

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALEX ROSAS and JONATHAN
GOODWIN, on behalf of
themselves and of those
similarly situated,

Plaintiffs,

v.

LEROY BACA, Sheriff of Los
Angeles County Jails; PAUL
TANAKA, Undersheriff, Los
Angeles Sheriff's
Department; CECIL RHAMBO,
Assistant Sheriff, Los
Angeles Sheriff's Department
and DENNIS BURNS, Chief of
Custody Operations Division,
Los Angeles Sheriff's
Department,

Defendants.

Case No. CV 12-00428 DDP (SHx)

**ORDER GRANTING PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION AND
DENYING DEFENDANT'S MOTION TO
DISMISS**

[Dkt Nos. 20, 36]

I. Introduction

Presently before the court is Plaintiffs' Motion for Class Certification under Rule 23(b)(2). Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following order. The court notes

1 that the threshold for satisfying class certification requirements
2 is relatively low. See Parkinson v. Hyundai Motor Am., 258 F.R.D.
3 580, 594 (C.D. Cal. 2008). The granting of this class
4 certification motion is a procedural step allowing this matter to
5 go forward. It is not intended, and does not constitute an opinion
6 on the ultimate merits of the lawsuit.

7 The court has great confidence in the leadership and integrity
8 of both sides to this dispute. The parties have proved to be
9 effective partners in crafting cooperative solutions to issues
10 raised in other, related matters before this court. Nothing in
11 this order shall be read to discourage the parties from continuing
12 to pursue collaborative efforts to address jail-related matters of
13 mutual concern.

14 **I. Background**

15 The Los Angeles County Sheriff's Department has the
16 responsibility of running the largest and likely most challenging
17 jail system in the country. It is a system which admits and
18 discharges over 150,000 inmates a year and is responsible, among
19 other matters, for delivering inmates to courthouses located
20 throughout the county. The inmate population is comprised of
21 individuals charged with crimes ranging from misdemeanors to
22 homicides, and includes pre-trial detainees, inmates who have been
23 convicted and sentenced, and, under California's "realignment"
24 program, an increasing number of state prisoners.

25 A substantial portion of the inmate population has serious
26 medical and mental health needs, disability issues, and drug and
27 alcohol dependency problems. While many inmates are non-violent or
28 low-level offenders, a significant number are hard-core gang

1 members or present other serious security threats. Inmates are
2 often housed in outdated facilities that are long past their life
3 cycles, and were never designed to accommodate inmates as numerous
4 and complex as today's jail population. It is in this context,
5 against a challenging backdrop of dwindling fiscal resources and an
6 increasing inmate population, that the Sheriff's Department has
7 endeavored to fulfill its custodial responsibilities to both
8 inmates and the public.

9 The American Civil Liberties Union's mission, in part, is to
10 protect inmates' constitutional rights, and further to ensure that
11 inmates are housed in a safe, humane environment that provides
12 opportunities for rehabilitation. Consistent with these interests,
13 the ACLU's monitors have, by order of this court and with the
14 cooperation of the Sheriff's Department, had access to the jail,
15 inmates, and senior Sheriff's Department jail supervisors.

16 The Sheriff's Department and the ACLU have a long history of
17 both litigation and collaboration on jail-related matters. During
18 some of that history, this court has decided contested issues and
19 worked with the parties to identify and resolve issues of mutual
20 concern, often without the need of formal litigation. The Los
21 Angeles County Office of Independent Review has also been of great
22 assistance to the court and the parties in resolving disputes.

23 Here, the ACLU, on behalf of Plaintiffs, has presented
24 evidence to the court and to the Sheriff's Department of alleged
25 instances of deputy-on-inmate and inmate-on-inmate altercations.
26 The ACLU asserts that such examples are the result of deficiencies
27 in the management of the jail system. (First Amended Complaint ¶¶
28 3, 13.)

1 The Sheriff's Department has acknowledged the ACLU's concerns,
2 and has made commendable efforts to implement positive jail reforms
3 and new initiatives, such as the establishment of new investigatory
4 and management task forces. The ACLU has made significant
5 contributions to these reform efforts. The court has no doubt that
6 the Sheriff's Department and the ACLU sincerely share the common
7 goal of making the downtown Los Angeles jail the best possible
8 facility.

