UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

George Topete et al.,

Plaintiffs,

v.

County of San Bernardino,

Defendant.

EDCV 16-355-VAP (DTBx)

ORDER GRANTING JOINT MOTION TO CERTIFY CLASS

Jaime Jaramillo, Monique Lewis, Joshua Mills, and Rahshun Turner ("Plaintiffs") and the County of San Bernardino ("Defendant") filed their Joint Motion to Certify Class on December 1, 2016 ("Motion"). (Doc. No. 44.) No party opposed the motion. After consideration of the papers in support of the Motion and arguments advanced at the hearing, the Court GRANTS the Motion as follows.

I. BACKGROUND

On November 11, 2016, Plaintiffs filed their Second Amended Class Action Complaint for Injunctive and Declaratory Relief on their own behalf and on behalf of those similarly situated. (Doc. No 41.) Plaintiffs allege Defendant's jails provide inadequate mental health care for inmates by failing to adequately screen incoming inmates for mental illness, belatedly and inadequately evaluating inmates for mental health symptoms, providing inadequate mental health care once care is requested by inmates, and improperly placing inmates with mental disabilities in solitary confinement, among other things. (Id. ¶¶ 13–23.) Defendant's jails allegedly provide inadequate medical care to inmates by, among other things, failing to screen

inmates adequately for health care conditions upon intake, failing to conform with professional standards of care for preventing and controlling infectious diseases, failing to assess and treat adequately inmates with substance withdrawal complications, and failing to provide timely access to specialty care. (Id. ¶¶ 24–29.) Defendant also allegedly provides inadequate dental care by not providing root canals, dentures, or dental floss. (Id. ¶ 30.) Plaintiff also claims Defendant fails to keep adequate health care records, which puts inmates at risk of "misdiagnosis, dangerous mistakes, and unnecessary delays in care," and Defendant denies inmates copies of their health records. (Id. ¶¶ 31–32.)

Defendant allegedly has a policy and practice of using excessive force against inmates. (Id. ¶¶ 33–36.) Plaintiffs state, "[f]orce is used on people who are deemed, correctly or not, to have disrupted jail operations, disobeyed jail rules, complained about conditions, or disrespected jail staff," and this pattern of excessive force occurs because (1) "Defendant does not adequately train, supervise, and discipline correctional officers" and (2) "Defendant's written policies and procedures are inadequate." (Id. ¶¶ 34–35.)

Plaintiffs also claim Defendant fails to protect inmates from violence. (Id. ¶¶ 37–42.) There are not enough correctional officers to ensure inmates' safety, and Defendant does not "classify and assign people to housing locations where they will be safe from injury and violence." (Id. ¶¶ 38–39.) When inmates notify Defendant's staff they are at risk of assault, Defendant allegedly does not respond adequately to protect inmates. (Id. ¶ 41.)

Plaintiffs allege Defendant's policies and practices discriminate against inmates with disabilities. (Id. ¶¶ 43–49.) Upon intake, Defendant fails to identify inmates' disabilities and required assistive devices, and Defendant does not provide required assistive devices or medical supplies to inmates in a timely fashion. (Id. ¶¶ 45, 47.) Defendant also fails to house inmates with disabilities where they can safely gain access to programs and services, and Defendant does not have effective procedures for inmates to contest disability discrimination. (Id. ¶ 46, 48.)

Plaintiffs claim Defendant's policies and practices subject inmates to harmful and inhumane solitary confinement. (Id. ¶¶ 50–66.) Defendant uses "small cells for solitary confinement, in which inmates stay for anywhere from 23 hours per day to months or years at a time, causing substantial risk of anxiety, panic, withdrawal, hallucinations, self-mutilation, and suicidal thoughts and behaviors." (Id. ¶ 50; see Doc. No. 45 ¶¶ 2–3.) Plaintiff alleges this is especially harmful for inmates with mental disabilities, and Defendant "locks people with psychiatric and/or intellectual disabilities in solitary confinement for nonconforming and erratic behaviors related to their conditions." (Doc. No. 41 ¶ 64.)

