other prisons, jails, and groups of prisons and jails. The Injunctive Relief Class draws from an even larger set of facilities. Wexford provides services in approximately 100 correctional facilities, and more than one third of the individuals in those facilities have OUD. Matus Dep. at 74-76. Mitcheff testified in January 2025 that Wexford was "treating probably over 6,000 people with MOUD." Mitcheff Dep. at 127. Even 20 class members from each Wexford-served facility would result in a class with thousands of members. Other courts have found that joinder is impracticable when presented with similar or smaller class sizes. *See, e.g., Postawko v. Missouri Dep't of Corr.*, No. 2:16-CV-04219-NKL, 2017 WL 3185155, at *6 (W.D. Mo. July 26, 2017) (finding numerosity satisfied given class of at least 2,000 inmates), *aff'd*, 910 F.3d 1030 (8th Cir. 2018); *Scott v. Clarke*, 61 F. Supp. 3d 569, 584 (W.D. Va. 2014) (finding numerosity satisfied given class of 1,200 prisoners). The Court finds that joinder is impracticable.

b. Commonality

Commonality requires "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Even a single common question will do." *Wal-Mart*, 564 U.S. at 359 (cleaned up). In *Wal-Mart*, the seminal case on the commonality requirement, the Supreme Court reversed certification of a class of more than one million current and former female employees of Wal-Mart who alleged the company's culture permitted gender bias to infect pay and promotion decisions. 564 U.S. at 338-43.

Individual Wal-Mart supervisors allegedly discriminated against female employees, but there was no "glue holding the alleged *reasons* for all those decisions together." 564 U.S. at 352. The Supreme Court endorsed its explanation of the commonality prerequisite in an earlier employment discrimination case. *Id.* (citing *Falcon*, 457 U.S. at 152). In both *Wal-Mart* and *Falcon*, the proposed classes failed due to a "conceptual gap" between a claim that an individual was denied a promotion on discriminatory grounds and the existence of a class of persons who suffered the same injury as that individual. *Wal-Mart*, 564 U.S. at 353 (citing *Falcon*, 457 U.S. at 157-58).

The Supreme Court suggested two ways to close this gap: showing (1) the employer used a biased testing procedure to evaluate candidates or (2) the employer operated under a "general policy of discrimination." *Wal-Mart*, 564 U.S. at 353 (quoting *Falcon*, 457 U.S. at 157-59).

Neither the *Wal-Mart* plaintiffs nor the *Falcon* plaintiff identified a general policy of discrimination.

In *Wal-Mart*, the Supreme Court noted that Wal-Mart's official policy forbade sex discrimination. 564 U.S. at 353. The only policy of sex discrimination that plaintiffs established was a "'policy' of *allowing discretion* by local supervisors over employment matters." *Id.* at 355. The instant case is dissimilar. Plaintiffs allege that Wexford had a uniform policy of denial of MOUD in spite of the standard of care. That policy constrained local medical providers' discretion. Until late 2022, Wexford's policy did not allow providers to treat OUD with MOUD unless the patient was pregnant. Mitcheff Dep. at 170-73; *see also* Pls.' Ex. 10 (2017 Medical Guidelines). The 2022 and 2024 guidelines allow provider discretion in some circumstances but not others. Pls.' Ex. 11 (2022 Medical Guidelines) at 11 (deferring to facility preferences on MOUD); Pls.' Ex. 12 (2024 Medical Guidelines) at 13 (same).

Plaintiffs close the "conceptual gap" that doomed the *Falcon* and *Wal-Mart* plaintiffs because they tie their claims to Wexford's company-wide, uniform policies. When Wexford providers denied Plaintiffs their prescribed medication, the glue holding those actions together was Wexford's company-wide policy limiting access to MOUD.

For certification, there must be a common question "of such a nature that it is capable of classwide 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." *Wal-Mart*, 564 U.S. at 350.

"Although the rule speaks in terms of common questions, 'what matters to class certification is the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation.'" *EQT*, 764 F.3d at 360 (cleaned up). The central contention of this action is that MOUD is the standard of care for OUD treatment, even in the correctional setting, and Wexford's policy limiting access to MOUD constitutes deliberate indifference. If that contention is true, its truth "will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart*, 564 U.S. at 350.

