

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NAACP OF SAN JOSE/ SILICON  
VALLEY, et al.,

Plaintiffs,

v.

CITY OF SAN JOSE, et al.,

Defendants.

Case No. 21-cv-01705-PJH

**ORDER RE CLASS CERTIFICATION,  
DISCOVERY, AND SEALING**

Re: Dkt. No. 87, 101, 102

Plaintiffs' motion for class certification came on for hearing on February 23, 2023. Plaintiffs appeared through their counsel, Mitchell Engel, Rachel Lederman, and Tammy Webb. Defendants appeared through their counsel, Matthew Pritchard. Also before the court are the parties' discovery letter brief and plaintiffs' motion to seal. Having read the papers filed by the parties and carefully considered their arguments and relevant authority, and good cause appearing, the court hereby rules as follows.

**BACKGROUND**

This is a civil rights case arising out of the May 2020 protests in response to the killing of George Floyd by police. Specifically, on May 29 and 30, 2020, plaintiffs participated in protests in San Jose to "express their view that police brutality and institutionalized racism must end," and now "seek redress for the violation of their constitutional rights to assemble, protest, and be free from racial discrimination, disability discrimination, excessive force, and wrongful arrest." Dkt. 108, ¶¶ 2, 3.<sup>1</sup>

There are two organization plaintiffs and eleven individual plaintiffs in this case.

<sup>1</sup> At the time that the class certification motion was filed, plaintiffs had been granted leave to file an amended complaint to substitute Doe defendants. See Dkt. 81. Plaintiffs filed a proposed amended complaint, which was ultimately filed as the operative complaint. See Dkt. 94, 108. This order will cite to the currently-operative version of the complaint.

1 The organization plaintiffs are (1) the National Association for the Advancement of  
2 Colored People of San Jose/Silicon Valley, and (2) the San Jose Peace and Justice  
3 Center. Dkt. 108, ¶¶ 14-15. There are eleven individual plaintiffs, not all of whom are  
4 proposed class representatives. For purposes of this section, only the proposed class  
5 representatives will be discussed.

6 The first proposed class representative is Joseph Cañas. Dkt. 108, ¶ 20. Cañas  
7 was at the protest on May 29, 2020, playing a guitar, when he was shot in the eye by an  
8 impact munition (also referred to as “projectile impact weapon,” or “PIW”). Id.

9 The second proposed class representative is Leslie Vasquez. Dkt. 108, ¶ 21.  
10 Vasquez attended the May 29, 2020 protest and was shot in the groin, thighs, and genital  
11 area, and bludgeoned in the stomach with a baton as she stood with her hands up. Id.

12 The third proposed class representative is Peter Allen. Dkt. 108, ¶ 22. Allen  
13 attended the protest on May 29, 2020, and was pushed to the ground and repeatedly  
14 shot with impact munitions. Id. Allen alleges that he was backing away when he was  
15 shoved to the ground by an officer with his baton, then shoved to the ground again when  
16 he tried to get up and back away. Id., ¶ 111. Allen alleges that he was again attempting  
17 to retreat when he was shot in the thigh and in the chest with PIW. Id., ¶ 112-113.

18 The fourth proposed class representative is Shaunn Cartwright. Dkt. 108, ¶ 23.  
19 Cartwright was shot in the knee, calf, and finger with PIW on May 30, 2020. Id.

20 The fifth proposed class representative is Yessica Riles. Dkt. 108, ¶ 24. On May  
21 29, Riles was shot with PIW in the abdomen while her hands were up in a ‘don’t shoot’  
22 gesture. Id., ¶ 78.

23 The sixth proposed class representative is Gustavo Flores. Dkt. 108, ¶ 25. Flores  
24 was present at the May 29, 2020 protest, and “tried to warn the other demonstrators,  
25 walking down the front line of demonstrators suggesting that they put their hands up in a  
26 gesture of ‘don’t shoot’ to show they were unarmed [and] did not pose a threat.” Id., ¶ 82.  
27 While Flores was doing so, a San Jose police officer “shot him in the groin and testicle  
28 with an impact munition.” Id. Flores fell to the ground, and as he got up, he saw the

officer reloading his gun. Id., ¶ 83. As Flores was trying to walk away, someone warned that the officer was aiming at him again, and when Flores turned to look, the officer shot him in his left collarbone with another impact munition. Id.

