

BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANDREW J. BRIGIDA, et al.,
Plaintiffs,
vs.
ELAINE CHAO, Secretary,
U.S. Department of
Transportation,
Defendant.

Case Number 16-cv-2227
February 1, 2022
10:17 a.m.

TRANSCRIPT OF ORAL RULING
BEFORE THE HONORABLE DABNEY L. FRIEDRICH
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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202-354-3284

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P R O C E E D I N G S

(All participants present telephonically.)

COURTROOM DEPUTY: Your Honor, we are in Civil Action 16-2227, Andrew Brigida, et al., versus the United States Department of Transportation, et al.

If I can have the parties identify themselves for the record, beginning with counsel for the plaintiff.

MS. BROWN: Good morning, Your Honor. This is Zhonette Brown on behalf of the plaintiff. And with me on the line are the client and proposed class representative Mr. Brigida and Mr. Douglas-Cook, as well as my co-counsel Mr. Pearson, Mr. Trachman, and Mr. McDonald.

THE COURT: Good morning, all.

MR. THORP: Good morning, Your Honor. Galen Thorp for the Department of Justice. With me are my supervisor Carlotta Wells, my colleague Michael Drezner, and Agency counsel Elisabeth Fry.

COURTROOM DEPUTY: All right. Good morning, all.

So I scheduled this telephonic hearing to issue a ruling on the plaintiffs' motion for class certification. I realized it was going to take some time, given my current calendar, to issue a written opinion. So I thought it best to give you all an oral ruling so that this case could go ahead and proceed to the next stage.

For the reasons that I will explain, I am going to grant

1 the plaintiffs' motion. First, let me give some background.

2 Plaintiffs Andrew Brigida and Matthew Douglas-Cook assert
3 employment discrimination claims against the Federal Aviation
4 Administration under Title VII of the Civil Rights Act. In
5 their fourth amended complaint, they allege that in 2014 the FAA
6 instituted a new air traffic controller hiring process that had
7 a racially discriminatory purpose and that these changes
8 resulted in their employment applications being denied.

9 A brief procedural background, the Court denied the
10 plaintiffs' first motion for class certification on
11 September 13, 2019. The plaintiffs later moved to amend their
12 complaint, which the Court granted in part. The Court also
13 denied the defendant's motion to strike the class claim. On
14 May 12, 2021, the Court denied the defendant's motion to dismiss
15 the fourth amended complaint. The plaintiffs then filed a new
16 motion for class certification. The Court heard argument on the
17 motion on January 13 of this year, and the motion is now ripe
18 for review.

19 I will presume the parties' familiarity with the facts and
20 just discuss the plaintiffs' allegations to the extent they are
21 relevant to resolving the pending motion for class
22 certification.

23 Briefly turning to the legal standards, the parties seeking
24 class certification must affirmatively demonstrate his
25 compliance with requirements of Federal Rule of Civil Procedure

1 23. *Wal-Mart Stores v. Duke*, 564 U.S. 338 at 350. A district
2 court exercises broad discretion in deciding whether to permit
3 the class to proceed as a class action. *Hartman v. Duffy*,
4 19 F.3d at 1471. The district court must perform a rigorous
5 analysis to ensure compliance with Rule 32, *Wal-Mart* at 351.

6 First, the Court must determine whether the party seeking
7 class certification has met the burden of showing that each of
8 the four prerequisites of Federal Rule of Civil Procedure 23(a)
9 are satisfied.

10 Those prerequisites are, one, that the class is so numerous
11 that joinder of all members is impracticable; two, that there
12 are questions of law or fact common to the class; three, that
13 the claims or defenses of the representative parties are typical
14 of the claims or defenses of the class; and four, that the
15 representative parties will fairly and adequately protect the
16 interests of the class.

17 Second, the Court must determine whether the proposed class
18 is maintainable under at least one of Rule 23(b) subdivisions.