9 The court recognizes that, while the Sheriff's Department and
10 ACLU continue to work together to achieve this common goal,
11 differences may arise requiring a judicial resolution. This
12 lawsuit is a vehicle by which the plaintiffs may seek relief.
13 Here, Plaintiffs seek only declaratory and injunctive relief on
14 behalf of themselves and other current and future inmates in the
15 downtown Los Angeles Jail Complex.¹ (FAC ¶¶ 3, 215.) The
16 plaintiffs do not seek monetary damages.

17 **III. Legal Standard**

18 The party seeking class certification bears the burden of
19 showing that each of the four requirements of Rule 23(a) and at
20 least one of the requirements of Rule 23(b) are met. See Hanon v.
21 Dataprods. Corp., 976 F.2d 497, 508-09 (9th Cir. 1992). Rule 23(a)
22 sets forth four prerequisites for class certification:

23 (1) the class is so numerous that joinder of all members
24 is impracticable, (2) there are questions of law or fact
25 common to the class, (3) the claims or defenses of the
26 representative parties are typical of the claims or
27 defenses of the class, and (4) the representative parties

28 ¹ The Jail Complex is comprised of three interconnected
facilities: Men's Central Jail, Twin Towers Correctional Facility,
and the Inmate Reception Center (collectively, "the Jails").

1 will fairly and adequately protect the interests of the
2 class.

3 Fed. R. Civ. P. 23(a); see also Hanon, 976 F.2d at 508.

4 These four requirements are often referred to as numerosity,
5 commonality, typicality, and adequacy. See General Tel. Co.
6 v. Falcon, 457 U.S. 147, 156 (1982). In determining the
7 propriety of a class action, the question is not whether the
8 plaintiff has stated a cause of action or will prevail on the
9 merits, but rather whether the requirements of Rule 23 are
10 met. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 178
11 (1974). This court, therefore, considers the merits of the
12 underlying claim to the extent that the merits overlap with
13 the Rule 23(a) requirements, but will not conduct a "mini-
14 trial" or determine at this stage whether Plaintiffs could
15 actually prevail. Ellis v. Costco Wholesale Corp., 657 F.3d
16 970, 981, 983 n.8 (9th Cir. 2011).

17 **IV. Discussion**

18 A. Federal Rule of Civil Procedure 23(a)

19 1. Numerosity

20 Plaintiffs must first demonstrate that "the class is so
21 numerous that joinder of all members is impracticable." Fed.
22 R. Civ. P. Rule 23(a)(1). The Jails currently house
23 thousands of inmates, and are certain to house many more in
24 the future. The court therefore agrees with Plaintiffs'
25 undisputed assertion that the numerosity requirement has been
26 satisfied.

27 2. Commonality

1 Second, the Plaintiffs must demonstrate that "there are
2 questions of law or fact common to the class." Fed. R. Civ.
3 P. 23(a)(2). "Rule 23(a)(2) has been construed permissively.
4 All questions of fact and law need not be common to satisfy
5 the rule. The existence of shared legal issues with divergent
6 factual predicates is sufficient" Hanlon v. Chrysler
7 Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). Indeed, "even a
8 single common question will do," so long as that question has
9 the capacity to generate a common answer "apt to drive the
10 resolution of the litigation." Wal-Mart Stores, Inc. v.
11 Dukes, 131 S.Ct. 2541, 2551, 2556 (2011) (citations, internal
12 quotations, and alterations omitted).

13 Defendant argues that the commonality requirement is
14 lacking here because "most class members have not been harmed
15 in any way," and that the "common denominator" of having been
16 subjected to the risk of misconduct is insufficient. (Opp.
17 at 4-5.) In a civil rights suit such as this one, however,
18 "commonality is satisfied where the lawsuit challenges a
19 system-wide practice or policy that affects all of the
20 putative class members." Armstrong v. Davis, 275 F.3d 849,
21 868 (9th Cir. 2001) abrogated on other grounds by Johnson v.
22 California, 543 U.S. 499 (2005). Under such circumstances,
23 individual factual differences among class members pose no
24 obstacle to commonality. Id.; see also Spalding v. City of
25 Oakland, No. C11-2867 THE, 2012 WL 994644 at *2 (N.D. Cal.
26 March 23, 2012).

