IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Plaintiffs AW, WL, RC, MJ, CM, and HH on behalf of themselves and all others similarly situated, and Protection and Advocacy for People with Disabilities, Inc., a South Carolina non-profit corporation, Plaintiffs, vs. John H. Magill, in his official capacity as the Director of the South Carolina Department of Mental Health; the South Carolina Department of Mental Health; and the South Carolina Mental Health Commission, Defendants.	Civil Action No. 2:17-1346-RMG **ORDER**

Before the Court is a motion for class certification by the Named Plaintiffs together with Protection and Advocacy for People with Disabilities, Inc. ("Plaintiffs"). (Dkt. No. 26.) For the reasons set forth below, the motion for class certification is denied.

I. Background

The G. Werber Bryan Psychiatric Hospital ("Bryan Hospital") is an inpatient facility in Columbia, South Carolina for individuals with mental health disabilities. The Adult Services Division primarily treats involuntary admissions, and the Forensics Division is a more secure unit that primarily treats patients referred by South Carolina jails and criminal courts. *See* S.C. DEP'T OF MENTAL HEALTH, https://www.state.sc.us/dmh/dir_facilities.htm (last visited Aug. 20, 2018). Plaintiffs allege that Defendants failed to develop sufficient community mental health services that would allow the Named Plaintiffs and proposed class to be discharged from Bryan

Hospital's Adult Services Division into an integrated care setting, causing injury by forcing these individuals to be unjustifiably isolated and discriminatorily held in the Adult Services Division on the basis of their mental disabilities. (Dkt. Nos. 1 ¶¶ 1-6, 26-1 at 2.) Plaintiffs claim Defendants' conduct violates Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. Plaintiffs seek declaratory and injunctive relief, including (i) enjoining Defendants from collecting the portion of Plaintiffs' bills and fees for hospital stays for the time period where Plaintiffs could have been, but were not, discharged from Bryan Hospital and (ii) enjoining Defendants from violating Plaintiffs' rights under the ADA and Section 504 of the Rehabilitation Act. (Dkt. No. 1, Prayer for Relief ¶¶ C-G.) Plaintiffs refer to the relief sought as "a single injunctive order requiring that Defendants make sufficient community mental health services available to ensure that the Class receives the services they need to live in their communities instead of in an institution." (Dkt. No. 26-1 at 2.)

Plaintiffs move pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2) to certify a class consisting of "All current and future adult, non-forensic residents of Bryan Hospital who, with appropriate supports and services, would now or in the future be able to live in an integrated community setting and who do not oppose living in an integrated community setting." (Dkt. Nos. 1 ¶ 109, 26-1 at 2.)

II. Legal Standard

"The class-action device, which allows a representative party to prosecute his own claims and the claims of those who present similar issues, is an exception to the general rule that a party in federal court may vindicate only his own interests." *Thorn v. Jefferson–Pilot Life Ins. Co.*, 445 F.3d 311, 318 (4th Cir. 2006) (citing *Gen. Tel. Co. of Sw. v. Falcon,* 457 U.S. 147, 156 (1982)). "Chief among the justifications for this device is its efficiency: adjudication of a properly-

constituted class action generally has *res judicata* effect and 'saves the resources of both the courts and the parties by permitting an issue potentially affecting every class member to be litigated in an economical fashion.'" *Id.* (quoting *Califano v. Yamasaki,* 442 U.S. 682, 701 (1979)). "To ensure this benefit is realized, however, and to protect both the rights of the absent plaintiffs to present claims that are different from those common to the class and the right of the defendant to present facts or raise defenses that are particular to individual class members, district courts must conduct a rigorous analysis to ensure compliance with Rule 23 . . . paying careful attention to the requirements of that Rule." *Id.* (internal citations and quotation marks omitted).

To be certified, a proposed class must satisfy the four prerequisites of Rule 23(a): (1) numerosity, (2) commonality, (3) typicality and (4) adequacy of representation, as well as one of the three categories in Rule 23(b). *See EQT Prod. Co. v. Adair,* 764 F.3d 347, 357 (4th Cir. 2014). Here, Plaintiffs seek certification under Rule 23(b)(2), which requires that "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). A party seeking class certification must do more than plead compliance with the Rule 23 requirements; rather, the party "must present evidence that the putative class complies with Rule 23." *Adair*, 764 F.3d at 357-58. Plaintiffs bear the burden of demonstrating 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. "Although Rule 23 does not give district courts a license to engage in free-ranging merits inquiries at the certification stage, a court should consider merits questions to the extent that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied."

Id. at 357–58 (internal quotation marks omitted); *accord Brown v. Nucor Corp.*, 785 F.3d 895, 903 (4th Cir. 2015).