19 Turning next to the relevant allegations of the operative
20 complaint, in 1991, the FAA established the Air Traffic
21 Collegiate Training Initiative, AT-CTI or CTI, program, entering
22 into partnership agreements with colleges, universities, and
23 other schools to administer the AT-CTI program. That's at 21
24 through 25 of the fourth amended complaint.

25 By 2008, the FAA used a separate hiring process for

1 qualified CTI candidates. Paragraph 34. Graduates of CTI
2 institutions who are U.S. citizens, received their institution's
3 recommendations, were below a maximum age, and who passed a
4 valid air traffic aptitude test, known as the Air Traffic
5 Control Selection and Training Examination, or AT-SAT, were
6 eligible to apply for CTI-only job postings. It's paragraph 28
7 and 35.

8 The plaintiffs allege that CTI-qualified applicants
9 received hiring preference or were more likely to be hired for
10 ATCS positions, paragraphs 35 and 49, but after the FAA
11 conducted a barrier analysis for the ATCS positions to determine
12 whether the hiring process served to discourage hiring minority
13 applicants, paragraphs 71 through 79, the FAA implemented
14 several changes to its hiring process. It eliminated CTI-only
15 vacancy announcements, purged the inventory of CTI-qualified
16 candidates, and struck their AT-SAT scores and implemented a new
17 biographical questionnaire. That's at paragraph 178.

18 The plaintiffs and putative class members are graduates of
19 CTI programs who unsuccessfully applied under the new hiring
20 process in 2014. They allege the FAA violated Title VII in two
21 main ways.

22 First, the FAA allegedly purged its merit-based hiring
23 preference for qualified applicants for air traffic controllers
24 with the intent and purpose of benefiting African American air
25 traffic controller applicants and hindering the class members.

1 Paragraph 195.

2 Second, the FAA implemented a biographical questionnaire to
3 the 2014 air traffic controller hiring process with the intent
4 and purpose of benefiting African American air traffic
5 controller applicants and hindering the class members. 198.

6 The plaintiffs claim that in so doing the FAA refused to
7 accept the outcome of a race-neutral hiring process solely
8 because of the racial makeup of the successful applicants and in
9 its place created a new race-motivated hiring scheme.

10 Named plaintiffs Andrew Brigida and Matthew Douglas-Cook
11 are Caucasian and Native American men respectively who graduated
12 from CTI institutions in 2013 and passed the AT-SAT with the
13 highest score possible. That's paragraphs 153 to 54, 167
14 through 68. Both took and failed the biographical
15 questionnaire. 158, 160, 170 to 171. Neither were hired by the
16 FAA as an air traffic controller. Paragraphs 160, 172.

17 Together, they seek to certify a similar class of
18 non-African American CTI graduates who, as described in the
19 plaintiffs' motion at 13, one, by February 10, 2014, (a),
20 graduated from a CTI program of one of the 36 FAA-partnered CTI
21 institutions between 2009 and 2013 and, (b), passed the AT-SAT;
22 two, applied to be an ATCS trainee through the 2014 all sources
23 vacancy announcement but failed the biographical questionnaire
24 that was incorporated into the 2014 ATCS hiring process and,
25 therefore, was not hired; and three, have never been offered

1 employment as an FAA air traffic controller.

2 Excluded from the class are CTI graduates who are not U.S.
3 citizens as of February 10, 2014; who by February 21, 2014, had
4 reached 31 years of age or 35 if they had 52 consecutive weeks
5 of prior air traffic controller experience; three, whose
6 academic records as of February 21, 2014, explicitly stated that
7 they were ineligible to receive a letter of recommendation from
8 the CTI school; or four, whose AT-SAT scores had expired as of
9 February 21, 2014.

10 I will now discuss Rule 23's requirements. First,
11 numerosity, the plaintiffs have put forth evidence that the
12 proposed class has over 1,000 members, and the FAA does not
13 dispute this prong.

