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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

ROBERT HICKEY, KENNETH HANKIN,
JENNIFER HUDZIEC, STEPHANIE
LANE, CARROLL JACKSON, DENISE
COOPER, NICOLE PEARSON, and
EMILY MALONEY, on behalf of
themselves and all others
similarly situated,

Plaintiffs,

v.

THE CITY OF SEATTLE, a
municipality; PAUL SCHELL,
Mayor of the City of Seattle;
and NORMAN STAMPER, Chief of
Police of the City of Seattle,

Defendants.

NO. C00-1672R

ORDER GRANTING RULE 54(b)
FINAL JUDGMENT AND CLASS
CERTIFICATION

THIS MATTER comes before the court on two motions:

(1) plaintiffs' second motion for 54(b) judgment and (2) plain-
tiffs' second motion for class certification. In a motion filed
with the court on July 26, 2001, plaintiffs first sought certifi-
cation of a comprehensive class for both declaratory relief and
money damages. That motion was denied after the court declared
constitutional the City's Civil Emergency Order Number 3 creating
a "No-Protest-Zone" during the World Trade Organization ("WTO")
ministerial conference in Seattle. The October 29, 2001 Order
effectively eliminated the claims common to the original proposed

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1 class as well as all of the claims of plaintiffs Kenneth Hankin,
2 Jennifer Hudziec, Stephanie Lane, Denise Cooper, and Nicole
3 Pearson. Plaintiffs' second motion for 54(b) judgment requests
4 the entry of final judgment as to these five named plaintiffs.

5 In their second motion for class certification, plaintiffs
6 seek to certify a smaller class of individuals, which consists of
7 all those arrested outside the No-Protest-Zone in a mass arrest
8 that took place at or near First Avenue and Broad Street in down-
9 town Seattle on December 1, 1999, and whose arrest records indi-
10 cate a violation of Seattle Municipal Code ("SMC") 12A.26.040.
11 Defendants, in their opposition to plaintiffs' class certifica-
12 tion motion, argue that the motion is untimely and that it fails
13 to satisfy the requirements of Federal Rule of Civil Procedure
14 23. Having reviewed the documents in support of and in opposi-
15 tion to the motions for Rule 54(b) judgment and for class certif-
16 ication, the court finds and rules as follows:

17
18 I. BACKGROUND

19 On December 1 and 2, 1999, the City of Seattle ("City") made
20 numerous arrests of persons who were gathered to protest the WTO
21 ministerial conference held in Seattle. These arrests included
22 both persons arrested inside the city emergency order's No-
23 Protest-Zone and persons arrested outside the No-Protest-Zone.
24 Those arrested outside the No-Protest-Zone included a group of
25 approximately 140 individuals who were arrested at or near First
26 Avenue and Broad Street in Seattle at approximately 4:00 p.m.

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1 The arrest records of these individuals all indicate, on pre-
2 printed stickers, that they were booked on charges of "FAILURE
3 TO OBEY 12A.26.040." Weaver Decl., Exs. C and D. The arrest
4 records additionally indicate that the charges related to the
5 mayoral order that created the No-Protest-Zone during the WTO
6 conference.

7 On October 2, 2000, eight named plaintiffs filed a complaint
8 alleging that various actions by police and city officials
9 violated 42 U.S.C. § 1983. Due to unresolved discovery issues,
10 the court vacated all deadlines in this action, including the
11 deadline to file a motion for class certification, by Order dated
12 February 27, 2001. Plaintiffs thereafter requested an interlocu-
13 tory appeal, which the Ninth Circuit denied.

14 In the instant motions, plaintiffs seek a (1) Rule 54(b)
15 final judgment of the five named plaintiffs whose claims were
16 eliminated by the consolidated October 29, 2001 Order; and
17 (2) class certification of the group of individuals arrested
18 outside the No-Protest-Zone at or near First Avenue and Broad
19 Street on December 1, 1999.

