FILED
MAY 1 9 2004
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Quentin Bullock, and Jack Reid, individually and on behalf of a class,

Plaintiffs

vs.

MICHAEL SHEAHAN,
SHERIFF OF COOK COUNTY,
in his official capacity
and Cook County

Defendant

No. 04 C 1051

JUDGE Elaine Bucklo
MAGISTRATE Judge Schenkier

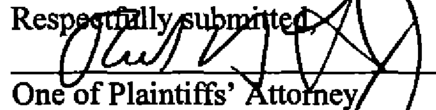
DOCKETED
MAY 2 1 2004

NOTICE OF FILING

PLEASE TAKE NOTICE that on May 19, 2004, I caused to be filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, the PLAINTIFFS' MEMORANDUM IN SUPPORT OF THE MOTION FOR CLASS CERTIFICATION .

Dated this 19th day of May , 2004.

Respectfully submitted,



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Quentin Bullock and Jack Reid, individually and on behalf of a class	)	
Plaintiffs,	)	No. 04 C 1051
vs.	)	JUDGE Elaine Bucklo
	)	MAGISTRATE Judge Schenkier
Michael F. Sheahan, as the Sheriff of Cook County in his Official Capacity and Cook County	)	
Defendants	)	

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MAY 21 2004

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THE MOTION FOR CLASS CERTIFICATION

The Plaintiffs, Quentin Bullock and Jack Reid, individually and on behalf of a class, by their attorneys, Thomas G. Morrissey and Robert H. Farley, Jr., submit this Memorandum in Support of their Motion for Class Certification.

INTRODUCTION

Plaintiffs' Amended Class Action Complaint asserts a putative class action against Defendants on behalf of individuals who have been strip searched without any individualized finding of reasonable suspicion or probable cause that they were concealing contraband or weapons at the Cook County Department of Corrections ("Jail") upon their return from court appearances that entitled them to release. The defendants admit that the Sheriff has a policy, and practice of strip searching only male inmates after there has been a judicial determination that there is no longer a basis for their detention other than to be processed for release from the Jail.

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(Def. Answer Amend. Compl. par. 17). The defendants also admit that the named plaintiffs, Quentin Bullock and Jack Reid, were strip searched pursuant to this policy and practice upon returning to the Jail after court appearances where they were found not guilty. (Def. Answer Amend. Compl. pars. 7, 8, 10, &11). The plaintiffs allege that the defendants' strip search policy is unreasonable under the Fourth Amendment and violates the Equal Protection Clause of the Fourteenth Amendment.

The Sheriff was previously a defendant in a similar class action lawsuit which alleged that the female inmates were strip searched after their return from court appearance that made them eligible for release from the Jail. *Gary v. Sheahan,* No. 96 C 7294 (Coar, J.). Although at the time of the filing of that lawsuit, the Jail had a written policy which required all inmates to be strip searched upon their return form court, the Court found that while all females were strip searched, there was no uniform practice in regards to strip searching male court returns. *Gary v. Sheahan,* 1998 U.S. Dist. Lexis 13378 at *16-17. Following the entry of a preliminary injunction barring the strip searching of female inmates returning to the Jail from court appearances which made them eligible for release, and prior to the Court's entry of summary judgment for the class, the Jail changed its practice in regards to male court returns and issued orders requiring the strip searching of all male inmates returning from court. After the *Gary* Court heard testimony of blatant violations of the preliminary injunction order, a permanent injunction was issued enjoining the Jail " from strip searching female inmate court returnees who have been judicially discharged from the Cook County Department of Corrections." *Gary,* 1999 U.S. Dist. Lexis 17305.

CLASS DEFINITION

The proposed Plaintiff class is defined as follows:

All male inmates who have been subjected to defendants' policy, practice and custom of strip searching ,without reasonable suspicion that the inmate is concealing a weapon or other contraband, at the Cook County Department of Corrections ("Jail") following their return from court after there is a judicial determination that there is no longer a basis for their detention, other that to be processed for release.

ARGUMENT

Parties seeking class action certification must first satisfy the provisions of Rule 23(a) of the Federal Rules of Civil Procedure. Then, in addition, the case must fit within at least one of the three subcategories under Rule 23(b). *Rosario v. Lividitis*, 963 F.2d 1013, 1017 (7th Cir. 1992), *cert.denied*, 506 U.S. 1051, 113 S.Ct.972 (1993). All four 23 (a) prerequisites are quite undoubtedly satisfied here, and this case falls squarely under the 23 (b)(3) category.

