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SA2006303236

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

L.H., et al., Plaintiffs, **v.** **ARNOLD SCHWARZENEGGER, et al.,** Defendants.	2:06-cv-02042 LKK GGH **DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION** Date: February 20, 2007 Time: 10:00 a.m. Courtroom: 4 (15th Floor) Judge: The Honorable Lawrence K. Karlton

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I

INTRODUCTION

Plaintiffs seek to certify their First Amended Complaint (FAC) as a class action. The Plaintiffs' motion for class certification is made pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). Plaintiffs make this request on behalf of over 4,000 juveniles. (FAC ¶ 1.) Plaintiffs assert constitutional claims on behalf of these juveniles under the Due Process and Equal Protection clauses of the Fourteenth Amendment (FAC ¶ 1), and claims for disability accommodations under the Americans with Disabilities Act (42 U.S.C. §§ 1209 *et seq.)* (ADA) and the Rehabilitation Act (Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 705(20)) (Section 504). (FAC ¶¶ 148-151.) Plaintiffs seek injunctive relief. (FAC Prayer for Relief at 35-36.)

Plaintiffs allege that the class of plaintiffs is composed of (1) juvenile parolees in California who are in the community under parole supervision or at large; (2) juvenile parolees in custody in California as alleged parole violators, and who are awaiting revocation of their parole; and (3) juvenile parolees in California who are in custody, having been found in violation of parole and returned to custody. (FAC ¶ 105.)

Plaintiffs' motion is most easily evaluated by considering their request for class certification relating to (1) constitutional claims under the Fourteenth Amendments, and (2) disability claims under the ADA and Section 504. Defendants oppose Plaintiffs' motion for certification of classes for both constitutional claims and disability claims.

Defendants oppose certification of Plaintiffs' class regarding both constitutional and disability claims on the grounds that class certification is unnecessary when only injunctive relief is requested and all purported class members will benefit from an injunction issued on behalf of the named Plaintiffs.

Defendants separately oppose certification of Plaintiffs' class regarding disability claims on several grounds. First, Plaintiffs have failed to meet the basic prerequisites of class certification under Federal Rule of Civil Procedure 23(a), namely typicality and numerosity. Plaintiffs L.H. and D.K. do not have standing to assert disability claims and therefore do not

meet the typicality requirement for class representatives. Additionally, Plaintiffs have not presented evidence of numerosity to support a class action with respect to disability claims. Finally, certification of a class action for disability claims is inappropriate, because disability claims are unique and require individual evaluation of both the disability and the required accommodation.

Defendants oppose class certification since Plaintiff D.K. is not a proper class representative. Plaintiffs seek to certify a class on behalf of "juvenile parolees *in California*" whether in custody or at large. (FAC ¶ 105.) (Emphasis added.) However, D.K. does not reside in California, and is not monitored for parole compliance by these Defendants. Therefore, one of the four named Plaintiffs fails to meet the most basic criterion for class certification: namely, being a juvenile parolee in California.

In light of these facts, the Court should deny Plaintiffs' motion. In the alternative, Defendants assert that Plaintiffs' motion is premature, and request that the court defer ruling on this motion until completion of discovery relating to the nature and extent of Plaintiffs' claims and their ability to represent a class. This is appropriate in light of the substantial factual inconsistency between the facts in Plaintiffs' files compared to the allegations made in their First Amended Complaint.

II

STANDARDS FOR CLASS CERTIFICATION

A. Prerequisites for Class Certification.

Before a class can be certified, plaintiffs must satisfy the four requirements of Rule 23(a). Rule 23(a) states four threshold requirements applicable to all class actions:

> (1) numerosity (a "class [so large] that joinder of all members is impracticable"); (2) commonality ("questions of law or fact common to the class"); (3) typicality (named parties' claims or defenses "are typical . . . of the class"); and (4) adequacy of representation (representatives "will fairly and adequately protect the interests of the class").

Amchem Products, Inc. v. Windsor, 521 U.S. 591, 613 (1997).

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The burden of demonstrating that the elements of Rule 23(a) are satisfied is on the party seeking class certification. *Doninger v. Pacific Northwest Bell, Inc*., 564 F.2d 1304, 1308 (9th Cir. 1977); *Nguyen Da Yen v. Kissinger,* 70 F.R.D. 656, 661 (N.D. Cal. 1976).