20
21 II. DISCUSSION

22 A. Fed. R. Civ. P. 54(b)

23 The court will first address the Rule 54(b) motion. Plain-
24 tiffs argue that Rule 54(b) final judgment as to the five named
25 plaintiffs whose claims were eliminated by the consolidated
26 summary judgment order is warranted so that they may join the

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1 appeal of the related case Menotti v. City of Seattle, C00-372R,
2 in which this court recently entered final judgment. Rule 54(b)
3 provides that a district court may "direct the entry of a final
4 judgment as to one or more but fewer than all of [multiple]
5 claims or parties only upon an express determination that there
6 is no just reason for delay and upon an express direction for the
7 entry of judgment." Before issuing a Rule 54(b) order, a dis-
8 trict court must first evaluate the interrelationship between all
9 the claims, to ensure that final judgment has been entered on at
10 least one entire claim and to avoid piecemeal litigation.
11 Curtis-Wright Corp. v. Gen. Elec. Corp., 446 U.S. 1, 10 (1980).

12 Here, final judgment against the five named plaintiffs
13 arrested inside the No-Protest Zone is proper. The court's
14 consolidated October 29, 2001 Order, finding the No-Protest-Zone
15 constitutional, effectively eliminated all claims made by these
16 five plaintiffs. The eliminated constitutional claims relating
17 to the No-Protest-Zone are separate and distinct from the surviv-
18 ing claims of the additional named plaintiffs whose claims relate
19 to their arrest outside the No-Protest-Zone. Further, since the
20 pending appeal in Menotti challenges precisely the issue on which
21 these plaintiffs' claims rest, it would be inequitable and
22 inefficient not to enter final judgment as to them. Accordingly,
23 the court GRANTS plaintiffs' motion. Final judgment shall be
24 entered against Kenneth Hankin, Jennifer Hudzic, Stephanie Lane,
25 Denise Cooper, and Nicole Pearson, the named plaintiffs arrested
26 inside the No-Protest-Zone.

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1 B. Class Certification

2 1. Timeliness

3 Turning to plaintiffs' motion for class certification, the
4 court first considers the City's timeliness challenge to this
5 motion. At first glance, the City's argument would appear to
6 have merit: it has been two years since this case was filed and
7 three years since the WTO Conference itself. Cf. Fed. R. Civ. P.
8 23(c) (requiring a party to bring a motion to certify "as soon as
9 practicable after the commencement of an action"). While the
10 motion might seem extremely late in coming, however, it appears
11 not to run afoul of any deadline. Prior to the original April 5,
12 2001 deadline for bringing a motion for class certification, the
13 court vacated all deadlines in this case. No case schedule has
14 been entered following the Ninth Circuit's denial of plaintiffs'
15 request for an interlocutory appeal. As such, the filing of this
16 motion, some two years after the commencement of this action,
17 does not appear to violate any procedural deadline.

18 2. Rule 23(a) Prerequisites

19 With this procedural objection out of the way, and disre-
20 garding whether plaintiffs' claims have merit, the motion for
21 class certification appears proper. Under Rule 23(a) plaintiffs
22 must show that the proposed class meets the prerequisites of
23 (a) numerosity, (b) commonality, (c) typicality, and (d) adequacy
24 of representation. E.g., Amchem Prods., Inc. v. Windsor, 521
25 U.S. 591, 613 (1997).

26
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1 a. Numerosity

2 A proposed class meets the numerosity requirement if "the
3 class is so numerous that joinder of all members is impractica-
4 ble." Fed. R. Civ. P. 23(a)(1). Additionally, small damage
5 claims weigh in favor of granting class certification. See,
6 e.g., Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 809 (1985)
7 ("Class actions also may permit the plaintiffs to pool claims
8 which would be uneconomical to litigate individually.").

9 Here, the proposed class size consists of approximately 140
10 members. Additionally, the individual damage claims involved are
11 small, making individual suits not practical. The numerosity
12 requirement is therefore satisfied.

13 b. Commonality

14 A class has sufficient commonality "if there are questions
15 of fact and law which are common to the class." Fed. R. Civ. P.
16 23(a)(2).

