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FILED
CLERK, U.S. DISTRICT COURT
APR 14 2005
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION BY DEPUTY

ENTERED
APR 14 2005
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION
DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STEVEN TRUJILLO; et al.,)
Plaintiffs,)
v.)
CITY OF ONTARIO, etc; et)
al.,)
Defendants.)

Case No. EDCV 04-1015-VAP(SGLx)

[Motion filed on March 7, 2005.]

ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Plaintiffs' Motion for Class Certification came before the Court for hearing on April 11, 2005. After reviewing and considering all papers filed in support of, and in opposition to, the Motion, as well as the arguments advanced by counsel at the hearing, the Court GRANTS Plaintiffs' Motion for Class Certification.

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I. BACKGROUND

Plaintiffs filed their Complaint on August 20, 2004, and their First Amended Complaint ("FAC") on October 28, 2004. Plaintiffs are officers of the City of Ontario

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(D).

20

1 Police Department ("OPD"). [FAC ¶¶ 3-9.] They allege
2 that in 1996, Defendants secretly installed a video
3 camera in the OPD men's locker room. [Id. ¶¶ 1, 28-32.]
4 They claim: (1) violation of the Fourth Amendment to the
5 United States Constitution, pursuant to 42 U.S.C. § 1983;
6 (2) violation of Article 1, Section 1 of the California
7 Constitution; and (3) common law invasion of privacy.

8
9 Plaintiffs now move for certification of a class of
10 "[a]ll persons who were employed by the Ontario Police
11 Department or volunteered for the Ontario Police
12 Department and used the Department's men's locker room
13 during the period in which the surveillance equipment was
14 installed." [Plaintiffs' Memorandum of Points and
15 Authorities in Support of Motion for Class Certification
16 ("Pls.' Mem.") at 1.] Plaintiffs filed their Motion for
17 Class Certification on March 7, 2005. Defendants filed
18 their Opposition ("Opp'n") on March 21, 2005, and
19 Plaintiffs filed a Reply on April 4, 2005.

20
21 **II. LEGAL STANDARD**

22 Under Federal Rule of Civil Procedure 23, in order to
23 bring a class action, a plaintiff must demonstrate:

24 (1) the class is so numerous that joinder of all
25 members is impracticable ["numerosity"], (2)
26 there are questions of law or fact common to the
27 class ["commonality"], (3) the claims or
28 defenses of the representative parties are
typical of the claims or defenses of the class
["typicality"], and (4) the representative
parties will fairly and adequately protect the

1 interests of the class ["adequacy of
2 representation"].

3 Fed. R. Civ. P. 23(a).

4
5 In addition to these prerequisites, a plaintiff must
6 satisfy one of the prongs of Federal Rule of Civil
7 Procedure 23(b) in order to maintain a class action.
8 Where, as here, a plaintiff moves for class certification
9 under Rule 23(b)(3), the plaintiff must prove that

10 the questions of law or fact common to the
11 members of the class predominate over any
12 questions affecting only individual members, and
13 that a class action is superior to other
14 available methods for the fair and efficient
15 adjudication of the controversy. The matters
16 pertinent to the findings include: (A) the
17 interest of members of the class in individually
18 controlling the prosecution or defense of
19 separate actions; (B) the extent and nature of
20 any litigation concerning the controversy
21 already commenced by or against members of the
22 class; (C) the desirability or undesirability of
23 concentrating the litigation of the claims in
24 the particular forum; (D) the difficulties
25 likely to be encountered in the management of a
26 class action.

19 Fed. R. Civ. P. 23(b)(3).

20
21 While a plaintiff seeking to maintain a class action
22 bears the burden of making a prima facie showing on each
23 of the necessary Rule 23 elements, "an extensive
24 evidentiary showing . . . is not required." Blackie v.
25 Barrack, 524 F.2d 891, 901 (9th Cir. 1975). Rather, a
26 court ruling on a class certification motion must make an
27 "informed judgment on each of [Rule 23's] requirements."
28

1 Id. at 901 n.17. A court may consider both the
2 allegations in a plaintiff's complaint as well as
3 extrinsic material in deciding whether to certify a
4 class. See id. at 900-01, 901 n.17.

