

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Amy McFalls, Jason Crunetti,	:	
Vincent Esposito, Gregory	:	
Jackson, and Brenda Lacy, on behalf	:	
of themselves and all persons similarly	:	
situated,	:	
	:	
Petitioners	:	
	:	
	:	
v.	:	No. 4 M.D. 2021
	:	
	:	
38th Judicial District, Hon.	:	
Thomas DelRicci, President Judge	:	
(in his official capacity),	:	
Michael R. Kehs, Esq. Court	:	
Administrator (in his official capacity),	:	
and Lori Schreiber, Clerk of Courts (in	:	
her official capacity),	:	
	:	
Respondents	:	Argued: January 25, 2023

BEFORE THE HONORABLE ELLEN CEISLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE CEISLER

FILED: April 6, 2023

I. Introduction

Currently before this Court is the Application for Class Certification and for Hearing After Discovery (Class Certification Application) filed by Petitioners Amy McFalls, Jason Crunetti, Vincent Esposito, Gregory Jackson, and Brenda Lacy, on behalf of themselves and all persons similarly situated (collectively Petitioners). The Class Certification Application pertains to Petitioners’ class action petition for review (PFR) that was filed

in [this Court’s] original jurisdiction, through which [Petitioners] seek declaratory and injunctive relief against Respondents 38th Judicial District, Hon. Thomas DelRicci, President Judge (in his official capacity),

Michael R. Kehs, Esq. Court Administrator (in his official capacity), and Lori Schreiber, Clerk of Courts (in her official capacity) (collectively Respondents) regarding the manner in which Respondents assess statutory costs upon guilty defendants in criminal matters. Petitioners allege that Respondents impose such costs without proper notice in an arbitrary and, at times, duplicative manner. In doing so, Petitioners allege that Respondents[] both exceed their statutory authority and violate Petitioners' constitutional rights to due process and equal protection.

McFalls v. 38th Jud. Dist. (Pa. Cmwlth. No. 4 M.D. 2021, filed Aug. 6, 2021) (*McFalls I*), slip op. at 1-2, 2021 WL 3700604, at *1.¹ Petitioners request, pursuant to Pennsylvania Rule of Civil Procedure 1707,² that this Court certify the class as consisting of the following:

All individuals who have appeared or will appear as defendants in criminal cases in the 38th Judicial District and against whom any duplicated costs have been or will be imposed in one criminal case when the charges arise out of the same occurrence, or in which the charges have been included in one complaint, information, or indictment by the use of different counts.

¹ A more detailed description of Petitioners' claims and requested relief can be found in *McFalls I*. See slip op. at 2-6, 2021 WL 3700604, at *1-*3.

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- (a) Within thirty days after the pleadings are closed or within thirty days after the last required pleading was due, the plaintiff shall move that the action be certified as a class action. The court may extend the time for cause shown. If the plaintiff fails to move for certification, the court if so notified shall promptly set a date for a certification hearing.
 - (b) The court may postpone the hearing to a later date pending the disposition of other motions or to permit discovery with respect to the class action issues.
 - (c) The hearing shall be limited to the Class Action Allegations. In determining whether to certify the action as a class action the court shall consider all relevant testimony, depositions, admissions and other evidence.

Pa. R.Civ.P. 1707.

Class Certification Application at 1-2. This Court held a hearing on January 25, 2023, regarding the Class Certification Application, and now issues this opinion in accordance with the responsibilities imposed upon it by law.³

II. Findings of Fact

(1.) The Common Pleas Case Management System (CPCMS) is used in Pennsylvania's Courts of Common Pleas as a database for documenting the events that occur in each criminal case, as well as for accounting, case management, and reporting purposes. Joint Stipulations of Fact and Law Submitted for the January 25, 2023 Class Certification Hearing (Joint Stipulation) ¶¶1-2.

(2.) In the 38th Judicial District, when a defendant pleads guilty to or is convicted of criminal charges in a given case, a judge will then hold a hearing at which they sentence that defendant and, in addition, may order the defendant to pay a fine or restitution. *Id.* ¶4.