27 Here, Plaintiffs contend that Sheriff's department
28 supervisors knew of, and were deliberately indifferent to, a

1 pattern or practice of deputies using or threatening violence
2 against inmates and facilitating inmate-on-inmate violence.
3 As a result, Plaintiffs assert, all class members are at
4 significant risk of excessive violence at the hands of
5 deputies. Resolution of these common questions is likely to
6 yield a common answer to the Eighth and Fourteenth Amendment
7 issues Plaintiffs have raised on behalf of all inmates. Rule
8 23(a)(2)'s commonality requirement is, therefore, satisfied.

9 3. Typicality

10 Rule 23(a) also requires a plaintiff to demonstrate that
11 "the claims or defenses of the representative parties are
12 typical of the claims or defenses of the class." Fed. R.
13 Civ. P. 23(a)(3). "[R]epresentative claims are 'typical' if
14 they are reasonably co-extensive with those of absent class
15 members; they need not be substantially identical." Hanlon,
16 150 F.3d at 1020. The complaint alleges that named Plaintiff
17 Rosas was threatened by Sheriff's deputies after witnessing a
18 display of excessive force against another inmate, and was
19 later himself the target of violence. (FAC ¶¶ 220-223.) The
20 complaint also alleges that named Plaintiff Goodwin was
21 physically assaulted by deputies without provocation. (FAC
22 ¶¶ 228-231.) While the precise nature of the injuries
23 suffered by the named Plaintiffs may differ from those
24 suffered by other class members, the complaint alleges that
25 the same pattern and practice of violence, and deliberate
26 indifference thereto, exposes every class member, including
27 the named Plaintiffs, to the same risk of violent attack.

1 Plaintiffs' claims are therefore typical of the claims of
2 absent class members.

3 4. Adequacy

4 Finally, the plaintiffs must demonstrate that "the
5 representative parties will fairly and adequately protect the
6 interests of the class." Fed. R. Civ. P. 23(a)(4).
7 "Resolution of two questions determines legal adequacy: (1)
8 do the named plaintiffs and their counsel have any conflicts
9 of interest with other class members and (2) will the named
10 plaintiffs and their counsel prosecute the action vigorously
11 on behalf of the class?" Hanlon, 150 F.3d at 1020.

12 Defendant points to no conflict of interest among
13 Plaintiffs' counsel, but asserts that counsel is nevertheless
14 inadequate by dint of alleged misconduct in a related case.
15 (Opp. at 5.) Defendant's contention is without merit.

16 Defendant also argues that named Plaintiffs Goodwin and
17 Rosas are inadequate class representatives because they have
18 not shown that they are likely to suffer from unlawful
19 deputy-on-inmate violence in the future, and therefore lack
20 Article III standing.² (Opp. At 6-7.) In order to
21 demonstrate an injury in fact sufficient to confer standing,
22 a plaintiff must demonstrate an "invasion of a legally
23 protected interest which is (a) concrete and particularized,
24 and (b) actual or imminent, not conjectural or hypothetical."
25 D'Lil v. Best W. Encina Lodge & Suites, 538 F.3d 1031, 1036

27 ² This argument also serves as the basis for Defendant's
28 separately filed Motion to Dismiss Plaintiffs' First Amended
Complaint (Dkt. No. 45).

1 (9th Cir. 2008), citing Lujan v. Defenders of Wildlife, 504
2 U.S. 555, 560-61 (1992). Defendant argues that the named
3 Plaintiffs have not shown an imminent harm.

4 To support his argument, Defendant relies primarily upon
5 City of Los Angeles v. Lyons, 461 U.S. 95 (1983). In Lyons,
6 a plaintiff sought injunctive relief after police officers
7 allegedly applied a chokehold on the plaintiff at a traffic
8 stop, without provocation. Lyons, 461 U.S. at 97. The
9 Court held that because the plaintiff could not show a real
10 and immediate threat that he would again be stopped and
11 placed in a chokehold, he could not make a showing of
12 irreparable injury and, therefore, lacked standing to pursue
13 injunctive relief. Id. at 105, 111.