A brief discussion of the Eighth Amendment deliberate indifference claim shows how common questions drive this litigation. The Eighth Amendment of the United States Constitution is violated when a corrections official is deliberately indifferent "to a substantial risk of serious harm to an inmate." *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). A plaintiff must satisfy a two-prong test showing (1) the injury or deprivation was "objectively, 'sufficiently serious'" and (2) the official has acted with "'deliberate indifference' to inmate health or safety." *Id.* at 834.

The first prong requires that deprivation poses "a serious or significant physical or emotional injury resulting from the challenged conditions," or "a substantial risk of such serious harm resulting from . . . exposure to the challenged conditions." *De'Lonta*, 330 F.3d at 634 (internal quotation marks and citation omitted). "In inadequate medical care cases, the Fourth Circuit has required plaintiffs to demonstrate officials' deliberate indifference to a serious medical need that has either been diagnosed

by a physician as mandating treatment or is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Baxley v. Jividen*, 508 F. Supp. 3d 28, 55 (S.D.W. Va. 2020) (cleaned up). Here, the classes include only individuals whose records indicate either an OUD diagnosis or other evidence of opioid dependence.

As to the second prong, the Fourth Circuit requires that an official "actually know of and disregard an objectively serious condition, medical need, or risk of harm." *De'Lonta*, 330 F.3d at 634. Class members are identified according to Wexford's documentation. Therefore, Wexford had knowledge of class members' serious condition. Wexford's policy allegedly disregarded the need for OUD treatment despite the company's recognition that doing so would increase the risks of relapse, overdose, and death. Plaintiffs have demonstrated "that the class members 'have suffered the same injury.'" *Wal-Mart*, 564 U.S. at 350 (citing *Falcon*, 457 U.S. at 157-58).

Wexford argues that Plaintiffs cite inapposite cases. First, Wexford argues that Plaintiffs' reliance on *Armstrong v. Davis* is improper because the case predates *Wal-Mart*, which clarified the commonality requirement. 275 F.3d 849 (9th Cir. 2001). In that case, the Ninth Circuit affirmed in relevant part the certification of a class of individuals who had a wide range of disabilities—including hearing, vision, learning, and mobility impairments and developmental disabilities—that the defendant did not accommodate. *Id.* at 868. The Ninth Circuit held that "in a civil-rights suit . . . commonality is satisfied where the

lawsuit challenges a system-wide practice or policy that affects all of the putative class members." *Id.* Wexford does not explain why this holding is abrogated by *Wal-Mart*. *See* Def.'s Resp. at 21 ("The standards have changed, so pre-*Wal-Mart* caselaw no longer controls."). In *Wal-Mart*, the Supreme Court did not create a new test that made all prior caselaw irrelevant: It pointed to its 1982 decision in *Falcon* as "describ[ing] how the commonality issue must be approached." 564 U.S. at 352. The class in *Armstrong* did not suffer from the same problems as the class in *Wal-Mart*—notably in that the *Armstrong* class identified a top-down policy that "[did] not comply with the requirements of the ADA." 275 F.3d at 863. Regardless, the classes here are unlike the class in *Armstrong* because they involve individuals with the same condition (OUD) who seek access to the same type of treatment (MOUD).

Next, Wexford argues that Plaintiffs cannot rely on two other prison litigation cases: *Postawko v. Missouri Department of Corrections*, 910 F.3d 1030 (8th Cir. 2018) and *Rogers v. Sheriff of Cook County*, No. 1:15-CV-11632, 2020 WL 7027556 (N.D. Ill. Nov. 29, 2020). In *Postawko*, the Eighth Circuit affirmed certification of a class of incarcerated plaintiffs alleging that the Missouri Department of Corrections and various related defendants violated the Eighth Amendment and the ADA by providing inadequate medical screening and care for chronic Hepatitis C (HCV) viral infections. 910 F.3d at 1033-34. In that case, the commonality requirement was satisfied by "the common question of whether the Defendants' policy or custom of withholding treatment with DAA drugs from individuals who have been or will

be diagnosed with chronic HCV constitutes deliberate indifference to a serious medical need." *Id.* at 1038. The appellate court reasoned that "the physical symptoms eventually suffered by each class member may vary, but the question asked by each class member is susceptible to common resolution." *Id.* at 1038-39.