14 Second, with respect to commonality, under Rule 23(a)(2),
15 the plaintiff must establish that there are questions of law or
16 fact common to the class. The claims by class members must
17 depend on a common contention, and that common contention must
18 be of such a nature that it is capable of class-wide resolution,
19 which means that determination of its truth or falsity will
20 resolve an issue that is central to the validity of each one of
21 the claims in one stroke. *Wal-Mart*, 564 U.S. at 350.

22 Class members must have suffered the same injury for the
23 same reason, such as a uniform policy or practice that is
24 illegal. *D.L. v. District of Columbia*, 302 F.R.D. 1 at 12.

25 In a Title VII discrimination case, the Supreme Court has

1 recognized two methods of showing commonality. The plaintiff
2 can either identify a testing procedure or other company-wide
3 evaluation method that can be charged with bias or, two, provide
4 significant proof that an employer operated under a general
5 policy of discrimination. *Wal-Mart*, 564 U.S. at 353.

6 Here, the plaintiffs allege both. They allege that the
7 biographical questionnaire, which all class members took and
8 failed, was promulgated with discriminatory intent. Plus, they
9 allege that the elimination of the class members' prequalified
10 status as exemplified by the striking of their AT-SAT scores was
11 a common policy adopted for a discriminatory purpose that
12 applied to all class members at the same time and in the same
13 way.

14 The plaintiffs thus present common questions, whether the
15 AT-SAT scores were purged and whether the biographical
16 questionnaire was promulgated in order to benefit African
17 Americans to the detriment of all other groups. These questions
18 will generate common answers apt to drive the resolution of the
19 litigation. *Wal-Mart*, 564 at 350.

20 The government's arguments in defending against the claims
21 cut across the entire class. *J.D. v. Azar*, 925 F.3d at 1321.
22 In short, the Secretary contends that the FAA changed the 2014
23 hiring process and adopted the biographical questionnaire for
24 legitimate, nondiscriminatory reasons. That's the answer at 1
25 through 2.

1 The Secretary's arguments to the contrary do not persuade.
2 First, the Court disagrees that the plaintiffs' allegations that
3 the biographical questionnaire was biased are vague and
4 conclusory such that they can't establish commonality. Instead,
5 as the Court noted in its denial of the Secretary's motion to
6 dismiss, the plaintiffs claim that the FAA failed to validate
7 the biographical questionnaire -- that's the complaint at
8 paragraph 117 -- and that it awarded points to applicants in a
9 fashion untethered to the qualifications necessary to be an air
10 traffic controller. See memorandum opinion denying motion to
11 dismiss at 4, note 3.

12 These contentions raise an inference that the FAA
13 promulgated the biographical questionnaire with discriminatory
14 intent, and at this stage, the fact that not every biographical
15 question negatively affected the class or favored African
16 Americans does not matter. This is not a disparate impact case
17 in which plaintiffs must show that a neutral practice has
18 disproportionately affected -- had an adverse effect on
19 minorities. *Ricci v. DeStefano* at 557 U.S. at 577. Rather, the
20 plaintiffs allege disparate treatment and must instead establish
21 that the defendant had a discriminatory intent or motive for
22 taking the job-related action. That's also *Ricci* at 577. The
23 plaintiffs' proffered proof, which applies class-wide, is geared
24 toward that question.

25 On the merits, the government put forth its evidence

1 regarding the actual impact of the biographical questionnaire in
2 order to prove that the FAA lacked discriminatory intent, but
3 that does not preclude class certification.

4 The Court also finds that the inclusion of women and other
5 minorities in the class does not defeat commonality. The
6 plaintiffs repeatedly allege that the FAA acted to benefit
7 African Americans to the detriment of all other groups. See,
8 for example, the complaint at paragraphs 11 through 12. At this
9 stage, these allegations are presumed true. *Moore v.*
10 *Napolitano*, 926 F.Supp.2d at 27.