The seventh proposed class representative is Cindy Cuellar. Dkt. 108, ¶ 28. Cuellar attended the May 29, 2020 protest and saw officers “shoot impact munitions into the crowd,” hitting a friend of hers who is a journalist. Id., ¶ 71. When Cuellar went to her friend’s aid, an officer shot her in her left calf. Id.

There are four other plaintiffs who are proceeding only as individuals, not as class representatives: Michael Acosta, Joseph Maldonado, Mahmoudreza Naemeh, and Megan Swift.

The defendants are as follows: the City of San Jose, David Sykes (city manager of San Jose), Edgardo Garcia (police chief of the SJPd), Christopher Knopf (SJPd assistant chief of police), Jason Dwyer (SJPd captain and the ‘special operations commander’ during the May 2020 protests), Brian Matchett (SJPd lieutenant), Steve Lagorio (SJPd lieutenant), Ronnie Lopez (SJPd sergeant), Lee Tassio (SJPd sergeant), Jaren Yuen (SJPd officer), Bill Nguyen (SJPd officer), Clifford Grodin (SJPd officer), Stephen Michael Curry (SJPd officer), Michael Simonini (SJPd officer), Victor Ayala (SJPd officer), James Adgar (SJPd officer), Steve Gaona (SJPd officer), Tyler Moran (SJPd officer), John Lynch (SJPd sergeant), Larry Situ (SJPd officer), Frank Orabuena (SJPd officer), Gerardo Silva (SJPd officer), and Chris Weber (SJPd officer). Dkt. 108, ¶¶ 27-47.

The complaint purports to assert eleven causes of action, though the first is for “injunctive relief” and the second is for “declaratory relief,” which are types of remedies rather than standalone causes of action. That leaves nine substantive causes of action:

(1) violation of First Amendment rights under section 1983, asserted by all plaintiffs against all defendants;

(2) excessive force in violation of Fourth and Fourteenth Amendments, under section 1983, asserted by all plaintiffs against defendants City of San Jose, Garcia,

Knopf, Dwyer, Matchett, and Tassio; and further asserted by plaintiff Acosta against defendants Yuen, Nguyen, Grodin, Lopez, and Lynch; by plaintiff Naemeh against defendants Orabuena, Weber, Situ, and Lopez; by plaintiff Swift against defendants Curry, Silva, and Ayala; by plaintiff Cañas against defendants Yuen and Lopez; by plaintiff Vasquez against defendants Yuen, Simonini, and Lopez; by plaintiff Allen against defendants Yuen and Lopez; by plaintiff Riles against defendant Simonini; by plaintiff Flores against defendants Gaona and Grodin; by plaintiff Cuellar against defendants Simonini, Adgar, Nguyen, Grodin, Moran, and Lynch; and by plaintiff Maldonado against defendant Lagorio;

(3) failure to intervene under section 1983, asserted by all plaintiffs against all defendants;

(4) violation of Title II of the Americans with Disabilities Act, asserted by plaintiff Cartwright against defendant City of San Jose;

(5) violation of section 504 of the Rehabilitation Act, asserted by plaintiff Cartwright against defendant City of San Jose;<sup>2</sup>

(6) violation of the California Bane Act, asserted by all plaintiffs against all defendants;

(7) violation of the California Ralph Act, asserted by all plaintiffs against defendants City of San Jose, Garcia, Knopf, Dwyer, Matchett, and Tassio; and further asserted by plaintiff Acosta against defendants Yuen, Nguyen, Grodin, Lopez, and Lynch; by plaintiff Naemeh against defendants Orabuena, Weber, Situ, and Lopez; by plaintiff Swift against defendants Curry, Silva, and Ayala; by plaintiff Cañas against defendants Yuen and Lopez; by plaintiff Vasquez against defendants Yuen, Simonini, and Lopez; by plaintiff Allen against defendants Yuen and Lopez; by plaintiff Riles against defendant Simonini; by plaintiff Flores against defendants Gaona and Grodin; by plaintiff Cuellar against defendants Simonini, Adgar, Nguyen, Grodin, Moran, and Lynch; and by plaintiff

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<sup>2</sup> In their reply, plaintiffs clarify that they are not seeking class certification as to “the disability discrimination claims.” Dkt. 103 at 13, n.7.