Wexford cites *Cody v. City of St. Louis* for the proposition that the Eighth Circuit has declined to extend *Postawko* beyond "precisely defined" classes. Def.'s Resp. at 22 n.8 (citing 103 F.4th 523, 532 (8th Cir. 2024)). Wexford suggests that the instant case does not involve such "precisely defined" classes. In *Cody*, the district court certified a class with a definition that did not even reference the challenged conditions of confinement. 103 F.4th at 532. *Postawko* alleged "precise policies or customs," which "is quite unlike Plaintiffs in [*Cody*], who, in their memorandum supporting their renewed motion to certify below, complained of undifferentiated 'putrid physical conditions,' which they argued remedied 'concerns of commonality and predominance' because they were limiting 'the class' allegation to only 'poor physical conditions.'" *Id.* The instant case is not similar to *Cody*.[5] Wexford's other arguments as to *Postawko* are not relevant given the new class definitions.

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5. Wexford filed a Notice of Supplemental Authority pointing the Court to a decision denying motions for class certification in a case alleging inadequate medical care at West Virginia's Southern Regional Jail. *Rose v. PrimeCare Med., Inc.*, No. 5:22-cv-00405, 2025 WL 1417168 (S.D.W. Va. May 15, 2025) (Volk, J.). *Rose* was like *Cody.* The *Rose* plaintiffs proposed a class of "all current and former pretrial detainees and inmates" at the jail without

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In *Rogers*, a district court certified classes of pretrial and post-sentence detainees subject to the Cook County Jail's "taper-to-zero" methadone policy. *Rogers v. Sheriff of Cook Cnty.*, No. 1:15-CV-11632, 2020 WL 7027556, at *5 (N.D. Ill. Nov. 29, 2020), *modified*, No. 1:15-CV-11632, 2024 WL 1376134 (N.D. Ill. Mar. 30, 2024).[6] Again, some of Defendant's arguments are not relevant because the class definitions no longer include those with merely a positive drug test prior to incarceration. Wexford also argues that the *Rogers* classes included only those who were lawfully taking MOUD at the time they entered the jail, which meant that "[t]here was no need for the court to engage in individualized inquiries about whether members had a 'serious medical need' for which MOUD was an

narrowing the proposed class to individuals with a serious medical need. *Id.* at *8. The allegations were "remarkably general and troublingly sparse." *Id.* at *3. Plaintiffs "cite[d] multiple policy failures from [Wexford and other] Defendants, such as (1) failing to address chronic understaffing and overdue medical tasks, and (2) ensuring timely access to medical care." *Id.* at *10. The instant case is easily distinguishable from *Rose.*

6. In *Rogers*, the district court modified the class definition years after certification because the jail ended its mandatory policy and allowed "the ultimate decision to taper [to be] made on a case-by-case basis by the health care providers." 2024 WL 1376134 at *6. The revised class definitions excluded those who were incarcerated after the jail ended its mandatory policy. *Id.* Wexford argues that no class member should be included who entered a Wexford-staffed facility after 2022, when Wexford issued guidelines that permitted MOUD for non-pregnant patients. This argument fails because, unlike in *Rogers*, the Damages Class members were not subject to decisions "made on a case-by-case basis by the health care providers."

appropriate treatment." Def.'s Resp. at 23. But the parties do not seriously contest that MOUD is an appropriate treatment for individuals who were diagnosed with OUD, prescribed MOUD, or monitored for opioid withdrawal. To be sure, scenarios exist where providers will not and should not offer MOUD due to patient preference, potential interactions with other drugs in a patient's system, or some other medical reason. To account for this reality, the Damages Class definition includes those who were not "screened for MOUD induction" instead of those who were not "offered MOUD." This definition reflects Plaintiffs' assertion that Wexford "prohibits its employees from providing individualized medical care to the vast majority of its patients who suffer from OUD." Pls.' Reply at 5. Plaintiffs argue that every OUD patient should get individualized medical care, not that every patient should get MOUD. The Court finds that the commonality prerequisite is satisfied.

