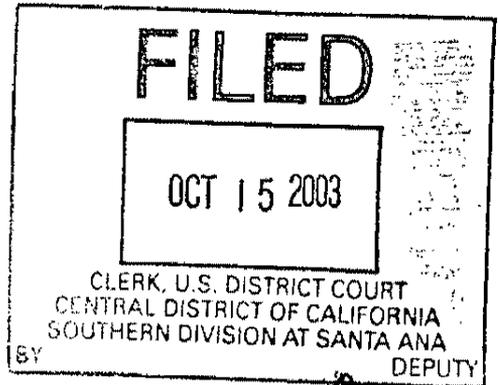


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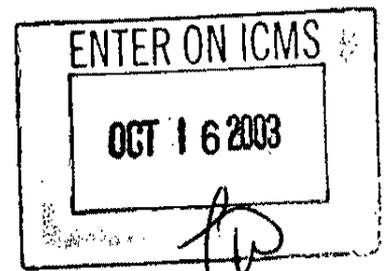


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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

FRED PIERCE, et al.,)
)
Plaintiffs,)
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vs.)
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COUNTY OF ORANGE,)
et al.,)
Defendants.)
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Case No. SA CV 01-0981-GLT(MLGx)
ORDER GRANTING PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION



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Plaintiffs' Motion for Class Certification is GRANTED.

I. BACKGROUND

Plaintiffs, pre-trial inmates at four Orange County jails, brought class action claims against County of Orange Defendants alleging violations of Plaintiffs' civil rights, rights established under Stewart v. Gates, 450 F.Supp. 583 (C.D. Cal. 1978), and the Americans with Disabilities Act (ADA). Plaintiffs claim they were detained for an unreasonable period of time after they were entitled to release, denied seats in holding cells, outdoor exercise, day room and telephone

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1 access, fifteen minute meal breaks, visitation and/or rights secured by
2 the ADA, and request injunctive relief and monetary damages.
3 Plaintiffs move for class certification.

4 5 II. DISCUSSION

6 In order for a class action to be certified, Plaintiffs have the
7 burden to establish all of the requirements of Federal Rule of Civil
8 Procedure 23(a). Mantolite v. Bolger, 767 F.2d 1416, 1424 (9th Cir.
9 1985). Rule 23(a) states four threshold requirements applicable to all
10 class actions: (1) numerosity, ("the class is so numerous that joinder
11 of all members is impracticable"); (2) commonality ("there are
12 questions of law or fact common to the class"); (3) typicality ("the
13 claims or defenses of the representative parties are typical of the
14 claims or defenses of the class"); and (4) adequacy of representation
15 ("the representative parties will fairly and adequately protect the
16 interests of the class"). Fed.R.Civ.P. 23(a); accord Amchem Products,
17 Inc. v. Windsor, 521 U.S. 591, 613 (1997).

18 In addition to satisfying Rule 23(a) prerequisites, Plaintiffs
19 must also show the action is maintainable under Rule 23(b), which
20 requires the action: (1) avoids the risk of inconsistent judgments; (2)
21 involves requests for relief applicable to the entire class; or (3)
22 involves common questions of fact or law which predominate over
23 questions that affect individual class members. Fed.R.Civ.P. 23(b);
24 accord Amchem Products, 521 U.S. at 614-15.

25 In deciding a motion for class certification, plaintiff's
26 allegations are taken as true and inquiry into the merits of the case
27 is improper at the class certification stage. Eisen v. Carlisle &
28 Jacqueline, 417 U.S. 177-78 (1974). The presumption is in favor of

1 certifying the class. 3 Newberg on Class Actions (4th Ed.), § 7.17.

2 A. Rule 23(a) Prerequisites

3 1. Numerosity

4 Plaintiffs seek to certify a class of all pre-trial detainees held
5 in Orange County jails after October 21, 2001 who were denied various
6 rights under Stewart and the ADA. Plaintiffs claim, and Defendants do
7 not dispute, the proposed class will number 60,000 individuals at
8 minimum. Individual joinder of members of a class this size would be
9 impracticable. Plaintiffs have satisfied the numerosity requirement.