17 Here, it appears that sufficient questions of fact and law
18 are common to the class. All members of the proposed class were
19 arrested in mass and all but one member were charged with failing
20 to clear the street in accordance with a mayoral order.¹ Plain-
21 tiffs assert that no such mayoral order existed which included
22 the area in which the proposed class members were arrested.

24 ¹Plaintiffs admit that one proposed class member's arrest
25 record does not state the violation shared by the others.
26 However, that member's record does not give any other reason for
arrest. Weaver Decl. ¶¶ 4, 5.

1 Thus, common issues of fact and law exist as to why the arrest
2 was made, whether probable cause existed for the arrest, and
3 whether the arrest violated constitutional rights.

4 Defendants argue that individual circumstances exist for
5 each arrestee that prevent class certification. For instance,
6 defendants argue that even if probable cause did not exist to
7 arrest for violation of SMC 12A.26.040², other legal bases for
8 arrest may have existed, such as obstruction of traffic. There
9 might very well be other circumstances justifying plaintiffs'
10 arrest.³ However, considering that the arrest records of each of
11 the proposed class members do not mention other violations to
12 justify the initial arrest, this argument creates additional
13 questions common to the proposed class. Regardless, Rule
14 23(a)(2) does not require that class members share all questions
15 of law and fact. Accordingly, the commonality requirement is
16 satisfied.

17 c. Typicality

18 The typicality prerequisite of Rule 23(a) is fulfilled if
19 "the claims or defenses of the representative parties are typical

20 ²SMC 12A.26.040 states:

21
22 A person is guilty of failure to obey the
23 Mayor's emergency order when he or she knowingly
24 violates any order issued under authority of
Sections 12A.26.010 or 12A.26.040.

25 ³Indeed, the court has found such circumstances, including
26 obstruction of traffic in violation of the Seattle Municipal
Code, to have justified arrests in the Menotti case, which appear
similar to the ones in this case.

1 of the claims or defenses of the class." Fed. R. Civ. P.
2 23(a)(3).

3 Here, each member of the proposed class, including Hickey
4 and Jackson, was arrested at the same place, at the same time,
5 and was booked on the same charges. Hence, the typicality
6 requirement is met.

7 d. Adequacy of Representation

8 The final requirement of Rule 23(a) is that "the representa-
9 tive parties will fairly and adequately protect the interests of
10 the class." Fed. R. Civ. P. 23(a)(4). This element examines
11 both whether the named plaintiff or counsel have any conflicts of
12 interest with other class members and whether the named plaintiff
13 and counsel will vigorously prosecute the case. Hanlon, 150 F.3d
14 at 1020. Plaintiffs assert, and the City does not dispute, that
15 the representative plaintiffs' claims and interests are not in
16 conflict with any interests of the proposed class. Pls.' Br. at
17 12. Finally, plaintiffs provide evidence of sufficient resources
18 accessible through plaintiffs' counsel to represent the Class.
19 Weaver Reply Decl., ¶ 6. Accordingly, the adequacy of represen-
20 tation requirement is satisfied.

21 2. Rule 23(b)(3) Requirements

22 In addition to the four prerequisites of Rule 23(a), Plain-
23 tiff must also meet the requirements of one of the subsections of
24 Rule 23(b). See Zinser v. Accufix Research Inst., Inc., 253 F.3d
25 1180, 1186, amended by 273 F.3d 1266 (9th Cir. 2001). In this
26 case, plaintiffs move to certify the class under Rule 23(b)(3).

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1 Rule 23(b)(3) requires (a) that common questions of law and fact
2 predominate over individual questions and (b) that class resolu-
3 tion is superior to other methods of adjudication.