c. Typicality

Rule 23(a) requires that the "claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The threshold of meeting typicality is "not high." *Brown v. Nucor Corp.*, 576 F.3d 149 (4th Cir. 2009), *as amended* (Oct. 8, 2009) (quoting *Shipes v. Trinity Indus.*, 987 F.2d 311, 316 (5th Cir. 1993)). "Typicality requires plaintiffs to show (1) that their interests are squarely aligned with the interests of the class members and (2) that their claims arise from the same events and are premised on the same legal theories

as the claims of the class members." *Baxley*, 338 F.R.D. at 88 (cleaned up).

Defendant argues that Plaintiffs fail to demonstrate typicality because their constitutional claims depend "heavily upon proof of subjective elements, such as the Eighth Amendment's 'deliberate indifference' standard, which requires proof that medical providers knew a particular inmate was subjected to a 'substantial risk.'" Def.'s Resp. at 26. In some cases, subjective elements may require individualized showings that are "non-typical and unique to each" class member. *Broussard*, 155 F.3d at 342. Wexford cites a Fourth Circuit decision overturning class certification where franchisee plaintiffs alleged a franchisor made various misrepresentations. *Id.* at 340-42. "The representations made to each franchisee varied considerably." *Id.* at 342. In the instant case, Plaintiffs allege that Wexford knew of the risks to OUD patients denied MOUD. The subjective element does not vary considerably from class member to class member.

Wexford also argues that Plaintiffs' claims are typical at an "unacceptably general level." *Soutter v. Equifax Info. Servs., LLC*, 498 F. App'x 260, 265 (4th Cir. 2012). However, Wexford argues that there are factual differences in the circumstances of various class members without illuminating why those factual differences defeat typicality. A representative party's claim does not need to be identical to the claims of the class. *Id.* at 265. The important question is whether "the variation in claims strikes at the heart of the respective causes of actions." *Deiter v. Microsoft Corp.*, 436 F.3d 461, 467 (4th Cir. 2006).

Here, there are factual differences between the claim of a woman in recovery who brought Suboxone with her to jail and was denied MOUD but received medicine to treat withdrawal symptoms, as well as her other prescription medications, and a man who was high on illicit opioids when booked into jail and experienced withdrawal with only multivitamins, ibuprofen, and other symptomatic medications instead of MOUD. Those factual differences do not strike at the heart of a deliberate indifference claim. The woman's interest in prosecuting her own case tends to advance the interests of the man's claim. Accordingly, the Court finds that the typicality requirement is satisfied despite these factual differences.

d. Fair and Adequate Representation of Class Interests

Finally, Rule 23(a)(4) precludes certification unless "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Two guidelines frame the Court's review of this requirement: (1) whether there is conflict between the representatives and class members and (2) whether the representatives will "vigorously prosecute the matter on behalf of the class." *Baxley*, 338 F.R.D. at 89. The second prong considers the abilities of both the class representatives and their attorneys. *Id.* As to this prerequisite, Wexford only argues that Plaintiffs cannot be adequate because they are not typical. Wexford again highlights factual differences in the circumstances of class members without illuminating the significance of those factual differences. Def.'s Resp. at 27-28.

The Court finds no evidence of conflict between the representatives and class members. Plaintiffs do not have any interests in conflict with the interests of class members they seek to represent. Plaintiffs and their counsel have demonstrated their ability to prosecute this matter on behalf of the proposed classes. Adequacy of counsel is presumed absent proof to the contrary, *Baxley*, 338 F.R.D. at 90, and counsel have submitted declarations attesting to their experience in complex class actions and prisoner litigation, Pls.' Exs. 2-5. The law firms and practitioners of Tycko & Zavareei LLP, Forbes Law Offices, PLLC, Calwell Luce diTrapano PLLC, and Berger Montague have dedicated significant resources to investigating and prosecuting the claims in this action, as demonstrated by numerous discovery motions and this motion for class certification.

