

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

TRE MCPHERSON, ET AL., : CIVIL NO. 3:20-CV-534 (JBA)
 :
 V. :
 :
 NED LAMONT, ET AL. : JUNE 11, 2020

JOINT MOTION FOR CLASS CERTIFICATION

On June 6, 2020, under the supervision of United States Magistrate Judge William I. Garfinkel, the parties reached a Settlement Agreement. In compliance with the Agreement and pursuant to Rule 23(b)(2) Fed. R. Civ. P, the parties respectfully jointly move to certify a class, that shall be defined, pursuant to paragraph 35 of the parties’ agreement, as follows:

“All persons who were incarcerated in a DOC facility from March 1, 2020, or are incarcerated, or in the future will be so incarcerated, until the termination date of this Agreement, December 31, 2020.”

Therefore, pursuant to this Court’s authority to approve the class certification, and pursuant to the parties’ agreement, the parties jointly request the Court grant this motion and approve the definition of the class. As set forth in the accompanying memorandum of law, the parties jointly submit that Second Circuit requirements for granting class certification are met in this case.

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Ned Lamont, et al.

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I hereby certify that on June 11, 2020, a copy of the foregoing was filed electronically [and served by mail on anyone unable to accept electronic filing]. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system [or by mail to anyone unable to accept electronic filing]. Parties may access this filing through the Court's system.

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**MEMORANDUM OF LAW IN SUPPORT OF
JOINT MOTION FOR CLASS CERTIFICATION**

1. Background and History of the Case

In late April, the incarcerated plaintiffs filed suit against Connecticut’s governor and correction commissioner in their official capacities, alleging that the latter contravened their Eighth and Fourteenth Amendment rights with their acts or omissions during the ongoing COVID-19 pandemic. Throughout the proceedings the defendants have denied any and all allegations of unconstitutional conduct, and instead have maintained their claims and defenses, including their claim that the practices of the Connecticut Department of Correction meet or exceed CDC guidelines, and in fact, are exemplary. After the defendants’ motion to dismiss was denied, the Court oversaw a brief period of discovery leading up to a scheduled June 10th hearing on the plaintiffs’ motion for a preliminary injunction. The parties also engaged in discussions to resolve the parties’ dispute on a classwide basis.

On June 6, 2020, following mediation with the Hon. William I. Garfinkel, the parties agreed on a settlement which, in relevant part, jointly defines the plaintiff class as “all persons who were incarcerated in a DOC facility from March 1, 2020, or are incarcerated, or in the future will be so incarcerated, until the termination date of this Agreement, December 31, 2020.” The parties respectfully seek certification of such a class in contemplation of notice to the class and a Fed. R. Civ. P. 23(e) fairness hearing.

2. The Plaintiffs meet all of the prerequisites for (b)(2) class certification

Here the parties jointly seek to certify a class under Rule 23(b)(2), and therefore they must demonstrate 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). “The party seeking class certification bears the burden of establishing by a preponderance of the evidence that each of Rule 23’s requirements has been met.” *Myers v. Hertz Corp.*, 624 F.3d 537, 547 (2d Cir. 2010).¹

Here, the parties have reached a settlement agreement with broad systemic non-monetary relief regarding, *inter alia*, sanitation practices in DOC facilities, testing of all inmates for SARS-CoV-2 virus, protocols for management of inmates who are positive for the virus, protocols for handling inmates with COVID-19—a disease caused by SARS-CoV-2—in accordance with CDC guidelines, and the formation of a five-person monitoring panel to ensure ongoing compliance with CDC Guidelines, and the provisions of the Agreement. The parties jointly agree and stipulate that this broad-based systemic relief will apply generally to the class, and that the class definition makes sense here where all persons who are incarcerated or will be incarcerated will be included in the class. “Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class. It does not authorize class certification when each individual class member would be entitled to a *different* injunction or declaratory judgment against the defendant.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360(2011). Here, the proposed class would be provided relief from the parties’ agreement.

¹ Here, pursuant to their Agreement the parties jointly move for class certification, and for purposes of settlement the Defendants assume, without waiving any future challenges to a class certification motion, that the prerequisites of Rule 23(a) and (b) are met.