On a motion for class certification, the Court must accept as true all facts alleged in Plaintiffs' complaint. See *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-178, 94 S.Ct. 2140, 2152 (1974) ("We find nothing in either the language or history of Rule 23 that gives court any authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action."); *Gammon v. GC Services Limited Partnership*, 162 F.D.R. 313, 315, n. 2 (N.D. Ill. 1995) (When evaluating a motion for class certification, the Court accepts all well-pleaded facts as true."); *Peritz v. Liberty Loan Corp.*, 523 F.2d 349, 353-54 (7th Cir. 1975); *Gomez v. Illinois State Bd. Of Educ.*, 117 F.R.D. 394, 396 (N.D. Ill. 1987): *Newburg on Class Actions*, Sec. 3.20, p. 3-124 ("It is settled law that any preliminary inquiry into or consideration of the merits of litigation is improper in connection with a determination of the

propriety of a class action.") Moreover, "the interests of justice require that in a doubtful case...any error, if there is to be one, should be committed in favor of allowing a class action." *Eisenberg v. Gagnon*, 766 F.2d 770, 785 (3rd Cir.), *cert. denied*, 474 U.S. 946 (1985); *Esplin v. Hirschi*, 402 F.2d 94, 101 (10th Cir.), *cert. Denied*, 394 U.S. 928 (1969); *Tapken v. Brown*, 1992 WL 17894, *26 (S.D. Fla.); *Horton v. Goose Creek Independent School District*, 690 F.2d 470, 487, n. 32 (5th Cir. 1982), *cert. denied*, 463 U.S. 1207 (1983); *Brown v. Cameron-Brown Co.*, 92 F.R.D. 32, 50 (E.D. Va. 1981).

1. Plaintiff has established the prerequisites for a class action pursuant to Rule 23(a)

A. Numerosity

Numerosity is easily met in this case. Courts in this judicial circuits have certified classed with less than 50 members. *Patrykus v. Gomills*, 121 F.R.D. 357, 361 (N.D. Ill. 1988) (court certified a class of approximately 50 class members, stating that "the complaint need not allege the exact number or identity of class members"); *Harris v. General Dev. Corp.*, 127 F.R.D. 655, 660 (N.D. Ill. 1989) (court held that numerosity was met when the plaintiffs demonstrated that at least 35 individuals were members of the proposed class); *Swanson v. American Consumer Industries*, 415 F.2d 1326, 1333, n.4 (7th Cir. 1996) (finding that a class of 151 was sufficient to certify a class, but 40 would have been acceptable). Case law has also recognized that courts should make "common assumptions" to support a finding of numerosity. *Grossman v. Waste Management, Inc.*, 162 F.R.D. 322, 329 (N.D. Ill. 1995). The numerosity requirement should be construed liberally in civil rights actions. *Jones v. Diamond*, 519 F.2d 1090, 1100 (5th Cir. 1975).

In this case, numerosity is satisfied because the joinder of all individuals affected by the Sheriff's policy is impracticable. In *Gary*, there were approximately 12,000 putative class members and due to the fact that there are substantially more male inmates at the Jail than females, the size of the class will exceed 20,000 individuals..

B. Commonality

Commonality requires that there be one or more questions of law or fact common to the class. Fed. R. Civ. Proc. 23 (a) (2). This rule does not require that all questions of law or fact raised in the litigation be common. *Port Auth. Police Benevolent Assn. V. Port Auth.*, 698 F.2d 150, 153-4 (2nd Cir. 1983). There need only be a single issue common to all members of the class. *Harris*, 127 F.R.D. at 661.

In fact, "[w]hen the party opposing the class has engaged in some course of conduct that effects a group of persons and gives rise to a cause of action, one or more of the elements of that cause of action will be common to all of the persons affected." *Newberg on Class Actions*, Sec. 3.10, p. 3-51. So long as one issue of law or fact is common to the class, "the presence of individual questions will not prevent satisfaction of the Rule 23 (a) (2) prerequisite." *Id.* at p. 3-60. *See also Ivy v. Meridian Coco-Cola Bottling Co.*, 108 F.R.D. 118, 123 (S.D. Miss. 1985) (holding that commonality and typicality were satisfied in an employment discrimination case despite the defendant's argument that individual questions would predominate concerning each hiring decision); *Patrykus*, 121 F.R.D. at 361 (holding that "[d]ifferences in individual cases concerning treatment or damages does not defeat commonality"); *Krislov v. Rednour*, 946 F.Supp. 563, 568 (N.D. Ill 1996).