V. Satisfaction of Rule 23(b)

Even where the requirements of Rule 23(a) are met, plaintiffs must show that their action fits into one of three categories listed in Rule 23(b). *Gunnells*, 348 F.3d at 423.

a. Injunctive Relief Class

Plaintiffs move to certify the Injunctive Relief Class under Rule 23(b)(2). Certification under Rule 23(b)(2) is appropriate when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). "The key to the (b)(2) class

is the indivisible nature of the . . . remedy warranted." *EQT*, 764 F.3d at 357 (citing *Wal-Mart*, 564 U.S at 360). "In other words, Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class." *Wal-Mart*, 564 U.S. at 360.

Plaintiffs propose that a single injunction requiring Wexford to screen those who have a diagnosis of OUD at the time of intake or during incarceration, test positive for opioids during incarceration, or are monitored for opioid withdrawal during incarceration and comply with the standard of care in providing MOUD treatment will bring relief to the class. Pls.' Mem. at 34; Pls.' Reply at 26. Wexford responds that no single injunction can provide relief to each member of the class because Wexford cannot force a facility to offer MOUD. At this stage, it is not appropriate for the Court to decide whether Wexford's or Plaintiffs' account of Wexford's policymaking authority is the accurate one. For purposes of class certification, Plaintiffs have satisfied the requirements of Rule 23(b)(2).

b. Damages Class

Plaintiffs move to certify the Damages Class under Rule 23(b)(3). Certification under Rule 23(b)(3) is appropriate when "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Courts consider the following four factors: (1) "the class members' interests in individually

controlling the prosecution or defense of separate actions;" (2) "the extent and nature of any litigation concerning the controversy already begun by or against class members;" (3) "the desirability or undesirability of concentrating the litigation of the claims in the particular forum;" and (4) "the likely difficulties in managing a class action." *Id.*

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. This inquiry focuses not only on whether common questions exist "but also on how those questions relate to the controversy at the heart of the litigation." *EQT*, 764 F.3d at 366.

Courts conduct a balancing exercise that is "qualitative, not quantitative," and recognizes that common issues "may still predominate even when some individualized inquiry is required." *Ealy v. Pinkerton Gov't Servs., Inc.*, 514 F. App'x 299, 305 (4th Cir. 2013). "For example, if 'common questions predominate regarding liability, then courts generally find the predominance requirement to be satisfied even if individual damages issues remain.'" *Soutter v. Equifax Info. Servs., LLC*, 307 F.R.D. 183, 214 (E.D. Va. 2015) (quoting *Stillmock v. Weis Markets, Inc.*, 385 F. App'x 267, 273 (4th Cir. 2010)). Importantly, "[t]he entire notion of predominance implies that the plaintiffs' claims need not be identical." *Krakauer v. Dish Network, L.L.C.*, 925 F.3d 643, 658 (4th Cir. 2019).

Here, Wexford points to several individualized issues that it argues will predominate: "Whether MOUD was

medically appropriate in any given case, whether Wexford was authorized to provide MOUD in the facility where the member was housed, and whether any harm resulted from the lack of MOUD treatment all demand individualized inquiry." Def.'s Resp. at 13. Additionally, Wexford argues Plaintiffs challenge "the subjective reasonableness of an untold number of patient-specific treatment decisions," involving individual questions that predominate. Def.'s Resp. at 29. Again, Wexford emphasizes merits questions that are not appropriate to address at this stage. If at a later stage it becomes apparent that there is some small subset of cases where MOUD is not appropriate, then the Court can adjust the class definition accordingly. The redefined Damages Class includes those who the parties agree will very often benefit from MOUD: individuals with OUD, individuals already prescribed MOUD at the time of intake, and individuals being monitored for opioid withdrawal. Outliers do not overwhelm an otherwise cohesive class. The common question of whether Wexford's policy constitutes deliberate indifference predominates.

Wexford also raises arguments related to the need for individualized damages calculations. Plaintiffs' expert proposes "a common methodology that can be used to calculate economic damages based on estimated MOUD pharmaceutical and nursing costs that would have been incurred by Wexford had it implemented universal screening and induction for those who were diagnosed with OUD and qualified for MOUD." Pls.' Mem. at 37 (citing Pls.' Ex. 13). Wexford argues that Plaintiffs' proposal "offers no viable path out of this thicket of patient-specific damages proof and harm determinations." Def.'s Resp. at 30.