6 **III. DISCUSSION**

7 **A. Class Certification**

8 The Court considers each of the factors necessary for
9 class certification below.

11 **1. Numerosity**

12 Although the absolute number of class
13 members is not the sole determining factor,
14 where a class is large in numbers, joinder will
15 usually be impracticable. Where the class is
16 not so numerous, however, the number of class
17 members does not weigh as heavily in determining
18 whether joinder would be infeasible. In the
19 latter situation, other factors such as the
20 geographical diversity of class members . . .
21 should be considered in determining
22 impracticability of joinder.

23 Jordan v. Los Angeles County, 669 F.2d 1311, 1319 (9th
24 Cir. 1982), vacated on other grounds by 459 U.S. 810
25 (1982).¹

26 Plaintiffs satisfy the numerosity requirement. The
27 First Amended Complaint avers that 125 people have been
28 identified on a surveillance video obtained by Plaintiffs

¹ Vacated decisions remain persuasive authority if
sound. See In re Taffi, 68 F.3d 306, 310 (9th Cir.
1995); Orhorhaghe v. INS, 38 F.3d 488, 493 n.4 (9th Cir.
1994).

1 and that the proposed class consists of 240 people. [FAC
2 ¶ 18.] Plaintiff Steven Trujillo attests to viewing one
3 video and identifying 125 OPD employees. [Declaration of
4 Steven Trujillo ("Trujillo Decl."), in Declarations in
5 Support of Plaintiffs' Motion ¶¶ 3-4.] These numbers
6 diminish the significance of Defendants' allegation that
7 the proposed class is geographically cohesive, [Opp'n at
8 5-6], and strongly suggest that it is impracticable to
9 join all class members. See Jordan, 669 F.2d at 1319.

10

11 In addition, according to Mr. Trujillo, at least 100
12 of those on the videotape remain OPD employees.

13 [Trujillo Decl. ¶ 4.] This raises the possibility of
14 employment retaliation against individual class members
15 who file suit and militates in favor of finding joinder
16 impracticable. See, e.g., Mullen v. Treasure Chest
17 Casino, LLC, 186 F.3d 620, 625 (5th Cir. 1999) (district
18 court "reasonably presumed that [] potential class
19 members still employed by [the defendant] might be
20 unwilling to sue individually or join a suit for fear of
21 retaliation," and this consideration supported finding
22 numerosity).

23

24 As well as asserting that the proposed class lacks
25 geographical diversity, Defendants argue that the
26 reduction in the number of named plaintiffs from the
27 initial Complaint to the First Amended Complaint is

28

1 evidence that "plaintiffs appear not able to sustain the
2 numbers of members they allege." [Opp'n at 6.] This
3 argument is without merit. Defendants cite no authority
4 indicating that a change in the number of named
5 plaintiffs signifies a lack of numerosity. In any event,
6 Defendants acknowledge they have no explanations for the
7 change in the number of named plaintiffs. [See id.]

8
9 In fact, 11 of the 12 people who were named
10 plaintiffs in the Complaint but are not named in the
11 First Amended Complaint have declared that they believed
12 it was unnecessary to remain named plaintiffs in light of
13 the decision to seek class certification and that they
14 still support the lawsuit. [See, e.g., Declaration of
15 Ronald Dupuis, in Declarations in Support of Plaintiffs'
16 Reply ¶¶ 3-5.] Thus, the change in the number of named
17 plaintiffs does not represent an erosion of potential
18 class members' support and has no relevance for the
19 numerosity inquiry.

20

21 2. Commonality

22 The commonality requirement is construed
23 permissively. See Hanlon v. Chrysler Corp., 150 F.3d
24 1011, 1019 (9th Cir. 1998). Thus, "[a]ll questions of
25 fact and law need not be common to satisfy the rule. The
26 existence of shared legal issues with divergent factual
27 predicates is sufficient, as is a common core of salient

28

1 facts coupled with disparate legal remedies within the
2 class." Id.

3
4 Plaintiffs clearly meet the demand of commonality.
5 The claims of the proposed class members all "stem from
6 the same source": the OPD's alleged placement of
7 surveillance equipment in its men's locker room. See id.
8 at 1019-20. This is "sufficient factual commonality to
9 satisfy the minimal requirements of Rule 23(a)(2)." Id.
10 at 1020.