"[T]here must not only be allegations relative to the matters mentioned in Rule 23 . . . but, in addition, there must be a statement of basic facts. *Mere repetition of the language of the rule is inadequate." Doninger v. Pacific Northwest Bell, Inc*., 564 F.2d at 1309 *quoting Gillibeau v. Richmond*, 417 F.2d 426, 432 (9th Cir. 1969). Failure to meet any one of the requirements of Rule 23(a) destroys the class action. *Rutledge v. Electric Hose & Rubber Co.*, 511 F.2d 668, 673 (9th Cir. 1975); *Nguyen Da Yen*, 70 F.R.D. at 661. Upon the failure of the class representative to meet any one of the four prerequisites of Rule 23(a), class certification will be denied. *Milonas v. Williams*, 691 F.2d 931, 938 (10th Cir. 1982).

In determining whether a matter should proceed as a class action, the court is required to make findings concerning each essential element of the class action rule. *Nguyen Da Yen,* 70 F.R.D. at 661. "A class may only be certified if we are satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 509 (9th Cir. 1992) *citing General Telephone Company of Southwest v. Falcon,* 457 U.S. 147, 161 (1982). Actual, not presumed, conformance with Rule 23(a) remains indispensable. *General Telephone Company of Southwest v. Falcon*, 457 U.S. at 160. The lenient application of Rule 23 to certain civil rights class actions is an illusion. *Nguyen Da Yen,* 70 F.R.D. at 670.

The court is "at liberty to consider evidence which goes to the requirements of Rule 23 even though the evidence may also relate to the underlying merits of the case" in ruling on a motion for class certification. *Hanon v. Dataproducts Corporation*, 976 F.2d at 509 *citing In re Unioil Sec. Litig.*, 107 F.R.D. 615, 618 (C.D. Cal.1985). In making a certification decision, a judge must look somewhere "between the pleading and the fruits of discovery . . . . [E]nough must be laid bare to let the judge survey the factual scene on a kind of sketchy relief map, leaving for later view the myriad of details that cover the terrain." *Sirota v. Solitron Devices, Inc.*, 673 F.2d 566, 571-72 (2nd Cir. 1982) *quoting Professional Adjusting Systems of America, Inc. v. General Adjustment Bureau, Inc.*, 64 F.R.D. at 38.

> Sometimes the issues are plain enough from the pleadings to determine whether the interests of the absent parties are fairly encompassed within the named plaintiff's claim, and sometimes it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question.

General Telephone Company of Southwest v. Falcon, 457 U.S. at 160.

In addition to satisfying Rule 23(a)'s prerequisites, parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3). *Amchem*, 521 U.S. at 614. Plaintiffs have sought certification here under Rule 23(b)(2). Rule 23(b) permits class actions for declaratory or injunctive relief where "the party opposing the class has acted or refused to act on grounds generally applicable to the class." *Id.*

B. Typicality Requirement Under Rule 23(a)(3).

The Supreme Court has repeatedly held that "a class representative must be part of the class and 'possess the same interest and suffer the same injury' as the class members." *General Tel. Co.*, 457 U.S. at 156. An individual litigant seeking to maintain a class action must meet the prerequisites of numerosity, commonality, typicality, and adequacy of representation specified in Rule 23(a). *Id.* These requirements "limit the class claim to those fairly encompassed by the named plaintiff's claims." *Id.* Upon the failure of the class representative to meet any of the prerequisites of Rule 23(a), class certification will be denied. *Milonas v. Williams*, 691 F.2d at 938.

The purpose of the typicality requirement is to ensure that the interests of the named representative align with the interests of the class. *Hanon v. Dataproducts Corp.*, 976 F.2d at 508 *citing Weinberger v. Thornton*, 114 F.R.D. 599, 603 (S.D. Cal.1986). Typicality refers to the nature of the claim of the class representative, and not to the specific facts from which it arose or the relief sought. *Id.* The test of typicality "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon*, 976 F.2d at 508 *citing Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal.1985).

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C. The Necessity of a Class Action May Be Considered by the Court in Ruling on Class Certification.

Courts have recognized that class certification is unnecessary if all the class members will benefit from an injunction issued on behalf of the named plaintiffs. The "necessity requirement" is a practice followed by several circuits of denying class certification under Rule 23(b)(2) when a class is not needed to obtain the same relief. *Dionne v. Bouley*, 757 F.2d 1344, 1355 (1st Cir. 1985). In *Galvan v. Levine*, 490 F.2d 1255 (2d Cir. 1973), one of the lead cases in this area, the court stated:

> Insofar as the relief sought is prohibitory, an action seeking declaratory or injunctive relief against state officials on the ground of unconstitutionality of a statute or administrative practice is the archetype of one where class action designation is largely a formality, at least for the plaintiffs.