11 The Court recognizes that the evidence may show that the
12 FAA acted to benefit women and minorities only to the detriment
13 of white men. Indeed, the complaint at times said as much.
14 Even so, the presence of women and other minorities in the class
15 will not generate differing answers to the crucial question of
16 why was I disfavored. *Wal-Mart*, 564 U.S. at 352.

17 Each class member suffers the same injury when the hiring
18 process changed. His or her prequalified status and AT-SAT
19 score were struck and he or she failed the biographical
20 questionnaire. The alleged reason for this change in the hiring
21 process is to alter the racial makeup that resulted from the old
22 hiring process.

23 Even if the FAA actually intended to benefit a female or
24 minority class member, that member was still injured by the
25 FAA's allegedly race-motivated actions. Such was the case in

1 *Ricci*. In that case the City of New Haven chose not to certify
2 test scores for firefighters because of the statistical
3 disparity based on race, i.e. how minority candidates had
4 performed when compared to white candidates. That's at 579.

5 The City's actions were meant to benefit minorities. Yet,
6 one of the plaintiffs in that case was a Hispanic man whose
7 score wouldn't qualify him for a promotion. That's at 574.

8 Even so, the Supreme Court did not suggest that this
9 plaintiff was not injured because he was a member of the class
10 that the City intended to benefit. The Court concluded that the
11 City violated Title VII by discarding the test to achieve a more
12 desirable racial distribution of promotion-eligible candidates.
13 That's at 584. And the Hispanic plaintiff was injured in the
14 same way as the white plaintiff by the City's discriminatory
15 action.

16 The same would be true for this class should the plaintiffs
17 succeed in proving their claims.

18 For these reasons, including women and minorities in the
19 class does not pose a commonality problem.

20 As their final argument related to commonality, the
21 Secretary points out that many of the class members only
22 received qualified AT-SAT scores as opposed to well-qualified
23 and thus likely would not have been hired, regardless of the
24 change in the hiring policy.

25 The Court already considered and rejected this argument in

1 denying the Secretary's motion to strike the class claims. In
2 that ruling, the Court explained that all putative class members
3 from the most to the least well qualified suffered the legal
4 injury of being discriminated against on the basis of their race
5 when the FAA abolished a preferential program on which the
6 graduates had invested time and resources and on which they
7 reasonably relied. Memorandum opinion and order at 6.

8 These differences among class members may affect the amount
9 of damages that each plaintiff may ultimately receive, but they
10 do not impact liability or other class-wide remedies.

11 The Court thus finds that the plaintiffs have satisfied the
12 commonality requirement of Rule 23(a)(2).

13 Turning next to typicality, Rule 23(a)(3) requires a
14 finding that the claims or defenses of the representative
15 parties are typical of the claims or defenses of the class.
16 Typicality concerns the relationship between the
17 representative's individual claims and the class's claims rather
18 than the relatedness of the entire class claims. *J.D.*, 925 F.3d
19 at 1322.

20 This requirement is satisfied if each class member's claim
21 arises from the same course of events that led to the claims of
22 the representative parties and each class member makes similar
23 legal arguments to prove the defendant's liability. *Little v.*
24 *WMATA*, 249 F.Supp.3d at 420.

25 That is the case here. Each class member's claim arises

1 from the striking of their prequalified status and their AT-SAT
2 scores and from failing the biographical questionnaire. The
3 legal argument that the FAA changed the hiring process because
4 of race is the same as well.

5 The typicality and commonality questions inquiry still tend
6 to merge. *General Telephone Company of Southwest v. Falcon*,
7 457 U.S. at 157, Note 13. Thus, the Secretary raises some of
8 the same arguments against typicality as they did against
9 commonality, and the Court will reject them for the reasons
10 given already. The presence of women and minorities do not
11 defeat typicality, as this prong is not destroyed merely by
12 factual variations. *Wagner v. Taylor*, 836 F.2d at 591. Nor
13 does it matter that the named plaintiffs scored well qualified
14 on the AT-SAT while other class members scored only qualified.

