UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 15-01332 AG (DFMx)	Date	June 23, 2017
Title	KENNETH GLOVER ET AL. v. CITY OF LAGUNA BEACH ET AL.		

Present: The Honorable	ANDREW J. GUILFORD	
Lisa Bredahl	Not Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs: Attorneys Present for Defendants:

Proceedings: **[IN CHAMBERS] ORDER GRANTING MOTION FOR CLASS CERTIFICATION**

David Sestini, Michael Newman, and Richard Owens (collectively, "Plaintiffs") are all homeless and disabled persons in Laguna Beach. Plaintiffs, on behalf of themselves and others similarly situated, are suing the City of Laguna Beach (the "City") and the Laguna Beach Police (collectively, "Defendants") for claims relating to their homelessness program. Plaintiffs have now filed a motion to certify this case as a class action.

Homelessness has become a very important issue in our community, generating voluminous filings in this case (and conversation in the public arena). There have been significant filings in this case, as recently as June 20, 2017, and issues raised in those recent filings are discussed in this Order.

The Court GRANTS Plaintiffs' motion for class certification. (Dkt. No. 112.)

1. LEGAL STANDARD

The class action is an exception to the way litigation usually goes: typically, lawsuits are litigated just by the individual named parties. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011). This exception is only justified if certain requirements are met.

First, a plaintiff seeking class certification must show that a proposed class satisfies the four elements of Federal Rule of Civil Procedure 23(a): (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation by the class representatives and class counsel. Fed. R. Civ. P. 23(a). All of these elements must be satisfied for a class to be certified.

Second, a plaintiff seeking class certification must show that a proposed class satisfies the requirements of at least one of three subsections of Rule 23(b). Those three subsections provide: (1) that prosecuting separate actions would create a risk of inconsistent or varying adjudications; (2) that the party opposing class certification has acted or failed to act on grounds that apply generally to the class; or (3) questions of law or fact common to class members predominate over any questions affecting only individual members and a class action is superior to other available methods for adjudicating the dispute. Fed. R. Civ. P. 23(b)(1)–(3). Only one of these factors needs to be satisfied for a class to be certified.

As a final note, these requirements aren't just pleading standards. *Dukes*, 564 U.S. at 350. A party seeking class certification must affirmatively demonstrate that these requirements have been met, and survive a rigorous analysis that may dip into an evaluation of the case's merits. *Id.* at 350–51.

2. BACKGROUND

In 2009, a group of disabled, homeless individuals sued Defendants, challenging the Laguna Beach Municipal Code ("LBMC") section 18.04.020, then effective, which criminalized sleeping at night in public places. (Dkt. No. 112-1 at 7.) The parties in that case settled and, as part of the settlement, the City repealed portions of LBMC section 18.04.020 and agreed to limit enforcement of California Penal Code section 647(e) against homeless people for two years. (*Id.*)

A few months later, the City enacted LBMC sections 8.30.030 and 18.05.020, prohibiting camping on public property and sleeping in beaches and parks. (*Id.*) Around the same time, the City also opened a temporary emergency shelter called the Alternative Sleeping Location ("ASL"). (*Id.*) Plaintiffs allege that disabled, homeless people cannot tolerate conditions associated with the ASL. (*Id.* at 8.) So Plaintiffs argue that disabled, homeless people are "left

with the difficult choice of subjecting themselves to the intolerable conditions of the ASL, or intolerable treatment by LBPD" under Defendants' homelessness policy. (*Id.*)

Plaintiffs now ask the Court to certify the following class:

> [a]ll homeless persons who reside or will reside in the geographic area of Laguna Beach who have a mental and/or physical disability as defined under section 504 of the Rehabilitation Act and Americans with Disabilities Act and who have been, or are likely to be, cited for violations of California Penal Code section 647(e), Laguna Beach Municipal Code section 8.30.030 and/or Laguna Beach Municipal Code section 18.05.020

("Proposed Class"). (*Id.* at 9:1–6.) Plaintiffs allege that Defendants violated "Title II of the Americans with Disabilities Act ('ADA'), section 504 of the Rehabilitation Act, and the Eight and Fourteenth Amendments of the United States Constitution, as well as analogous provisions of California's Constitution." (*Id.* at 8.)

3. PRELIMINARY ISSUES

First, Defendants have many evidentiary objections to documents and declarations of various witnesses. (Dkt. Nos. 113–116.) Some of these objections would be more appropriate either at trial or when the Court is doing an analysis of a motion that requires much closer examination of the substance of the claims. It is true that a class certification motion may dip into the merits of a claim, but the Court did not rely on the documents and statements that Defendants object to in making its ruling on the class certification motion. For example, Defendants object to Exhibit A, which is offered to prove that the City enforced anti-camping laws after the ASL opened. (Dkt. No. 115 at 2.) This timing issue has nothing to do with whether the elements of class certification are satisfied. Another example is one of Defendants' objection to statements from a Proposed Class representative. One of the Plaintiffs talks about his diagnosis and Defendants object on grounds of hearsay. (Dkt. No. 113 at 2.) This plaintiff's other non-hearsay and general assertions that he is mentally disabled are sufficient for the allegations in this motion for class certification. The Court has also considered the recent objection and reply and has only considered appropriate matters from

the recent supplemental briefing. (Dkt. Nos. 201 & 202.) No further action is required on the objections.