10 2. Commonality

11 Plaintiffs specify the common questions of law and fact in this
12 case. The questions of law are the following: whether the Defendants
13 must comply with the court mandate to provide each inmate with at least
14 fifteen minutes to consume meals and a space to sit while they wait in
15 holding cells; whether the Defendants must comply with the court
16 mandate to allow each inmate in administrative segregation access to
17 dayrooms for at least two hours a day, access to roof-top exercise
18 facilities for at least two hours each week, and to receive visitors at
19 least twice a week; and whether Defendants may deny disabled inmates
20 necessary accommodations and equal access to services or activities.
21 The Plaintiffs intend to prove Defendants have a systemic practice of
22 violating the Stewart court order and the ADA. They intend to present
23 evidence of particular violations suffered by individual inmates, but
24 these questions of fact are essentially a common question to the class
25 because each incident contributes to the common question of whether
26 Defendants have a common practice.

27 Defendants' argument that the proposed class does not meet the
28 commonality requirement because the class raises different incidents of

1 alleged misconduct in different branches of the jails and involves
2 different inmates misses the point that Plaintiffs intend to prove
3 systemic violations. Plaintiffs also intend to prove their systemic
4 violation claim with inmate activity logs containing numerous asserted
5 violations on their face (e.g. 840 separate violations of dayroom
6 access, 100 violations of roof-top exercise).

7 "In a civil-rights suit...commonality is satisfied where the
8 lawsuit challenges a system-wide practice or policy that affects all of
9 the putative class members." Armstrong v. Davis, 275 F.3d 849 (9th
10 Cir. 2001).^{1/} Defendants' alleged conduct and the legality of this
11 conduct are "questions of law or fact common to the class."
12 Fed.R.Civ.P. 23(a)(2). Plaintiffs have satisfied the commonality
13 requirement.

14 3. Typicality

15 The claims or defenses of the class representatives must be
16 typical of the claims or defenses of other class members. Fed.R.Civ.P.
17 23(a)(3). "Under the rule's permissive standards, representative
18 claims are 'typical' if they are reasonably co-extensive with those of
19 absent class members; they need not be substantially identical."
20 Hanlon v. Chrysler Corp., 150 F.3d 1011, 1020 (9th Cir. 1998). "The
21 purpose of the typicality requirement is to assure that the interest of
22 the named representative aligns with the interests of the class."
23 Hanon, *supra*, 976 F.2d at 508 (citing Weinberger v. Thornton, 114
24 F.R.D. 599, 603 (S.D.Cal. 1986)).

25 Defendants argue typicality is lacking because each Plaintiff
26

27 ^{1/}In Armstrong, the Ninth Circuit upheld class certification
28 of a class of disabled prisoners and parolees who alleged they
had been discriminated against under the ADA.

1 experienced a unique injury and requires a separate liability
2 determination. As discussed above, the uniqueness of each incident is
3 not important because Plaintiffs aim to prove a systemic practice of
4 violations. The parties cite no controlling authority on the
5 individual damages issue, and a damage formula is usually suitable to
6 this sort of facts. See e.g. Hassine v. Jeffes, 846 F.2d 169, 177 (3rd
7 Cir. 1988) ("Rule 23 does not require that the representative plaintiff
8 have endured precisely the same injuries that have been sustained by
9 the class members, only that the harm complained of be common to the
10 class, and that the plaintiff demonstrate a personal interest.") As
11 stated by Plaintiffs:

12 [P]laintiffs here have pled simple conditions of confinement
13 allegations, which are grounded not on a complex analysis of
14 individual officers' conduct or the peculiar circumstances of each
15 plaintiff's detention, but on defendants' consistent and ongoing
16 failure to comply with Stewart v. Gates' and the ADA's minimum
17 requirements regarding the treatment of detainees. Further,
18 through their claims, plaintiffs do not seek compensatory damages
19 for various medical and psychological conditions, but only
20 compensatory damages for the deprivation of these civil rights
21 which flow from those simple violations.

