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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KAREN CRAFT, et al.,

Plaintiffs,

v.

COUNTY OF SAN BERNARDINO, et
al.,

Defendant(s).

CASE NO. EDCV 05-00359 SGL (OPx)

ORDER GRANTING MOTION FOR
CLASS CERTIFICATION

This matter is before the Court on plaintiffs' Motion for Class Certification, filed on September 8, 2006. This matter was heard on October 2, 2006. As set forth more fully below, the Court **GRANTS** plaintiff's Motion and certifies four classes in this action, as well a number of sub-classes.

I. Background

The named plaintiffs in this action seek to represent thousands of individuals who were and are, while in the custody of the San Bernardino County Sheriff's Department ("SBSD") pursuant to SBSD's policies and/or practices, subjected to strip searches and/or visual body cavity searches upon their arrest, transfer between facilities, and transport to court appearances. Plaintiffs also challenge the manner in which such searches were and are conducted.

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II. Class Action Requirements

Plaintiffs seek to have classes and sub-classes certified pursuant to Rule 23(a)(1)-(4) and 23(b)(3) of the Federal Rules of Civil Procedure. Plaintiff bears the burden of proof on class certification requirements. Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir.1992). Prior to class certification, plaintiffs must first define an ascertainable and identifiable class. Schwartz v. The Upper Deck Co., 183 F.R.D. 672, 679 (S.D.Cal.1999). Once an ascertainable and identifiable class has been defined, plaintiffs must show that they meet the four requirements of Rule 23(a), and the two requirements of Rule 23(b)(3). In re Beer Distribution Antitrust Litigation, 188 F.R.D. 557 (N.D.Cal.1999).

In ruling on a motion for class certification, the Court is not required to determine the merits of any claim or defense. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 94 S.Ct. 2140, 40 L.Ed.2d 732 (1974). However, evaluation of many of the questions entering into determination of class action questions (including adequacy of representation) is intimately involved with the merits of the claim. Coopers & Lybrand v. Livesay, 437 U.S. 463, 469 n. 12, 98 S.Ct. 2454, 57 L.Ed.2d 351 (1978).

A. Rule 23(a) Requirements

Rule 23(a) establishes four prerequisites for every class action: (1) The class must be so numerous that joinder of all members is impracticable (the numerosity requirement); (2) there must be questions of law or fact common to the class (the commonality requirement); (3) the claims or defenses of the representative parties must be typical of the claims or defenses of the class (the typicality requirement); and (4) the representative parties must fairly and adequately protect the interests of the class (the adequacy of representation requirement). General Telephone Company of the Southwest v. Falcon, 457 U.S. 147, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982); Fed. R. Civ. P. 23(a)(1)-(4).

1 **1. Numerosity**

2 “The numerosity requirement requires examination of the specific facts of
3 each case and imposes no absolute limitations.” General Tel. Co. of the Northwest,
4 Inc. v. Equal Employment Opportunity Commission, 446 U.S. 318, 330, 100 S. Ct.
5 1698, 1706 (1980). The Ninth Circuit has affirmed district court rulings finding the
6 numerosity requirement had been satisfied where there were only 27 members of
7 the proposed class. See Tietz v. Bowen, 695 F. Supp. 441 (N.D. Cal. 1987), aff’d
8 without op., 892 F.3d 1046 (9th Cir. 1990).

9 Here, the Court easily concludes that the numerosity requirements are met.
10 This action involves claims based on the practices at two SBSD facilities. By the
11 SBSD’s own account, as posted on its web site, one of the facilities, West Valley
12 Detention Center (“West Valley”) takes in approximately 50,000 individuals per
13 year. The other facility, Central Detention Center (“CDC”), takes in approximately
14 15,000 individuals per year. According to plaintiff’s theory of the case, the inmates
15 at these facilities are subjected to strip searches pursuant to blanket policy,
16 practice, or custom. The Court is satisfied that, among those tens of thousands of
17 inmates, a sufficient number of class members exist to satisfy the numerosity
18 requirement. This is so even taking into account that the plaintiffs’ Motion seeks
19 certification of a number of classes.

20 **2. Commonality and Typicality**

21 The commonality and typicality requirements overlap and are therefore
22 considered together. The commonality requirement will be satisfied if the named
23 plaintiffs share at least one question of fact or law with the grievances of the
24 prospective class. Baby Neal for and by Kanter v. Casey, 43 F.3d 48, 57 (3d Cir.
25 1994).

