UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DUNCAN ROY, *et al.*,

Plaintiffs,

v.

COUNTY OF LOS ANGELES, *et al.*,

Defendants.

GERARDO GONZALEZ, *et al.*,

Plaintiffs,

v.

IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*,

Defendants.

Case No. CV 12-09012-AB (FFMx)

Consolidated with:
Case No. CV 13-04416-AB (FFMx)

ORDER GRANTING PLAINTIFFS' MOTION TO MODIFY CLASS DEFINITION

I. INTRODUCTION

This action involves two cases that have been consolidated: *Duncan Roy, et al. v. County of Los Angeles, et al.*, No. 12-cv-09012-AB-FFM and *Gonzalez v. Immigration & Customs Enforcement, et al.*, No. 13-cv-04416-AB-FFM (both cases are now proceeding under No. 12-cv-09012-AB-FFM). The remaining Plaintiffs in the Roy action at the time the Court considered the recent summary judgment motions were Clemente De La Cerda and Alain Martinez-Perez (collectively, "Roy Plaintiffs").[1] Defendants in the Roy action are the County of Los Angeles and Sheriff Leroy D. Baca (collectively, "Roy Defendants" or the "County"). The Roy Plaintiffs bring the instant Motion to Modify the Class Definition in light of the Court's February 7, 2018 summary judgment Order. (Dkt. No. 348 ("Mot.").)

After considering the papers filed in support of and in opposition to the instant Motion, the Court **GRANTS** the Roy Plaintiffs' Motion.

II. RELEVANT BACKGROUND

On September 9, 2016, the Court granted, in part, the Roy Plaintiffs' Motion for Class Certification. (See Dkt. No. 184.) The Court certified seven classes for the Roy action: (1) the False Imprisonment Equitable Relief Class; (2) the *Gerstein* Equitable Relief Class; (3) the False Imprisonment Damages Class; (4) the Post-48 Hour *Gerstein* Subclass; (5) the Investigative Detainer Class; (6) the No Bail Notation Class; and (7) the No-Money Bail Subclass. (Dkt. No. 184.) Relevant to this action, the Post-48 Hour *Gerstein* Subclass includes "[a]ll LASD inmates who were detained for more than forty-eight hours beyond the time they were due for release from criminal custody, based solely on immigration detainers, excluding inmates who had a final order of removal or were subject to ongoing removal proceedings as indicated on the face of the immigration detainer" and covers those inmates who were detained

[1] The only remaining Plaintiff in the Roy action after the Court issued its Order on the summary judgment motions (Dkt. No. 346) is Alain Martinez-Perez.

from October 19, 2010 to the present (federal claims), and from November 7, 2011 to June 5, 2014 (California state law claims). (Dkt. No. 184.)

The Court did not certify the *Gerstein* Damages Class which included: "[a]ll LASD inmates who were detained beyond the time they are due for release from criminal custody, solely on the basis of immigration detainers, excluding inmates who had a final order of removal or were subject to ongoing removal proceedings as indicated on the face of the detainer." (Dkt. No. 184.) This class sought damages pursuant to federal law from October 19, 2010, to the present, and under California state law from November 7, 2011, to June 5, 2014. (Dkt. No. 184.) The Court did not certify the broader *Gerstein* Damages Class because it was concerned that this class would not be susceptible to a class-wide liability determination. (Dkt. No. 184 at 23–24.) The issue with the broader *Gerstein* Damages Class was that unlike the Post-48 Hour Damages Subclass, "whether each class member who was provided a probable cause hearing within forty-eight hours was provided a hearing within a reasonable amount of time would be an individualized inquiry dependent on the facts of the case." (Dkt. No. 184 at 24.) "For those who were not given a probable cause hearing for more than forty-eight hours, however, it may be found as a matter of law that all such delays were unreasonable." (Dkt. No. 184 at 24.) The Court ultimately concluded "that the Roy Plaintiffs have failed to establish commonality for the *Gerstein* [C]lass, though they have met the commonality requirement for the Post-48[]Hours *Gerstein* [S]ubclass." (Dkt. No. 184 at 24.)