(3.) In conjunction with the conviction or guilty plea, defendants are statutorily required to pay certain costs, unless expressly relieved of that obligation in whole or in part by the sentencing judge. *Id.* ¶5 (citing 42 Pa. C.S. § 9728(b.2)).

(4.) In the 38th Judicial District, sentencing judges regularly order defendants to pay "costs," sometimes orally identifying each count for which "costs" must be paid during the course of a sentencing hearing. Joint Stipulation ¶¶6, 9.

(5.) The 38th Judicial District's sentencing judges do not otherwise have a policy or routine of specifying which costs they have ordered defendants to pay or the amount owed as a result. *Id.* ¶10.

³ When a court "certif[ies], refus[es] to certify or revoke[s] a certification of a class action, the court shall set forth in an opinion accompanying the order the reasons for its decision on the matters specified in [Pennsylvania] Rules [of Civil Procedure] 1702, 1708 and 1709, including findings of fact, conclusions of law[,] and appropriate discussion." Pa. R.Civ.P. 1710(a).

(6.) Nor is there an administrative process in the 38th Judicial District, whereby a criminal defendant or their attorney is provided at the time of sentencing with an itemized breakdown that shows the costs imposed by a sentencing judge and the specific charges to which those costs apply. *Id.* ¶30.

(7.) Instead, court clerks record the directives issued by the judges during the sentencing hearings on a form known as either a disposition sheet, a sentencing sheet, or a green sheet (Disposition Sheet). *Id.* ¶¶11, 13-16.

(8.) No completed Disposition Sheet contains information regarding the specific statutory costs that a given defendant is liable for or the precise dollar amount that is owed as a result. *Id.* ¶14.

(9.) Unless a sentencing judge issues an order regarding costs in response to a defendant's motion, the relevant Disposition Sheet and hearing transcript constitute the only proof as to the sentencing judge's imposition of costs upon a given defendant. *Id.* ¶16.

(10.) Once a court clerk has completed a Disposition Sheet, and the sentencing judge has signed it, the Disposition Sheet is sent to another 38th Judicial District employee, known as a criminal court assistant. The criminal court assistant updates the affected defendant's case file on CPCMS, in relevant part, by recording the phrase "defendant to pay costs" for each count regarding which the sentencing judge has ordered costs to be paid. *Id.* ¶¶18-20, 24.

(11.) The criminal court assistant then transmits the pertinent case file and Disposition Sheet to the Clerk of Court's Office. *Id.* ¶21.

(12.) In the 38th Judicial District, the Clerk of Court's Office is tasked with collecting all costs, fines, and monetary restitution from criminal defendants. *Id.* ¶29.

(13.) A Clerk of Court's Office employee, known as a disposition clerk, then uses CPCMS and the Disposition Sheet to assess specific costs against the defendant. *Id.* ¶¶8, 25-27.

(14.) All of the disposition clerks in the Clerk of Court's Office have been trained in a uniform way regarding how to interpret Disposition Sheets and assess the costs that have been imposed upon defendants. *Id.* ¶28.

(15.) The Clerk of Court's Office has an interpretive policy, whereby if a Disposition Sheet shows that a sentencing judge has imposed costs on a defendant for multiple counts, then all eligible costs will be assessed against the defendant for those counts. This policy was adopted in 2015 at the instruction of the 38th Judicial District's leadership and has been in place since then. *Id.* ¶23.

(16.) "Verifiers" employed by the Clerk of Court's Office check the information the disposition clerks have entered into CPCMS, in order to ensure that the assessed costs for each case match the information memorialized on each relevant Disposition Sheet. *Id.*

(17.) At no point during this process is information recorded in CPCMS that explicates the reasoning behind a given sentencing judge's decision to impose costs upon a defendant on multiple counts. *Id.* ¶22.

