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United States District Court, S.D. New York.

MARISOL A., et al., Plaintiffs,
v.
Rudolph W. GIULIANI, Mayor of the City of New York, et al., Defendants.

No. 95 Civ. 10533(RJW). | April 23, 1998.

Opinion

MEMORANDUM DECISION AND ORDER

WARD, J.

***1** Plaintiffs move for an order, pursuant to Rule 23(c)(4)(B), Fed.R . Civ.P., certifying subclasses. For the reasons that follow, plaintiffs' motion is granted.

BACKGROUND

In December 1995 eleven named plaintiff children sued City and State officials alleging that the City of New York Child Welfare Administration ("CWA"), now known as the Administration for Children's Services ("ACS"), is administered in violation of state and federal law. Plaintiffs allege that systemic deficiencies of agency-wide proportions have resulted in deprivations of their constitutional rights.

In an Order dated July 3, 1996 ("Class Certification Order"), the Court certified the following class:

> [a]ll children who are or will be in the custody of [ACS], and those children who, while not in the custody of ACS, are or will be at risk of neglect or abuse and whose status is known or should be known to ACS.

City defendants asked the Court to certify the Class Certification Order for immediate appeal pursuant to 28 U.S.C. § 1292(b). By Memorandum and Order dated July 26, 1996, the Court granted City defendants' request for interlocutory appeal, on the theory that "an immediate appeal may materially advance the ultimate termination of litigation."

On appeal, the Second Circuit affirmed the Class Certification Order, but directed the Court to certify subclasses to facilitate the efficient and orderly administration of the litigation. *Marisol A. v. Giuliani,* 126 F.3d 372 (2d Cir.1997). Plaintiffs now move to certify subclasses.

DISCUSSION

In its decision upholding this Court's grant of class certification, the Court of Appeals expressed concern regarding the breadth of the class and the high level of abstraction at which legal and factual issues common to the class were defined. The panel concluded that, although this Court had acted within its discretion in certifying a class based on what it deemed a super-claim, the creation of subclasses was necessary. The Court of Appeals cautioned that,

> [w]ell in advance of trial, the district court must engage in a rigorous analysis of the plaintiffs' legal claims and factual circumstances in order to ensure that appropriate subclasses are identified, that each subclass is tied to one or more suitable representatives, and that each subclass satisfies Rule 23(b)(2). Thus, it is imperative that the district court identify (1) the discrete legal claims which are at issue, (2) the named plaintiffs who are aggrieved under each individual claim at issue, and (3) the subclasses that each named plaintiff represents.

Marisol A., 126 F.3d at 378–79.[1] While it was left to this Court to determine what subclasses might be appropriate, the panel did offer the following guidance:

> One possible method of developing proper subclasses would divide the present class based on the commonality of the children's particular circumstances, the type of harm the children allegedly have suffered, and the particular systemic failures which the plaintiffs assert have occurred.
> ***2** *Id.* at 379.

Accordingly, plaintiffs now move to certify the following subclasses:

SUBCLASS I: Children whom the defendants know or should know have been abused or neglected/maltreated by virtue of a report of abuse or neglect/maltreatment.

The deficiencies, legal claims and named plaintiffs associated with Subclass I are as follows:

[text material not displayable] Failure to timely investigate reports of abuse or neglect, in violation of Child Abuse Prevention and Treatment Act ("CAPTA") requirements that defendants maintain a system to receive allegations of suspected child abuse or neglect, 42 U.S.C. §§ 5106a(b)(1)(A) & (2), and New York Social Services Law ("SSL") requirements regarding the role and functions of the New York State Child Abuse and Maltreatment Register ("State Central Register"), SSL §§ 398(2)(a) & (6)(a), 417, 421.1, 421.2(a) & (b), and the timing of investigations of abuse and neglect. SSL §§ 424, 424–b, 424–c.
Named plaintiffs: Marisol A., Shauna D., Walter and Richard S.[2]

[text material not displayable] Failure to conduct adequate investigations and assessments of risk to children, in violation of CAPTA requirements that defendants promptly investigate reports of abuse and neglect and act immediately to protect abused or neglected children and children in danger of abuse or neglect, 42 U.S.C. §§ 5106a(b)(2), 5106c(b)(1), SSL requirements regarding the components of investigations of abuse and neglect, SSL §§ 424(6) & (7), and New York Family Court Act ("Family Court Act") requirements concerning the initiation of Family Court proceedings, N.Y.F.C.A. § 1024 and the N.Y. Const. Art. XVII.