4 a. Predominance

5 "The Rule 23(b)(3) predominance inquiry tests whether
6 proposed classes are sufficiently cohesive to warrant adjudica-
7 tion by representation." Hanlon, 150 F.3d at 1022 (citing
8 Amchem, 521 U.S. at 623). In analyzing cohesiveness, "it is not
9 enough to establish that common questions of law or fact merely
10 exist, as it is under Rule 23(a)(2)'s commonality requirement."
11 Duncan v. Northwest Airlines, Inc., 203 F.R.D. 601, 611-612 (W.D.
12 Wash. 2001). Instead, the inquiry must focus on "legal or
13 factual questions that qualify each class member's case as a
14 genuine controversy." Amchem, 521 U.S. at 623. When common
15 questions present a significant aspect of the case and they can
16 be resolved for all members of the class in a single adjudica-
17 tion, there is clear justification for handling the dispute on a
18 representative rather than on an individual basis. Hanlon, 150
19 F.3d at 1022 (internal quotation omitted). "Implicit in the
20 satisfaction of the predominance test is the notion that the
21 adjudication of common issues will help achieve judicial econ-
22 omy." Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1234 (9th
23 Cir. 1996).

24 Here, inasmuch as common issues of law and fact predominate
25 in this case, judicial economy would be served through class
26 certification. The proposed class members were arrested together

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1 at the same general location, for the same alleged violation, and
2 they were booked on the same charge. Issues related to probable
3 cause arising from this mass arrest are common to the class.
4 The City's only serious argument -- that the court will have to
5 adjudicate independently the merits of each arrest in light of
6 other possible bases for the arrest -- is not persuasive, given
7 the paucity of individual facts as to each arrest. Accordingly,
8 the court finds that the predominance requirement is satisfied.

9 b. Superiority

10 Rule 23(b)(3) also requires that class action must be
11 "superior to other available methods for the fair and efficient
12 adjudication of the controversy." Fed. R. Civ. P. 23(b)(3).
13 Rule 23(b)(3) provides a non-exhaustive list of factors to
14 consider in determining superiority: the interest of members of
15 the class in individually controlling the prosecution or defense
16 of separate actions; the extent and nature of any litigation
17 concerning the controversy already commenced by and against
18 members of the class; the desirability or undesirability of
19 concentrating the litigation of the claims in the particular
20 forum; and the difficulties likely to be encountered in the
21 management of a class action. "Consideration of these factors
22 requires the court to focus on the efficiency and economy ele-
23 ments of the class action so that cases allowed under subdivision
24 (b)(3) are those that can be adjudicated most profitably on a
25 representative basis. Zinser, 253 F.3d at 1190 (quotations
26 omitted).

1 Here, the record before the court weighs in favor of certif-
2 ication. The plaintiffs have small damages claims that would
3 make individual litigation inefficient. Additionally, there is
4 no evidence of any pending litigation by members of the proposed
5 class regarding this controversy nor of any unusual obstacles
6 that would make managing the class particularly difficult.
7 Accordingly, the court finds that the superiority requirement of
8 Rule 23(b)(3) is satisfied.⁴

9
10 III. CONCLUSION

11 For the foregoing reasons, the court hereby GRANTS plain-
12 tiffs' motions for 54(b) judgment [doc no. 107-1] and for class

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23 ⁴Plaintiffs also moved to certify the class under Rule
24 23(b)(2). However, the court fails to see a need either for
25 injunctive or declaratory relief. The WTO conference has long
26 passed, the mayoral order is no longer in effect, and the unique
circumstances giving rise to these claims are no longer present.
Accordingly, class certification under Rule 23(b)(2) is not
appropriate.

1 certification [doc. no. 96-1].⁵

2 DATED at Seattle, Washington this 5th day of November, 2002.

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4 _____
5 BARBARA JACOBS ROTHSTEIN
6 UNITED STATES DISTRICT JUDGE

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22 ^bThe court modifies, however, the class definition to read
as follows:

23 All individuals arrested on December 1, 1999, at
24 or near the intersections of First Avenue and
25 Broad Street or First Avenue and Clay Street in
26 Seattle, Washington, whose arrest records indicate
that a reason for arrest was a violation of
Seattle Municipal Code § 12A.26.040.