(20.) The Clerk of Court's Office does not automatically or proactively provide defendants or their attorneys with itemized breakdowns of assessed costs, but instead provides them upon request and, in addition, makes them available through criminal docket sheets that are accessible online. *Id.* ¶31.

(21.) Petitioners assert that duplicative costs were assessed against 12,918 criminal defendants in the 38th Judicial District between the beginning of 2008 and the end

of 2018, and against an additional 590 between January 1, 2019, and October 26, 2020. *See* PFR ¶¶10-11;

(22.) Petitioners entered Exhibit 1 into evidence at the January 25, 2023 hearing regarding their Class Certification Application. Exhibit 1 summarizes, in spreadsheet form, 320 criminal cases that were adjudicated in the 38th Judicial District between January 5, 2021, and February 28, 2022, in which sentencing judges assessed duplicative court costs against defendants. *See* Petitioners' Ex. 1.

(23.) In response to a request made by this Court during the course of the hearing, Petitioners filed of record criminal docket sheets from 30 of those 320 criminal cases. *See* Petitioners' Ex. 14.

(24.) These 30 docket sheets each individually show the following categories of information: (a) the name of a specific defendant; (b) a single criminal docket number for that defendant; (c) the charges lodged against the defendant under that docket number; (d) a single offense tracking number; (e) the disposition of the charges, culminating in either a guilty plea or a guilty verdict; (f) the specific costs assessed against the defendant as a result of that disposition; and (g) highlights indicating which of those costs were assessed more than once under that docket number. *See id.*

(25.) Petitioners did not provide evidence regarding Respondents' cost assessment procedures or policies for any other time period.

(26.) Petitioners have also filed of record their own criminal docket sheets for their cases from the 38th Judicial District, which each individually show information that falls into the same categories as that shown through the aforementioned 30 representative docket sheets. *See* Petitioners' Ex. 15.

(27.) Petitioner McFalls was sentenced in the 38th Judicial District on December 11, 2019. *See id.*

(28.) Petitioner Crunetti was sentenced in the 38th Judicial District on July 11, 2019. *See id.*

(29.) Petitioner Esposito was sentenced in the 38th Judicial District on October 17, 2019. *See id.*

(30.) Petitioner Jackson was sentenced in the 38th Judicial District on December 5, 2019. *See id.*

(31.) Petitioner Lacy was sentenced in the 38th Judicial District on October 4, 2019. *See id.*

(32.) In keeping with existing policies, Respondents did not proactively provide Petitioners with an itemized, per-charge breakdown of the costs that had been assessed against them as a result of these sentences. PFR ¶¶39-57; *see* Joint Stipulation ¶¶30-31.

(33.) Petitioners do not currently have any active or pending criminal charges against them in the 38th Judicial District. Joint Stipulation ¶¶32-33.

III. Discussion

The standard that governs a court's determination regarding whether to certify a class action has been articulated through both the Pennsylvania Rules of Civil Procedure and our *corpus* of related case law. Certification is appropriate only in the event each of the following five requirements are satisfied:

- (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;

(4) the representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in [Pennsylvania] Rule [of Civil Procedure] 1709; and

(5) a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in [Pennsylvania] Rule[of Civil Procedure] 1708.

Pa. R.Civ.P. 1702. “Rule 1702 . . . [is] written in the conjunctive, meaning that in order to obtain class action status, all prerequisites must be met.” *Keppley v. Sch. Dist. of Twin Valley*, 866 A.2d 1165, 1176 (Pa. Cmwlth. 2005).