Second, the parties have filed some recent supplemental briefing. The first set of supplemental briefing is about the current status of one of the proposed class representatives, Owens. (Dkt. Nos. 181, 182, & 183.) Owens recently pled guilty to nonviolent offenses and has been sentenced to incarceration for one year. But he will likely be in jail for six months under state law providing good time credits. Cal. Penal Code § 4019. Defendants argue that Owen shouldn't be a class representative because he doesn't meet the commonality, typicality, or adequacy requirements. Defendants' arguments aren't convincing. Owens will most likely be released months before the trial date. The second set of supplemental briefing is about the current status of another proposed class representative, Newman. (Dkt. Nos. 196 & 200.) According to Defendants, Newman's claims are moot because he has recently retained permanent housing, partially through the assistance of the Friendship Shelter, Inc. staff that manage the ASL and so Newman is no longer homeless. But Mr. Newman's individual claims are not moot because they are "capable of repetition, yet evading review." See S. Pac. Terminal Co. v. ICC, 219 U.S. 498, 514–515 (1911). Further, the relation-back doctrine applies here. *See, e.g.*, *Wade v. Kirkland*, 118 F.3d 667, 669 (9th Cir. 1997) (holding that the relation-back doctrine applies where the purported class members have transitory claims.) Both of these plaintiffs will remain as class representatives.

Finally, the Court finds it unnecessary to address ascertainability. *See Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017).

4. ANALYSIS

4.1 Rule 23(a)(1)—Numerosity

Rule 23(a)(1) requires that a class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "[I]mpracticability does not mean impossibility," but simply that joinder of all class members must be difficult or inconvenient. *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913 (9th Cir. 1964).

A proposed class of at least forty members may satisfy the numerosity requirement. *See Jordan v. Los Angeles County*, 669 F.2d 1311, 1319 (9th Cir. 1982), *vacated on other grounds by County of Los Angeles v. Jordan*, 459 U.S. 810 (1982). According to Plaintiffs, there are at least 100 homeless people in Laguna Beach. (Dkt. No. 112-1 at 13:13.) The City has estimated that 80% of the homeless population in Laguna Beach is disabled. (*Id* at 13:16.) Therefore, Plaintiffs estimate that the number of putative class members is approximately 80. (*Id.* at 13:19.)

Defendants argue that Plaintiff's evidence for the number of homeless people in Laguna Beach is not reliable because it is based on data from 2009. (*Id.* at 16–17.) Defendants also argue that the homeless population lives in a small geographical area so joinder of all members is not impracticable. (*Id.* at 17.) But Plaintiffs point out the difficulty in identifying potential future Proposed Class members and how these Proposed Class members would be especially unlikely to pursue their claims individually because of their disabilities. (Dkt. No. 112-1 at 21–22.)

Numerosity is satisfied.

4.2 Rule 23(a)(2)—Commonality

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). But there must be a "common contention" that is "of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Dukes*, 564 U.S. at 350. (2011).

Plaintiff argues that Defendants systematically denied access to the ASL and discriminated against all class members. Plaintiffs allege that four common questions show the existence of shared legal issues: "(a) whether Defendants' homelessness policy discriminates against putative class members; (b) whether alternative housing and cessation of enforcement would alleviate these access barriers; (c) whether the City has an obligation under the ADA to provide reasonable accommodations to persons with disabilities in the ASL; and (d) whether

alternative housing and a cessation of enforcement would cause a fundamental alteration to Defendants' homelessness policy." (Dkt. No. 112-1 at 23.) Defendants argue that these questions cannot be answered on a class-wide basis. (Dkt. No. 117, 13:15.) The Court disagrees.

It is true that Proposed Class members suffer from a wide variety of mental or physical disabilities. But the overarching issue for each member is identical. All are allegedly adversely affected by Defendants' homelessness policy. Defendants cite *Wal-Mart v. Dukes* and point out that for commonality to be met, the Proposed Class must suffer the same injury, not just violation of the same law. (Dkt. No. 117 at 19.) Proposed Class members, according to Defendants, each allegedly experienced different harms. For example, one individual was allegedly harmed physically from having to sleep on the ASL's floor matts while another individual suffered from anxiety allegedly exacerbated by conditions at the ASL. (*Id.* at 20.) But this level of similarity of harm goes too deep. Proposed Class members all allegedly suffered the injury of having their rights violated due to their disabilities. So the harmed suffered by Proposed Class members is also common.

