UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DUNCAN ROY, *et al.*,

Plaintiffs,

v.

COUNTY OF LOS ANGELES, *et al.*,

Defendants.

GERARDO GONZALEZ, *et al.*,

Plaintiffs,

v.

IMMIGRATION AND CUSTOMS ENFORCEMENT, *et al.*,

Defendants.

Case No. CV 12-09012-AB (FFMx)

Consolidated with:
Case No. CV 13-04416-AB (FFMx)

ORDER DENYING DEFENDANTS' MOTION FOR DECERTIFICATION OF THE CLASSES

I. INTRODUCTION

This action involves two cases that have been consolidated: *Duncan Roy, et al. v. County of Los Angeles, et al.*, No. 12-cv-09012-AB-FFM and *Gonzalez v. Immigration & Customs Enforcement, et al.*, No. 13-cv-04416-AB-FFM (both cases are now proceeding under No. 12-cv-09012-AB-FFM). The remaining Plaintiffs in the Roy action at the time the Court considered the recent summary judgment motions were Clemente De La Cerda and Alain Martinez-Perez (collectively, "Roy Plaintiffs"). The only remaining named Plaintiff in the Roy action after the Court issued its Order on the summary judgment motions (Dkt. No. 346) is Alain Martinez-Perez. Defendants in the Roy action are the County of Los Angeles and Sheriff Leroy D. Baca (collectively, "Roy Defendants" or the "County"). The County brings the instant Motion for Decertification of the Classes. (Dkt. No. 364 ("Mot.").)

After considering the papers filed in support of and in opposition to the instant Motion, the Court **DENIES** the County's Motion.

II. RELEVANT BACKGROUND

On September 9, 2016, the Court granted, in part, the Roy Plaintiffs' Motion for Class Certification. (See Dkt. No. 184.) The Court certified seven classes for the Roy action: (1) the False Imprisonment Equitable Relief Class; (2) the *Gerstein* Equitable Relief Class; (3) the False Imprisonment Damages Class; (4) the Post-48 Hour *Gerstein* Subclass; (5) the Investigative Detainer Class; (6) the No Bail Notation Class; and (7) the No-Money Bail Subclass. (Dkt. No. 184.)

On February 7, 2018, this Court granted in part and denied in part the Roy Defendants' Motion for Summary Judgment, or Alternatively, Partial Summary Judgment (Dkt. No. 242) and granted in part and denied in part the Roy Plaintiffs' Motion for Summary Adjudication Regarding Liability (Dkt. No. 240). (Dkt. No. 346.)

On March 30, 2018, the County filed the instant Motion for Decertification of the Classes. (Mot.) On April 13, 2018, the Roy Plaintiffs opposed. (Dkt. No. 375

("Opp'n").) And on April 27, 2018, the County replied. (Dkt. No. 380 ("Reply").)

On May 7, 2018, the Roy Plaintiffs filed Consolidated Objections to Declarations of Gregory Sivard in Support of Los Angeles County's Motion for Decertification. (Dkt. No. 384.) On May 8, 2018, the County filed its Response and Request to Strike Portions of Plaintiffs' "Objections" to Declarations of Greg Sivard Re: Defendant's Motion to Decertify the Damages Classes. (Dkt. No. 385.)[1]

III. LEGAL STANDARD

Federal Rule of Civil Procedure 23(c)(1)(C) permits a court to alter or amend an order granting class certification at any point prior to the entry of final judgment. Fed. R. Civ. P. 23(c)(1)(C); *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160 (1982) ("Even after a certification order is entered, the judge remains free to modify it in the light of subsequent developments in the litigation."). "In considering the appropriateness of decertification, the standard of review is the same as a motion for class certification: whether the Rule 23 requirements are met." *Marlo v. United Parcel Serv., Inc.*, 251 F.R.D. 476, 479 (C.D. Cal. 2008), *aff'd*, 639 F.3d 942 (9th Cir. 2011).

IV. DISCUSSION

The County argues that decertification is required because: (1) the predominance and superiority requirements of Rule 23(b)(3) cannot be satisfied; (2) the Roy Plaintiffs have not come forward with a viable trial plan; and (3) there is no class representative. (Mot.)

A. Whether Predominance and Superiority Requirements of Rule 23(b)(3) Are Satisfied

The County argues that predominance and superiority are lacking because (1) class members cannot be identified without individualized inquiries; (2) there is no

[1] In its response, the County argues that portions of the Roy Plaintiffs' consolidated objections are a sur-reply, and should be stricken as such. The Court DENIES the County's request to strike portions of the Roy Plaintiffs' consolidated objections.

way to reliably calculate and adjudicate damages for class members without individualized inquires; and (3) individualized inquiries will be required to adjudicate affirmative defenses.