The criteria for class action certification are often referred to as numerosity, commonality, typicality, fair and adequate representation, and fairness and efficiency. “The burden of proving that class certification is appropriate falls upon the party seeking certification,” and “decisions in favor of maintaining a class action should be liberally made.” *Foust v. Se. Pa. Transp. Auth.*, 756 A.2d 112, 118 (Pa. Cmwlth. 2000). “While the class proponent’s burden is not heavy, more than mere conjecture or conclusory allegations are required to enable a court to conclude that the class certification requirements are met.” *Dunn v. Allegheny Cnty. Prop. Assessment Appeals and Review*, 794 A.2d 416, 423 (Pa. Cmwlth. 2002)

Muscarella v. Com., 39 A.3d 459, 467 (Pa. Cmwlth. 2012). A court’s decision regarding “the appropriateness of class treatment is an inherently fact-laden inquiry . . . [and] where material facts are in dispute, class certification . . . rulings are to be premised on properly determined facts, not assumed ones.” *Basile v. H & R Block, Inc.*, 52 A.3d 1202, 1208 (Pa. 2012). “A court should not dispose of class certification issues on the basis of the court’s evaluation of the ‘underlying merits of the claim.’ . . . However, ‘courts may need to examine the elements of the underlying cause of action in order to dispose of class issues properly.’” *Doe I v. Franklin Cnty.*, 272 A.3d 1022, 1034 (Pa. Cmwlth. 2022) (quoting *Debbs v. Chrysler Corp.*, 810 A.2d 137, 154 (Pa. Super. 2002)). While “[t]he burden of proving that class

certification is appropriate falls upon the party seeking certification[,]" *Foust*, 756 A.2d at 118, it nevertheless remains that

[t]he proponent of class certification "must only present sufficient evidence to make out a *prima facie* case" that the five requirements for class certification are met. *Keppley* . . . , 866 A.2d [at] 1170-71. . . . "[I]n doubtful cases, any error should be committed in favor of allowing class certification." *Foust*, 756 A.2d at 118. Moreover, courts are vested with broad discretion in defining the class based on commonality of issues and the propriety of maintaining the action on behalf of the class. [*Id.*] at 116.

Muscarella, 39 A.3d at 467.

After thorough consideration, this Court has determined that Petitioners have satisfied each of the aforementioned requirements, but only with regard to a segment of their proposed class.

A. Numerosity

A class is sufficiently numerous when the number of potential plaintiffs would burden the court and unnecessarily drain the resources of the litigants should plaintiffs sue individually. *Keppley*, 866 A.2d at 1171 (quotations omitted). The proponent need not plead or prove the actual number of class members, so long as he is able to "define the class with some precision and provide the court with sufficient indicia that more members exist[] than it would be practicable to join." *Id.* Conversely, where the class is so poorly defined that the court cannot discern who the potential class members are, the numerosity requirement has not been met. Courts should consider the practical inability of a class representative to identify other class members when the opponent to class certification controls that information and refuses to provide the names and addresses of other class members. *Janicik [v. Prudential Ins. Co. of America]*, 451 A.2d [451,] 455 [(Pa. Super. 1982)].

Doe I, 272 A.3d at 1033-34.

In this instance, Petitioners have averred that roughly 13,500 criminal defendants were directly impacted by Respondents’ allegedly illegal and unconstitutional cost assessment methods between early 2008 and October 26, 2020. Findings of Fact (F.F.) ¶21. Respondents did not take issue with this figure during the January 25, 2023 hearing. *See* Hearing Tr., 1/25/23, at 95 (attorney representing 38th Judicial District, DeRicci, and Kehs (collectively Judicial Respondents) stating that it would be tremendously burdensome to review the sentencing determinations that were made in “13,000 cases”); *id.* at 156 (the same attorney arguing that class certification is not warranted here, in part because “the problem here is, you know, we’re going to have 13,000 people, it’s going to be a can of worms”); *id.* at 164-66 (attorney for Schreiber noting that “we have heard representations that there’s approximately 13,000 people affected from about 2008 through the present[,]” then arguing that the scope of the class should be limited to account for the relevant statute or statutes of limitations).⁴ Furthermore, Petitioners have provided this Court with evidence that Respondents still employ these methods, and have submitted detailed, supportive docket information regarding a subset of the criminal defendants against whom duplicative costs have been assessed in the interval between the PFR’s filing and present. *See* F.F. ¶¶22-24. There is thus, at minimum, *prima facie* valid evidence that the pool of potential petitioners affected by Respondents’ cost assessment