III. Discussion

A. The Class Is Not Readily Identifiable.

As an initial matter, Plaintiffs' motion for class certification must be denied because the class is not easily ascertainable. "Rule 23 contains an implicit threshold requirement that the members of a proposed class be 'readily identifiable.'" *Adair*, 764 F.3d at 358. In other words, the Court must be able to "readily identify the class members in reference to objective criteria." *Id.* "If a class description is not sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member, a class should not be certified." *Anselmo v. West Paces Hotel Grp., LLC*, No. 9:09-2466-MBS, 2011 WL 1049195, at *18 (D.S.C. Mar. 18, 2011) (internal quotation marks omitted). "The plaintiffs need not be able to identify every class member at the time of certification, but if class members are impossible to identify without extensive and individualized fact-finding or mini-trials, then a class action is inappropriate." *Adair*, 764 F.3d at 358. (internal quotations omitted).

Plaintiff seeks to certify a class of "All [1] current and future [2] adult, non-forensic residents of G. Werber Bryan Psychiatric Hospital who, [3] with appropriate supports and services, would [4] now or in the future [5] be able to live in an integrated community setting and [6] who do not oppose living in an integrated community setting." (Dkt. No. 26 at 2.) These class members cannot be easily identified without extensive and individualized fact-finding into issues that turn on personal circumstances and are inherently fact-specific, such as each class member's medical diagnosis, future prognosis, treatment plan, and future interest in and ability to live in an integrated care facility. *See Cuming v. South Carolina Lottery Comm'n*, No. 3:05-cv-03608-MBS, 2008 WL 906705, at *1 (D.S.C. Mar. 31, 2008) ("Where the practical issue of

identifying class members is overly problematic, the court should consider that the administrative burdens of certification may outweigh the efficiencies expected in a class action."). Plaintiffs contend that these individuals can be easily ascertained by consulting Defendant's routine documentation of the "names and status" of Bryan Hospital residents. (Dkt. No. 26-1 at n.4.) But investigating if an individual has "been recommended for screening by their treatment team" as indication that a family member is willing to take the patient, and "ask[ing] their treatment team" or reviewing "the social work notes" to determine if the patient "needed a structured placement" (Dkt. No. 26-3 at 12) is not an objective measure by which to determine if an individual meets the class criteria. Plaintiffs offer no objective tool to identify each class member. As a result, the Court finds the proposed class is not readily ascertainable.

B. There Are Not Common Questions of Law or Fact.

Even if the proposed class were readily identifiable as a threshold matter, Plaintiffs have not demonstrated that each requirement of Rule 23(a) is satisfied. For example, to maintain a class action, there must be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The class members' "claims must depend upon a common contention . . . 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 Stores, Inc. v. Dukes,* 564 U.S. 338, 350 (2011); *see also Adair,* 764 F.3d at 360 ("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.") (internal quotation marks omitted) (emphasis in original). "A single common question will suffice, but it must be of such a nature that its determination will resolve an issue

that is central to the validity of each one of the claims in one stroke." *Adair*, 764 F.3d at 360 (internal citations and quotation marks omitted).

Here, as noted, each proposed class member is factually unique from the others. Plaintiffs' proposed common injury—"unnecessary institutionalization" (Dkt. No. 26 at 2)—is not sufficient for a single proceeding to produce common answers that could resolve classwide issues. *See Thorn v. Jefferson-Pilot Ins. Co.*, 445 F.3d 311, 317 (4th Cir. 2006) ("A question is not common . . . if its resolution turns on a consideration of the individual circumstances of each member."). And, because the proposed class is fundamentally heterogeneous by virtue of each individual's evolving medical treatment, class certification of these over 152 individuals would not produce the efficiency intended by Rule 23. *See id.* (finding "Plaintiffs have failed to meet the requirement of commonality" because "the court would be required to conduct an inquiry into the individual circumstances and motivations of each class member"). Accordingly, the Court finds the commonality requirement of Rule 23(a) is not satisfied.

C. The Named Representatives' Claims are Not Typical of Those of the Class.

The typicality requirement of Rule 23(a)(3) demands that "a class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Lienhart v. Dryvit Sys., Inc.*, 255 F.3d 138, 146 (4th Cir. 2001) (quoting *General Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982)). Named Plaintiffs are patients at Bryan Hospital for whom "community based services would be appropriate," who do not "oppose community based treatment," and who have "been involuntarily committed to Bryan Hospital." (Dkt. No. 1 ¶ 12.) These interests and injuries generally reflect those alleged by the proposed class members. *See Parker v. Asbestos Processing, LLC*, No. 0:11–CV–01800–JFA, 2015 WL 127930, at *7 (D.S.C. Jan. 8, 2015) ("The typicality requirement is met if a plaintiff's claim arises from the same event

or course of conduct that gives rise to the claims of other class members and is based on the same legal theory."). Nonetheless, "[l]ike the requirement of commonality, the requirement of typicality serves as a guidepost for determining whether under the particular circumstances maintenance of a class action is economical." *Falcon*, 457 U.S. at 157 n.13. One such indication of typicality is damages, and the injunction Plaintiffs seek—enjoining Defendants from collecting bills and fees from Plaintiffs for the time period when Plaintiffs could have been, but were not, discharged from Bryan Hospital—requires an analysis of each member's circumstances that is not appropriate for class certification. *See Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 342-44 (4th Cir. 1998) (holding that individualized damages will preclude typicality where a fact-specific inquiry is necessary). The Court therefore finds the class representatives' interests and injuries are not typical of those of the class members.

