

B

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

Genise Hart, Carmen Feliciano,
Ann Francis Gelco, Helen Koss
Caprice Morales and
Michelle Gandy, individually and
and on behalf of a class,

Plaintiffs

vs.

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

Defendant

No. 03 C 1768

JUDGE: James Zagel
MAGISTRATE: Ashman

FILED
JUL - 6 2005
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

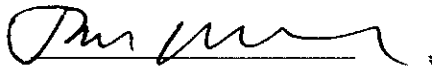
NOTICE OF FILING

To: See Service List

PLEASE TAKE NOTICE that on July 6, 2005, I filed with the United States District Court for the Northern District of Illinois, Eastern Division, a **MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**.

Dated this 6th Day of July, 2005 at Chicago, Illinois.

Respectfully submitted,



Plaintiffs' Counsels

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

Genise Hart, Carmen Feliciano,)
Ann Francis Gelco, Helen Koss)
Caprice Morales and)
Michelle Gandy, individually and)
and on behalf of a class,)

Plaintiffs)

vs.)

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

No. 03 C 1768

JUDGE: James Zagel

MAGISTRATE: Ashman

FILED
JUL - 6 2005
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
THEIR MOTION FOR CLASS CERTIFICATION**

Now come the plaintiffs, individually and on behalf of a class, by their attorneys, submit this Memorandum in Support of their Motion for Class Certification.

INTRODUCTION

The Plaintiffs in this case are currently or have been pretrial detainees at the Cook County Department of Corrections ("Jail"). As pretrial detainees at the Jail, the plaintiffs are subjected to weekend lock downs which occur at least once a month. During these lock downs, inmates are confined to their cells starting a 1:30 p.m. on Friday afternoon and are not released until late on Sunday afternoon. The plaintiffs are challenging the reasonableness of regular, scheduled lock

downs which last up to fifty hours over the weekends and continue after their tiers have been searched at the Jail. These prolonged lock downs serve no justifiable administrative purpose at the Jail and amount to punishment of the pre-trial detainees.

CLASS DEFINITIONS

Plaintiffs seek certification as a class action pursuant to Rule 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure. There are two proposed classes:

(i) For injunctive relief under Rule 23(b)(2) the class consist all pretrial female inmates at the Cook County Department of Corrections who have exhausted the available administrative remedies and who have been and/or will in the future be subjected to non-emergency, extended lock downs over a weekend after their tiers have been searched at the Jail.

(ii) For relief under Rule 23(b)(3) the class shall consist of all former female pretrial inmates at the Cook County Department of Corrections who had been subjected to non-emergency, extended lock downs over a weekend after their tier had been searched at the Jail and who were not incarcerated on March 11, 2003. The class shall also include those inmates who were incarcerated at the time of the filing and who had exhausted their available administrative remedies prior to March 11, 2003.

ARGUMENT

Parties seeking class action certification must first satisfy the provisions of Rule 23(a) of the Federal Rules of Civil Procedure. 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 undoubtedly satisfied here, as this case falls within the 23 (b)(3) category.

1. Plaintiffs have established the prerequisites for a class action pursuant to Rule 23(a)

A. Numerosity

Numerosity is easily established in the present case. Courts in this judicial circuit 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). Based on information provided by the defendant, the class exceeds 10,000 female inmates. Thus, Plaintiffs’ claims in the present case satisfies the numerosity requirement.

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. The proposed Fourth Amended Complaint states that all female inmates are subjected to weekend lock downs at least once a month. The commonality and predominance requirements are met here because there are questions of fact and law common to the class, which predominate over questions affecting only individual class members. Among the common questions of fact and law are the following:

- (i) Whether there are prolonged, weekend lock downs which continue after the tier has been searched, each month at the Jail in the female housing units;

- (ii) Whether prolonged lock downs which continue after the tier has been searched, each month at the jail are related to a legitimate governmental interest;
- (iii) Whether the Sheriff has a duty, during prolonged weekend lock downs, to protect inmates from harm from other inmates;
- (iv) Whether the continuation of the lock downs by the defendants, after a tier has been searched, exposes pretrial detainees to unreasonable and “gratuitous infliction of pain or suffering”;
- (v) Whether the safety of female inmates is endangered during the prolonged weekend lock downs;
- (vi) Whether during the prolonged weekend lock downs the plaintiffs are able to receive appropriate medical and/or psychological treatment to prevent serious medical injuries;
- (vii) Whether the prolonged weekend lock downs which continue after a tier is searched constitutes punishment of pretrial detainees.

