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

CHARLES KING and ANDRE BROWN,
Plaintiffs,

v.

ROGER E. WALKER, Director of Illinois Department of Corrections, JESSE MONTGOMERY, Deputy Director of Parole, Operations,
Defendants.

No. 06C 0204

JUDGE GETTLEMAN

MAGISTRATE JUDGE GERALDINE SOAT BROWN

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

Plaintiffs submit this memorandum in support of their motion for class certification under Rules 23(b)(3) of the Federal Rules of Civil Procedure.

I. INTRODUCTION AND FACTUAL BACKGROUND

Plaintiffs are adult, Cook County parolees who are charged with violating their paroles. After their unrelated arrests, they were taken to the Cook County Jail. As alleged parole violators, they are not eligible for bond. Pursuant to Defendant's policy, Plaintiffs only remained in the Cook County Jail long enough for arrangements to be made to ship them to Joliet. They were not afforded the opportunity to proceed to a preliminary parole revocation hearing while in the Cook County Jail.

After Plaintiffs were transported to Joliet, they were detained for additional time (more than 10 business days) without preliminary parole revocation hearings. Furthermore, when preliminary hearings finally are conducted, Plaintiffs, like all other parolees, are – or will be – denied their constitutional right to present favorable evidence and to cross examine adverse witnesses. In fact, Defendants, in direct violation of two prior consent decrees, summarily find probable cause to revoke parole based entirely on police reports. But see, attached court decisions. No testimony is presented to prove the alleged violations and Cook County parolees never are allowed to present favorable testimony from their witnesses. As a result of Defendants' policy, it is all but impossible for parolees to even contact their witnesses about the preliminary parole revocation hearing. Parolees have little, if any, access to phones, and they are not given sufficient advance notice of the date and location of the preliminary parole revocation hearing. Consequently parolees cannot make arrangements for their witnesses to appear at the preliminary revocation hearing.

II. PLAINTIFFS' ALLEGATIONS MEET THE THRESHOLD REQUIREMENTS FOR CLASS CERTIFICATIONS.

A. The Proposed Class Definition Is Sufficiently Precise.

The proposed class is limited to adult Cook County parolees who are taken into custody at the Cook County Jail. As to all such parolees, past, present and future, Defendants' policy is the same.

Plaintiffs must allege the existence of a readily identifiable class (Amchen

Products, Inc., v. Windsor, 521 U.S. 591, 138 L. Ed.2d 689 (1997); Simpson v. Miller, 93 F.R.D. 540, 545 n. 11 (N.D. Ill. 1982)), and the class representatives must be members of the class. Whitlock v. Johnson, 153 F.3d 380, 383-84 (7th Cir. 1998); Hendrix v. Faulkner, 525 F. Supp. 435, 442 (N.D. Ind. 1981), cert. denied, 468 U.S. 1217 (1984). A proposed class definition does not require absolute identity of all possible class members. Alexander v. Q.T.S. Corporation, 1999 WL 573358 at 5, 7 (N.D.Ill. July 30,1999). As long as the operative facts are similar enough to suggest that many people will be affected in the same way, the class definition satisfies Rule 23. Joncek v. Local 714 International Teamsters, 1999 WL 755051 (N.D. Ill Sept. 3, 1999, Judge Gettleman); National Organization For Women, Inc., v. Scheidler, 172 F.R.D. 351, 357 (N.D. Ill 1997).

Here, the proposed class is precise and unambiguous. Cook County Teachers Union, Local 1600 v. Byrd, 456 F.2d 882 (7th Cir. 1972), cert. denied, 409 U.S. 848 (1973). It includes only those persons who a) are alleged adult parole violators from Cook County and b) they were transported from the Cook County Jail to Joliet without having been afforded a preliminary parole revocation hearing.

B. The Proposed Class Satisfies The Numerosity Requirement.

The identified class is so numerous that joinder of all members is impracticable. Gaspar v. Linvatev, 167 F.R.D. 51 (N.D. Ill. 1996); Swanson v. American Consumer Industries, Inc., 415 F.2d 1326, 1333 (7th Cir. 1969). Impracticability is determined by considering: (1) the size of the class; (2) the geographic dispersion of members; (3) the

nature of relief sought; (4) the ability of individuals to press their own claims; and (5) the practicality of forcing re-litigation of common issues. Gomez v. Illinois State Bd. of Educ., 117 F.R.D. 394, 399 (N.D. Ill. 1987); Rosario v. Cook County, 101 F.R.D. 659, 661 (N.D. Ill. 1983); 7A Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 1762 (1986). The exact number of class members or their precise identities is not essential to class certification as long as there is a defined class which is sufficiently numerous. Evans v. United States Pipe and Foundry Co., 696 F.2d 925, 930 (11th Cir. 1983); Toney v. Rosewood Care Center Inc. of Joliet, 1999 WL 199249 (N.D. Ill, March, 1999).