⁴ Respondents argue that class certification is not warranted because it is unclear how many of these individuals challenged assessed costs at the sentencing or post-sentencing phase, or whether, for each of these individuals, the convictions that gave rise to those assessed costs emanated from one criminal incident, or from multiple incidents, or, for that matter, whether certain statutory costs may legally be imposed more than once for convictions stemming from a single incident. *See* Judicial Respondents’ Suppl. Br. in Opposition to Class Certification Application at 21-29; Schreiber Suppl. Br. in Opposition to Class Certification Application at 4-9. They, however, presented no evidence that undermined Petitioners’ assertion that these 13,500 individuals were each assessed duplicative costs in each criminal case in which they were either convicted or pled guilty.

practices is extremely deep. This substantial number of affected individuals would make it highly impractical to have all of them join this litigation as named petitioners and, in addition, would utterly swamp this Court's extremely limited resources if they each elected to individually file original jurisdiction actions of their own. Accordingly, Petitioners have satisfied the numerosity requirement for class certification.

B. Commonality

To establish the commonality requirement, [a petitioner must] identify common questions of law and fact—"a common source of liability." *Weismer* [*v. Beech-Nut Nutrition Corp.*], 615 A.2d [428,] 431 [(Pa. Super. 1992)]. Simply contending that all putative members of a class have a complaint is not sufficient if the complaints are disparate personal allegations arising from different circumstances and requiring different evidence, *i.e.*, "one requiring less, the other requiring more, the one not indicative of the merits, the other appearing to approach the merits of individual cases." *Allegheny* [*Cnty.*] *Hous. Auth. v. Berry*, . . . 487 A.2d 995, 996-98 [(Pa. Super.] 1985) (commonality requirement not met with bare allegation that a number of plaintiffs had different verifiable complaints against same defendant); *see Eisen v. Indep. Blue Cross*, 839 A.2d 369, 372 (Pa. Super. 2003) (same). Commonality may not be established if "various intervening and possibly superseding causes of damage" exist. *Weismer*, 615 A.2d at 431. The critical inquiry for the certifying court is whether the material facts and issues of law are substantially the same for all class members. *Liss* [*& Marion, P.C. v. Recordex Acquisition Corp.*], 983 A.2d [652,] 663 [(Pa. 2009)]. The court should be able to envision that the common issues could be tried such that "proof as to one claimant would be proof as to all" members of the class. *Id.*

Samuel-Bassett v. Kia Motors Am., Inc., 34 A.3d 1, 22 (Pa. 2011). "While the existence of individual questions essential to a class member's recovery is not necessarily fatal to the class, there must be a *predominance of common issues shared*

by all class members which can be justly resolved in a single proceeding.” *Keppley*, 866 A.2d at 1173 (quoting *Baldassari v. Suburban Cable TV Co., Inc.*, 808 A.2d 184, 191 (Pa. Super. 2002)) (emphasis in original).

It is certainly true that *all* the putative members of the class do not find themselves in precisely identical situations, as undoubtedly there are differences between the particular costs that were imposed against each prospective member as a result of their respective sentences. Even so, the thread that unmistakably ties *all* of the potential class members together is that *all* of those costs were imposed upon them in accordance with Respondents’ purportedly illegal and unconstitutional assessment practices. *See McFalls I*, slip op. at 1-2, 2021 WL 3700604, at *1; F.F. ¶¶1-20. The root cause of the alleged harm is therefore the same across the proposed class. This shared issue not only presents questions of law that “can be justly resolved in a single proceeding[,]” *Keppley, supra*, but is so central to this matter that it also renders ancillary whatever factual differences may exist between the potential class members’ individual situations. Consequently, Petitioners have satisfied class certification’s commonality requirement.