15 The FAA's defenses specific to these individual plaintiffs
16 will have little, if any, relevance to the outcome of the
17 overall but not specific liability and injunctive relief phases
18 of this litigation. *Little*, 249 F.Supp.3d at 420.

19 The same goes for the fact that the class representatives
20 did not reapply to a controller position after the 2015
21 congressional legislation, unlike many of the class members.
22 Again, this factual variation goes to damages and not to
23 liability and injury. Even though some class members applied
24 for the 2012 hiring vacancy in addition to the 2014 vacancy,
25 they still suffered the same injury as the class

1 representatives. Namely, they were not hired in 2014 after the
2 FAA allegedly changed the hiring process for racially
3 discriminatory reasons.

4 The Secretary raises an important point, and that is that
5 the class includes those who graduated as far back as 2009 and
6 2010 who would not have been eligible for selection under the
7 legacy hiring process in 2014 unless they had extended their
8 eligibility. If a class member was not eligible to be hired
9 under the old hiring process, he or she was not injured by the
10 FAA's actions and thus cannot be a member of the class.

11 The plaintiffs contend that this issue is addressed by the
12 class definition only encompassing those with active AT-SAT
13 scores. But it's not clear to the Court that a person who had
14 an active AT-SAT score had also necessarily extended his or her
15 eligibility to apply under the legacy process.

16 So the plaintiffs must ensure moving forward that the class
17 only include those 2009 and 2010 graduates who had affirmatively
18 extended their eligibility to apply to CTI-only announcements in
19 2014.

20 Subject to this clarification, the class satisfies the
21 typicality requirement.

22 Under Rule 23(a)(4), the representative parties must also
23 fairly and adequately protect the interests of the class. The
24 named representative must not have antagonistic or conflicting
25 interests with the unnamed members of the class, and the

1 representative must appear able to vigorously prosecute the
2 interests of a class through qualified counsel. *Twelve John*
3 *Does v. District of Columbia*, 117 F.3d at 575.

4 Class counsel have extensive civil litigation experience,
5 including in class actions and civil rights lawsuits. The Court
6 has no trouble finding them qualified, and the Secretary does
7 not dispute this.

8 Instead, the Secretary argues that the presence of women
9 and other minorities might create conflicting or antagonistic
10 interests between the class representatives and the unnamed
11 class members.

12 It is true that if the FAA intended to benefit women and
13 other minorities, that it is possible that some members of these
14 groups would not support the representatives' requested relief,
15 but the class members all suffered an injury allegedly because
16 of the FAA's discriminatory actions. And there might often be a
17 possibility that some absent class members possess conscientious
18 beliefs running counter to an interest in redressing an alleged
19 infringement of their rights. *J.D.*, 925 F.3d at 1317.

20 The D.C. Circuit in *J.D.* affirmed the certification of a
21 class of all pregnant, unaccompanied, minor children in the
22 custody of the federal government where the class
23 representatives sought to enjoin a policy that prohibited class
24 members from obtaining a previability abortion. That's at 1305.
25 The class representatives who sought abortions were deemed

1 adequate even though many absent class members likely opposed
2 abortion on ideological grounds and, thus, would have supported
3 the government policy. That's 13 through 20.

4 The Court highlighted that -- the class certified in
5 *Gratz v. Bollinger*, 539 U.S. 244, a class challenging a
6 university affirmative action program. In that case the class
7 included only those who had been denied admission, in other
8 words those who suffered an injury under the affirmative action
9 program. Even so, the class surely included those who supported
10 affirmative action. *J.D.*, 925 F.3d at 1318 through 19.

11 Here, even if the class includes women and other minority
12 class members who support the FAA's actions, that does not pose
13 a barrier to their inclusion in this class, so long as they were
14 injured by the change in the employment process. The Court can
15 also craft an injunctive relief to avoid obvious conflicts among
16 the class representatives and female and minority class members.
17 For instance, it's unlikely that the Court would enjoin the FAA
18 from involving special interest groups associated with protected
19 classifications from involvement in designing hiring
20 methodology. See fourth amended complaint, paragraph 206.