Named plaintiffs: Marisol A., Shauna D., Walter and Richard S.

[text material not displayable] Failure to take proper steps to protect children who are or should be found at risk of abuse or neglect in violation of 42 U.S.C. § 5106a(b)(2), and the Fourteenth Amendment to the United States Constitution.

Named plaintiffs: Marisol A., Shauna D., Walter and Richard S.

SUBCLASS II: Children in families in which there is an open indicated report of abuse or neglect.

The deficiencies, legal claims and named plaintiffs associated with Subclass II are as follows:

[text material not displayable] Failure to provide adequate and accessible preventive services and supervision to protect children and eliminate the need for, or reduce the length of, foster care placements in violation of the CAPTA requirement that defendants have procedures, adequate staffing, training, personnel, programs, services and facilities to address cases of abuse or neglect, 42 U.S.C. § 5106a(b)(3), Adoption Assistance and Child Welfare Act of 1980 ("Adoption Assistance Act") requirements that defendants provide case plans including necessary services and permanency goals, 42 U.S.C. §§ 622(b)(9)(B)(iii) & (iv), 627(a)(2)(c) & (b)(3), 671(a)(16), 675(1), state law requirements governing the steps to be taken to protect children in open, indicated cases, SSL §§ 358–a, 392, 409, 409–a(1) & (7), 409–d(1) & (3)(b)(ii), 409–e, 409f(1), 424(10); N.Y.F.C.A. §§ 1055, 1055–a, 1058; N.Y. Const. Art. XVII, and federal constitutional due process requirements, U.S. Const. Amend. XIV.

3** ***Named plaintiffs: Marisol A., Shauna D., Walter and Richard S.

SUBCLASS III: Children in the custody of the Administration for Children's Services.

The deficiencies, legal claims and named plaintiffs associated with Subclass III are as follows:

[text material not displayable] Failure to provide timely and adequate assessments, case plans and administrative reviews in violation of Adoption Assistance Act and SSL requirements that defendants establish and maintain written case plans for all foster children, prepared and updated within specified time periods and including specified information and assessments, 42 U.S.C. §§ 627, 671(a)(14) & (16), 675(1), and conduct periodic status reviews of the appropriateness of foster care placements and the progress made toward permanency goals. 42 U.S.C. §§ 675(1) & (5); SSL §§ 358–a, 397, 409e & 409f.

Named plaintiffs: Marisol A., Lawrence B., Thomas C., Ozzie E., Darren and David F., Bill and Victoria G., Brandon H., Steven I., and Walter and Richard S.

[text material not displayable] Failure to develop and maintain an adequate array of placements, placement of children in homes and facilities not best suited to their needs, and failure to ensure continuity and stability of placements in violation of Adoption Assistance Act and SSL requirements that children be placed in the least restrictive, most family-like, and most appropriate setting, and in foster homes or other institutions that accord with recommended standards regarding admissions, safety, sanitation, and civil rights protections. 42 U.S.C. §§ 671(a)(10), (11) & (16), 675(5)(A); SSL §§ 374–b, 374–c, 374–d, 375, 376, 377, 384–b, 397(3) & (4)(c), 398(3)(c), 398.6(g)(1); U.S. Const. Amend. XIV; N.Y. Const. Art. XVII.
Named plaintiffs: Lawrence B., Thomas C., Ozzie E., Darren and David F., Steven I., Walter and Richard S., and Danielle J.[3]

[text material not displayable] Failure to provide services necessary to prevent foster children from deteriorating while in care in violation of the Adoption Assistance Act, 42 U.S.C. §§ 622(b)(9), 671(a)(16), 675(1) and SSL §§ 398, 409–e, 424–c, and in violation of federal and state due process and freedom from harm requirements, U.S. Const. Amend. XIV; N.Y. Const. Art. XVII, and requirements that children not be denied the protection and benefits of the child welfare system due to handicaps or disabilities. 29 U.S.C. § 794(a); 42 U.S.C. § 12132; SSL §§ 398.4(a), .6(p) & .15.