C. Typicality

The purpose of the typicality requirement is to ensure that “the class representative’s overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that her pursuit of her own interests will advance those of the proposed class members.” *D’Amelio [v. Blue Cross of Lehigh Valley]*, 500 A.2d [1137,] 1146 [(Pa. Super. 1985)]; *Baldassari*, 808 A.2d at 193. Typicality exists if the class representative’s claims arise out of the same course of conduct and involve the same legal theories as those of other members of the putative class. *Dunn . . .*, 794 A.2d [at] 425[.] The requirement ensures that the legal theories of the representative and the class do not conflict, and that the interests of the absentee class members will be fairly

represented. *See id.*; *Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 632 (3d Cir. 1996). But, typicality does not require that the claims of the representative and the class be identical, and the requirement “may be met despite the existence of factual distinctions between the claims of the named plaintiff and the claims of the proposed class.” *Keppley* . . . , 866 A.2d [at] 1174 . . . ; *Hassine v. Jeffes*, 846 F.2d 169, 176-77 (3d Cir. 1988); *Klusman v. Bucks [Cnty.] Court of Common Pleas*, . . . 564 A.2d 526, 531 (Pa. Cmwlth. 1989). *aff’d per curiam*, . . . 574 A.2d 604 ([Pa.] 1990) (atypicality “must be clear and must be such that the interests of the class are placed in significant jeopardy”).

Samuel-Bassett, 34 A.3d at 30-31.

Here, Petitioners’ pursuit of their own interests will also advance those of the broader putative class. Indeed, Petitioners’ claims arise from the same conduct that has allegedly harmed the rest of the prospective class members and they seek relief that, if granted, will benefit Petitioners themselves in the same way as the class as a whole. *See McFalls I*, slip op. at 1-2, 2021 WL 3700604, at *1; F.F. ¶¶1-32; PFR, Wherefore Clause. In other words, all of the interests at play here are squarely aligned, without any meaningful daylight between them. As such, Petitioners have satisfied class certification’s typicality requirement.

D. Fair and Adequate Representation

When “determining whether the representative parties will fairly and adequately assert and protect the interests of the class,” a court must consider, at minimum,

- (1) whether the attorney for the representative parties will adequately represent the interests of the class,
- (2) whether the representative parties have a conflict of interest in the maintenance of the class action, and
- (3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

Pa. R.Civ.P. 1709. This Court is satisfied, as a result of the affidavit presented by John J. Grogan, Esquire, co-counsel for Petitioners, that Mr. Grogan and his colleagues possess skills honed through years of handling public interest and class action lawsuits, such that they will more than adequately represent the interests of the broader proposed class. *See* Declaration of John J. Grogan Filed in Support of Petitioners' Application for Class Certification (Grogan Declaration) ¶¶2-12. That determination is bolstered by this Court's positive assessment of the briefs, motions, and pleadings that Mr. Grogan and his colleagues have submitted thus far during the course of this litigation, as well as their performance during oral argument in this matter. Additionally, this Court has no concerns regarding the existence of any conflicts of interest. Any relief that is ultimately secured by Petitioners will accrue equally to the benefit of the broader putative class and, in addition, there is no proof that Petitioners have any vested, personal interest in the establishment and maintenance of this matter as a class action, beyond that clearly articulated in the PFR. *See Dunn*, 794 A.2d at 425 (courts will presume that no conflict of interest exists unless presented with evidence to the contrary). Finally, given that Mr. Grogan and his colleagues are handling this matter *pro bono* and are consequently shouldering the costs of litigation, *see* Grogan Declaration ¶13, this Court is satisfied that Petitioners possess financial resources that are sufficient to ensure that the putative class' interested will not be harmed. Therefore, Petitioners have satisfied the fair and adequate representation prerequisite.