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The need for patient-specific damages determinations does not defeat certification of the Damages Class. "Rule 23 explicitly envisions class actions with such individualized damage determinations." *Gunnells*, 348 F.3d at 428. The Court need not identify the proper mechanism for setting damages at this stage. "If liability is found, then a damages-setting mechanism can be developed with input from the parties." *Rogers*, 2020 WL 7027556, at *7 (noting possible mechanisms based on withdrawal symptoms described in medical records or "damages amounts that are fixed according to a certain schedule, including the number of days that the class member suffered the symptom"). The parties retread the damages issues in the context of superiority.

Here, proving the relevant issues "in individual trials would require enormous redundancy of effort, including duplicative discovery, testimony by the same witnesses in potentially hundreds of actions, and relitigation of many similar, and even identical, legal issues." *Gunnells*, 348 F.3d at 426. In their briefing, the parties did not discuss other litigation by class members in the context of superiority. The Court observes that in another case in this district, a single plaintiff sued Wexford after he was denied his prescribed Suboxone at West Virginia's Central Regional Jail. *Taylor v. Wexford Health Sources, Inc.*, 737 F. Supp. 3d 357, 365-67 (S.D.W. Va. 2024) (Berger, J.). The plaintiff testified that "he was too ill to get out of bed and did not know where he was at times during his withdrawal" and overdosed shortly after his release. *Id.* at 366. This case settled weeks before trial. *See* Notice of Settlement, *Taylor* (No. 2:23-cv-00475) (ECF No. 263).

Taylor involved many similar issues, similar discovery, and testimony by at least one of the same individuals deposed for this case. The similarities between this case and *Taylor* demonstrate that consolidation is likely to have benefits such as conserving judicial resources and reducing litigation costs.

Additionally, "class certification will provide access to the courts for those with claims that would be uneconomical if brought in an individual action." *Gunnells*, 348 F.3d at 426. Consolidation is especially economical for the class members who suffer pain for a matter of days or weeks during incarceration but do not overdose after release. *Cf. Taylor*, 737 F. Supp. 3d at 365-67 (describing plaintiff's account that he brought suit after he "nearly died"). The Court finds that a class action is superior to other methods to adjudicate this controversy.

CONCLUSION

The Court **GRANTS** Plaintiffs' Motion for Class Certification, ECF No. 137, but redefines the proposed class definitions as follows:

> **Damages Class:** All individuals who were confined at a Listed Facility during the applicable Relevant Time Period, who (1) (a) had a diagnosis of Opioid Use Disorder (OUD) at the time of intake, and reported that diagnosis during intake, or were diagnosed during such incarceration, (b) had a prescription for FDA-approved Medication for Opioid Use Disorder

(MOUD) at the time of intake, or (c) were monitored for opioid withdrawal during such incarceration; and (2) who were not continued on MOUD, if already prescribed MOUD, or screened for MOUD induction; and (3) who were thereafter released from the Listed Facility.[7]

Injunctive Relief Class: All persons who are currently, or will in the future, be confined at a carceral facility for which Wexford provides

7. The "Listed Facilities" along with their corresponding "Relevant Time Period" are as follows: Alabama Department of Corrections (7/7/2021 to 3/31/2023), Butler County Prison (7/7/2021 to 9/30/2021), Douglas County Jail (9/1/2024 to date of judgment), Erie County Prison (7/7/2021 to 12/31/2023), Illinois Department of Corrections (7/7/2021 to date of judgment), Mohave County Adult Detention Center (6/7/2022 to date of judgment), Navajo County Detention Center (3/8/22 to date of judgment), State of New Mexico Corrections Department (7/7/2020 to date of judgment), Nueces County Jail Facilities (12/1/2023 to date of judgment), Orleans Parish Jail (6/1/2024 to date of judgment), Pinal County facilities (7/7/2021 to date of judgment), St. Clair County Jail (7/7/2021 to date of judgment), St. Lucie County Jail (7/7/2019 to 3/31/2023), Southwest Virginia Regional Jails (7/7/2021 to date of judgment), West Virginia Division of Corrections & Rehabilitation Prisons and Jails (7/7/2021 to date of judgment), Western Virginia Regional Jail at Roanoke (7/1/2024 to date of judgment), Westmoreland County Prison (7/7/2021 to 8/30/2022), and Yavapai County Jail Facilities (7/7/2021 to date of judgment). Excluded from the Class is Defendant, and any entities in which Defendant has a controlling interest, the Defendant's employees, any Judge to whom this action is assigned and any member of such Judge's staff and immediate family, as well as claims for personal injury or wrongful death. *See* Compl. ¶ 171.