1 Maldonado against defendant Lagorio;

2 (8) assault and battery, asserted by all plaintiffs against defendants City of San  
3 Jose, Garcia, Knopf, Dwyer, Matchett, and Tassio; and further asserted by plaintiff  
4 Acosta against defendants Yuen, Nguyen, Grodin, Lopez, and Lynch; by plaintiff Naemeh  
5 against defendants Orabuena, Weber, Situ, and Lopez; by plaintiff Swift against  
6 defendants Curry, Silva, and Ayala; by plaintiff Cañas against defendants Yuen and  
7 Lopez; by plaintiff Vasquez against defendants Yuen, Simonini, and Lopez; by plaintiff  
8 Allen against defendants Yuen and Lopez; by plaintiff Riles against defendant Simonini;  
9 by plaintiff Flores against defendants Gaona and Grodin; by plaintiff Cuellar against  
10 defendants Simonini, Adgar, Nguyen, Grodin, Moran, and Lynch; and by plaintiff  
11 Maldonado against defendant Lagorio; and

12 (9) negligence, asserted by all plaintiffs against defendants City of San Jose,  
13 Garcia, Knopf, Dwyer, Matchett, and Tassio; and further asserted by plaintiff Acosta  
14 against defendants Yuen, Nguyen, Grodin, Lopez, and Lynch; by plaintiff Naemeh  
15 against defendants Orabuena, Weber, Situ, and Lopez; by plaintiff Swift against  
16 defendants Curry, Silva, and Ayala; by plaintiff Cañas against defendants Yuen and  
17 Lopez; by plaintiff Vasquez against defendants Yuen, Simonini, and Lopez; by plaintiff  
18 Allen against defendants Yuen and Lopez; by plaintiff Riles against defendant Simonini;  
19 by plaintiff Flores against defendants Gaona and Grodin; by plaintiff Cuellar against  
20 defendants Simonini, Adgar, Nguyen, Grodin, Moran, and Lynch; and by plaintiff  
21 Maldonado against defendant Lagorio. See Dkt. 108, ¶¶ 206-284.

22 Plaintiffs now move for certification on the following proposed classes:

23 Damages class: The direct force damages class is defined as all persons  
24 present at protests regarding the killing of George Floyd in the city of San  
25 Jose on May 29, 2020 or May 30, 2020 who were struck by either Projectile  
26 Impact Weapons (including 37mm and 40mm projectiles and bean-bag  
shotguns), batons, or otherwise physically struck by a San Jose Police  
Department officer.

27 Injunctive relief class: The injunctive relief class is defined as all persons  
28 who have in the past participated, presently are participating, or may in the  
future participate in, or be present at, demonstrations within the city of San

Jose in the exercise of their rights of free speech, assembly, association, petition, and of the press, in general, and particularly as it relates to protesting police violence and discrimination against people of color.

Dkt. 108, ¶¶ 185, 186.

## DISCUSSION

### A. Legal standard

“Before certifying a class, the trial court must conduct a ‘rigorous analysis’ to determine whether the party seeking certification has met the prerequisites of Rule 23.” Mazza v. American Honda Motor Co., Inc., 666 F.3d 581, 588 (9th Cir. 2012) (citation and quotation omitted).

The party seeking class certification bears the burden of affirmatively demonstrating that the class meets the requirements of Federal Rule of Civil Procedure 23. Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011). In order for a class action to be certified, plaintiffs must prove that they meet the requirements of Federal Rule of Civil Procedure 23(a) and (b).

Rule 23(a) requires that plaintiffs demonstrate numerosity, commonality, typicality and adequacy of representation in order to maintain a class. First, the class must be so numerous that joinder of all members individually is “impracticable.” See Fed. R. Civ. P. 23(a)(1). Second, there must be questions of law or fact common to the class. Fed. R. Civ. P. 23(a)(2). Third, the claims or defenses of the class representative must be typical of the claims or defenses of the class. Fed. R. Civ. P. 23(a)(3). And fourth, the class representative(s) must be able to protect fairly and adequately the interests of all members of the class. Fed. R. Civ. P. 23(a)(4). The parties moving for class certification bear the burden of establishing that the Rule 23(a) requirements are satisfied. Gen'l Tel. Co. of Southwest v. Falcon, 457 U.S. 147, 156 (1982); see also Dukes, 564 U.S. at 350.