Named plaintiffs: Lawrence B., Thomas C., Darren and David F., Bill G., Steven I., Brandon H., Walter and Richard S.

[text material not displayable] Failure to provide services necessary to promote children's return home where appropriate, in violation of the Fourteenth Amendment to the United States Constitution and Adoption Assistance Act requirements that states conduct periodic status reviews of the appropriateness of foster care placements and the progress made toward permanency goals, 42 U.S.C. §§ 522(b)(9), 675(1) & (5), and SSL requirements regarding permanency planning for children in foster care, SSL §§ 409–a, 409–e.

4** ***Named plaintiff: Ozzie E.

[text material not displayable] Failure to provide timely and adequate adoption services, in violation of the Fourteenth Amendment to the United States Constitution, Adoption Assistance Act requirements that defendants conduct periodic status reviews of the appropriateness of foster care placements and the progress made toward permanency goals, 42 U.S.C. §§ 622(b)(9), 675(1) & (5), and SSL requirements regarding permanency planning for children in foster care, SSL §§ 372–b, 372–f, 409–a, 409–e.

Named plaintiffs: Marisol A., Thomas C., Darren and David F., Bill and Victoria G., Brandon H., and Walter and Richard S.

[text material not displayable] Failure to provide adequate independent living services, in violation of Adoption Assistance Act requirements that defendants conduct periodic status reviews of the appropriateness of foster care placements and the progress made toward permanency goals, 42 U.S.C. §§ 675(1) & (5), and SSL requirements regarding permanency planning for foster children, SSL §§ 409–a; 409–e.

Named plaintiffs: Thomas C. and Steven I.

[text material not displayable] Failure to ensure timely judicial reviews and to adhere to court orders in violation of the Adoption Assistance Act, 42 U.S.C. § 675(5), the SSL, SSL § 392, and the Family Court Act, N.Y.F.C.A. §§ 756–a, 1055, 1055–a & 1058.

Named plaintiffs: Bill and Victoria G.

Plaintiffs' proposed subclasses track the three major stages in a child's journey through the child welfare system. First there is a report of abuse or neglect, then a case is opened, and finally, if necessary, the child is taken into protective custody. The subclasses proposed are modeled on the reports of the Case Review Team, which demarcated the same periods in its analysis of the system.[4]

Federal Rule of Civil Procedure 23(c)(4)(B) provides that, "[w]hen appropriate a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly." Courts are empowered, under Rule 23(c)(1), to amend their certification orders any time before the case is decided on the merits. Each subclass must independently meet the requirements of Rule 23(a), which permits certification

> only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Parties seeking class certification must also show that the class action is maintainable under Rule 23(b). In the instant case, plaintiffs must establish that defendants have acted, or refused to act, in a way that is generally applicable to each proposed subclass, thereby making appropriate final injunctive relief that will benefit each subclass as a whole. Fed.R.Civ.P. 23(b)(2).

***5** Defendants contend that plaintiffs' proposed subclasses do not satisfy Rule 23. The Court will discuss the requirements of Rule 23, and why plaintiffs' proposed subclasses comport with them, in turn.

I. Numerosity

Class certification is appropriate if the number of plaintiffs is so large as to render joinder impracticable. In *Robidoux v. Celani,* the Second Circuit noted that the

> [d]etermination of practicability depends on all the circumstances surrounding a case, not on mere numbers. Relevant considerations include judicial economy arising from the avoidance of a multiplicity of actions, geographic dispersion of class members, financial resources of class members, the ability of claimants to institute individual suits, and requests for prospective injunctive relief which would involve future class members.