E. Adjudicative Fairness and Efficiency

When fulfilling its responsibility to “determin[e] whether a class action is a fair and efficient method of adjudicating the controversy[,]” Pa. R.Civ.P. 1702(5), a

court must follow the analytical framework contained in Pennsylvania Rule of Civil Procedure 1708:

(a) Where monetary recovery alone is sought, the court shall consider

(1) whether common questions of law or fact predominate over any question affecting only individual members;

(2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;

(3) whether the prosecution of separate actions by or against individual members of the class would create a risk of

(i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;

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

(4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;

(5) whether the particular forum is appropriate for the litigation of the claims of the entire class;

(6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;

(7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

(b) Where equitable or declaratory relief alone is sought, the court shall consider

(1) the criteria set forth in subsections (1) through (5) of subdivision (a), and

(2) whether the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making final equitable or declaratory relief appropriate with respect to the class.

(c) Where both monetary and other relief is sought, the court shall consider all the criteria in both subdivisions (a) and (b).

Pa. R.Civ.P. 1708.

“[S]ince Petitioners only seek declaratory and injunctive relief, rather than monetary damages,” *McFalls I*, slip op. at 22-23, 2021 WL 3700604, at *10, this Court has reviewed the Class Certification Application using the six criteria enumerated in Rule 1708(b) and has determined that Petitioners have satisfied each of those criteria in this instance. First, as already discussed above, the question of whether Respondents’ cost assessment practices are illegal and unconstitutional is so central that it undoubtedly predominates over whatever differences may exist between the factual specifics of each potential class member’s situation. Second, it is highly unlikely that this Court or the parties will have difficulty managing this matter as a class action, despite the large number of individuals in the prospective class, as the questions presented by Petitioners are well-defined and are purely legal in nature, as well as because information regarding the potential class members is readily available through CPCMS. Third, it is unlikely that adjudicating the questions at play here through individual lawsuits would run the risk of inconsistent adjudications, because a ruling on the legality and constitutionality of Respondents’ cost assessment procedures in one case would constitute binding or persuasive authority in any subsequent matters. By the same token, however, a ruling of that

nature would also effectively dispose of the interests of individuals who were not parties to that matter. Fourth, this Court is not aware of any other current or prior litigation commenced by Petitioners or against Respondents that involves the specific issues that have been presented in this matter. Fifth, this Court has already determined that the Commonwealth is the correct forum for this litigation. *See id.*, slip op. at 8-15, 2021 WL 3700604, at *3-*7. Lastly, “final equitable or declaratory relief [would be] appropriate with respect to the class[,]” Pa. R.Civ.P. 1708(b)(2), because Respondents used the challenged practices to assess costs in each of the prospective class members’ criminal cases. Consequently, Petitioners have satisfied the adjudicative fairness and efficiency prerequisite.

F. Scope of Certified Class

Though Petitioners have, broadly speaking, satisfied each of the six applicable criteria for class certification, it does not follow that that have established their entitlement to have the class certified in accordance with their preferred definition. As already noted, “[w]hile the class proponent’s burden is not heavy, *more than mere conjecture or conclusory allegations are required to enable a court to conclude that the class certification requirements are met.*” *Dunn*, 794 A.2d at 423 (emphasis added). Here, Petitioners seek certification of the following class:

All individuals who have appeared or will appear as defendants in criminal cases in the 38th Judicial District and against whom any duplicated costs have been or will be imposed in one criminal case when the charges arise out of the same occurrence, or in which the charges have been included in one complaint, information, or indictment by the use of different counts.

Class Certification Application at 1-2. This proposed definition implicitly suggests that Respondents have always, from time immemorial, assessed costs against criminal defendants in the manner challenged by Petitioners, despite the lack of

record evidence showing that to be the case. Indeed, Petitioners have only presented this Court with information pertaining to the existence and effect of Respondents' cost assessment procedures from the beginning of 2008 through the present. *See* F.F. ¶¶21-25. It would thus be improper to certify the class as proposed, because, in doing so, this Court would be relying upon pure supposition regarding Respondents' pre-2008 activities. In light of this, certification is appropriate only for a class encompassing those individuals against whom Respondents imposed sentencing-related costs from January 1, 2008, onwards. *See* Pa. R.Civ.P 1710(c) (“When appropriate, in certifying, refusing to certify or revoking a certification of a class action the court may order that . . . (2) a class be divided into subclasses and each subclass treated as a class for purposes of certifying, refusing to certify or revoking a certification and that the provisions of these rules be applied accordingly.”).