1. Identification of Class Members

The County argues that "each release is unique, and that there is no way to determine whether an inmate was over-detained without specifically reviewing the details of an inmate's release including, in some circumstances, both electronic and paper records." (Mot. at 8; Reply at 5.) By this statement, the County acknowledges that it is possible to determine release dates based upon review of electronic and paper records. Case law does not require that the information used to identify class members be contained in electronic records. Rule 23 simply requires clear criteria by which class members can be identified and does not require administrative convenience or feasibility. *See Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1123 (9th Cir. 2017), *cert. denied sub nom. ConAgra Brands, Inc. v. Briseno*, 138 S. Ct. 313 (2017) ("Fed. R. Civ. P. 23(a) . . . identifies the prerequisites to maintaining a class action in federal court. It does not mention 'administrative feasibility'"). Adopting the County's argument that class certification is not warranted because the County does not maintain electronic records would provide an avenue for entities to escape class liability—they could simply maintain paper records. This is not, and should not be the law. Merely because this might prove to be an arduous task for the County does not mean that the County should be permitted to escape class liability or potential class liability on this basis.

The County also argues "that the vast majority of inmates released from County jail are released before they serve 100% of their sentence on a state criminal charge(s)." (Mot. at 8 (emphasis omitted).) The County asserts that "[t]herefore, depending on the circumstance and the individual inmate's criminal history, a fact specific analysis will be required to determine whether a lawful basis existed for each potential class member's detention in County jail (and the actual end-date of their

criminal sentence), even if that detention extended beyond their 'expected release' date." (Mot. at 8.) It appears that the County is misconstruing the Roy Plaintiffs' method of determining which individuals were "over-detained." The Roy Plaintiffs clarify that the County "ha[s] long known (since May 2016) [that] Plaintiffs calculate over-detentions for sentenced inmates based solely on the time inmates remained incarcerated after their sentence actually expired (i.e. after their statutory maximum release date); the jail's early release policies and timetables were not considered in determining the date inmates were entitled to release." (Opp'n at 3–4.) Thus, "Plaintiffs do not count as over-detentions thousands of individuals who became due for release prior to expiration of their sentence pursuant to early release policies but were not immediately released due to an immigration detainer, even though similarly situated inmates without immigration detainers would have been released." (Opp'n at 4.) Thus, the Court rejects the County's arguments that such inquiries into the inmates' release dates and comparison of these release dates to the inmates' maximum sentences would defeat class certification.

Finally, the Court previously determined that predominance as to liability is satisfied as to the No-Money Bail Class, and the No-Bail Notation Class. (*See* Dkt. No. 184.) Because there is no basis to change the Court's previous rulings on these issues at this time, the Court maintains that predominance as to liability still exists, and does not find that predominance and superiority are lacking based on the County's argument that class members cannot be identified without individualized inquires.[2]

2. Calculation of Damages

The bulk of the County's Motion argues that the classes should be decertified

[2] The Court has reviewed the County's Notice of Supplemental Authority, Plaintiffs' Response, and the County's Objection. (Dkt. Nos. 388–89, 390.) The Court does not find *Victorino v. FCA US LLC*, No. 16cv1617–GPC(JLB), 2018 WL 2967062 (S.D. Cal. June 13, 2018), analogous to the instant case. The Court **DENIES as moot** the County's request to strike or decline to consider Plaintiff's response, as the Court has reached this decision after reviewing and considering *Victorino* and the other authority discussed in the County's Notice of Supplemental Authority.

on the basis that predominance cannot be satisfied in the absence of some appropriate common method for calculating class-wide damages. (Mot. at 10–19.) The Roy Plaintiffs argue that class-wide damages are available here: general damages and presumed damages. (Opp'n.) They further argue that "even if the Court were to reject both of these approaches to class-wide damages[—general and presumed—]decertification would be improper because individual damage assessments do not defeat predominance." (Opp'n at 1.)

In its Reply, the County relies upon a Central District of California case, *Amador v. Baca*, 299 F.R.D. 618, 630–35 (C.D. Cal. 2014), to argue that general and presumed damages are not available here. (Reply at 10–12.) Much of the County's discussion, however, focuses on presumed damages, not general damages. (*See, e.g.*, Reply at 10 ("Judge Wilson rejected the concept that presumed damages have any application in § 1983 cases where, as here, an individual's damages are not difficult to establish."), 11 ("Judge Wilson's analysis continued with a review of Supreme Court authorities relevant to the issue of presumed damages, noting that presumed damages in the context of common law defamation have been labeled 'an oddity of tort law, for it allows recovery of purportedly compensatory damages without evidence of actual loss.'").) While the discussion in *Amador* to which the County refers discusses "general damages," the conflation of presumed damages and general damages here is not appropriate, as they are distinct concepts and categories of damages. (Reply at 11–12.)