> comprehensive medical and/or healthcare services, who have a diagnosis of Opioid Use Disorder (OUD) at the time of intake, and report that diagnosis during intake, or are diagnosed during such incarceration, test positive for opioids during such incarceration, or are monitored for opioid withdrawal during such incarceration.

Plaintiffs' claims are based on violations of the Eighth and Fourteenth Amendments to the Constitution for failing to provide adequate medical care. The law firms and practitioners of Tycko & Zavareei LLP, Forbes Law Offices, PLLC, Calwell Luce diTrapano PLLC, and Berger Montague are appointed class counsel.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: July 24, 2025

/s/ Robert C. Chambers
Robert C. Chambers
United States District Judge

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED JUNE 1, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-2038
(3:23-cv-00476)

LAUREN SPURLOCK; HEATHER SMITH;
AND SHAWN ZMUDZINSKI, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

Plaintiffs-Appellees,

v.

WEXFORD HEALTH SOURCES, INC.

Defendant-Appellant.

Filed June 1, 2026

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 40. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX D — CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

United States Constitution
Article III

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States,--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court

shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Appendix D

FEDERAL RULES OF CIVIL PROCEDURE

Rule 23. Class Actions

(a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

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

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

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

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

Appendix D

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

(1) *Certification Order.*

(A) *Time to Issue.* At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) *Defining the Class; Appointing Class Counsel.* An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) *Altering or Amending the Order.* An order that grants or denies class certification may be altered or amended before final judgment.

(2) *Notice.*

(A) *For (b)(1) or (b)(2) Classes.* For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) *For (b)(3) Classes.* For any class certified under Rule 23(b)(3)--or upon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)--the court must direct to class members the best notice that is practicable under the circumstances,

including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

(3) *Judgment.* Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) *Particular Issues.* When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) *Subclasses.* When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) Conducting the Action.

(1) *In General.* In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require--to protect class members and fairly conduct the action--giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair

and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) *Combining and Amending Orders.* An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class--or a class proposed to be certified for purposes of settlement--may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) Notice to the Class.

(A) *Information That Parties Must Provide to the Court.* The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.

(B) *Grounds for a Decision to Give Notice.* The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to:

(i) approve the proposal under Rule 23(e)(2); and

(ii) certify the class for purposes of judgment on the proposal.

(2) *Approval of the Proposal.* If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

(3) *Identifying Agreements.* The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) *New Opportunity to be Excluded.* If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) *Class-Member Objections.*

(A) *In General.* Any class member may object to the proposal if it requires court approval under this subdivision (e). The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.

(B) *Court Approval Required for Payment in Connection with an Objection.* Unless approved

by the court after a hearing, no payment or other consideration may be provided in connection with:

(i) forgoing or withdrawing an objection, or

(ii) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

(C) *Procedure for Approval After an Appeal.* If approval under Rule 23(e)(5)(B) has not been obtained before an appeal is docketed in the court of appeals, the procedure of Rule 62.1 applies while the appeal remains pending.

(f) Appeals. A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule, but not from an order under Rule 23(e)(1). A party must file a petition for permission to appeal with the circuit clerk within 14 days after the order is entered, or within 45 days after the order is entered if any party is the United States, a United States agency, or a United States officer or employee sued for an act or omission occurring in connection with duties performed on the United States' behalf. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.

(g) Class Counsel.

(1) *Appointing Class Counsel.* Unless a statute provides otherwise, a court that certifies a class must

appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) *Standard for Appointing Class Counsel.* When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) *Interim Counsel.* The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) *Duty of Class Counsel.* Class counsel must fairly and adequately represent the interests of the class.

(h) Attorney's Fees and Nontaxable Costs. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).