Defendants argue that when determining whether the ASL discriminates on the basis of disabilities, the analysis is individualized and the appropriate relief is directly tied to that disability. (Dkt. No. 117, 16:14.) Therefore, there is no common answer to drive the resolution of litigation. (*Id.* at 17:10.) The Court disagrees. All Proposed Class members want the same injunctive relief—"equal access to a safe, legal place to sleep." (Dkt. No. 112-1, 17:20.)

Plaintiffs' analogies to other cases where courts found commonality despite differences in the disabilities of class members is also convincing to the Court. (Dkt. No. 135 at 12–13.) The Ninth Circuit has affirmed the certification of a class of prisoners with various disabilities who claimed that some of their prison's policies violated the ADA and Rehabilitation Act. *Armstrong v. Davis*, 275 F.3d 849 (9th Cir. 2001). The Ninth Circuit found commonality despite the defendant's arguments that the class members' individual disabilities were too varied. *Id* at 868.

Defendants also argue that not all Proposed Class members have even tried accessing the ASL. Even if this is true, certifying this class would still resolve the issue of *accessibility* and legality of the City's shelter in "one stroke."

One of Defendants' arguments—that Plaintiffs have failed to even allege commonality for their eighth amendment and substantive due process violations claims—is convincing to the Court. This Court assesses the commonality issue for each claim individually. *See Polanco v. Schneider Nat. Carriers, Inc.*, No. CV 10-4565-GHK JEMX, 2012 WL 10717265 (C.D. Cal. Apr. 25, 2012). Commonality has not been established for the eighth amendment and substantive due process violations claims, and it has not been established for "analogous provisions of the California Constitution." Class certification is denied as to these claims. Commonality is satisfied as to the ADA and Rehabilitation Act claims.

4.3 Rule 23(a)(3)—Typicality

Federal Rule of Civil Procedure 23(a)(3) requires the plaintiff's claims to be "typical" of the claims of the class members. Fed. R. Civ. P. 23(a)(3). "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998).

The "commonality and typicality requirements . . . 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." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, n. 5 (2011) (quoting *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157–158, n. 13 (1982)).

Defendants argue that Plaintiffs' "difficulties" in accessing the ASL stem from factors unrelated to their disabilities and instead related to their behavioral problems. (Dkt. No. 117 at 25–26.) But Plaintiffs are alleging that those behavioral problems stem from their disabilities. Typicality has a "permissive" standard. *Hanlon*, 150 F.3d at 1020. The "typicality inquiry involves comparing the injury asserted in the claims raised by the named plaintiffs with those of the rest of the class." *Armstrong*, 275 F.3d at 869. Just like in *Armstrong*, the

injuries here are identical. The Proposed Class "all suffer a refusal or failure to afford them accommodations . . . and are objects of discriminatory treatment on account of their disabilities." *Id.*

Typicality is satisfied.

4.4 Rule 23(a)(4)—Adequacy

Finally, Plaintiff has shown adequacy of representation by the class representatives and class counsel. There are two questions to consider for this requirement: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020.

Plaintiffs have shown adequacy of class representatives and class counsel and Defendants do not oppose this. Adequacy is satisfied.

4.5 Rule 23(b)(2)

Under Federal Rule of Civil Procedure 23(b)(2), class certification is appropriate when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." F. R. Civ. P. 23(b)(2). Plaintiffs allege that "Defendants have acted in a manner that fails to consider the needs of its disabled, homeless population, and in so doing, have acted with respect to class members generally." (Dkt. No. 112-1 at 29.) Plaintiffs seek a uniform injunctive and declaratory relief from the City's policies that are applicable to the Proposed Class.

Defendants argue that individualized injunctions are necessary for each individual Proposed Class member. "Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class." *Id.* It is true that "claims for *individualized* relief . . . do not satisfy [] Rule[23(b)(2)]." *Dukes*, 564 U.S. at 360. But Plaintiffs are not seeking individualized injunctions. Instead, Plaintiffs seek "permanent supportive housing

paired with a case manager." (Dkt. No. 135 at 20.) According to Plaintiffs, issues of access to services for individual Proposed Class members could just be determined by a case worker, without the need to individual hearings. (*Id.*)

"'Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples' of what (b)(2) is meant to capture." *Id.* at 361 (quoting *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 614 (1997)). This class-based discrimination claim satisfies Rule 23(b)(2).

5. DISPOSITION

The Court appoints the ACLU-SC and the law firm of Paul Hastings LLP as class counsel of the Proposed Class, and the named plaintiffs as class representatives.

The Court GRANTS Plaintiffs' motion for class certification. (Dkt. No. 112.)

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