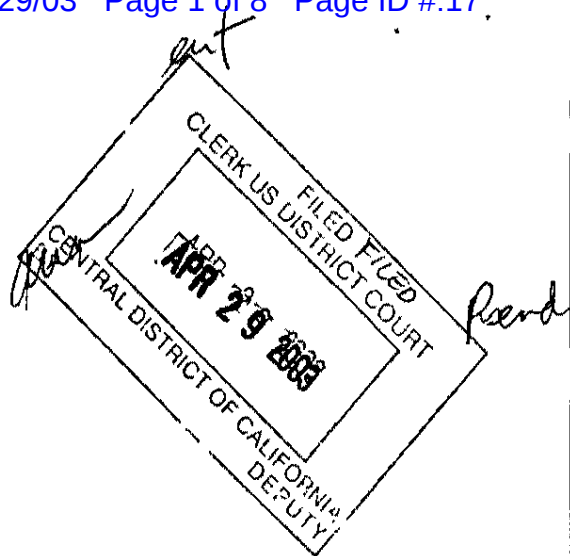
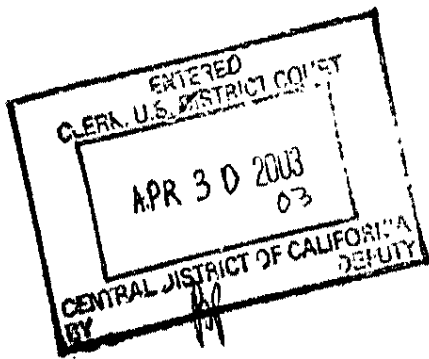


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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Susan Rodde, et al.,

Plaintiffs,

vs.

Diana Bontá, et al.,

Defendants.

CV 03-01580 FMC (PJWx)

**ORDER GRANTING PLAINTIFFS'
MOTION FOR CLASS
CERTIFICATION**

This matter is before the Court on Plaintiffs' Motion for Class Certification (docket #21). The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for May 5, 2003, is removed from the Court's calendar. For the reasons set forth below, the Court **hereby grants** Plaintiffs' Motion for Class Certification.

I. Class Definition

Plaintiffs seek certification of the following class:

All present and future recipients of the Medicaid program:

- (a) who reside in the County of Los Angeles; (b) who have or will have disabilities; and (c) who, because of their disabilities[,] need or will need inpatient and/or outpatient rehabilitative and

1 other medical services that are currently provided at Rancho Los
2 Amigos National Rehabilitation Center.

3 (Motion at 6).

4

5 **II. Objections to Evidence**

6 Defendants County of Los Angeles and Dr. Garthwaite object to a
7 number of declarations offered by Plaintiffs as lacking in foundation,
8 irrelevant, speculative, inadmissible lay opinions, and inadmissible
9 testimony by unqualified experts. Defendants' objections are overruled.

10

11 **A. The Plaintiffs' Declarations**

12 Plaintiffs may testify as to the effects of the treatment they have
13 received at Rancho. Plaintiffs' testimony regarding the effect on them of the
14 potential closing of Rancho is admissible; it is based on their personal
15 knowledge and assessment of what other treatment options are available to
16 them. To the extent Plaintiffs are offering opinions, the Court finds their
17 testimony to be admissible lay opinions pursuant to Fed. R. Evid. 701.

18

19 **B. The Goodwill CEO Declaration**

20 The CEO of Goodwill describes a history of interaction with Rancho,
21 and the effects of the services provided by Rancho on Goodwill's clients. His
22 declaration is admissible.

23

24 **C. The Doctors' Declarations**

25 Inexplicably, Defendants object to the testimony of a number of
26 doctors as inadmissible testimony of unqualified experts. This objection
27 hardly warrants discussion; however, by way of example, the Court notes
28 that Dr. Richard Chambers is unquestionably qualified as an expert:

1 He attended Columbia medical school, and completed an internship, two
2 residencies, and one fellowship in orthopedics. He began working at Rancho
3 approximately thirty-two years ago as the Chief of Ortho-Diabetes Amputee
4 Services; he has been Board Certified by the American Board of Orthopedic
5 Surgery since 1977.

6 Equally inexplicably, Defendants object to one doctor's statement that
7 his department cares primarily for minorities.