21 Moreover, unlike in the cases cited by the Secretary, the
22 class representatives here have not accused absent minority or
23 female class members of having received preferred treatment.
24 *Cf. Moore v. National Association of Securities Dealers, Inc.*,
25 181 Westlaw 274 at 7.

1 In contrast, the class representatives in this class allege
2 that the FAA intended for African Americans to uniquely benefit.

3 In its opposition brief at 31, the Secretary has raised for
4 the first time the argument that Mr. Brigida has not exhausted
5 his claim about the striking of the AT-SAT score. And the
6 Secretary argues that Brigida, therefore, cannot adequately
7 represent the class.

8 The Court will not resolve this argument at the class
9 certification stage. Based on the limited briefing on this
10 issue, the Court is not convinced that the claim is not
11 exhausted, and that the defense bears the burden of pleading and
12 proving the affirmative defense. See *Bowden v. United States*,
13 106 F.3d at 437.

14 The Secretary points to Mr. Brigida's declaration that he
15 learned of this change in the hiring process in early January.
16 See Brigida declaration at paragraph 27. Yet, the complaint
17 alleges that the FAA told Mr. Brigida about the changes on
18 January 27, 2014. That's at paragraph 157 of the complaint.

19 Further, the Court expresses no view on whether the
20 plaintiffs are correct that the Secretary waived its defense,
21 given that the information in Mr. Brigida's declaration was
22 included in the plaintiffs' first motion for class certification
23 back in 2018. The Secretary previously raised an exhaustion
24 defense in its earlier motion opposing leave to amend and to
25 strike the class claims but did not include this argument.

1 To resolve this issue, the Court will need additional
2 briefing, and it would be inappropriate to decide it now, given
3 that it does not preclude class certification. Mr. Brigida
4 exhausted the biographical questionnaire claim, and all putative
5 class members suffered from taking and failing the biographical
6 questionnaire. See memorandum opinion and order at 3 through 4.
7 Adequacy is thus satisfied.

8 With respect to ascertainability, the D.C. Circuit has not
9 yet ruled whether Rule 23 contains such a requirement for class
10 certification. *J.D.*, 925 F.3d at 1320. But even if it is
11 required, the Court finds that the proposed class is
12 ascertainable as it is readily discernible by objective
13 criteria. *J.D.* at 1319.

14 If putative class members do not have their ineligibility
15 for recommendation from a CTI school noted on their transcript,
16 they are included in the class. But the Secretary may have
17 individual defenses against such class members in the damages
18 phase if it turns out they likely would not have received the
19 recommendation.

20 With the proposed class meeting Rule 23's requirements, the
21 Court will next turn to Rule 23(b).

22 The plaintiff seeks certification for a liability
23 determination and declaratory and injunctive relief under
24 23(b)(2) and for damages and back pay under 23(b)(3).
25 Alternatively, the plaintiffs seek certification of an issues

1 class for liability, declaratory, and injunctive relief under
2 Rules 23(b) (2) and (c) (4), while leaving the damages and
3 individual equitable relief calculations for individualized
4 hearings at a later stage.

5 The Court finds that the latter course is the most
6 appropriate here.

7 First, Rule 23(b) (2) is satisfied. A class action under
8 this rule may be maintained if the parties opposing the class
9 has acted or refused to act on grounds that apply generally to
10 the class, so that final injunctive relief or corresponding
11 declaratory relief is appropriate respecting the class as a
12 whole. That's Rule 23(b) (2).

13 Civil rights cases against parties charged with unlawful,
14 class-based discrimination are prime examples of what (b) (2) is
15 meant to capture. *Wal-Mart*, 564 U.S. at 361.