Galvan v. Levine, 490 F.2d at 1261, *cited in Dionne v. Bouley*, 757 F.2d at 1355. *See also Gray v. International Broth. Of Elec. Workers*, 73 F.R.D. 638, 640 (D.C.D.C. 1977) (where "the relief being sought can be fashioned in such a way that it will have the same purpose and effect as a class action," the certification of a class action is unnecessary and inappropriate); *Kansas Health Care Ass'n v. Kansas Dep't of Soc. and Rehabilitation Servs.*, 31 F.3d 1536, 1548 (10th Cir. 1994) (class certification unnecessary where all members benefit from an injunction issued on behalf of the named plaintiffs).

One factor that a court may properly take into account is the fact that the same relief can, for all practical purposes, be obtained through an individual injunction without the complications of a class action. *Dionne*, 757 F.2d at 1356. "The language of Rule 23(b)(2) is reasonably clear: whether the action should be maintained as a class action depends on the appropriateness of injunctive or corresponding relief with respect to the class as a whole. Thus, when the same relief can be obtained without certifying a class, a court may be justified in concluding that class relief is not 'appropriate.'" *Id.*, *quoting* 3 B.J. Moore & J. Kennedy, *Moore's Federal Practice*, ¶ 23.40[3] at 23-297 n.13 (2d ed. 1982).

Both California district courts and appellate court have followed this approach. In *James v. Ball*, 613 F.2d 180 (9th Cir. 1979), the court held that the district court did not abuse its

discretion in refusing to certify a suit as a class action where "the relief sought will, as a practical matter, produce the same result as formal class-wide relief." *James v. Ball*, 613 F.2d at 186, *rev'd on other grounds* 451 U.S. 355 (1981). *See also, Karine Sokol v. New United Motor Mfg., Inc.*, 1999 WL 1136683 (N.D. Cal. 1999); *Officers for Justice v. Civil Service Com'n of the City and County of San Francisco*, 371 F. Supp. 1328 (D.C. Cal. 1973).

III

ARGUMENT

A. The Court's Decision Is Properly Based Solely on the Facts of this Case.

In support of their motion, Plaintiffs include the Declaration of Karen Kennard with attached Exhibits A through E. These exhibits are the Stipulated Order for Permanent Injunctive Relief in *Valdivia v. Schwarzenegger (Valdivia)*; the Revised Permanent Injunction in *Armstrong v. Davis (Armstrong);* the court order on plaintiffs' motion for class certification in *Valdivia*; the Order Granting Motion to Enforce Revised Permanent Injunction in *Amrstrong;* and the court order on cross-motions for summary judgment in *Valdivia*, respectively. In submitting these exhibits to the court, Plaintiffs are raising a "me, too" argument and suggesting that certification of these other actions automatically warrants certification of this action. However, there is no support in the law for this argument.

A class may only be certified if the court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied. *Hanon v. Dataproducts Corp.*, 976 F.2d at 509. The factors are numerosity, commonality, typicality, and adequacy of representation. The Court must therefore determine whether Plaintiffs have met their burden on these prerequisites, as well as determine the necessity for class certification when injunctive relief is requested under Rule 23(b)(2). In making its decision, the Court must look somewhere between the pleadings and the fruits of discovery. *Sirota v. Solitron Devices, Inc.*, 673 F.2d at 571.

The rulings of the district courts in other actions have no bearing on whether on not these Plaintiffs have satisfied the prerequisites of Rule 23(a), or whether the relief requested can be obtained without the complications of a class action. Those issues can only be addressed by analyzing the pleading and facts in this matter.

Additionally, the two matters cited, *Valdivia* and *Armstrong*, relate to adult parole issues, while the present action relates solely to juvenile parole. At this time, juvenile parole revocation procedures and hearings are under separate and distinct divisions of the California Department of Corrections and Rehabilitation, namely the Department of Juvenile Justice (DJJ). (Dec. of John Monday ¶ 7, attached as Ex. A.) DJJ is not a party to either the *Valdivia* or the *Armstrong* matters.