On February 7, 2018, this Court granted in part and denied in part the Roy Defendants' Motion for Summary Judgment, or Alternatively, Partial Summary Judgment (Dkt. No. 242) and granted in part and denied in part the Roy Plaintiffs' Motion for Summary Adjudication Regarding Liability (Dkt. No. 240). (Dkt. No. 346.) The Court granted summary judgment as to the Post-48 Hour *Gerstein* Subclass. (Dkt. No. 346 at 38–41.) In brief, the Court granted summary judgment in favor of the Roy Plaintiffs' Post-48 Hour *Gerstein* Subclass because the undisputed

evidence established that the Los Angeles County Sheriff's Department ("LASD") held inmates beyond their release dates on the basis of civil immigration detainers. (Dkt. No. 346 at 41.) The Court further held that holding the inmates beyond their release dates on the basis of civil immigration detainers constituted a new arrest under the Fourth Amendment. (Dkt. No. 346 at 41.) Ultimately, the Court concluded that because the LASD officers have no authority to arrest individuals for civil immigration offenses, detaining individuals beyond their release date violated the individuals' Fourth Amendment rights. (Dkt. No. 346 at 41.)

On March 2, 2018, the Roy Plaintiffs filed the instant Motion to Modify the Class Definition. (Mot.) On March 21, 2018, the County opposed. (Dkt. No. 359.) And on April 9, 2018, the Roy Plaintiffs replied. (Dkt. No. 370.)

III. LEGAL STANDARD

Federal Rule of Civil Procedure 23(c)(1)(C) permits a court to alter or amend an order granting class certification at any point prior to the entry of final judgment. Fed. R. Civ. P. 23(c)(1)(C). Therefore, the district court retains flexibility and is free to modify a class definition in light of developments during the course of litigation. *See, e.g.*, *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982) ("Even after a certification order is entered, the judge remains free to modify it in the light of subsequent developments in the litigation."); *United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO, CLC v. ConocoPhillips Co.*, 593 F.3d 802, 809 (9th Cir. 2010). "In considering the appropriateness of [modification or] decertification, the standard of review is the same as a motion for class certification: whether the Rule 23 requirements are met." *Marlo v. United Parcel Serv., Inc.*, 251 F.R.D. 476, 479 (C.D. Cal. 2008), *aff'd*, 639 F.3d 942 (9th Cir. 2011).

IV. DISCUSSION

The Roy Plaintiffs argue that because the Court's decision to grant summary judgment in favor of the Post-48 Hour *Gerstein* Subclass was based upon the legal

conclusion that the County violated the individuals' Fourth Amendment rights when the LASD held them beyond their release date based upon a civil immigration detainer, the liability determination extends to all persons held after they were due for release on civil immigration detainers, regardless of the duration of the additional detention. (Mot. at 1–2.) Thus, because this legal analysis would apply to not only those in the Post-48 Hour *Gerstein* Subclass, but would also apply to those individuals held for less than 48 hours beyond their release date, the class definition for the Post-48 Hour *Gerstein* Subclass should be amended. (Mot. at 2.) The Roy Plaintiffs request that the Court amend the Post-48 Hour *Gerstein* Subclass to include persons held less than 48 hours. (Mot. at 2.)

The Roy Plaintiffs note that this amended definition "would result in a class identical in composition to that found by the Court in its summary judgment ruling and likewise identical to the *Gerstein* Damages Class sought (but denied) in Plaintiffs' Class Certification Motion." (Mot. at 2.) The Roy Plaintiffs also argue that the modified class would encompass all members of the "Investigative Detainer" class. (Mot. at 9.)

A. Whether the Court Should Modify the Post-48 Hour *Gerstein* Subclass

By modifying the Post-48 Hour *Gerstein* Subclass to include all persons held after they were due for release on immigration detainers, including those held less than 48 hours, the Court would essentially be certifying the *Gerstein* Damages Class. The Court did not certify the broader *Gerstein* Damages Class because it was concerned that this class would not be susceptible to a class-wide liability determination. (Dkt. No. 184 at 23–24.) The issue with the broader *Gerstein* Class was that unlike the Post-48 Hour Damages Subclass, "whether each class member who was provided a probable cause hearing within forty-eight hours was provided a hearing within a reasonable amount of time would be an individualized inquiry dependent on the facts of the case." (Dkt. No. 184 at 24.)

Now, however, the Court's Order granting summary judgment in favor of the Roy Plaintiffs' Post-48 Hour *Gerstein* Subclass renders the distinction between those individuals who were held more than 48 hours after they were due for release based on an immigration detainer and those who were held less than 48 hours moot. The Court granted summary judgment in favor of the Roy Plaintiffs' Post-48 Hour *Gerstein* Subclass on the basis that holding an individual beyond his or her release date based on a civil immigration detainer is a new arrest, the LASD does not have authority to arrest individuals based on civil immigration detainers, and thus, the County violated the Plaintiffs' Fourth Amendment rights when it held the individuals beyond their release dates based on civil immigration detainers. (Dkt. No. 346 at 38–41.) The practical implication is that this same finding of liability would not only apply to those held beyond 48 hours, but all individuals who were held beyond their release dates based on a civil immigration detainer for any amount of time. Thus, there is no longer a commonality concern with this broader class, as the basis for liability would apply to the entire class.