16 Here, the complaint alleges the FAA acted on grounds that
17 apply generally to the class. It purged class members'
18 prequalified status and their AT-SAT scores and administered the
19 biographical questionnaire, which each member failed. A
20 declaratory judgment that these changes violated Title VII would
21 provide relief to each member of the class. *Wal-Mart* at 350.

22 The Court also finds that an injunction applicable to the
23 entire class could be fashioned upon a finding of liability.
24 *Little*, 249 F.Supp.3d at 423. For instance, the Court could
25 order the FAA to grant a hiring preference to the class members

1 for FAA positions. This injunction would still apply class-
2 wide, even if not every class member applied for a position or
3 is ultimately hired after being given a preference.

4 But the Court is unsure that the questions of law or fact
5 common to class members predominate over any questions affecting
6 only individual members and that a class action is superior to
7 other available methods for fairly and efficiently adjudicating
8 the controversy. Rule 23(b)(2).

9 The Court is most concerned about predominance and that
10 individual damage questions will overwhelm the common issues.
11 *Little*, 249 F.Supp.3d at 425. For instance, the class members
12 differ in terms of the likelihood that they would have been
13 hired under the CTI-only hiring process in terms of their AT-SAT
14 score, whether they would have passed the medical security and
15 suitability screening, et cetera, and in the mitigation efforts.
16 See *Houser v. Pritzker*, 28 F.Supp.3d at 253, noting that the
17 plaintiffs' proposed damages model is vastly overinclusive as it
18 includes individuals who are not entitled to back pay under the
19 proposed theory of liability because they would not have been
20 hired even absent the alleged discrimination.

21 The Court will thus deny certification under Rule 23(b)(2).

22 But 23(c)(4) gives the Court discretion to certify a class
23 in particular issues and resolve others on an individual basis,
24 so long as the proposed class satisfies the requirements of Rule
25 23(a) and (b) with respect to liability.

1 As explained, the proposed class satisfies the requirements
2 of 23(a) and (b) (2) as to liability and injunctive and
3 declaratory relief. Certifying this class will materially
4 advance the litigation and make the proceedings more manageable.
5 *Houser*, 28 F.Supp.3d at 254.

6 Therefore, the Court will follow Judge Collyer's approach
7 in *Little* and certify a liability, injunctive, and declaratory
8 relief class under Rule 23(b) (2) and (c) (4) and leave the
9 damages and back pay determinations for individual
10 determinations at a later stage. That is *Little* at 249
11 F.Supp.3d at 425. See also *Houser*, 28 F.Supp.3d at 254, in
12 which that Court stated the Court could appoint a special master
13 to preside over individual damages proceedings or could
14 decertify the class after the liability phase and provide notice
15 to plaintiffs as to how to proceed to prove damages. There's no
16 need to decide at this time which avenue to pursue.

17 So for these reasons, the Court will grant the plaintiffs'
18 motion for class certification.

19 As a reminder, the Court did set in a minute order that the
20 parties would have 21 days to file a joint status report
21 proposing a schedule for discovery.

22 All right. Any questions?

23 And if I misspoke, I'm sorry. I'm denying under 23(b) (3).
24 That's the ruling of the Court.

25 Anything we need to address right now?

1 MS. BROWN: Not from the plaintiffs' side, Your Honor.

2 We will file our status report in 21 days.

3 THE COURT: Okay. All right. Mr. Thorp?

4 MR. THORP: The same for the government.

5 THE COURT: Okay. All right. Thank you, all.

6 (Proceedings adjourned at 10:48 a.m.)

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1 CERTIFICATE OF OFFICIAL COURT REPORTER

2
3 I, Sara A. Wick, certify that the foregoing is a
4 correct transcript from the record of proceedings in the
5 above-entitled matter.
6

7 Please Note: This hearing occurred during the
8 COVID-19 pandemic and is, therefore, subject to the
9 technological limitations of court reporting remotely.
10

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12 /s/ Sara A. Wick

March 12, 2022

13 SIGNATURE OF COURT REPORTER

DATE
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