8 The physicians may testify regarding the racial and/or composition of
9 the individuals they treat; they may testify regarding patient treatment and
10 professional standards of care; they may testify regarding the availability of
11 comparable treatment at other facilities, based on personal knowledge; and
12 they may testify regarding the detrimental effects on their patients of delays
13 in treatment (or the failure to treat).

14

15 **III. Class Action Requirements**

16 Plaintiffs seek to have a class certified pursuant to Rule 23(a)(1)-(4) and
17 23(b)(2) of the Federal Rules of Civil Procedure. Prior to class certification,
18 plaintiffs must first define an ascertainable and identifiable class. *See*
19 *Schwartz v. The Upper Deck Co.*, 183 F.R.D. 672, 679 (S.D. Cal. 1999).

20 Plaintiff bears the burden of proof on class certification requirements. *Hanon*
21 *v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir.1992).

22

23 **A. Rule 23(a)(1)-(4)**

24 Rule 23(a) establishes four prerequisites for every class action: (1) the
25 class must be so numerous that joinder of all members is impracticable [the
26 numerosity requirement]; (2) there must be questions of law or fact common
27 to the class [the commonality requirement]; (3) the claims or defenses of the
28 representative parties must be typical of the claims or defenses of the class

1 [the typicality requirement]; and (4) the representative parties must fairly
2 and adequately protect the interests of the class [the adequacy of
3 representation requirement]. *General Telephone Company of the Southwest*, 457
4 U.S. 147, 102 S.Ct. 2364 (1982); Fed. R. Civ. P. 23(a)(1)-(4).

5 **1. Numerosity**

6 The Rule 23(a)(1) numerosity factor does not mean that the class must
7 be so numerous that joinder is impossible, but rather simply that joinder of
8 the class is impracticable. *See Harris v. Palm Springs Alpine Estates, Inc.*, 329
9 F.2d 909, 913 (9th Cir. 1964).

10 Plaintiff has presented evidence that the class is comprised of
11 hundreds, if not thousands, of individuals. The numerosity requirement is
12 met.

13 **2. Commonality**

14 Rule 23(a)(2) requires that “there are questions of law or fact common
15 to the class.” *Id.* The members of the class do not have to share every
16 question of law or fact in common, but “issues . . . common to the class as a
17 whole” must exist and “turn on questions of law applicable in the same
18 manner to each member of the class.” *Califano v. Yamasaki*, 442 U.S. 682,
19 700-01, 99 S.Ct. 2545 (1979).

20 The Ninth Circuit has recognized that when proposed members are
21 moving for certification under Rule 23(a) in conjunction with Rule 23(b)(2),
22 a district court may relax the commonality requirement. *See Von Colln*, 189
23 F.R.D. 584, 590 (C.D. Cal. 1999) (citing *Walters v. Reno*, 145 F.3d 1032,
24 1045-48 (9th Cir.1998), *cert. denied*, 526 U.S. 1003, 119 S.Ct. 1140 (1999)).
25 Therefore, all that is required is that Plaintiffs share a common harm, even if
26 individualized facts supporting the alleged harm differ. *Von Colln*, 189
27 F.R.D. at 590.

28 Here, there are common questions of law and fact.

1 **3. Typicality**

2 The typicality requirement of Rule 23(a) is met if “the claims or
3 defenses of the representative parties are typical of the claims or defenses of
4 the class.” Fed. R. Civ. P. 23(a)(3). This is a permissive standard, and
5 “representative claims are ‘typical’ if they are reasonably co-extensive with
6 those of absent class members; they need not be substantially identical.”
7 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). To satisfy the
8 typicality requirement, “a class representative must be part of the class and
9 ‘possess the same interest and suffer the same injury’ as the class members.”
10 *General Tel. Co.*, 457 U.S. at 156.

11 The named Plaintiffs’ claims are typical of those of the class.

12 **4. Adequacy of Representation Requirement**

13 To satisfy the adequacy of representation requirement, “the
14 representative parties [must] fairly and adequately protect the interests of the
15 class.” Fed. R. Civ. P. 23(a)(4). Due process concerns require that absent
16 class members be afforded adequate representation before they are subject to
17 entry of a binding judgment. *Hanlon*, 150 F.3d at 1020 (citing *Hansberry v.*
18 *Lee*, 311 U.S. 32, 42-43, 61 S.Ct. 115 (1940)). Determining adequacy of
19 representation requires resolution of two questions: (1) Do the named
20 plaintiffs and their counsel have any conflicts of interest with other class
21 members? And (2) will the named plaintiffs and their counsel prosecute the
22 action vigorously on behalf of the class? *Hanlon*, 150 F.3d at 1020.