The parties propose two classes of plaintiffs: (1) a class consisting of "[a]ll people who are now, or in the future will be, incarcerated in the San Bernardino County jails" (the "Plaintiff Class") and (2) "[a]ll people who are now, or in the future will be, incarcerated in the San Bernardino County jails and who have a psychiatric and/or intellectual disability, as defined under the Americans with Disabilities Act (ADA), 42 U.S.C. §12101 et seq., and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794" (the "Plaintiff Subclass"). (Doc. No. 44 at 7–8.)

II. LEGAL STANDARD

Recognizing that "[t]he class action is an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only," Federal Rule of Civil Procedure 23 demands two requirements be met before a court certifies a class. Comcast Corp. v. Behrend, 133 S. Ct. 1426, 1432 (2013).

A party first must meet the requirements of Rule 23(a), which demands the party "prove that there are in fact sufficiently numerous parties, common questions of law or fact, typicality of claims or defenses, and adequacy of representation." Id. Although not mentioned in Rule 23(a), the moving party must also demonstrate the class is ascertainable. Keegan v. Am. Honda Motor Co., 284 F.R.D. 405, 521 (C.D. Cal. 2012); Rodmakers, Inc. v. Newport Adhesives & Composites, Inc., 209 F.R.D. 159, 163 (C.D. Cal. 2002) ("Prior to class certification, plaintiffs must first define an ascertainable and identifiable class.").

If a party meets Rule 23(a)'s requirements, the proposed class must also satisfy at least one of the requirements of Rule 23(b). Here, Plaintiff invokes Rule 23(b)(1)(A) (Doc. No. 44 at 12). Under 23(b)(1)(A), class certification is appropriate if the prosecution of separate actions by individual members of the class would create the risk of "inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class." Fed. R. Civ. P. 23(b)(1)(A). A "core example" of an action under 23(b)(1)(A) is the "situation in which many individuals, all challenging a single government policy, bring separate suits for injunctive relief." William B. Rubenstein, Newberg on Class Actions § 4:11 (5th ed. 2016)

District courts are given broad discretion to grant or deny a motion for class certification. Bateman v. Am. Multi-Cinema, Inc., 623 F.3d 708, 712 (9th Cir. 2010). The party seeking class certification bears the burden of showing affirmative compliance with Rule 23. See Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011) ("Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule."). This requires a district court to conduct a "rigorous analysis" that frequently "will entail some overlap with the merits of the plaintiff's underlying claim." Id. Nevertheless, the merits can be considered only to the extent they are "relevant to determining whether the Rule 23 prerequisites to class certification are satisfied." Amgen Inc. v. Conn. Ret. Plans & Trust Funds, 133 S. Ct. 1184, 1195 (2013).

III. DISCUSSION

A. Ascertainable Class

Before establishing numerosity, commonality, typicality, and adequacy, "the party seeking class certification must demonstrate that an identifiable and ascertainable class exists." Mazur v. eBay Inc., 257 F.R.D. 563, 567 (N.D. Cal. 2009). "A class definition should be precise, objective, and presently ascertainable," though "the class need not be so ascertainable that every potential member can be identified at the commencement of the action." O'Connor v. Boeing N. Am., Inc., 184 F.R.D. 311, 319 (C.D. Cal. 1998) (internal quotations omitted). "As long as the general outlines of the membership of the class are determinable at the outset of the litigation, a class will be deemed to exist." Id.

Courts will deny certification if it is difficult to determine class members at the outset. See Tietsworth v. Sears, Roebuck & Co., No. 09-288, 2013 WL 1303100, at *3-4 (N.D. Cal. Mar. 28, 2013) (denying certification where "ascertaining class membership would require unmanageable individualized inquiry"); Bruton v. Gerber Products Co., No. 12-CV-02412-LHK, 2014 WL 2860995, at *6-7 (N.D. Cal. June 23, 2014) (denying certification when proposed class members would have to submit affidavits describing what products they purchased); Jones v. ConAgra Foods, Inc., No. C 12-01633 CRB, 2014 WL 2702726, at *10 (N.D. Cal. June 13, 2014) ("Even assuming that all proposed class members would be honest, it is hard to imagine that they would be able to remember which particular Hunt's products they purchased from 2008 to the present, and whether those products bore the challenged label statements.").