Finally, the policies behind adult corrections and juvenile detention are different. The stated purpose of adult corrections and imprisonment is punishment (California Penal Code § 1170(a)(1) (2007)), while the purpose of juvenile detention is correction and rehabilitation as well as public safety (California Welfare and Institutions Code § 1700 (2007)). Therefore, any comparison to the adult parole cases is misdirected.

B. The Court May Decline to Certify the Class Because a Class Action Is Not Necessary to Obtain the Relief Sought.

Plaintiffs brought the present action complaining of violations of their constitutional rights under the Fourteenth Amendment and their statutory rights under the ADA and Section 504. (FAC ¶¶ 1, 148-151.) Plaintiffs complain that Defendants are "systematically violating the[ir] constitutional and statutory rights" (Plaintiffs' Supporting Mem. of P. & A. 1:4-5), and have requested prospective injunctive relief (FAC Prayer for Relief at 35-36). Accordingly, Plaintiffs are requesting system-wide injunctive relief for their constitutional and disability claims.

Where injunctive relief is requested against state officials to correct an alleged system-wide constitutional or statutory practice or policy, a class action designation is unnecessary. Under such circumstances, a judgment for one named plaintiff will run to the benefit of all similarly situated plaintiffs. *Galvan v. Levine*, 490 F.2d at 1261. Class certification is therefore not necessary since the requested relief can, for all practical purposes, be obtained through an individual injunction without the complications of a class action. *Dionne v. Bouley*, 757 F.2d at 1356. Where the predominant part of plaintiffs' prayer seeks declaratory and injunctive relief,

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"[n]o useful purpose would be served by permitting this case to proceed as a class action." *Gray v. Int'l Broth. of Elec. Workers*, 73 F.R.D. at 641.

Plaintiffs have requested prospective injunctive relief against state officials and state departments. The requested relief relates to alleged system-wide constitutional and disability practices and procedures. Accordingly, an injunction issued on behalf of the named Plaintiffs would have a system-wide effect, and would benefit all of the proposed class members. Therefore, class certification is unnecessary in this case. Further, certifying a class of juveniles who are or may be subject to the juvenile parole revocation process will result in unnecessary complication and complexities. Defendants therefore request that the court use its discretion under Rule 23(b)(2) and deny Plaintiffs' motion for class certification.

C. The Named Plaintiffs Are Not Proper Class Representatives for Claims under the ADA or Section 502.

Plaintiffs' disability claim is brought under the ADA and Section 504 of the Rehabilitation Act. Only a person with a "disability" as defined in the ADA may state a claim under the act. *Davoll v. Webb*, 160 F.R.D.142, 145 (D. Colo. 1995). To qualify for relief under the Rehabilitation Act, a plaintiff must prove he is an "individual with handicaps" (now "individual with a disability.") *Chandler v. City of Dallas*, 2 F.3d 1385, 1390, 1391 n.18 (5th Cir. 1995). Case law developed under the Rehabilitation Act may be generally applicable to the term "disability" as used in the ADA. *Davoll v. Webb*, 160 F.R.D. at 144-5.

In order to act as a class representative for a claim under the ADA and Section 504 of the Rehabilitation Act, one or more of the named plaintiffs must be a qualified individual with a disability. This insures that the nature of the claim by the named plaintiff is the same or similar to the claim by the class members. This showing is necessary to meet the typicality requirement under Rule 23(a). The failure of the class representative to meet the typicality (or any other) prerequisites of Rule 23(a) requires that class certification be denied. *Milonas v. Williams*, 691 F.2d at 938.

Here, Plaintiffs' claims regarding disability accommodation under the ADA and Section 504 are brought by L.H. and D.K. only. L.H alleges that he suffered unspecified

"developmental delays" and "has been a special education student since childhood and requires assistance with reading." (FAC ¶ 74.) He denies receiving a high school diploma or a G.E.D., and alleges that the Court of Appeal "found him to be an individual with exceptional needs." *Id.* These exceptional needs are undefined. Finally, L.H. alleges that he is an individual with a disability as that term is defined in Section 504 and the ADA, but fails to state what the actual disability is or what effect, if any, it has with respect to the parole revocation process. *Id.* Presumably, L.H.'s disability relates to his education abilities.