23 Alternatively, the Ninth Circuit has stated that the adequacy of
24 representation requirement is met when the representatives fairly and
25 adequately protect the interests of the class. *Local Joint Exec. Bd. Of*
26 *Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162
27 (9th Cir. 2001), *cert. denied*, 534 U.S. 973, 122 S. Ct. 395 (2001). This adequate
28 representation depends on the qualifications of counsel, the absence of

1 antagonism, a sharing of interests between representatives and absentees,
2 and the unlikelihood that the suit is collusive. *Id.*

3 Defendants point to the fact that the individual class members have
4 different medical needs, which leads to a divergence of interests, which is a
5 form of antagonism. The Court is unpersuaded. All Plaintiffs have an
6 interest in ensuring the availability of adequate medical treatment for Medi-
7 Cal recipients, and the fact that their individual medical needs may differ
8 from those of other class members does not render them inadequate class
9 representatives.

10 **B. Rule 23(b)(2)**

11 Rule 23(b)(2) allows class actions where “the party opposing the class
12 has acted or refused to act on grounds generally applicable to the class,
13 thereby making appropriate final injunctive relief or corresponding
14 declaratory relief with respect to the class as a whole” *Id.* Under Rule
15 23(b), “[i]t is sufficient if class members complain of a pattern or practice
16 that is generally applicable to the class as a whole.” *Walters v. Reno*, 145 F.3d
17 1032, 1047 (9th Cir. 1998) (certifying a class of aliens challenging inadequate
18 notice of deportation by INS). “Even if some class members have not been
19 injured by the challenged practice, a class may nevertheless be appropriate.”
20 *Id.* (citing 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane,
21 Federal Practice & Procedure § 1775 (2d ed. 1986); *Adamson v. Bowen*, 855
22 F.2d 668, 676 (10th Cir.1988) (emphasizing that although “the claims of
23 individual class members may differ factually,” certification under Rule
24 23(b)(2) is a proper vehicle for challenging “a common policy”)).

25 Here, Plaintiffs are challenging a common policy, and their claims fall
26 squarely within Rule 23(b).

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IV. Defendants' Proposed Limitation of Class

The Court is unpersuaded by Defendants' argument that future recipients should not be included in the class. Defendants argue that other cases certifying classes with future members have involved enjoining a systemic practice or rule, unlike the present case. Defendants attempt to distinguish *Von Colln v. County of Ventura*, 189 F.R.D. 583, 594 (C.D. Cal. 1999), in which the court certified a class of prisoners, including future prisoners, in a case regarding whether those prisoners could be subjected to use of a certain type of restraint. *Von Colln*, 189 F.R.D. at 594 (C.D. Cal. 1999). The Court sees no meaningful distinction between the future prisoners in the class of plaintiffs in *Von Colln* (all of whom could have been subject to a certain restraint), and the class of plaintiffs here, (all of whom could be subject to inadequate care due to the closure of Rancho Los Amigos).

V. Certification of Class

The Court hereby certifies the following class of Plaintiffs:
All present and future recipients of the Medicaid program:
(a) who reside in the County of Los Angeles; (b) who have or will have disabilities; and (c) who, because of their disabilities[,] need or will need inpatient and/or outpatient rehabilitative and other medical services that are currently provided at Rancho Los Amigos National Rehabilitation Center.

VI. Notice to Class Members

Because certification has made pursuant to Rule 23(b)(2), no notice to class members is required. See Newberg on Class Actions, § 8:5.

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VII. Conclusion

For the reasons set forth below, the Court **hereby grants** Plaintiffs' Motion for Class Certification (docket #21).

The Court's concurrently filed Temporary Restraining Order shall apply with equal force to the absent class members.

Dated: April 29, 2003


FLORENCE-MARIE COOPER, JUDGE
UNITED STATES DISTRICT COURT