Notably, the County does not contest that the broader class satisfies Rule 23. (*See* Opp'n.) In the Court's Order on class certification, the Court held that this broader *Gerstein* Damages class satisfied the numerosity requirement (the broader class consists of approximately 13,030 potential class members) (*see* Dkt. No. 184 at 19), the Court now finds that this broader class satisfies the commonality and typicality requirements as common questions apply to the entire class, and the Court continues to hold that the Roy Plaintiffs are adequate representatives (*see* Dkt. No. 184 at 29–30). Thus, the broader modified class satisfies Rule 23 requirements. *See* Fed. R. Civ. P. 23(a).

Much of the County's Opposition is devoted to the argument that expanding the Post-48 Hour Subclass to include persons held less than 48 hours directly conflicts with the Fifth Circuit's decision in *City of El Cenizo, Texas v. Texas*, 885 F.3d 332

(5th Cir. 2018).[2] These arguments are nearly identical to those that the County put forth in its Motion for Reconsideration. (*Compare* Dkt. No. 359 at 5–11 *with* Dkt. No. 373 at 3–9.) As the Court rejected the County's arguments that the *City of El Cenizo* controls here in its Order on the Motion for Reconsideration, the Court need not repeat itself here.

The County also argues that the expansion of the Post-48 Hour *Gerstein* Subclass cannot be reconciled with the Roy Plaintiffs' own theories of relief and Ninth Circuit law. (Opp'n at 2–5.) The fact that the Court's legal analysis for determining liability, however, differed from Plaintiffs' analysis, does not foreclose the Court's ability to modify the class to conform to the liability determination. While the County argues that permitting the Court to modify the class to conform to the liability determination would go against Ninth Circuit law, the authority that the County cites highlights that the Ninth Circuit has not determined that Courts are forbidden from doing so. In their Opposition, the County quotes *Grodzitsky v. Am. Honda Motor Co. Inc.*, 2014 WL 718431, at *4 (C.D. Cal. Feb. 19, 2014) (internal quotation marks omitted), stating, "[t]he Ninth Circuit has not addressed the scope of the Court's discretion to modify a class definition at the certification stage. District Courts are split over whether to hold a plaintiff to the definition of a class set forth in the complaint." (Opp'n at 4.) The County then misquotes the case. The County continues the text as if it is all part of one larger quotation, stating, "[t]he Court is bound to class definitions provided in the complaint and, absent an amended complaint, will not consider certification beyond it." (Opp'n at 5.) However, this

[2] On May 9, 2018, the County filed a Notice of Substitution of *City of El Cenizo* Opinion by the Fifth Circuit Court of Appeals. (Dkt. No. 386.) On May 8, 2018, the Fifth Circuit withdrew its decision, found at 885 F.3d 332, and substituted in a new opinion, found at ---F.3d---, 2018 WL 2121427 (5th Cir. May 8, 2018). The Fifth Circuit withdrew its prior opinion of March 13, 2018, for purposes of "eliminate[ing] reference to *United States v. Gonzalez–Longoria*, 831 F.3d 670 (5th Cir. 2016) (en banc), given that decision's abrogation by the Supreme Court in *Sessions v. Dimaya*, ---U.S.---, 138 S. Ct. 1204 . . . (2018)." *City of El Cenizo*, 2018 WL 2121427, at *1. The amended opinion does not change the Court's analysis here.

quote is not the Court's holding in *Grodzitsky*, this language is from a parenthetical used to describe another case, which the *Grodzitsky* court used to demonstrate that "[d]istrict courts are split over whether to hold a plaintiff to the definition of a class as set forth in the complaint." 2014 WL 718431, at *4.

Moreover, this is not a situation where the Roy Plaintiffs are attempting to modify the class to create a new class that is different from those classes Plaintiffs sought to certify. The modified class is the same as the *Gerstein* Damages Class, which the Court previously held could not be certified because of commonality issues. (Dkt. No. 184 at 23–24.) Because those commonality issues are no longer present, and because the Supreme Court has held that "[e]ven after a certification order is entered, the judge remains free to modify it in light of the subsequent developments in the litigation," *Gen. Te. Co. of Sw.*, 457 U.S. at 160, the Court finds it appropriate to modify the Post-48 Hour *Gerstein* Subclass to conform to the definition of the original *Gerstein* Damages Class.