D.K. alleges a history of drug and alcohol abuse, and states that he does not have a high school diploma nor a G.E.D. (FAC ¶ 74.) He also alleges that his file contains "diagnoses of mental disorders." *Id.* D.K. alleges that he is an individual with a disability as that term is defined in Section 504 and the ADA, but again fails to state what the actual disability is or what the effect, if any, it has with respect to the parole revocation process. *Id.* Presumably the disability of D.K. relates to this "mental disorders."

The central files for both of these named Plaintiffs have been obtained and reviewed. The information contained in these files do not support their allegation of disability. Relevant documents of L.H. are attached as Exhibit B. These records do confirm early educational problems. However, these problems appear to be due to habitual truancy rather than any developmental disability. (Ex. B-1.) As of October 19, 2001, L.H. was in tenth grade and believed that he was current on his high school credits for a tenth grader. (Ex. B-2) At that time, L.H. had reading skills and abilities at the advanced basic skills level. (Ex. B-2.) People who read at this skill level can handle most routine reading, writing and computation tasks related to their life roles. *Id.* L.H. was planning to complete high school and hoped to enroll in college. (Ex. B-2, B-3.) No mental health services were required by L.H. as documented in the report of February 26, 2003. (Ex. B-4.) Additionally, his file is devoid of any record of a developmental disability. (Dec. of James M. Sobolewski.)

Reports relating to D.K. are attached as Exhibit C. D.K.'s annual review dated February 17, 2005, documents that he completed all proficiency tests in math, reading and writing in order to take his G.E.D. (Ex. C-1.) The Progress Case Conference dated March 29,

2005, as well as the prior annual review indicate that D.K was attending career academy and getting ready to take his G.E.D. test to make himself more marketable. (Ex. C-2, C-4.) The Progress Case Conference also addressed his mental health diagnoses. D.K. did not have a significant history of mental illness, was not suffering from mental illness, and did not demonstrate any serious or major impairment of functioning. (Ex. C-3.) There was no evidence as of February 17, 2005 that D.K. suffered from previously diagnosed mental problems. (Ex. C-1, C-2.) Therefore, there is no support for the allegation that D.K is a qualified individual with a disability, and no basis for his disability claim under the ADA and Section 504.

There is no evidence that either L.H. or D.K. are qualified individuals with a disability who have standing to bring a claim under the ADA and Section 504. Accordingly, neither of these Plaintiffs meet the typicality requirement under Rule 23(a)(3) to act as class representatives for disability claims. Since Plaintiffs have no class representatives for disability claims, the Court should deny their motion for class certification with respect to these claims.

D. Plaintiffs Have Not Established the Numerosity Prerequisite for Their Disability Claims under the ADA or Section 502.

The first requirement for maintaining a class action under Rule 23(a) is that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). In order for the court to be able to determine whether the class is so numerous that joinder is impracticable, plaintiffs must show some evidence of, or reasonable estimate of, the number of class members. *Nguyen Da Yen*, 70 F.R.D. at 661. Mere speculation as to satisfaction of this requirement does not satisfy Rule 23(a)(a). *Id.*

Plaintiffs have failed to established the numerosity requirement relating to their disability claims under the ADA and Section 504. While Plaintiffs allege that their class is "over 4000 juveniles" at imminent risk for violation of their constitutional rights under the Fourteenth Amendment (FAC ¶ 1), there is no such allegation regarding the number of juveniles who are in danger of having their rights under the ADA and Section 504 violated.

In order to maintain a disability claim under the ADA and Section 504, Plaintiffs must be qualified individuals with a disability, as defined by the acts. As noted above, Plaintiffs L.H.

and D.K. fail to meet those criteria. Further, it is unclear how many members of the proposed class meet this definition. Plaintiffs' only allegation is that the "plaintiff class includes numerous 'individuals with disabilities' as that term is defined in Section 504 . . . and the ADA." (FAC ¶¶ 105, 145.)

Plaintiffs have a duty to present evidence of–or at least a reasonable estimate of–the number of class members. This requirement is necessary for the Court to determine whether the class is so numerous that joinder of all members would be impracticable. However, Plaintiffs have presented no such evidence or factual representation of the number of qualified "individuals with a disability." The Court is therefore left to speculate as to this number. Since Plaintiffs have failed to satisfy the numerosity prerequisite of Rule 23(a), the Court should deny their motion for class certification with respect to disability claims under the ADA and Section 504.