In this case, commonality is easily met because Defendants "engaged in some course of

conduct that affects a group of persons and gives rise to a cause of action." *Newberg on Class Actions,* Sec. 3.10, p. 3-51. As previously stated, the Sheriff admits to having a policy of strip searching all male inmates returning to the Jail after receiving court orders making them eligible for release. In addition, all female inmates returning to the Jail with court ordered releases are not strip searched. (Def. Answer Amend. Compl, par. 17). In *Bynum v. District of Columbia,* 217 F.R.D. 43; 2003 U.S. Dist. Lexis 13884, (2003), the plaintiffs challenged the District of Columbia, Department of Correction's policy of strip searching inmates upon returning from court to jail with court orders entitling them to be released. In determining that the plaintiffs' had satisfied the commonality requirement of Rule 23(a), the court stated that :

> Regardless of the potential variation of individual circumstances of each inmate's return, the challenged activity-strip searching- is common to all putative class member. The question of whether defendant's policy of strip searching violates the Constitution raises questions of law and fact that are common to the class. When the cause of action arises out of a course of conduct that affects a group of persons, one or more elements of the cause of action will be common to the entire group. *Bynum,* 214 F.R.D. at 34 (quoting Alba Conte & Herbert Newberg, Newberg On Class Actions Sect. 3.10 (4th ed., 2002). In this case , as with the other detention class, the question of causation will be the same for all plaintiffs, because it is the same course of conduct that allegedly injured each plaintiff.

The common questions of law and fact in the present case are as follows:

A. Whether the defendants admitted policy and practice of strip searching all male inmates without reasonable suspicion that the inmate is concealing a weapon or other contraband,with judicial discharges upon their return to the Jail violates the Fourth or Fourteenth Amendments .

B. Whether female inmates returning to the Jail with judicial discharges are similarly situated to male inmates returning to the jail with judicial discharges.

C. Typicality

Typicality determines whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct. *General Telephone Company of Southwest v. Falcon*, 457 U.S. 147, 152 (1982). When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is met irrespective of varying fact patterns which underlie individual claims. *Id*; *see also Robidoux v. Celani*, 987 F.2s 931, 936-937 (2nd Cir. 1998); *Baby Neal ex rel Kanter v. Casey*, 43 F.3d 48, 56 (3rd Cir. 1994). Courts should look to the elements of the cause of action that the class representative must prove in order to establish the defendant's liability. If they are substantially the same as those needed to be proved by the class members' claims, the representative's claim is typical. *Johns v. DeLeonardis*, 145 F.R.D. 480, 483 (N.D. Ill. 1992).

For example, in *Patrykus v. Gomilla*, 121 F.R.D. 357 (N.D. Ill. 1988), the plaintiffs brought a class action complaint alleging that government officers violated their civil rights. The complaint alleged that police and state officials busted into a bar frequented by homosexual and bisexual men, without warrants for any class members nor probable cause, and forced class members to lie face down on the floor for several hours, subjected them to unnecessary searches and photographs, compelled the class members to reveal detailed personal information and subjected the class members to homosexual slurs. The court certified a class because the claims asserted on behalf of all potential class members arose from the same course of conduct and were based upon the same legal theories. *Id.* at 362. According to the court, the fact that defendants hypothetically may assert individualized defenses, or that some class might not be homosexual or

bisexual, has no bearing on the issue of typicality. *Id.* The court needed only to determine if the named representatives' claims had the same essential characteristics as the claims of the other members of the class. *Id.*

Here, the Plaintiffs claims are typical of the claims of the class. The defendants admit that the named plaintiffs, Quentin Bullock and Jack Reid, were strip searched pursuant to the challenged policy and practice after court appearances where they were found not guilty. (Def. Answer Amend. Compl. pars. 7, 8, 10, &11). The Plaintiff has adequately demonstrated that typicality is satisfied in this case.