B. Whether the Court's Modified Subclass Encompasses the "Investigative Detainer" Class

Because the Court finds it appropriate to modify the class definition to conform to the liability determination, the Court next considers whether this modified class encompasses the Investigative Detainer Class.

In their Motion for Summary Adjudication Regarding Liability, the Roy Plaintiffs argued that they were entitled to summary adjudication as to the Investigative Detainer Class. (Dkt. No. 240 at 13–14.) According to the Roy Plaintiffs, "the LASD honored . . . immigration detainers that requested detention on the sole grounds that *an investigation had been initiated*, facially communicating that ICE had not yet acquired evidence to support probable cause of removability." (Dkt. No. 240 at 13 (emphasis in original).) Defendants argued that while the language on ICE's detainer forms have been modified several times during the period relevant to the case, "ICE agents have always been required to establish . . . the existence of

probable cause of a subject's removability from the United States, prior the issuance of a detainer." (Dkt. No. 273 at 5 (emphasis omitted).)

The Court held that it was undisputed that "[t]he 8/2010 version of the I-247 Form includes four checkboxes indicating the basis for issuing an immigration detainer; the first box states 'Investigation has been initiated to determine whether this person is subject to removal from the United States.'" (Dkt. No. 275 ¶ 2.) The Court further held that it was also undisputed that "[t]he 6/2011 version of the I-247 Form includes four checkboxes indicating the basis for issuing an immigration detainer; the first box states 'Initiated an investigation to determine whether this person is subject to removal from the United States.'" (Dkt. No. 275 ¶ 3.)

Plaintiffs argued that the "investigative detainers" expressly disclaim the existence of probable cause on their face." (Dkt. No. 279 ¶ 154.) However, Defendants argued that despite whatever form was used and what the options on the form were, ICE was always required to issue detainers based upon probable cause, meaning that the boxes on the form were not always indicative of the probable cause basis for the detainer. (*See* Dkt. No. 279 ¶ 83.) The Court found that a material factual dispute existed as to whether the "investigative detainers" were actually based on probable cause, and the box checked indicated something else, or whether they were not based on probable cause and the "investigative detainers" meant that an investigation into probable cause was occurring, rather than some sort of other investigation, and held that summary judgment as to this issue was not proper. (Dkt. No. 346 at 39–40.) Accordingly, the Court denied the Roy Plaintiffs' Motion for Summary Adjudication Regarding Liability as to the Investigative Detainer Class. (Dkt. No. 346 at 39–40.)

The Roy Plaintiffs now contend that because the legal reasoning supporting liability for the Post-48 Hour *Gerstein* Subclass is the same legal reasoning that supports liability for the modified class—that LASD's holding of any person beyond the time they are due for release based on a civil immigration detainer constitutes a

new arrest in violation of the inmates' Fourth Amendment rights—the issue of whether the "investigative detainers" were based on probable cause is moot because even if they were, the LASD does not have authority to arrest individuals based upon a civil immigration detainer. (*See* Mot. at 9.)

The Court agrees. Because the legal reasoning supporting liability that applies to the modified class would also apply to the investigative detainer class, the Court finds that there is no longer a need for trial on the Investigative Detainer Class because such class is usurped by the modified class.

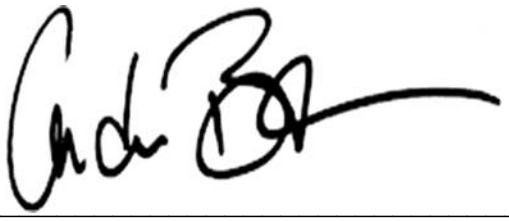
V. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the Roy Plaintiffs' Motion to Modify Class Definition.

The Post-48 Hour *Gerstein* Subclass is hereby amended to conform to the original *Gerstein* Damages Class as follows: "All LASD inmates who were detained beyond the time they are due for release from criminal custody, solely on the basis of immigration detainers, excluding inmates who had a final order of removal or were subject to ongoing removal proceedings as indicated on the face of the detainer."

IT IS SO ORDERED.

Dated: July 11, 2018



HONORABLE ANDRÉ BIROTTE JR.
UNITED STATES DISTRICT COURT JUDGE