22 Plaintiff's Reply for Class Certification at 18. The Court agrees that
23 a damage formula appears to be suitable for this case and certification
24 will not fail for reason of imprecise damages.

25 4. Adequacy of Representation

26 A class representative must be able "fairly and adequately to
27 protect the interests" of all the class members. Fed.R.Civ.P. 23(a)(4).
28 Representation is adequate if (1) the attorney representing the class

1 is qualified and competent, and (2) the class representatives are not
2 disqualified by interests antagonistic to the remainder of the class.
3 Lerwill v. Inflight Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir.
4 1978).

5 The member's interests are all aligned, there are no anticipated
6 or actual conflicts of interest and Plaintiffs' attorneys are well
7 qualified to represent the class. Defendants do not dispute
8 certification on these grounds. Plaintiffs' attorneys and the class
9 representatives are adequate representatives of the class.

10 B. Rule 23(b) Requirements

11 Plaintiffs are seeking to certify a hybrid class that meets the
12 requirements of both Rule 26(b)(2) and (b)(3).

13 A Rule 23(b)(2) class is appropriate if the "party opposing the
14 class has acted or refused to act on grounds generally applicable to
15 the class." Fed.R.Civ.P. 23(b)(2). "Rule 23(b)(2) was drafted
16 specifically to facilitate relief in civil rights suits." 8 Newberg on
17 Class Actions (4th Ed.) § 25:20. Plaintiffs allege Defendants'
18 violations affect the whole class and they are seeking injunctive and
19 declaratory remedies to force Defendants' compliance with the Stewart
20 order and the ADA. Plaintiffs meet Rule 23(b)(2)'s requirements.

21 A Rule 23(b)(3) class action should be certified where the court
22 finds that "questions of law or fact common to the members of the class
23 predominate over any questions affecting only individual members, and
24 that a class action is superior to other available methods for the fair
25 and efficient adjudication of the controversy." Fed.R.Civ.P. 23(b)(3).

26 The common questions predominate over any individual questions in
27 this case since the allegations relate to Defendant's claimed
28 widespread failure to comply with Stewart and the ADA.

1 Practical considerations also weigh in favor of class
2 certification for the fair and efficient adjudication of this
3 controversy. Because each class members' potential damages are small
4 or nominal, litigation costs would probably prohibit these claims from
5 being brought individually.

6 C. Class Definitions

7 Defendants claim Plaintiffs' class definitions are overbroad
8 because they include five branches of the Orange County jail system.
9 Defendants rely exclusively on Stevens v. Harper, 213 F.R.D. 358, 379
10 (E.D. Cal. 2002), to argue Plaintiffs have failed to make the required
11 systemwide showing with regard to each proposed class at all five
12 facilities.

13 The Stevens decision is persuasive authority, but Defendants'
14 characterization of the court's holding is not entirely accurate.
15 Defendants contend the court denied class certification on a claim
16 because the plaintiffs made an "inadequate showing that the CYA has a
17 pattern or practice of failing to protect wards at all of its
18 facilities." Id. at 379. In fact, the court denied class
19 certification on this claim because the named plaintiff could not
20 represent a class with Fourteenth Amendment claims when he could only
21 assert Eighth Amendment claims due to his confinement. Id. After
22 stating that the named plaintiff could not represent the class, the
23 court added "Moreover, there is an inadequate showing that the CYA has
24 a pattern or practice of failing to protect wards at all of its
25 facilities" before concluding "Class certification on plaintiffs'
26 physical safety claim is therefore denied." Id. The Stevens court did
27 not rely on the fact that plaintiffs had not made an adequate showing
28 at all of its facilities to reach its conclusion.

1 Even if Defendants are correct in their characterization of the
2 Stevens case, the Court is satisfied Plaintiffs make an adequate
3 showing of their claims at each facility for class certification
4 purposes.

5 III. DISPOSITION

6 Plaintiffs' Motion for Class Certification is GRANTED.^{2/}

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8 DATED: October 15, 2003.

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10 
11 GARY L. TAYLOR
12 UNITED STATES DISTRICT JUDGE
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^{2/}The Court did not consider Plaintiff's Proposed Trial Plan in reaching its decision.