11
12 Defendants' characterization of proposed class
13 members' claims as "disparate and unique" because "not
14 all of the employees are present on the videotape in the
15 same amount of time, or in the same stage of dress"
16 merits little consideration. [Opp'n at 7, 8.] The
17 extent to which any particular proposed class member is
18 on the videotape and his degree of undress bear on
19 damages. "The amount of damages is invariably an
20 individual question and does not defeat class action
21 treatment." Blackie, 524 F.2d at 905.

22 23 **3. Typicality**

24 "[A] plaintiff's claim is typical if it arises from
25 the same event or practice or course of conduct that
26 gives rise to the claims of other class members and his
27 or her claims are based on the same legal theory."
28

1 Rosario v. Livaditis, 963 F.2d 1013, 1018 (7th Cir. 1992)
2 (quotation marks and citation omitted); O'Connor v.
3 Boeing North American, Inc., 184 F.R.D. 311, 332 (C.D.
4 Cal. 1998); Haley v. Medtronic, Inc., 169 F.R.D. 643, 649
5 (C.D. Cal. 1996). Put more generally, "[u]nder the
6 rule's permissive standards, representative claims are
7 'typical' if they are reasonably co-extensive with those
8 of absent class members; they need not be substantially
9 identical." Hanlon, 150 F.3d at 1020.

10

11 Named Plaintiffs' claims are typical of those of the
12 proposed class. Like the claims of members of the
13 proposed class, named Plaintiffs' claims arise from the
14 alleged installation of surveillance equipment in the OPD
15 men's locker room and are based on the right under the
16 Fourth Amendment to the U.S. Constitution to be free from
17 unreasonable searches and seizures; the right to privacy
18 under the California Constitution; and California common
19 law's privacy guarantee.

20

21 Defendants contend that named Plaintiffs' claims are
22 not typical because the proposed class includes OPD
23 volunteers. [Opp'n at 10.] While of course employees'
24 claims against an employer might not be typical of
25 volunteers' claims in some instances, the claims of OPD
26 employees appear coextensive with those of OPD volunteers

27 // //

28

1 under the circumstances that Plaintiffs allege here.
2 Defendants offer no arguments to the contrary.

3

4 As for Defendants' insistence that the "proposed
5 class representatives do not have direct claims against
6 each defendant" and thus their claims are not typical,
7 this is simply not the case. Named Plaintiffs
8 specifically aver the involvement of each Defendant in
9 the allegedly unlawful conduct, [see FAC ¶¶ 28, 30,
10 31,38], and named Plaintiffs and proposed class members
11 have the same claims, on the same grounds, against the
12 same Defendants.

13

14 **4. Adequacy of Representation**

15 "Resolution of two questions determines legal
16 adequacy: (1) do the named plaintiffs and their counsel
17 have any conflicts of interest with other class members
18 and (2) will the named plaintiffs and their counsel
19 prosecute the action vigorously on behalf of the class?"
20 Hanlon, 150 F.3d at 1020.

21 // //

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1 The Court perceives no conflicts of interest.²
2 Named Plaintiffs will "fairly and adequately protect the
3 interests of the class." Fed. R. Civ. P. 23(a); see Gen.
4 Tel. Co. of Southwest v. Falcon, 457 U.S. 147, 157 n.13
5 (1982) (commonality and typicality requirements "tend to
6 merge with the adequacy-of-representation requirement").
7 Plaintiffs' counsel are competent. [See Declarations of
8 Della Bahan, Peter J. Eliasberg, Michael D. Lackie, in
9 Declarations in Support of Plaintiff's Motion.]
10 Accordingly, the Court finds that Plaintiffs satisfy this
11 requirement.

12

13 **5. Predominance of Common Questions of Law or Fact**
14 **and Superiority of a Class Action**

15 Common questions of law and fact predominate over
16 questions affecting only individual members. The
17 critical legal and factual issues are the same for all
18 members of the proposed class, including whether
19 Defendants secretly installed surveillance equipment in
20 the OPD men's locker room; whether proposed class members
21 possessed a reasonable expectation of privacy in the OPD
22 men's locker room; and whether Defendants' alleged

23

24 ² Based on the reduction in the number of named
25 plaintiffs from the Complaint to the First Amended
26 Complaint, Defendants maintain that there are "clearly
27 established conflicts of interest within the class"
28 precluding adequate representation. [Opp'n at 11.] As
the Court has already explained, this change in the
number of named plaintiffs has nothing whatsoever do with
conflicts among proposed class members. See supra Part
III.A.1.