IV. Conclusions of Law

- (1.) Petitioners have presented sufficient *prima facie* evidence regarding numerosity, commonality, typicality, fair and adequate representation, and adjudicative fairness and efficiency, regarding criminal defendants upon whom Respondents imposed sentencing-related costs on or after January 1, 2008.
- (2.) Petitioners have thus established that class certification is warranted regarding those criminal defendants upon whom Respondents imposed sentencing-related costs on or after January 1, 2008.
- (3.) Petitioners have failed to present such evidence regarding criminal defendants upon whom Respondents imposed sentencing-related costs prior to January 1, 2008.
- (4.) Petitioners have thus failed to establish that class certification is warranted regarding those criminal defendants upon whom Respondents imposed sentencing-related costs prior to January 1, 2008.

(5.) The class which for which certification is proper in this matter shall be defined as follows: “All individuals who have appeared or will appear as defendants in criminal cases in the 38th Judicial District and upon whom any duplicated costs were imposed on or after January 1, 2008, or will be imposed in the future, in one criminal case when the charges arise out of the same occurrence, or in which the charges have been included in one complaint, information, or indictment by the use of different counts.”⁵



ELLEN CEISLER, Judge

⁵ Judicial Respondents assert that this Court lacks subject matter jurisdiction over this matter, as well as that Petitioners do not have standing. *See* Judicial Respondents’ Mem. of Law in Opposition to Class Certification Application, at 19-22, 26-31; Judicial Respondents Suppl. Mem. Of Law in Opposition to Class Certification Application at 7-15. To be blunt, this Court already disposed of these arguments at the preliminary objections stage. *See McFalls I*, slip op. at 8-15, 19-20, 2021 WL 3700604, at *3-*9. Furthermore, to the extent that Judicial Respondents seek to put forth new arguments as to why Petitioners lack standing, they are precluded from doing so. *See Twp. of Bristol v. 1 Enterprises, LLC*, 177 A.3d 1045, 1051 (Pa. Cmwlth. 2018) (citations omitted) (“Lack of standing is not a jurisdictional defect. . . . Objections to lack of standing, including claims of lack of capacity to sue, must be raised at the earliest opportunity and are waived if not promptly raised.”). As such, Judicial Respondents’ attempt to get a second bite of that apple is at once procedurally improper and unnecessary.

Separately, Schreiber argues that class certification is not warranted, either in whole or in part, due to the impact of the applicable statute or statutes of limitations. *See* Schreiber’s Supplemental Br. in Opposition to Class Certification Application at 20-28. However, given Petitioners’ low, *prima facie*-level burden of proof at this stage, as well as their professed intent to challenge Schreiber’s argument on the bases of both equitable tolling and waiver, Petitioners’ Suppl. Br. on Statutes of Limitations and Class Certification at 8 n.8, 15-20, this Court has concluded that any consideration of statute of limitations-related issues must be based upon a more fully developed record. *See Foust*, 756 A.2d at 117 (“[C]lass certification does not preclude a defense of statute of limitations as to one or more of the class members. [In instances where t]he statute of limitations defense was available [and] was pleaded by [a respondent, it] can presumably be addressed elsewhere during the course of the litigation.”).

2. The Class Certification Application is DENIED IN PART, as to those criminal defendants upon whom Respondents imposed sentencing-related costs prior to January 1, 2008;
3. The class that has been certified in this matter shall be defined as follows:
“All individuals who have appeared or will appear as defendants in criminal cases in the 38th Judicial District and upon whom any duplicated costs were imposed on or after January 1, 2008, or will be imposed in the future, in one criminal case when the charges arise out of the same occurrence, or in which the charges have been included in one complaint, information, or indictment by the use of different counts.”



ELLEN CEISLER, Judge