14 Lyons, however, is readily distinguishable. Unlike the
15 plaintiff in Lyons, who could do no more than speculate that
16 he might someday once again interact with law enforcement
17 officers, Plaintiffs here remain incarcerated in the Jails,
18 and will necessarily come into frequent contact with
19 Sheriff's deputies, including some of the very deputies who
20 are alleged to have engaged in unlawful violent activity.
21 Furthermore, Plaintiffs here have alleged a widespread
22 pattern of violence and indifference to that violence,
23 supported by numerous declarations from inmates, experts, and
24 civilian witnesses. Where defendants have engaged in a
25 pattern of injurious acts in the past, "there is a sufficient
26 possibility that they will engage in them in the near future
27 to satisfy the 'realistic repetition' requirement" necessary
28 to demonstrate an actual injury. Armstrong, 275 F.3d at 861;

1 see also LaDuke v. Nelson, 762 F.2d 1318, 1324 (9th Cir.
2 1985) (distinguishing Lyons from case involving a standard
3 pattern of unconstitutional behavior). Having alleged a
4 pattern of unlawful behavior that is likely to recur, the
5 named Plaintiffs here have demonstrated injury in fact, and
6 are adequate class representatives.

7 B. Federal Rule of Civil Procedure 23(b)

8 A party seeking class certification must also
9 demonstrate that at least one of the following three
10 conditions is satisfied: (1) the prosecution of separate
11 actions would create a risk of: (a) inconsistent or varying
12 adjudications, or (b) individual adjudications dispositive of
13 the interests of other members not a party to those
14 adjudications; (2) the party opposing the class has acted or
15 refused to act on grounds generally applicable to the class;
16 or (3) questions of law or fact common to the members of the
17 class predominate over any questions affecting only
18 individual members, and a class action is superior to other
19 available methods for the fair and efficient adjudication of
20 the controversy. See Fed. R. Civ. P. 23(b); Dukes v.
21 Wal-Mart Stores, Inc., 603 F.3d 571, 580 (9th Cir. 2010) (en
22 banc).

23 As noted above, Plaintiffs here seek certification under
24 Rule 23(b) (2). Defendant contends that Plaintiffs have
25 provided no evidence whatsoever that Rule 23(b) (2) is
26 satisfied. (Opp. at 3.) The FAC clearly alleges, however,
27 that Sheriff's command and supervisory staff have been and
28 remain aware of the alleged pattern and practice of unlawful

1 violence and are deliberately indifferent to it. The
2 complaint further alleges that multiple deputies ignored
3 named Plaintiff Rosas' requests for a complaint form. (FAC ¶
4 223.) Plaintiffs have also submitted expert declarations
5 stating that Defendant has failed to rein in deputies'
6 abusive behavior. (See, e.g., Declaration of Thomas Parker
7 in Support of Plaintiffs' Motion for Class Certification ¶
8 10). In light of these allegations, the court is satisfied
9 that Plaintiffs have sufficiently demonstrated that the party
10 opposing the class has acted or refused to act on grounds
11 generally applicable to the class.

12 **V. Conclusion**

13 For the reasons stated above, Plaintiff's Motion to
14 Certify Class is GRANTED.³ The court hereby certifies a class
15 comprised of all present and future inmates confined in the
16 Jail Complex in downtown Los Angeles, pursuant to Federal
17 Rule of Civil Procedure 23(b)(2). The court reiterates that
18 the certification of the plaintiff class has no bearing on
19 the viability or veracity of Plaintiffs' claims. The court
20 remains available to assist the parties in mediating
21 disputes, while recognizing the possibility that further
22 litigation may also be necessary.

23 IT IS SO ORDERED.

24
25 Dated: June 7, 2012



26 DEAN D. PREGERSON
27 United States District Judge

28 ³ For the reasons discussed in Section III.A.4, supra,
Defendant's Motion to Dismiss the FAC is DENIED.