987 F.2d 931, 936 (2d Cir.1993) (citations omitted). These factors are particularly relevant in the instant case, where plaintiffs are children in New York City's child welfare system. The findings of the CRT reflect that 69% of children enter the system because of inadequate guardianship, 43% because of caretaker drug abuse, 37% due to inadequate parenting skills and 26% because they have suffered serious physical injury. *See* Second Report of the CRT at 24. Children who are unable to protect themselves at home have neither the ability nor the financial resources to individually seek relief in the courts. Further, that plaintiffs seek prospective injunctive relief that would benefit future subclass members also militates in favor of a finding of impracticability.

Subclass I consists of children who the defendants know or should know have been abused or neglected by virtue of a report of abuse or neglect. It includes all children in New York City who have been the subject of a report of abuse or maltreatment made to the State Central Register. In the last quarter of 1996 alone, these reports numbered 10,196. *See* First Report of the CRT at 2.

Subclass II is comprised of all children in families on which ACS maintains an open indicated report of abuse or neglect. The Second Report of the CRT indicates that between July 1, 1996 and December 31, 1996, there were 15,561 open indicated cases active in New York City. *See* Second Report of the CRT at 2. Subclass III consists of all children currently in the custody of ACS. According to the Third Report of the CRT, in 1996 there were approximately 50,000 children in New York City's foster care system. *See* Third Report of the CRT at 2.

The thousands of putative members of each subclass renders joinder impracticable. Therefore, the three subclasses proposed by plaintiffs independently satisfy the numerosity requirement of Rule 23(a)(1).

II. Commonality

To satisfy the commonality requirement, "plaintiffs' grievances [must] share a common question of law or of fact." *Marisol A.,* 126 F.3d at 376. By their very nature, class actions seeking injunctive relief often present common questions satisfying Rule 23(a)(2). 7A Charles A. Wright, et al., *Federal Practice and Procedure* § 1763 at 201 (1986). Plaintiffs assert that there are questions of fact and law common to the members of each of the proposed subclasses.

***6** They contend that one of the questions of fact common to the members of Subclass One is: Whether investigations conducted by defendants are timely and thorough, and whether defendants take actions necessary to ensure the protection of children found to be at risk of neglect or abuse? A question of law common to the members of Subclass One is: Whether defendants are in compliance with their obligations under CAPTA and SSL regarding the maintenance of a system to receive allegations of suspected abuse or neglect, conducting timely and adequate investigations and assessments of risk to children, and protecting children at risk?

According to plaintiffs, the putative members of Subclass Two have a common interest in the following factual question: Whether defendants provide adequate, accessible preventive services sufficient to eliminate the need for, or reduce the length of, foster care placements; and whether defendants monitor children in open indicated cases to ensure that they do not undergo further abuse? Among the asserted legal claims common to Subclass Two are: Whether defendants are in compliance with their legal obligations under CAPTA, 42 U.S.C. § 5106a(b)(3), the Adoption Assistance Act, 42 U.S.C. §§ 622(b)(9)(B)(iii) & (iv), 627(a)(2)(C) & (b)(3), 671(a)(16), 675(1) and the SSL relating to the provision of services to prevent the need for foster care placement, and relating to the protection of children in open, indicated cases?

Plaintiffs contend that the members of Subclass Three also raise claims involving common questions of law and fact. The questions of fact common to members of Subclass Three include: Whether defendants provide children in the custody of ACS with services necessary to provide protection, and prevent harm and deterioration; and whether defendants engage in legally mandated case planning to prevent foster children from drifting for years through the system? Legal questions common to Subclass Three members include: Whether defendants provide timely and adequate assessments, case plans, administrative reviews, and necessary services in compliance with their obligations under the Adoption Assistance Act, 42 U.S.C. §§ 622(b)(9), 627, 671(a)(14) & (16), 675(1) & (5), and state law, SSL §§ 358–a, 397, 398, 409e & 409f and 424–c?

