

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART IAS MOTION 52EFM

Justice

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R. C., A. G., J. J.

Plaintiffs,

- v -

THE CITY OF NEW YORK, JAMES O'NEILL,

Defendants.

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INDEX NO. 153739/2018

MOTION DATE 09/04/2019

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 126, 127, 128

were read on this motion to/for ORDER MAINTAIN CLASS ACTION

Upon the foregoing documents, it is ordered that the motion to maintain class action status is GRANTED.

Introduction

This action arises out of plaintiffs' allegation that the New York City Police Department ("NYPD") has policies regarding access to sealed records that are in violation of Criminal Procedure Law § 160.50(1) and § 160.55(1)(c). The three named plaintiffs allege to have been aggrieved by these policies and are suing for both injunctive relief and for some monetary damages. Plaintiffs now move for class certification for all those who have sealed records and have either been aggrieved or may be aggrieved by these alleged unlawful practices of the NYPD. According to the plaintiffs, between 2014 and 2016, there were 400,000 arrests that were required to be sealed that the NYPD maintains access to.<sup>1</sup>

<sup>1</sup> This statistic appears to be undisputed by the defendants.

Defendant, City of New York (“City”), opposes such certification, arguing mainly that plaintiffs have failed to satisfy the requirements for class certification and that the class certification is premature, as there has been limited discovery with no depositions thus far in this case. Additionally, the City argues that due to the doctrine of *stare decisis* and the likelihood that an order in this case will be precedent as to all other similar claims, such class certification is unnecessary.

### Discussion

CPLR § 901(a) states that a class may be certified if the following statutory prerequisites are met:

1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members;
3. the claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. the representative parties will fairly and adequately protect the interests of the class; and
5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

CPLR § 901(a).

Plaintiff avers, and the Court agrees, that there are likely tens of thousands of members of the class that would be impacted by this case. This appears to be a conservative estimate, based on the number provided of 400,000 arrests over a three-year period that ended almost three years ago.

Plaintiff contends that there are narrow issues thus creating common questions of law and fact. Also, due to the narrowness of the issues in this case, the allegations of the named plaintiffs

appear to be typical of those of other potential class members. Additionally, the representation of class members would be without conflict of any two class members, and the named plaintiffs would obviously be motivated to win the case on behalf of themselves and others. Judging from oral argument and the papers submitted in this case, attorneys for the proposed class would quite adequately represent the subject class. Finally, judicial economy would absolutely be served by resolving this issue in one case as opposed to the possibility of many cases.

The Court agrees with the arguments set forth by the plaintiffs as to why class certification is appropriate. All the factors required for class certification pursuant to CPLR § 901(a) are met.

As noted, in addition to challenging the plaintiffs' contentions regarding the sufficiency of the plaintiffs meeting the CPLR requirements for class certification, the City argues that the motion is premature, as there has been insufficient discovery to date. The Court respectfully does not believe that this discovery is needed prior to a decision being made as to class certification. Contrary to the City's contention, the issue in dispute, as stated, is quite narrow, with much of the underlying information no doubt coming from the City as to its policies and practices. Thus, the Court rejects the City's arguments that individualized discovery would be required rendering class certification onerous. The First Department has held that the question of commonality is not whether common issues outweigh individual issues rather an inquiry must be made to determine if such certification would promote uniformity among similarly situated individuals and is appropriate even when there are questions of law and fact not common to the class *Pludeman v. N. Leasing Sys., Inc.*, 74 AD3d 420, 423 [1st Dept 2010] (internal citations omitted). As such, there does not seem to be any information that would be derived from depositions of the plaintiffs that would aid this Court in determining whether class status is appropriate.

In addition, the City argues that the governmental operations doctrine makes class certification unnecessary, in short that the doctrine of *stare decisis* would sufficiently resolve the matter without the need for class certification. However, it is simply speculative at this point to say that any order issued by this Court in this case would be binding on all potential class members. Moreover, if the allegations levied by the plaintiffs are true, the doctrine of *stare decisis* has not dissuaded the NYPD from continuing their alleged unlawful policies in violation of the laws regarding sealed records. Accordingly, it is hereby

ORDERED that the plaintiffs' motion for class certification is GRANTED and it is further

ORDERED that the Bronx Defender Services and Cleary Gottlieb Steen & Hamilton LLP are appointed counsel for the class.

9/5/2019  
DATE

LYLE E. FRANK, J.S.C.  
**HON. LYLE E. FRANK J.S.C.**

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	
		DENIED				