Having found the class not ascertainable, insufficient common questions of law or fact, and insufficient typicality, the Court finds that the proposed class cannot be certified. The Court has taken each requirement of Rule 23(a) into careful consideration in light of the facts as alleged, and finds that two of the four Rule 23(a) requirements are satisfied.

D. Numerosity

A class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "No specified number is needed to maintain a class action." *Brady v. Thurston Motor Lines,* 726 F.2d 136, 145 (4th Cir. 1984). Instead, "the determination rests on the court's practical judgment in light of the particular facts of the case." *Lott v. Westinghouse Savannah River Co.,* 200 F.R.D. 539, 550 (D.S.C. 2000); *accord Gen. Tel. Co. of the Nw. v. Equal Emp't Opportunity Comm'n,* 446 U.S. 318, 330 (1980) ("The numerosity requirement requires examination of the specific facts of each case and imposes no absolute limitations.")

"[P]racticability of joinder depends on many factors, including, for example, the size of the class, ease of identifying its numbers and determining their addresses, facility of making service on them if joined and their geographic dispersion." *Baltimore v. Laborers' Int'l Union of N. Am.*, 67 F.3d 293, 1995 WL 578084 at *1 (4th Cir. 1995).

Here, the class consists of at least 152 individuals currently institutionalized in the adult care lodges at Bryan Hospital, as well as additional individuals who may be hospitalized at Bryan Hospital in the future. (Dkt. No. 1 ¶ 110.) This class is sufficiently numerous that joinder is impracticable. *See Doe v. Charleston Area Med. Ctr., Inc.*, 529 F.2d 638, 645 (4th Cir. 1975) ("Where the plaintiff has demonstrated that the class of persons he or she wishes to represent exists, that they are not specifically identifiable supports rather than bars the bringing of a class action, because joinder is impracticable."). Moreover, these individuals are unlikely to seek individual vindication of their rights by virtue of their current hospitalization and mental health disabilities. The Court therefore finds the numerosity requirement of Rule 23 satisfied.

E. Adequate Representation

Named Plaintiffs must be able to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This requirement is "a two-pronged inquiry, requiring evaluation of: (1) whether class counsel are qualified, experienced, and generally able to conduct the proposed litigation; and (2) whether Plaintiffs' claims are sufficiently interrelated with and not antagonistic to the class claims as to ensure fair and adequate representation." *Lott v. Westinghouse Savannah River Co.*, 200 F.R.D. 539, 561 (D.S.C. 2000); *see also Falcon*, 457 U.S. at 158 (noting that the Rule 23(a)(4) requirement "raises concerns about the competency of class counsel and conflicts of interest").

Regarding the first prong, class counsel primarily practices litigation arising out of construction and admiralty matters. *See* WOMBLE BOND DICKINSON LLP, https://www.womblebonddickinson.com/us/people/dana-w-lang and https://www.womblebonddickinson.com/us/people/sean-d-houseal (last visited Aug. 20, 2018). This apparent lack of experience in class action or disabilities law would be supplemented by the expertise of Protection and Advocacy for People with Disabilities, Inc. and the Bazelon Center for Mental Health Law. Therefore, on the whole, the trial team would be able to prosecute the action on behalf of the class. Turning to the second prong, the "adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 625 (1997). Here, there are no apparent conflicts of interest between the proposed class representatives. Although the lack of typicality raises whether "the named plaintiff[s'] claim[s] and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence," *Gunnells v. Healthplan Servs., Inc.,* 348 F.3d 417, 459 (4th Cir. 2003), the Court finds that the Rule 23(a)(4) requirement is satisfied.

F. Rule 23(b)(2)

Finally, if the class were readily identifiable and all Rule 23(a) requirements were satisfied, Plaintiffs must also demonstrate that Defendants "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). This necessitates two showings: (1) "the defendants' actions or inactions must be based on grounds generally applicable to all class members," and (2) final injunctive relief [would] be appropriate for the class as a whole." *Williams v. Jones*, No. 9:14-cv-00787-RMG-BM, 2014 WL 2155251, at *9

(D.S.C. May 22, 2014). Plaintiffs contend that "a single injunctive order requiring that Defendants make sufficient community mental health services available" would "benefit the Class as a whole." (Dkt. No. 26-1 at 2, 27.) But each proposed class member's medical diagnosis, future prognosis, treatment plan, and ability to live in a community setting is individualized and subject to change as the member's health and medical status evolve. As a result, the injunctive relief Plaintiffs seek necessitates a patient-specific inquiry and, therefore, would not have the blanket effect that Rule 23(b)(2) requires. Accordingly, the Court finds that Rule 23(b)(2) is not satisfied.

IV. Conclusion

For the foregoing reasons, the motion for class certification by Named Plaintiffs together with Protection and Advocacy for People with Disabilities, Inc. (Dkt. No. 26) is **DENIED**.

AND IT IS SO ORDERED.

Richard Mark Gergel
United States District Court Judge

August 21, 2018
Charleston, South Carolina