Defendants argue that plaintiffs cannot show commonality because many of the claims challenge the "adequacy" or "appropriateness" of ACS decisions or actions. According to defendants, these are "matters of judgment which must be examined individually for each person, in light of each person's unique circumstances." Defs.' Mem. Opp'n Mot. for Certification of Subclasses ("Defs.' Mem.") at 14.

This Court has already held that "[t]he unique circumstances of each child do not compromise" the questions of law and fact common to the class. *Marisol A. v. Giuliani,* 929 F.Supp. 662, 690 (S.D.N.Y.1996). The commonality inquiry hinges not on the individual circumstances of each plaintiff, but on the actions of defendants. As noted by the Third Circuit in Baby *Neal v. Casey,* "classes have been certified in a legion of civil rights cases where commonality findings were based primarily on the fact that defendant's conduct is central to the claims of all class members irrespective of their individual circumstances and the disparate effects of the conduct." 43 F.3d 48, 57 (3d Cir.1994) (citing 7A Charles A. Wright, et al., *Federal Practice and Procedure* § 1763 at 219 (1986)).

***7** In *Baby Neal,* the Third Circuit reversed a district court's denial of a motion for class certification. *Id.* The Court of Appeals held that the district court erred in concluding that "the factual differences of the 6,000 children" precluded a finding of commonality, and thus class certification. *Id.* at 61. The Third Circuit noted that "the putative class members in this case share the common legal claim that ... systemic deficiencies [in Philadelphia's child welfare agency] result in widespread violations of [plaintiffs'] statutory and constitutional rights, irrespective of their varying individual needs and complaints." *Id.* Likewise, in the instant case, this Court holds that the questions of law and fact common to each subclass satisfy Rule 23(a)(2) regardless of the different factual circumstances faced by each plaintiff.

III. Typicality
The commonality and typicality requirements are closely related. As noted by the Supreme Court,

> [t]he commonality and typicality requirements of Rule 23(a) tend to merge. Both serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence. Those requirements therefore also tend to merge with the adequacy-of-representation requirement, although the latter requirement also raises concerns about the competency of class counsel and conflicts of interest.

General Tel. Co. v. Falcon, 457 U.S. 147, 157–58 n. 13, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982). The typicality requirement of Rule 23(a) "is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *In re Drexel Burnham Lambert Group, Inc.,* 960 F.2d 285, 291 (2d Cir.1992), *cert. dismissed,* 506 U.S. 1088, 113 S.Ct. 1070, 122 L.Ed.2d 497 (1993) (citing *Eisen v. Carlisle & Jacquelin,* 391 F.2d 555, 562 (2d Cir .1968), *vacated on other grounds,* 417 U.S. 156, 94 S.Ct. 2140, 40 L.Ed.2d 732 (1974)).

Subclass One is represented by named plaintiffs Marisol A., Shauna D., and Walter and Richard S., who have claims that are typical of Subclass One members. All four of the proposed representatives of Subclass One were the subjects of reports of abuse or neglect to the State Central Register, and all claim that defendants failed to properly investigate those reports. *See* Compl. ¶¶ 91, 129; Proposed Intervening Compl. ¶¶ 7–8. These claims are typical of those of the members of the proposed subclass in that they emerge from a common factual base—the alleged inadequacy of defendants' protective service system and defendants' failure to respond properly to reports of abuse and neglect—and they involve legal questions identical to those raised generally by the class. *See e.g., In re Drexel Burnham Lambert,* 960 F.2d at 291.

The claims of the named plaintiffs in subclass Two, Marisol A., Shauna D., and Walter and Richard S., are typical of those of the Subclass in its entirety. According to plaintiffs, each of these proposed subclass representatives: (1) has resided in a home that has been the subject of an indicated report of abuse or neglect; (2) has endured incidents of abuse or neglect that occurred after they were reported to the child welfare system, which had by then assumed responsibility for their protection; and (3) had been denied the range of services necessary to secure their physical and psychological well-being. Pls.' Mem. in Supp. Mot. for Certification of Subclasses ("Pls.' Mem. Supp.") at 16.