If all four prerequisites of Rule 23(a) are satisfied, the court must also determine whether to certify the class under one of the three subsections of Rule 23(b), pursuant to which the named plaintiffs must establish that either (1) that there is a risk of substantial prejudice from separate actions; or (2) that declaratory or injunctive relief benefitting the

class as a whole would be appropriate; or (3) that common questions of law or fact common to the class predominate and that a class action is superior to other methods available for adjudicating the controversy at issue. See Fed. R. Civ. P. 23(b).

The court does not make a preliminary inquiry into the merits of plaintiffs' claims in determining whether to certify a class. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 177 (1974). The court will, however, scrutinize plaintiffs' legal causes of action to determine whether they are suitable for resolution on a class-wide basis. See, e.g., Moore v. Hughes Helicopters, Inc., 708 F.2d 475, 480 (9th Cir. 1983). Making such a determination will sometimes require examining issues that overlap with the merits. See Dukes, 564 U.S. at 350-51 (acknowledging that court's "rigorous analysis" will frequently entail some overlap with merits of plaintiff's underlying claim).

The court will consider matters beyond the pleadings, if necessary, in order to ascertain whether the asserted claims or defenses are susceptible of resolution on a class wide basis. See McCarthy v. Kleindienst, 741 F.2d 1406, 1419 n.8 (D.C. Cir. 1984).

#### B. Analysis

##### 1. Damages class

As set forth above, in order to certify a damages class under Rule 23(b)(3), plaintiffs must show that the four Rule 23(a) requirements are met, and must also show that "common questions of law or fact common to the class predominate and that a class action is superior to other methods available for adjudicating the controversy at issue." Because, as will be set forth below, the court finds this matter can be determined on the basis of the Rule 23(b) showing alone, the court does not reach the Rule 23(a) showing.

Plaintiffs argue that their claims present "common questions of law and fact regarding the city's customs and policies related to policing public protest" that predominate over any individual issues. Specifically, plaintiffs identify the following common questions: (1) did the SJPd have an unconstitutional custom and practice of using indiscriminate and other excessive force against peaceful protestors, as evidenced



1 during the Floyd protests, (2) was there a failure to train the city's employees in the  
2 proper use of force, and a failure to adequately supervise their use of force, and (3) were  
3 the foregoing violations authorized by city policymakers because no discipline was  
4 imposed for any of the excessive force and violations of written SJPd policies. Dkt. 87 at  
5 20-21.

6 Plaintiffs argue that another district court, on similar facts, granted a motion for  
7 class certification after finding that common issues predominated over individual ones.  
8 See Multi-Ethnic Immigrant Workers Org. Network v. City of Los Angeles, 246 F.R.D. 621  
9 (C.D. Cal. 2007) ("MIWON").

10 The MIWON court found that the predominance requirement was indeed met as to  
11 plaintiffs' Fourth Amendment excessive force claims:

12 The Court recognizes that the conduct of individual officers in the field may  
13 present individual issues of reasonableness, namely whether it was  
14 reasonable under the circumstances for a particular officer to fire less-lethal  
15 munitions, use his baton to strike people, or use other forms of force, such  
16 as pushing and shoving.

17 Nonetheless, the individual issues share a common source: the command  
18 decisions to disperse the crowd and to authorize the use of less-lethal  
19 munitions if the crowd's behavior warranted it. LAPD Report at 8, 34–35.  
20 Because the legality of these command decisions is the overriding common  
21 question, the predominance requirement is met as to the Fourth  
22 Amendment claim.

23 MIWON at 635.

24 That final sentence – the focus on the command decisions, rather than the actions  
25 of individual officers – is the key to the court's conclusion on predominance. Earlier in the  
26 same section, the MIWON court emphasized that "plaintiffs focus on the LAPD  
27 commanders' authorization of 'less lethal' force (as distinct from the application of such  
28 force)." Id. (emphasis in original). Also of note is that, in MIWON, the plaintiffs filed suit  
against only the City of Los Angeles, William Bratton (the Chief of Police), Cayler Carter  
(Deputy Chief of Police), and Louis Gray (a LAPD commander). Id. at 624.<sup>3</sup>

<sup>3</sup> The MIWON opinion also states that Does 1 through 10 were named as defendants, but



1 In contrast, there is no such narrow focus on the command decisions in the  
2 present case. Plaintiffs are pursuing claims against not only the defendants who made  
3 the high-level decisions to authorize force, but also the officers who applied such force.  
4 That is the key distinction between this case and MIWON.