Defendants also note that courts are cautious to certify disability discrimination claims as class actions, due to the individualized determinations required by these claims. In *Mantolete v. Bolger*, 767 F.2d 1416 (9th Cir. 1985), the Ninth Circuit affirmed the district court's dismissal of the class allegations. In *Mantolete*, plaintiffs sought to certify a nation-wide class of epileptics who were denied employment with the United States Postal Service because of their disability. The court observed that determining the propriety of relief in such cases underscores the importance of a case-by-case adjudication. Whether a particular individual is a qualified individual with a disability will necessitate an inquiry into the individual's medical and work history as well as other factors bearing on the person's fitness for a given position. *Mantolete v. Bolger* at 1425. Similarly, in *Chandler v. City of Dallas*, 2 F.3d 1385 (5th Cir. 1993), plaintiffs sought to certify a class of persons excluded from a City of Dallas job due to physical standards adopted by the city to hold that job. Neither of the plaintiffs met these standards. On appeal, the court found that class certification was inappropriate since "the determinations of whether an individual is handicapped or 'otherwise qualified' are necessarily individualized inquiries." *Chandler v. City of Dallas* at 1396. Because of the uncertainty of the number of qualified individuals with disabilities, the case-by-case review of records and files necessary to determine

if a plaintiff is a qualified individual with disability, and the individualized nature of the relief that may be required, certification of the Plaintiffs' disability claims in the present case should also be denied.

E. Plaintiff D.K. Is Not a Proper Class Representative Since He Does Not Reside in California.

The final requirement of Rule 23(a) is that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The class of Plaintiffs in this action is "juvenile parolees in California." (FAC ¶ 105.) An identity of interest between the class representative and the class insures adequacy of representation. *Nguyen Da Yen*, 70 F.R.D. at 665.

Plaintiffs have included D.K. as a named Plaintiff. In this position, D.K. purports to be a class representative of "juvenile parolees in California." (FAC ¶ 105.) However, D.K. does not reside in California, and therefore fails to meet the adequacy of representation requirement under Rule 23(a)(4) necessary to represent this class.

The central file of D.K. indicates that he was permitted to move to Kansas to reside with his father. (Dec. of Al Hunter ¶ 5.) This move was permitted under the Interstate Compact Agreement. *Id.* D.K. moved to Kansas in June 2006. *Id.* Therefore, D.K. is not a "juvenile parolee in California," but rather a juvenile parolee in Kansas. As a resident of Kansas, D.K. does not have a commonality of interest with the proposed class of juveniles in California to adequately represent their interests.

Under the interstate agreement, responsibility for supervising D.K.'s compliance with the terms of his parole shifted to the juvenile parole authorities of the State of Kansas. *Id.* This shift in responsibility occurred in 2006. *Id.* Therefore, D.K. is now the immediate responsibility of the juvenile parole system of Kansas and not of California. Because of his move, D.K. is neither a juvenile parolee in California, nor a parolee under the immediate supervision of the Defendants. He does not fall into the class that he purports to represent. Accordingly, D.K. is not a proper class representative for "juvenile parolees in California" claiming relief for either alleged constitutional or disability violations.

IV

CONCLUSION

Plaintiffs request class certification for constitutional claims under the Fourteenth Amendment and disability claims under the ADA and Section 504. Prospective injunctive relief is requested for both claims. Since any injunctive relief obtained by the named Plaintiffs will run to the benefit of all potential Plaintiffs, certification of a class with its attendant complications and difficulties is unnecessary.

Plaintiffs have also failed to meet the prerequisites for class certification for their disability claims under the requirements of Federal Rule of Civil Procedure 23(a). The files of L.H. and D.K., the two named Plaintiffs asserting a disability claim, indicate that neither of these Plaintiffs are qualified individuals with disabilities, and therefore do not have standing to assert disability claims. Additionally, D.K. is not a "juvenile parolee in California." Therefore, neither of these Plaintiffs meet the typicality prerequisite necessary to maintain a class action for disability claims.

Finally, Plaintiffs have failed to provide evidence of, or a reasonable estimate of, the number of class members as required by the numerosity prerequisite. The Court is therefore forced to speculate whether the class is so numerous that joinder of all members would be impracticable. Further, Plaintiffs' disability claims are not appropriate for class certification due to the individualized determination of these claims. The necessity for a case-by-case review of records and files to determine if a Plaintiff is a qualified individual with a disability and the individualized nature of the relief that may be required argue against class certification.

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Defendants respectfully request that the Court deny Plaintiffs' motion for class certification.

Dated: February 6, 2007

Respectfully submitted,

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