Here, the parties seek to certify two separate classes: (1) All people who are now, or in the future will be, incarcerated in the San Bernardino County jails (the "Plaintiff Class") and (2) all people who are now, or in the future will be, incarcerated in the San Bernardino County jails and who have a psychiatric and/or intellectual disability, as defined under the Americans with Disabilities Act (ADA), 42 U.S.C. §12101 et seq., and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (the "Plaintiff Subclass"). (Doc. No. 44 at 7–8.) By filing a joint motion for class certification, the parties agree that both the Plaintiff Class and the Plaintiff Subclass are sufficiently ascertainable. (See id.) Also, as prison records are readily available to identify who is currently incarcerated in Defendant's jails and the jails' medical records can establish which inmates have psychiatric or intellectual disabilities, the proposed class definitions are "precise, objective, and presently ascertainable." Although the identities of future inmates who will be incarcerated in Defendant's

jails are not currently ascertainable, courts frequently allow class action plaintiffs to represent others who may be damaged by a defendant's acts in the future. Parsons v. Ryan, 289 F.R.D. 513, 525 (D. Ariz. 2013), aff'd, 754 F.3d 657 (9th Cir. 2014); Piva v. Xerox Corp., 70 F.R.D. 378, 388 (N.D. Cal. 1975) ("Courts have further allowed former employees to challenge discriminatory practices in hiring by permitting them to represent future employees."); Long v. Sapp, 502 F.2d 34, 42 (5th Cir. 1974) ("this court held a former black employee to be a proper representative in a Title VII suit of the class of present and potential future black employees of the defendant"). Thus, the Court finds the Plaintiff Class and Plaintiff Subclass are sufficiently ascertainable.

B. RULE 23(A)

a. Numerosity

To satisfy the numerosity requirement under Rule 23(a)(1), joinder of all class members must be "impracticable," but not necessarily impossible. Parkinson v. Hyundai Motor Am., 258 F.R.D. 580, 588 (C.D. Cal. 2008). Courts have not required evidence of a specific class size or identity of class members to satisfy the requirements of Rule 23(a)(1). Robidoux v. Celani, 987 F.2d 931, 935 (2d Cir. 1993). Although there is no "precise threshold," Courts have routinely found the numerosity requirement is met when a proposed class comprises "40 or more members." Berry v. Baca, 226 F.R.D. 398, 403 (C.D. Cal. 2005).

Here, both parties allege there are currently approximately 6,000 prisoners housed in Defendant's jails, and each of these prisoners is subject to Defendant's policies and practices within the jails. (Doc. No. 44 at 12.) Further, Defendant's jails house "hundreds of prisoners" who have either psychiatric or intellectual

disabilities, or both. (Id. at 12–13.) As the Plaintiff Class and the Plaintiff Subclass consist of a large number of prisoners, there is "no doubt that joinder of all members of the potential Class and Subclass would be impracticable, if not impossible." Parsons v. Ryan, 289 F.R.D. 513, 516 (D. Ariz. 2013), aff'd, 754 F.3d 657 (9th Cir. 2014). Accordingly, the Court finds Rule 23(a)'s numerosity requirement is met.

b. Commonality

Commonality "requir[es] a plaintiff to show that 'there are questions of law or fact common to the class.'" Dukes, 564 U.S. at 349 (quoting Fed. R. Civ. P. 23(a)(2)). Even a single common question will suffice. Id. at 2556.

"Rule 23(a)(2) is not 'a mere pleading standard,' so establishing commonality sometimes requires affirmative evidence, which the courts must subject to 'rigorous analysis.'" Stockwell v. City & Cty. of San Francisco, 749 F. 3d 1107, 1111 (9th Cir. 2014) (quoting Dukes, 564 U.S. at 351). This "rigor often 'will entail some overlap with the merits of the plaintiff's underlying claim.'" Id. "Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." Amgen Inc., 133 S. Ct. at 1195. "'[W]hether class members could actually prevail on the merits of their claims' is not a proper inquiry in determining the preliminary question 'whether common questions exist.'" Stockwell, 749 F.3d at 1112 (quoting Ellis v. Costco Wholesale Corp., 657 F. 3d 970, 983 n. 8 (9th Cir. 2011)). The Court, therefore, is mindful that the proper inquiry here is "whether the questions presented, whether meritorious or not, [are] common to the members of the putative class." Id. at 1113–14. In class action suits involving inmates challenging a county's prison conditions, "[n]umerous courts have concluded that the commonality

requirement can be satisfied by proof of the existence of systemic policies and practices that allegedly expose inmates to a substantial risk of harm." Parsons v. Ryan, 754 F.3d 657, 681 (9th Cir. 2014).