1 conduct violated the Fourth Amendment, the California
2 Constitution, or California common law.³ [FAC ¶ 19.]
3 The individualized questions address the amount of time
4 for which proposed class members were recorded and the
5 degree of proposed class members' exposure on any
6 videotapes that were made. These questions relate to
7 damages and therefore, as previously noted, do not
8 prevent class certification. See Blackie, 524 F.2d at
9 905.

10

11 A class action in this instance is superior to the
12 adjudication of individual claims. Judicial economy
13 obviously favors a class action over more than 100
14 individual suits. In addition, a class action will
15 permit proposed class members who remain OPD employees to
16 prosecute claims they might otherwise hesitate to bring
17 because they fear retaliation by the OPD.

18

19 Defendants contend that a class action is not
20 superior to other forms of adjudication here because
21 Plaintiffs could use a "test case" to determine the
22 merits of their claims. [Opp'n at 12.] Defendants,
23 however, do not indicate why a test case would be
24 preferable in this instance, and Plaintiffs argue
25 persuasively that a "test case" would be an inferior

26

27

28 ³ Defendants note the predominance requirement,
[Opp'n at 7], but do not discuss it.

1 method of resolution, not least because the statute of
2 limitations would continue to run for the other proposed
3 class members.⁴

4
5 Consideration of the factors enumerated in Rule
6 23(b)(3) confirms that common questions predominate and
7 that a class action is superior to other methods of
8 adjudicating this dispute. See Hanlon, 150 F.3d at 1023
9 ("non-exclusive factors listed in Rule 23(b)(3) []
10 potentially apply to both the predominance and
11 superiority inquiries").

12
13 As in Hanlon, "[f]rom either a judicial or litigant
14 viewpoint, there is no advantage in individual members
15 controlling the prosecution of separate actions. There
16 would be less litigation or settlement leverage,
17 significantly reduced resources and no greater prospect
18 for recovery." Id. Plaintiffs are unaware of any other
19 pending litigation involving the use of surveillance
20 equipment in the OPD men's locker room, and Defendants
21 have pointed to none. [Pls.' Mem. at 11; Opp'n at 12.]
22 Concentrating the litigation in this forum is desirable
23 because all Defendants and most members of the proposed
24

25 ⁴ The statute of limitations for the proposed class
26 members' § 1983 claims, for example, is one year. See
27 Taylor v. Regents of Univ. of Cal., 993 F.2d 710, 711
28 (9th Cir. 1993). Thus, proposed class members' § 1983
claims might well be time-barred by the time a "test
case" was resolved.

1 class are here. [See Pls.' Mem. at 11-12; Trujillo Decl.
2 ¶ 4.] Finally, a class action in this case does not pose
3 any particular management problems.

4
5 **6. Conclusion**

6 The Court finds that Plaintiffs have satisfied the
7 requirements of Rule 23 and certifies the following class
8 on all three of Plaintiffs' claims: all persons who were
9 employed by the Ontario Police Department or volunteered
10 for the Ontario Police Department, used the Department's
11 men's locker room during the period in which the
12 surveillance equipment was installed, and were recorded
13 by the surveillance equipment.⁵

14
15 **B. Appointment of Class Counsel**

16 Upon certifying a class, a court must appoint class
17 counsel who will "fairly and adequately represent the
18 interests of the class." Fed. R. Civ. P. 23(c)(1)(B),
19 (g)(1)(A) - (B).

20 In appointing class counsel, the court [] must
21 consider:

- 22 • the work counsel has done in identifying or
23 investigating potential claims in the action,
24 • counsel's experience in handling class
25 actions, other complex litigation, and claims of
the type asserted in the action,
• counsel's knowledge of the applicable law, and

26 ⁵ This formulation of the class differs from that
27 proposed by Plaintiffs in their Motion because the Court
28 discerns no basis for liability if a putative plaintiff
was not at some point recorded by the surveillance
equipment.