Other district court decisions from this district recognize presumed and general damages as distinct categories of damages, and have found that general damages may be available on a class-wide basis in § 1983 actions based upon unlawful detention. *See Rodriguez v. City of Los Angeles*, No. CV 11-01135 DMG (JEMx), 2014 WL 12515334, at *1, *5–7 (C.D. Cal. Nov. 21, 2014) (denying the defendants' motion for class decertification and recognizing that general damages, distinct from presumed damages, may be available on a class-wide basis in a § 1983 action based on unlawful

detentions); *see also Aichele v. City of Los Angeles*, 314 F.R.D. 478, 496 (C.D. Cal. 2013) (certifying § 1983 over-detention class action and finding that general damages are available on a class-wide basis). The Court agrees with these decisions and finds that general damages are available on a class-wide basis here.

"At this stage, the question is only whether [Plaintiffs have] presented a workable method [for calculating class-wide damages]." We conclude that [they] have." *Lambert v. Nutraceutical Corp.*, 870 F.3d 1170, 1184 (9th Cir. 2017). As such, the Court rejects the County's arguments that decertification is warranted here based on damages issues.

3. Adjudication of Affirmative Defenses

The County argues that individualized inquiries will be required to adjudicate affirmative defenses, and thus, the classes should be decertified. (Mot. at 20.) This Court previously held that "class certification will not prevent the Roy [D]efendants from presenting individualized affirmative defenses." (Dkt. No. 184 at 34 (citing *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 671 (7th Cir. 2015) ("As long as the defendant is given the opportunity to challenge each class member's claim to recovery during the damages phase, the defendant's due process rights are protected.")).)

Moreover, the only affirmative defense that the County addresses in its Motion to demonstrate that affirmative defenses would defeat predominance and superiority is the application of the Prison Litigation Reform Act ("PLRA"). The County argues that the PLRA applies here and that "inmate litigants are barred from recovering damages for emotional distress, absent a showing of a physical injury." (Mot. at 20.) The County asserts that "potential class members would be required to prove the existence of a physical injury before they could recover damages for emotional distress, which would be a highly individualized inquiry." (Mot. at 20–21.) Notably, the Court has already rejected the County's argument that the PLRA's physical injury

requirement applies here. (Dkt. No. 184 at 37–38.) The Court again rejects this argument.

B. Whether Plaintiffs' Trial Plan is Sufficient at this Stage in Litigation

The County argues that the classes should be decertified on the basis that the Roy Plaintiffs do not have a viable trial plan. Because the Court finds that the Roy Plaintiffs have provided a sufficient trial plan for this stage in the litigation (*see* Dkt. No. 366)—demonstrating that liability determinations and damages determinations (based on general damages) are available on a class-wide basis, the Court rejects the County's arguments on this point.

C. Whether Plaintiff Martinez-Perez is an Adequate Representative

The County contends that Plaintiff Martinez-Perez is not an adequate class representative because "the undisputed evidence is that he was not aware of any effort to post bail on his behalf prior to his transfer to ICE custody on December 20, 2011." (Mot. at 23 (citing Dkt. No. 243-1 (Defendant's Separate Statement of Undisputed Material Facts)).) According to the County, "[w]ithout any such evidence, any claim based on the allegation that he was not allowed to post bail is not cognizable as a matter of law and therefore, he is not an adequate class representative." (Mot. at 23.) Again, the County raised this same argument during the recent summary judgment litigation, and this Court rejected it. (Dkt. No. 346 at 42 (recognizing that the Roy Plaintiffs' theory of "liability does not hinge on whether the LASD specifically communicated to any individual that they could not post bail due to an ICE detainer, but rather, liability turns on whether [the] LASD's practice of characterizing all ICE detainers as 'no bail' holds effectively denied ICE-hold inmates the right to post bail").)

The County also contends that Plaintiff Martinez-Perez "was not held more than 48 hours (*excluding weekends*) beyond his 'release date.'" (Mot. at 23–24 (citing Dkt. No. 243-1) (emphasis added).) The County seems to argue that based upon this, he is

not an adequate representative for the Post-48 Hours *Gerstein* Subclass, yet, the County's argument is not clear on this point. (*See* Mot. at 23–24.) This argument misrepresents the Roy Plaintiffs' definition of the Post-48 Hours *Gerstein* Subclass, as the Roy Plaintiffs have defined this class as those held beyond 48 hours *including weekends and holidays*. (*See* Dkt. Nos. 184, 346.)

V. CONCLUSION

For the foregoing reasons, the Court **DENIES** the County's Motion for Decertification of the Classes.

IT IS SO ORDERED.

Dated: July 11, 2018

HONORABLE ANDRÉ BIROTTE JR.
UNITED STATES DISTRICT COURT JUDGE