***8** Finally, the claims of the named plaintiffs who will represent Subclass Three are typical of those of the subclass as a whole. Plaintiffs contend that each of the named plaintiffs representing Subclass Three

> is, or was at the time of class certification, in the custody of defendants. The named plaintiffs' experiences are typical of those children in foster care and the allegations they raise rest on factual circumstances that are replicated widely within the proposed subclasses. For example, like many foster children, Darren and David F. were denied necessary psychological services and, as a result, their mental state and behavior deteriorated significantly. Defendants' failure to provide Darren and David with necessary mental health services typifies a pattern whereby such services are denied to a substantial portion of the foster children who need them. Bill and Victoria G. were denied proper case planning and, as a result, drifted through the foster care system for thirteen years, often with a goal of return home even when their mother's whereabouts were unknown to the agency. This too is typical of many children in the Subclass who also have been denied proper case planning, and who have had the goal of return home maintained even though their parents could not be located. Similarly, Thomas C. spent six years in foster care before his mother's parental rights were terminated, even though it was clear from the outset that, as a drug abuser who abused Thomas, she would never be a proper care giver. While in foster care, Thomas was placed with a Minister who took him out of state and sexually abused him. As a result, Thomas suffers from serious emotional problems and has attempted suicide. Like many foster children, he now has special mental health needs that must be addressed if he is not to suffer further deterioration in foster care.

Pls.' Mem. Supp. at 18–19 (citations to Compl. and Reports of the CRT omitted).

Defendants argue that because the factual circumstances of each case differ, no named plaintiff can be typical of the class. As with commonality, however, factual differences between the plaintiffs do not preclude a finding of typicality. To establish

typicality, plaintiffs need not prove that the claims of class representatives are "identical to those of the class members." *McNeill v. New York City Hous. Auth.,* 719 F.Supp. 233, 252 (S.D.N.Y.1989). In *Wilder v. Bernstein,* this Court observed that

> [t]here are diverse issues of fact in all class actions. The individual members of a class will invariably reach an adversary posture with the defendant in different ways. But Rule 23(a)(3) does not require that the factual background of the named plaintiff's [sic] case be identical with that of other members of the class, but that the disputed issue occupy essentially the same degree of centrality to the named plaintiffs' claim as to that of other members of their purported class.

499 F.Supp. 980, 992 (S.D.N.Y.1980) (quoting *Cottrell v. Virginia Elec. & Power Co.,* 62 F.R.D. 516, 520 (E.D.Va.1974)). The typicality requirement of Rule 23 is satisfied here because "individual differences among the plaintiffs and between the plaintiffs and other class members do not affect the plaintiffs' central claim" that ACS is being administered in contravention of state and federal law, and that systemic deficiencies in the agency are resulting in deprivations of plaintiffs' constitutional rights. *See id.*

IV. Adequacy of Representation

***9** Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." There are two components to the adequacy of representation prong of Rule 23(a). First, "class counsel must be 'qualified, experienced and generally able' to conduct the litigation. Second, the class members must not have interests that are 'antagonistic' to one another." *In Re Drexel Burnham Lambert Group, Inc.,* 960 F.2d at 291.

At no point have defendants challenged the adequacy of Children's Rights Inc., counsel to the plaintiff class. Nor do defendants contend that there may be conflicts of interest between the named plaintiffs and other class members.[5] Rather, defendants' opposition to adequacy of representation is contained in a cross-motion to dismiss certain plaintiffs and next friends. In their cross-motion, defendants argue that the claims of Lawrence B., Marisol A. and Steven I. have become moot, and that the connection between several next friends and the named plaintiffs they purport to represent is too tenuous to render them adequate next friends and representatives. For the reasons stated supra in note 1, the cross-motion has been severed and will be disposed of by the Court in the near future. In the event that the motion is granted in whole or in part, plaintiffs will have to substitute additional named plaintiffs and next friends who can adequately represent the class.

V. Rule 23(b)(2)

Plaintiffs move for certification under Rule 23(b)(2), which provides that a class action may be maintained if "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." According to plaintiffs, they have been injured, or are at risk of being injured, by defendants' pattern of failing to comply with federal and state law.