1 • the resources counsel will commit to
representing the class; [and]
2 [] may consider any other matter pertinent to
counsel's ability to fairly and adequately
3 represent the interests of the class

4 Fed. R. Civ. P. 23(g)(1)(C).

5
6 Named Plaintiffs' counsel, Della Bahan, Peter J.
7 Eliasberg, and Michael Lackie, move jointly to be
8 appointed class counsel. [Pls.' Mem. at 14-16.] Ms.
9 Bahan does not specify the work she has already done in
10 this action; however, her declaration establishes that
11 she has experience handling class action, employment, and
12 civil rights cases. [Declaration of Della Bahan, in
13 Declarations in Support of Plaintiffs' Motion ¶ 3.] She
14 declares that her firm has the resources necessary to
15 prosecute this case and that she and her firm are "fully
16 committed to vigorously representing the plaintiffs."
17 [Id. ¶¶ 8, 9.] The Court is satisfied that Ms. Bahan
18 will "fairly and adequately represent the interests of
19 the class" and appoints her class counsel.

20
21 Mr. Eliasberg has worked on this case for "many
22 months," speaking with named Plaintiffs and proposed
23 class members. [Declaration of Peter J. Eliasberg, in
24 Declarations in Support of Plaintiffs' Motion ¶ 7.] He
25 has been counsel in class actions alleging civil rights
26 violations. [Id. ¶ 6.] He declares that the American
27 Civil Liberties Union Foundation for Southern California,
28

1 where he is Managing Attorney, has sufficient resources
2 to represent the proposed class. [Id. ¶ 3, 8.] The
3 Court finds that Mr. Eliasberg will "fairly and
4 adequately represent the interests of the class" and
5 appoints him class counsel.

6
7 Mr. Lackie has spent a "substantial amount of time"
8 meeting with named Plaintiffs and proposed class members.
9 [Declaration of Michael Lackie, in Declarations in
10 Support of Plaintiffs' Motion ¶ 6.] He has acted as
11 counsel in at least one other class action. [Id. ¶ 4.]
12 His law practice focuses on the rights of public
13 employees, and his firm represents over 70 public
14 employee unions on various matters. [Id. ¶ 3.] He
15 declares that his firm has adequate resources to
16 represent the proposed class. [Id. ¶ 7.] The Court
17 finds that Mr. Lackie will "fairly and adequately
18 represent the interests of the class" and appoints him
19 class counsel.

20

21 C. Notice to Class Members

22 For any class certified under Rule 23(b)(3), the
23 court must direct to class members the best
24 notice practicable under the circumstances,
25 including individual notice to all members who
26 can be identified through reasonable effort. The
27 notice must concisely and clearly state in
28 plain, easily understood language:

- the nature of the action,
- the definition of the class certified,
- the class claims, issues, or defenses,

- 1 • that a class member may enter an appearance through counsel if the member so desires,
- 2 • that the court will exclude from the class any member who requests exclusion, stating when and
- 3 how members may elect to be excluded, and
- 4 • the binding effect of a class judgment on class members under Rule 23(c)(3).

5 Fed. R. Civ. P. 23(c)(2)(B).

6
7 Plaintiffs have not suggested a plan for "the best
8 notice practicable under the circumstances," nor have
9 they lodged with the Court a proposed notice of pendency
10 of class action. The Court therefore orders Plaintiffs
11 to file such a plan and lodge the requisite notice no
12 later than April 15, 2005.

13
14 **IV. CONCLUSION**

15 For the foregoing reasons, Plaintiffs' Motion for
16 Class Certification is GRANTED. Della Bahan, Peter J.
17 Eliasberg, and Michael Lackie are appointed class
18 counsel. Plaintiffs shall file a notice plan and lodge a
19 proposed notice of pendency of class action no later than
20 April 20, 2005. Defendants may file any objections to
21 the notice plan and notice of pendency of class action no
22 later than April 27, 2005.

23
24 **IT IS SO ORDERED.**

25
26 Dated: April 14, 2005

Virginia A. Phillips
27 VIRGINIA A. PHILLIPS
28 United States District Judge