26 The typicality requirement of Rule 23(a) is met if “the claims or defenses of
27 the representative parties are typical of the claims or defenses of the class.” Fed. R.
28 Civ. P. 23(a)(3). This is a permissive standard, and “representative claims are

1 'typical' if they are reasonably co-extensive with those of absent class members;
2 they need not be substantially identical." Hanlon v. Chrysler Corp., 150 F.3d 1011,
3 1020 (9th Cir.1998). To satisfy the typicality requirement, "a class representative
4 must be part of the class and 'possess the same interest and suffer the same injury'
5 as the class members." General Tel. Co., 457 U.S. at 156, 102 S.Ct. 2364.

6 The typicality requirement is satisfied "if each class member's claim arises
7 from the same course of events that led to the claims of the representative parties
8 and each class member makes similar legal arguments to prove the defendant's
9 liability." In re Lorazepam & Clorazepate Antitrust Litigation, 202 F.R.D. 12, 21
10 (D.D.C.2001).

11 Here, both the commonality and typicality requirements are satisfied.
12 Plaintiff allege they suffered a common injury by virtue of their being subjected to
13 the strip searches and/or visual body cavity searches, and they allege they were
14 subjected to these searches pursuant to a blanket policy or practice of SBSD.
15 Whether, and to what extent, such policies and/or practices are followed is a
16 question of fact common to the class members. Whether, and to what extent, such
17 policies and/or practices are unlawful or unconstitutional, is a question of law
18 common to the class members. It is clear that the named plaintiffs allege that they
19 were treated just like all the other inmates were treated, rendering their claims
20 typical of those of the class members as a whole.

21 **3. Adequacy of Representation**

22 To satisfy the adequacy of representation requirement, "the representative
23 parties [must] fairly and adequately protect the interests of the class." Fed. R. Civ.
24 P. 23(a)(4). Due process concerns require that absent class members be afforded
25 adequate representation before they are subject to entry of a binding judgment.
26 Hanlon, 150 F.3d at 1020 (citing Hansberry v. Lee, 311 U.S. 32, 42-43, 61 S.Ct.
27 115, 85 L.Ed. 22 (1940)).

28 Determining adequacy of representation requires resolution of two questions:

1 (1) Do the named plaintiffs and their counsel have any conflicts of interest with
2 other class members? And (2) will the named plaintiffs and their counsel prosecute
3 the action vigorously on behalf of the class? Hanlon, 150 F.3d at 1020.

4 Alternatively, the Ninth Circuit has stated that the adequacy of representation
5 requirement is met when the representatives fairly and adequately protect the
6 interests of the class. Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v.
7 Las Vegas Sands, Inc., 244 F.3d 1152, 1162 (9th Cir. 2001), cert. denied, 534 U.S.
8 973, 122 S.Ct. 395 (2001). Adequate representation depends on the qualifications
9 of counsel, the absence of antagonism, a sharing of interests between
10 representatives and absentees, and the unlikelihood that the suit is collusive. Id.

11 The essence of one of defendants' arguments that plaintiffs have failed to
12 meet this factor may be fairly characterized as follows: The named plaintiffs are not
13 the type of individuals that are best suited to representing others. Defendants point
14 out that a number of the class representatives have used aliases and have been
15 convicted of felonies and crimes such as burglary and forgery. However, this would
16 be the situation in any case in which jail or prison conditions are challenged. Model
17 citizens, such as those defendants suggest would be the only adequate class
18 representatives, generally do not make up a large proportion of the jail population.

19 Defendants also argue that some plaintiffs' accounts of their incarceration do
20 not match up with defendants' records. Although such facts, if decided against
21 plaintiffs, could render them ineligible to represent a certain class or sub-class, the
22 Court is satisfied, at this stage in the proceeding, that each class and sub-class has
23 at least one named plaintiff who can adequately represent it, and whose account of
24 his or her incarceration is not called into question by defendants.

25 Plaintiffs have satisfied the Rule 23(a) requirements for class certification.

26 **B. Rule 23(b)(3) Requirements**

27 Rule 23(b)(3) requires a finding by the court (1) that the questions of law or
28 fact common to the members of the class predominate over any questions affecting

1 only individual members, and (2) that a class action is superior to other available
2 methods for the fair and efficient adjudication of the controversy.