The parties allege a common issue of law for both the Plaintiff Class and Plaintiff Subclass is "whether [Defendant] is deliberately indifferent to the class members' health and safety in the application of its policies and practices." (Doc. No. 44 at 14.) The parties also allege common questions of fact include questions regarding "the content of [Defendant's] policies governing prisoners' conditions of confinement" and assumedly, the actual conditions of prisoners' confinement. (Id.) Thus, "[t]he putative class and subclass members [present] common contentions whose truth or falsity can be determined in one stroke: whether the specified . . . policies and practices to which they are all subjected by [Defendant] expose them to a substantial risk of harm." Parsons v. Ryan, 754 F.3d 657, 678 (9th Cir. 2014). Accordingly, the Court finds the commonality requirement is satisfied.

c. Typicality

The Ninth Circuit in Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998), explained, "representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." Id. at 1020. Thus, to find typicality, a "court does not need to find that the claims of the purported class representatives are identical to the claims of the other class members." Haley v. Medtronic, Inc., 169 F.R.D. 643, 649 (C.D. Cal. 1996). "In other words, a claim is typical if it: (1) arises from the same event or practice or course of conduct that gives rise to the claims of other class members; and (2) is based on the same legal theory as their claims." Id. Rule 23(a)'s commonality and

typicality requirements occasionally 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." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 349 n.5 (2011).

Here, the parties allege Plaintiffs Rahshun Turner, Monique Lewis, Jaime Jaramillo, and Joshua Mills all are exposed to the same policies and practices within Defendant's jails. (Doc. No. 44 at 17; Doc. No. 45 ¶¶ 7–13.) All the other members of the Plaintiff Class and the Plaintiff Subclass are also incarcerated, or will be incarcerated, in the same jails and thus are, or will be, exposed to the same policies and practices. (Doc. No. 44 at 7–8, 17.) As Defendant's policies and practices are the same for all of its jails, Plaintiffs and all members of the Plaintiff Class and Plaintiff Subclass claim they are "exposed to an ongoing risk of injury under current policies and practices in the event that they are housed in solitary confinement or in a location where their physical safety is in jeopardy, that they need medical, mental, or dental healthcare, or that they require accommodations for disabilities." (Id. at 17.) Also, as discussed above, the fact that Plaintiffs assert common issues of law and fact exist tends to show their claims are typical of the Plaintiff Class and Plaintiff Subclass. (Id. at 14.)

d. Adequacy of Representation

Rule 23(a)(4) demands that "representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This determination "is a question of fact that depends on the circumstances of each case." In re Nat'l W.

Life Ins. Deferred Annuities Litig., 2010 WL 2735732, at *5 (S.D. Cal. July 12, 2010) (citing McGowan v. Faulkner Concrete Pipe Co., 659 F.2d 554, 559 (5th Cir. 1981)). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class member[s], and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" Hanlon, 150 F.3d at 1020. "Class representatives have less risk of conflict with unnamed class members when they seek only declaratory and injunctive relief." Hernandez v. Cty. of Monterey, 305 F.R.D. 132, 160 (N.D. Cal. 2015).

Here, the parties assert Plaintiffs are adequate representatives for the Plaintiff Class and Plaintiff Subclass because Plaintiffs' "interests are in fact identical to the interests of the proposed Class and Subclass: all seek declaratory and injunctive relief compelling defendant to change its policies and practices related to conditions of confinement, prisoner classification, protection from violence, healthcare, and reasonable accommodations in the San Bernardino County jails." (Doc. No. 44 at 18.) Further, courts have routinely held prisoners requesting relief from allegedly inadequate system-wide policies and practices are adequate named plaintiffs to represent the interests of similarly situated prisoners. E.g., Hernandez, 305 F.R.D. at 160; Parsons, 754 F.3d at 681; Armstrong v. Davis, 275 F.3d 849, 879 (9th Cir. 2001).