The Third Circuit has gone so far as to say that certification under Rule 23(b)(2) is almost always appropriate in actions seeking primarily injunctive relief. *Baby Neal,* 43 F.3d at 58 (citing *Weiss v. York Hosp.,* 745 F.2d 786, 811 (3d Cir.1984), *cert. denied,* 470 U.S. 1060 (1985)). In the instant case, plaintiffs seek declaratory and injunctive relief necessary and appropriate to remedy any violations of plaintiffs' rights under the United States Constitution and the New York State Constitution and federal and state laws. Compl. ¶ 354(c). Further, they ask the Court to appoint a receiver with full authority to oversee and direct the implementation of any injunctive relief granted by the Court, to restructure New York City's child welfare system and ensure that the child welfare system operates in full compliance with all applicable law. Compl. ¶ 354(e).

Because the failings of defendants alleged by the members of each subclass are generally applicable to the subclass as a whole, and the relief sought by plaintiffs is primarily injunctive and would benefit the subclasses in their entirety, Rule 23(b)(2) is satisfied.

CONCLUSION

***10** Plaintiffs' proposed subclasses meet each of the requirements of Rule 23(a) and satisfy Rule 23(b)(2). Accordingly, plaintiffs' motion to certify subclasses is granted, and the subclasses are defined as:

Subclass One

Children whom the defendants know or should know have been abused or neglected/maltreated by virtue of a report of abuse or neglect/maltreatment.

Subclass Two

Children in families in which there is an open indicated report of abuse or neglect.

Subclass Three

Children in the custody of the Administration for Children's Services.

It is so ordered.

Footnotes

1 In addition to plaintiffs' motion to certify subclasses, there are several other motions currently pending before the Court, including: plaintiffs' motion to intervene additional plaintiffs and add and substitute next friends; defendants' cross-motion to dismiss certain claims, plaintiffs and next friends; plaintiffs' motion for an order holding defendants in contempt of the Interim Stipulation and Order entered by the Court on July 17, 1997 ("the Interim Stipulation and Order"); and defendants' motion to vacate the Interim Stipulation and Order. To comply with the Second Circuit's direction that this Court certify subclasses well in advance of trial, however, the Court has severed the motion to certify subclasses, and will dispose of the remaining motions in forthcoming decisions.

2 Walter and Richard S. are proposed intervening plaintiffs. *See supra* note 1. The Court has reviewed plaintiffs' motion to intervene additional plaintiffs and expects to grant it shortly.

3 Danielle J. is a proposed intervening plaintiff. As noted above, the Court anticipates granting plaintiffs' motion to intervene in a forthcoming decision. *See supra* notes 1–2.

4 In a stipulation "So Ordered" by the Court on January 28, 1997 ("Stipulation"), the parties established a Case Review Team ("CRT") to "conduct a review of an appropriate sample(s) of records of members of the class for the purpose of determining the accuracy of the factual allegations in the complaint concerning alleged deficiencies in the New York City child welfare system." Stipulation ¶ 5. The CRT consists of the Center for the Study of Social Policy, the United Way of New York City, and Larry G. Brown, the Director of the Performance Monitoring and Analysis Unit, Office of Children and Family Services, New York State Department of Social Services. In accordance with the Stipulation, the CRT has provided the Court and the parties with a three-part report summarizing its findings. The first part, entitled, "Investigations of Reports of Suspected Child Abuse and Maltreatment by New York City's Administration for Children's Services" ("First Report of the CRT"), was released on August 12, 1997. The second part, entitled, "Services to Families with Open Indicated Cases" ("Second Report of the CRT"), was released on September 5, 1997. The third and final installment of the report was released in December 1997, and is captioned, "Services to Children in Foster Care and Their Families" ("Third Report of the CRT").

5 In their opposition to plaintiffs' motion for class certification, defendants contended that there were conflicts of interest between the class members. That argument, however, was flatly rejected by both this Court, *Marisol A.,* 929 F.Supp. at 692, and the Second Circuit, *Marisol A.,* 126 F.2d at 378.