D. Adequacy of representation

The two factors that are universally recognized as the guidelines for adequate representation are: 1) the representative must not have interests antagonistic to or conflicting with the interests of the class, and 2) the representative must appear able to prosecute the action vigorously through qualified counsel. *Newberg on Class Actions*, Sec. 3.22, p. 3-126. *See also Prudential*, 148 F.3d at 312; *Amchen Products, Inc. V. Windsor*, 521 U.S. 591, 626, n. 20, 117 S.Ct. 2231 (1997). *In re United Energy Corp. Solar Power Modules Tax Shelter Invs. Secs. Litig.*, 122 F.R.D. 251, 257 (C.D. Cal. 1988) (holding that the plaintiffs were adequate representatives for the class where they expressed an interest in and understanding of the case and participated in depositions) . The party opposing a class has the burden to establish that representation is inadequate. *Lewis v. Curtis*, 671 F.2d 779, 788 (3rd Cir. 1982), *cert. denied*, 459 U.S. 880, 103 S.Ct. 176 (1982).

Plaintiffs are adequate representatives of the putative class. The plaintiffs have no interest

which are adverse to the class. The named plaintiffs each were strip searched pursuant to the defendants' policy and practice, without any individualized finding of reasonable suspicion after becoming eligible for release upon a judicial finding of not guilty. Counsels for the plaintiffs are experienced civil rights attorneys with experience in complex class action litigation. Thomas Morrissey has been class counsel in *Portis v. City of Chicago,* No. 02 C 3139 (Judge Gettleman); *Thompson, et al. v. City of Chicago,* No. 01 C 6916, 2002 U.S. Dis. LEXIS 10627 (Magistrate Judge Nolan); *Gary et al., v. Sheahan,* No. 96 C 7294 (Judge Coar); *Watson et al., v. Sheahan,* No. 94 C 6891 (Judge Bucklo); *Hvorcik et al. v. Sheahan,* 92 C 7324 (Judge Shadur). Robert H. Farley, Jr., has been class counsel in *Portis* and *Gary.*

2. Plaintiffs have established that the class action is maintainable pursuant to Rule 23(b)(3).

Rule 23 (b) (3) permits a class action where "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. Proc. 23 (b) (3). "The predominance requirement is generally satisfied where a 'common nucleus of operative facts' exists among all class members for which the law provides a remedy." *Chandler v. Southwest Jeep-Eagle, Inc.*, 162 F.R.D. 302, 310 (N.D. Ill. 1995). "Once this basic determination has been made, the fact that there may be individual questions, as proposed by defendant, will not defeat the predominating common question." *Miner v. Gillette Company*, 428 N.E.2d 478, 485 (Ill. 1981). *See also Zinberg v. Washington Bancorp, Inc.*, 138 F.R.D. 397, 410 (D.N.J. 1990) ("Where all class members are united in their desire to establish the defendants' complicity and liability,

individual issues, if they exist, are secondary.").

The requirements of Rule 23 (b) (3) are easily met in this case. As set forth above for commonality, at a minimum, the issue as to whether members of the class were unlawfully strip searched after court appearances making them eligible for release (and thereby deprived of their rights under the Fourth and Fourteenth Amendments) is common to all putative class members, and this question is the overriding and predominant issue applicable to all putative class members. Even if there are, *arguendo*, other questions affecting only individual members, no such questions would predominate over the common class questions. A class action is also superior to other available methods for the fair and efficient adjudication of the controversy. Denying a class and requiring hundreds of individual actions would waste judicial resources, may lead to duplicative and inconsistent rulings, and would cause a financial hardship for the class members if they were all required to prosecute individual actions.

CONCLUSION

Wherefore, for the foregoing reasons, the Plaintiffs requests that this Court enter an Order certifying this action as a class action, certifying the plaintiffs as representatives of the class defined herein, and designating their attorneys, Thomas G. Morrissey and Robert H. Farley, Jr., as class counsel.

Respectfully submitted,

One of the Attorneys for the Plaintiffs

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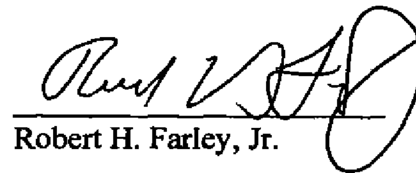
CERTIFICATE OF SERVICE

I, Robert H. Farley, Jr., one of the attorneys for the Plaintiffs, deposes and states that he service a copy of the foregoing **Plaintiffs Memorandum In Support Of Class Certification,** by mailing and faxing a copy on or before 5:00 p.m. on May 19, 2004 to the attorney(s) listed below.



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