Here, the parties state counsel has no conflicts of interest with Plaintiffs or any of the proposed class members. (Doc. No. 44 at 19.) Plaintiffs' counsel, Donald Specter of The Prison Law Office, states his firm has committed significant resources to this case by "interviewing Plaintiffs and other members of the Class and

subclass to develop the factual record and legal issues underlying this case, performing legal research about potential claims and relief available to the Class," drafting a complaint and class certification motion, and negotiating the substance of remedial plans with Defendant. (Doc. No. 46 ¶ 3.) Plaintiffs' counsel states he has "litigated numerous large-scale prisoner and parolee class actions for the last 30 years, including successfully arguing before the U.S. Supreme Court" on two occasions. (Id. ¶ 4) Further, Plaintiffs' counsel promises his firm will continue to "dedicate substantial resources" in order to prosecute the action vigorously on behalf of the class. (Id. ¶ 6.)

Accordingly, the Court finds Plaintiffs and their counsel will fairly and adequately protect the interests of the class.

As Plaintiffs have met all the Rule 23(a) requirements, the Court now turns to the Rule 23(b) requirements.

C. RULE 23(B)

Under 23(b)(1)(A), class certification is appropriate if the prosecution of separate actions by individual members of the class would create the risk of "inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class." Fed. R. Civ. P. 23(b)(1)(A). A "core example" of an action under 23(b)(1)(A) is the "situation in which many individuals, all challenging a single government policy, bring separate suits for injunctive relief." William B. Rubenstein, Newberg on Class Actions § 4:11 (5th ed. 2016).

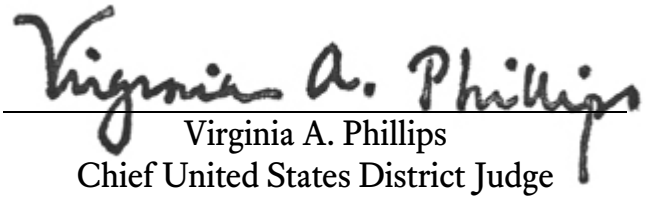
Here, the parties assert there are approximately 6,000 inmates housed in Defendant's jails, and because each one is subjected to Defendant's policies and practices, each one could file suit requesting injunctive relief. (Doc. No. 44 at 20; see Doc. No. 45 ¶¶ 7–13.) If each suit were litigated independently, the rulings could conflict with one another and impose inconsistent standards, according to which Defendant would be required to tailor its policies and practices. Thus, certification is appropriate under 23(b)(1)(A) because if the members of the proposed class litigated their claims individually there would be a risk that each individual case would impose a different standard on Defendant. See Ashker, 2014 WL 2465191 at *7 (certifying class of inmates claiming prison policy violated the Eighth Amendment pursuant to 23(b)(1)(A)). Accordingly, the requirements for certification under 23(b)(1)(A) are met.

IV. CONCLUSION

For the reasons stated above, the Court GRANTS the parties' joint Motion. Accordingly the Court certifies two classes: (1) a Plaintiff Class of "[a]ll people who are now, or in the future will be, incarcerated in the San Bernardino County jails" and (2) a Plaintiff Subclass of "all people who are now, or in the future will be, incarcerated in the San Bernardino County jails and who have a psychiatric and/or intellectual disability, as defined under the Americans with Disabilities Act (ADA), 42 U.S.C. §12101 et seq., and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794." (Doc. No. 44 at 7–8.) Further, the Court certifies plaintiffs Jaime Jaramillo, Monique Lewis, Joshua Mills, and Rahshun Turner as representatives of the Plaintiff Class and Plaintiff Subclass, and the Court certifies The Prison Law Office as counsel for the Plaintiff Class and Plaintiff Subclass.

IT IS SO ORDERED.

Dated: 1/27/17



Virginia A. Phillips
Chief United States District Judge