5 The distinction can be most clearly seen when looking at plaintiffs' excessive force  
6 claim under section 1983. See Dkt. 108, ¶¶ 222-226. Plaintiffs assert the claim on behalf  
7 of all plaintiffs against defendants City of San Jose, Garcia, Knopf, Dwyer, Matchett, and  
8 Tassio, those defendants having been involved in the authorization of force, but plaintiffs  
9 also assert the excessive force claim against individual officers who were involved in the  
10 application of force. Specifically, the excessive force claim is asserted by plaintiff Acosta  
11 against defendants Yuen, Nguyen, Grodin, Lopez, and Lynch; by plaintiff Naemeh  
12 against defendants Orabuena, Weber, Situ, and Lopez; by plaintiff Swift against  
13 defendants Curry, Silva, and Ayala; by plaintiff Cañas against defendants Yuen and  
14 Lopez; by plaintiff Vasquez against defendants Yuen, Simonini, and Lopez; by plaintiff  
15 Allen against defendants Yuen and Lopez; by plaintiff Riles against defendant Simonini;  
16 by plaintiff Flores against defendants Gaona and Grodin; by plaintiff Cuellar against  
17 defendants Simonini, Adgar, Nguyen, Grodin, Moran, and Lynch; and by plaintiff  
18 Maldonado against defendant Lagorio. See id. The same non-overlapping sets of  
19 plaintiffs and defendants are listed for plaintiffs' state law claims for assault and battery,  
20 negligence, and violation of the Ralph Act. See id., ¶¶ 268-284.

21 Because this case involves not only common claims regarding the authorization of  
22 force, but also individual claims arising out of each individual application of force, the  
23 court finds that the reasoning of MIWON is distinguishable, and accordingly, the court  
24 concludes that plaintiffs have not shown that common issues would predominate over  
25 individual issues as required by Rule 23(b)(3). For that reason, plaintiffs' motion for  
26 certification of a damages class is DENIED. As discussed above, the court need not  
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28 \_\_\_\_\_  
the opinion provides no indication that any Doe substitutions were ultimately made.

1 address the Rule 23(a) factors as they relate to the proposed damages class.

2 2. Injunctive relief class

3 Certification under Rule 23(b)(2) is appropriate where the opposing party “has  
4 acted or refused to act on grounds generally applicable to the class, thereby making  
5 appropriate final injunctive relief or corresponding declaratory relief with respect to the  
6 class as a whole.” Fed. R. Civ. P. 23(b)(2).

7 As an initial matter, the court points out the lack of clarity in plaintiffs’ pursuit of  
8 injunctive relief. Neither the complaint nor the amended complaint sets forth the scope or  
9 nature of the injunction that plaintiffs are seeking. Plaintiffs’ class certification motion  
10 similarly fails to specify what type of injunction they seek the court to impose. In their  
11 reply brief, plaintiffs state for the first time that they are seeking to enjoin “the  
12 indiscriminate use of impact munitions and batons on peaceful protestors,” and “to  
13 ensure the written policy is followed, plaintiffs also seek training and accountability  
14 measures.” Dkt. 103 at 16. No further details are provided.

15 Even putting aside any vagueness problems, the larger obstacle to certification  
16 under Rule 23(b)(2) is the cross-cutting, non-overlapping nature of the various claims  
17 brought by different plaintiffs against different defendants. In contrast, in the MIWON  
18 case cited above, the court certified an injunctive relief class in a case where plaintiffs  
19 brought suit against only LAPD command personnel, and “focus[ed] on the LAPD  
20 commanders’ authorization of ‘less lethal’ force (as distinct from the application of such  
21 force).” MIWON, 246 F.R.D. at 635 (emphasis in original). However, as discussed  
22 above, the plaintiffs in this case did not focus their claims in a similar manner. Rather  
23 than bringing suit against only command personnel and focusing on their authorization of  
24 force, the plaintiffs in this case challenge both the authorization of force by command  
25 personnel as well as the application of force by line officers. The number of individual,  
26 non-overlapping claims brought by different sets of plaintiffs against different sets of  
27 defendants prevents the court from concluding that defendants’ conduct applies generally  
28 to the class, and accordingly, plaintiffs’ motion for certification of an injunctive relief class

1 is DENIED. As discussed above, the court need not address the Rule 23(a) factors as  
2 they apply to the proposed injunctive relief class.