Before approving a class settlement, this Court must decide “whether the requirements for class certification in Rule 23(a) and (b) have been satisfied,” *In re American Int’l Grp., Sec. Litig.*, 689 F.3d 229, 238 (2d Cir. 2012); *Waggoner v. Barclays PLC*, 875 F.3d 79, 86 n.5 (2d Cir. 2017). The parties agree and submit that for purposes of settlement, the proposed class satisfies the numerosity, commonality, typicality, and adequacy of representation standards in Fed. R. Civ. P. 23(a)(1)-(4).² There is no dispute the class meets numerosity requirements, and commonality, typicality and adequacy of representation standards are also met here where injunctive relief is appropriate for the class as a whole. Fed. R. Civ. P. 23(b)(2). As all four elements of Rule 23 (a) have been satisfied the Court should certify the proposed settlement class.

Here, the proposed class satisfies the numerosity requirement because the class comprises more than 10,000 people,³ and our Circuit presumes numerosity exists in classes of larger than forty members. *E.g., Pennsylvania Pub. Sch. Employees’ Ret. Sys. v. Morgan Stanley & Co.*, 772 F.3d 111, 120 (2d Cir. 2014). The commonality requirement is similarly met, because the proposed class members all raise the same issues of fact surrounding the defendants’ response to the COVID-19 outbreak in the prisons in which they are held. *E.g., Marisol A. v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997) (“The commonality requirement is met if plaintiffs’ grievances share a common question of law or of fact.”). The proposed class members also share typicality, because the Complaint alleges that the defendants’ response to the pandemic violated the Eighth or Fourteenth Amendment rights of all incarcerated people. *E.g., In re Drexel Burnham Lambert Grp.*, 960 F.2d 285, 291 (2d Cir. 1992) (holding that typicality exists when “each class member makes similar legal arguments to prove the

² By joining in this motion, Defendants do not waive and reserve their right to challenge class certification if the Agreement is not approved, or for any reason, or in in any future litigation.

³ See Exhibit A to declaration of Michelle DeVeau [ECF # 59-24] at 1.

defendant's liability").⁴ Lastly, the proposed class is adequately represented by the named plaintiffs, because there is no conflict between them and the rest of the class, and because their conduct to date has assured the class "of vigorous prosecution" of the claims. *Irvin v. Harris*, 944 F.3d 63, 71 (2d Cir. 2019). "Rule 23(a)(4) requires that plaintiffs demonstrate that 'class counsel is qualified, experienced, and generally able to conduct the litigation.' *In re Drexel Burnham Lambert*, 960 F.2d at 291." *Marisol A. v. Giuliani*, 126 F.3d 372, 378 (2d Cir. 1997). Throughout the hard-fought negotiations under the supervision of Magistrate Judge Garfinkel, the parties agree, and the Magistrate Judge's remarks confirm, that plaintiffs' attorneys have demonstrated their qualifications and experience to conduct class-action litigation, and that the Settlement is fair, adequate and reasonable. *See* Transcript, ECF Doc. #103.

Secondly, the plaintiffs' allegations demonstrate that "final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). The injunction sought by the plaintiffs in the Complaint and motion for a preliminary injunction would address the common deficiencies alleged by the plaintiffs, without necessitating individualized injunctions for each plaintiff. *See Amara v. CIGNA Corp.*, 775 F.3d 510, 522 (2d Cir. 2014). In accordance with those commonalities, the proposed class settlement includes relief extending to the

⁴ The parties recognize that for class certification purposes the Court may *arguendo* accept the allegations of the complaint; however, the parties also jointly agreed and stated in their agreement, in part, that the Connecticut Department of Correction ("DOC") has begun the mass testing of prisoners confined in DOC facilities, a program that exceeds the current CDC guidelines; the parties acknowledge DOC's many efforts to comply with the CDC guidelines and, where appropriate, to obtain clarification or guidance from the Connecticut Department of Public Health ("DPH"); and the parties recognize DOC's significant efforts to combat COVID-19, including, but not limited to, increasing sanitation and hygiene, testing, and releasing prisoners safely and appropriately to the community, which has resulted, in combination with prisoners having reached their end of sentence dates, in the prison population declining to numbers not seen in decades.

entire class, such as a monitoring panel and systemwide mitigation measures. Accordingly, the Court should certify the plaintiff class as proposed by the parties in their Settlement Agreement.

3. Conclusion

For the reasons set forth above, the Court should certify the plaintiff class pursuant to Fed. R. Civ. P. 23(b)(2) and the class shall be defined as “all persons who were incarcerated in a DOC facility from March 1, 2020, or are incarcerated, or in the future will be so incarcerated, until the termination date of this Agreement, December 31, 2020.”

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