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, Defendant cannot seriously contend that the Plaintiffs' claims are not typical of the proposed class. The claims asserted on behalf of all potential class members arise from the same course of conduct and are based upon the same legal theories.

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).

In this case, Plaintiffs are adequate representatives of the putative class. They have no interests antagonistic to or conflicting with the class. Moreover, Plaintiffs' counsel are well qualified to advance the interests of the class. Plaintiffs' counsel are experienced in class actions, particularly class actions against the state and other government entities, and Plaintiffs' counsel have previously been found to be adequate class counsel by numerous courts. *See Bullock v. Sheahan*, No. 04 C 1051 (Judge Bucklo); *Portis et al. v. City of Chicago*, No. 02 C 3139 (Judge Gettleman); *Thompson, et al. v. City of Chicago*, No. 01 C 6916 2002 U.S. Dist. 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)

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

Plaintiffs meet the requirements of Rule 23(b)(2). The Defendant's policy and practice of prolonged weekend lockdowns of pretrial detainees, which continue after the tiers are searched, serves no justifiable administrative purpose at the Jail and amounts to harsh and abusive punishment of the pretrial detainees, thus making class certification appropriate in this case. The Defendant has acted on grounds generally applicable to the class of pretrial detainee inmates, thereby making appropriate final injunctive relief with respect to the class as a whole.

The certification of this case will protect the parties and the courts from repetitive litigation. Due to the common issues presented by the Defendant's practice of prolonged and abusive weekend lockdowns, a class action suit is superior to repetitive litigation.

Plaintiffs meet the requirements of 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.").

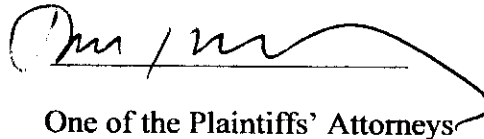
The requirements of Rule 23 (b) (3) are easily met in this case. As set forth above for

commonality, at a minimum, the issue as to whether members of the class were unlawfully subjected to prolonged weekend lockdowns after their tiers were searched 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, lead to the possibility of duplicative and inconsistent rulings, and cause a financial hardship for the class members if they were all required to prosecute individual actions.

CONCLUSION

Wherefore, for the foregoing reasons, Plaintiffs respectfully request that the Court grant this motion and certify the proposed classes.

Respectfully submitted,

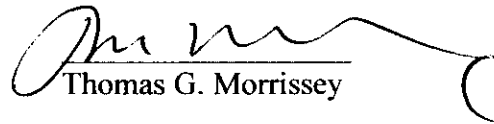

One of the Plaintiffs' Attorneys

Thomas G. Morrissey
Thomas G. Morrissey, Ltd.
10249 S. Western Ave.
Chicago, IL 60643
773-233-7900

Robert H. Farley, Jr.
Robert H. Farley, Jr. Ltd.
1155 S. Washington
Naperville, IL 60540
630-369-0103

CERTIFICATE OF SERVICE

I, Thomas G. Morrissey, one of the attorneys for the Plaintiffs, deposes and states that he service a copy of the foregoing **Plaintiffs Memorandum In Support of Their Motion for Class Certification** by mailing and faxing a copy on or before 5:00 p.m. on July 6, 2005, to the attorney(s) listed below.


Thomas G. Morrissey

SERVICE LIST

To: Mr. Steven Puiszis
Hinshaw & Culbertson
222 N. LaSalle Street, Suite 300
Chicago, IL 60601-1081

Mr. Patrick T. Driscoll, Jr.
Civil Bureau Chief
Office of the State's Attorneys
500 Richard J. Daley Center
Chicago, IL 60602