3 C. Other issues

4 1. Discovery letter brief

5 Also before the court is a discovery dispute between the parties. The discovery  
6 dispute is a request by defendants to “preclude plaintiff Acosta’s claim for future income  
7 loss based on documents plaintiffs did not provide in initial disclosures or during  
8 discovery.” Dkt. 102 at 1.

9 The essence of defendants’ argument is that plaintiffs waited until after the close  
10 of discovery to reveal that plaintiff Acosta would be pursuing damages based on lost  
11 future income. Dkt. 102 at 1. Defendants argue that the late disclosure prevents them  
12 from taking discovery from Acosta’s employer and coworkers. Defendants thus ask for  
13 an order precluding Acosta from pursuing damages based on lost future income, and  
14 from using any documents related to Acosta’s employment that were not provided before  
15 the close of discovery. Defendants’ request is made pursuant to Rules 26 and 37. Rule  
16 26 requires a party to disclose damages-related information and to supplement or correct  
17 those disclosures in a timely manner, and Rule 37 forbids the use at trial of information  
18 that was not properly disclosed, unless the failure to disclose was substantially justified or  
19 harmless. See Fed. R. Civ. P. 26, 37; R & R Sails, Inc. v. Insurance Co. of Penn., 673  
20 F.3d 1240, 1246 (9th Cir. 2012).

21 Plaintiffs argue that “Acosta’s discovery responses have always made clear that  
22 he might have a future wage loss claim,” and cite to interrogatory responses stating that  
23 “he is struggling to keep up at his demanding job” and “the amount of any future wage  
24 loss is undetermined at this time.” Dkt. 102 at 4. Plaintiffs argue that “when defendants  
25 requested documents supporting a claim for loss of income or earning capacity in  
26 October 2021, no such documents existed and any future wage loss was speculative,”  
27 but “in October and November 2022, events transpired that made it more likely that Mr.  
28 Acosta could suffer an injury-related future income loss.” Id. Specifically, plaintiffs point

1 to Acosta's job performance review in October 2022 that was "significantly less positive"  
2 than prior reviews, and to news of a "tech downturn" in November 2022, arguing that  
3 those events turned a speculative wage-loss claim into a non-speculative one.

4 Overall, plaintiffs have not shown that their failure to timely disclose was  
5 substantially justified or harmless. Essentially, they argue that Acosta was aware of his  
6 own limitations, but was not aware that his supervisor had noticed until the performance  
7 review in October 2022. First of all, the fact discovery cutoff was not until November 14,  
8 2022, so plaintiffs still could have made the disclosure before the close of discovery – but  
9 more importantly, Acosta himself is in the best position to assess whether he feels that  
10 his work performance was affected, and by plaintiffs' own account, he was aware of that  
11 at least as early as July 2022. Accordingly, defendants' request to preclude the claim of  
12 future income loss and the late-produced documents is GRANTED.

13 2. Motion to seal

14 In connection with the discovery letter brief, plaintiffs filed a motion to seal. See  
15 Dkt. 97. Because the motion sought the sealing of entire exhibits, rather than seeking  
16 limited redactions of truly sensitive information, the court denied the motion to seal  
17 without prejudice. See Dkt. 100.

18 Plaintiffs have filed a revised motion to seal, but in addition to seeking the sealing  
19 of medical and mental health information, plaintiffs also seek the sealing of information  
20 related to plaintiff's employment, such as salary information and the names of products  
21 that plaintiff worked on. See Dkt. 101.

22 To the extent that plaintiffs seek the sealing of medical and/or mental health  
23 information, the motion to seal is GRANTED. However, to the extent that plaintiffs seek  
24 the sealing of information related to plaintiff Acosta's employment, the motion to seal is  
25 DENIED. Plaintiffs are directed to re-file the exhibits with only medical or mental health  
26 information redacted from public filing.

27 **CONCLUSION**

28 For the foregoing reasons, plaintiffs' motion for class certification (Dkt. 87) is

DENIED as to both the proposed damages class under Rule 23(b)(3) as well as the proposed injunctive relief class under Rule 23(b)(2). Defendants' discovery request to preclude evidence based on Acosta's future lost income (Dkt. 102) is GRANTED, and plaintiffs' motion to seal (Dkt. 101) is GRANTED in part and DENIED in part.

**IT IS SO ORDERED.**

Dated: April 7, 2023

/s/ Phyllis J. Hamilton

PHYLLIS J. HAMILTON  
United States District Judge