Here, the alleged policy affects hundreds, if not thousands, of parolees every year. Classes involving far fewer putative members are routinely certified. Williams v. Brown, 214 F.R.D. 484 (N.D. Ill. 2003)- a class of three hundred certified; Patrykus v. Gomilla, 121 F.R.D. 357, 361 (N.D. Ill. 1988)-class of fewer than 50 putative members certified. Furthermore, litigation, by thousands of individuals, of a common core of facts arising from the same unlawful conduct is an extreme waste of judicial resources, precisely the result that the class certification is designed to prevent. Carnegie, 376 F.3d at 660-662: Johns v. DeLeonardis, 145 F.R.D. 480, 483 (N.D. Ill. 1992).

C. Common Questions of Law and Fact Are Controlling.

The commonality requirement of Rule 23 is satisfied when the factual and legal issues relate to standardized conduct by the defendants toward members of the proposed

class. Whitlock v. Johnson, 153 F.3d 380 (7th Cir. 1998). Because the Defendants engaged in a single course of conduct resulting in injury to the class as a whole, a common core of operative facts is present, and Rule 23(a)(2) is satisfied. Johns, 145 F.R.D. at 483, (citing Patrykus v. Gomila, 121 F.R.D. 357, 361 (N.D. Ill. 1988)). Once common issues of fact or law are alleged, it makes no difference whether the specific activities relating to each class member vary slightly. Williams, 214 F.R.D. at 489-93; Alliance to End Repression v. Rochford, 565 F.2d 975, 977 (7th Cir. 1977); Retired Chicago Police Ass'n v. City of Chicago, 141 F.R.D. 477, 485 (N.D. Ill. 1992).

D. The Typicality Requirement Is Satisfied.

Plaintiffs' claims have the "same essential characteristics as the claims of the class at large," so the typicality requirement of Rule 23(a)(3) also is met. De La Fuente v. Stokely-Van Camp, Inc., 713 F.2d 225, 232 (7th Cir. 1983). In Edmondson v. Simon, 86 F.R.D. 375, 380 (N.D. Ill. 1980), the Court held that where the named-plaintiff's claims arise from the same practice or course of conduct and are based on the same legal theory, the typicality requirement is met. See National Organization For Women v. Scheidler, 172 F.R.D. 351 (N.D. Ill. 1997); Johns, 145 F.R.D. at 483.

E. Plaintiffs Fairly and Adequately Represent the Class.

The Court must determine adequacy of representation under Rule 23 by examining: (1) whether conflicts of interest exist between the named representatives and the rest of the class members, and (2) whether the named plaintiffs' counsel will

adequately protect the interests of the class. Secretary of Labor v. Fitzsimmons, 805 F.2d 682, 697 (7th Cir. 1986). There are no conflicts between the named class representatives and the remainder of the class. Nor are Plaintiffs' interests antagonistic to the class.

When the class' attorneys "have been found to be adequate in the past, it is persuasive evidence that they will be adequate again." Beckless v. Heckler, 622 F. Supp. 715, 721 (N.D. Ill. 1985) In this litigation, the attorneys representing the interests of the Plaintiff class members have successfully represented civil rights claimants in other class actions. See May v. Sheahan, 226 F.3d 876 (7th Cir. 2000); Faheem v. Klincar, 841 F.2d 712 (7th Cir. 1988), Whitlock v. Johnson, 153 F.3d 380 (7th Cir. 1998); Gates v. Towery, 2004 WL 2583905 (N.D. Ill. 2004); Williams v. Brown, 214 F.R.D. 484 (N.D. Ill.2003); and Patrykus v. Gomilla, 121 F.R.D. 357, 301 (N.D. Ill. 1988). Plaintiffs, therefore, have satisfied all the core elements for (b)(3) certification.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this cause be maintained as a class action and that the Court certify the class as herein defined under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

Respectfully submitted,

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