3 Certification under Rule 23(b)(3) is appropriate "whenever the actual
4 interests of the parties can be served best by settling their differences in a single
5 action." Hanlon, 150 F.3d at 1022 (citation omitted). Rule 23(b)(3) certification
6 requires that common questions predominate over any questions affecting only
7 individual members, and that class resolution be superior to other methods for the
8 fair and efficient adjudication of the controversy. Id.

9 **1. Questions of Law or Fact Predominate**

10 The predominance of common questions of fact or law is satisfied by
11 plaintiffs' showing of "a common nucleus of operative facts." Siegel v. Chicken
12 Delight, Inc., 271 F.Supp. 722, 726 (N.D. Cal.1967). In order to determine
13 predominance, the Court looks to whether the focus of the proposed class action
14 will be on the words and conduct of the defendants rather than on the behavior of
15 the individual class members. See e.g., Advocate Health Care v. Mylan
16 Laboratories, Inc., 202 F.R.D. 12, 29 (D.D.C. 2001); Iron Workers Local No. 17 Ins.
17 Fund v. Philip Morris, Inc., 182 F.R.D. 523, 539-40 (N.D. Ohio 1998).

18 This requirement is clearly met here. The focus of this lawsuit is on the
19 actions of the defendants; specifically, the main focus from a factual standpoint will
20 be to ascertain what are the SBSD's policies and practices regarding strip search
21 and/or visual body cavity searches. The legality and constitutionality of those
22 policies and practices, once ascertained, will be the predominate legal issues. Any
23 individual assessments will be subordinate issues, and will be most likely limited to
24 whether and when plaintiffs were subjected to the policies and practices and what
25 damages they suffered as a result.

26 Defendants argued in their opposition, without elaboration, that "after
27 adjudication of the class-wide issues, plaintiffs must still introduce a great deal of
28 individualized proof or argue a number of individualized legal points to establish

1 most or all of the elements of their individual claims," and that therefore "the claims
2 are not suitable for class certification" Opp at 11. When pressed on this point
3 at oral argument, defendants were unable to provide further elaboration or to
4 explain how the "individualized proof" and "individualized legal points" should
5 persuade the Court why it should not find the predominance requirement satisfied.

6 Therefore, the Court finds that the predominance requirement of 23(b)(3)
7 has been satisfied.

8 **2. Superiority of Class Action Mechanism**

9 Plaintiffs must also show that a class action is superior to other available
10 methods for the fair and efficient adjudication of the controversy. The superiority
11 inquiry requires a determination of whether the objectives of the particular class
12 action procedure will be achieved in the particular case. Hanlon, 150 F.3d at 1023
13 (citation omitted).

14 Rule 23(b)(3) sets forth a number of factors the Court should consider in
15 determining whether a class action is superior to other available methods. Those
16 are: (1) the interest of members of the class in individually controlling the
17 prosecution or defense of separate actions; (2) the extent and nature of any
18 litigation concerning the controversy already commenced by or against members of
19 the class; (3) the desirability or undesirability of concentrating the litigation of the
20 claims in the particular forum; and (4) the difficulties likely to be encountered in the
21 management of a class action.

22 Addressing the first factor, it is not likely that the interest of members of the
23 class in individually controlling the prosecution of separate actions is high. The
24 class members, all of whom have been arrested and incarcerated sometime in the
25 last three years, are not likely to have the means to prosecute individual actions.
26 To the extent some class members may have the will and the means to undertake
27 such a task, the possibility that they may opt-out of the present action alleviates any
28 concerns the Court may have on this issue.

1 The second factor also favors certification as there is no indication that any
2 class members have instituted actions similar to the present one.

3 The third factor clearly favors certification. This action is against the County
4 of San Bernardino, which is located in this district. Because the plaintiffs were
5 arrested, incarcerated, and appeared in court in this geographic area, it is likely that
6 the vast majority of the class members reside in this geographic area as well. The
7 convenience of all parties favor concentration in this district. This case is well-
8 suited for class-action disposition, and all the parties are located nearby; therefore
9 concentrating the litigation in this Court is desirable.

10 The fourth factor also favors certification. There are, of course, difficulties in
11 management of all class actions, especially a class action that involves thousands
12 — perhaps tens of thousands or hundreds of thousands — class members.
13 However, the Court is persuaded that proper management of the present class will
14 proceed relatively smoothly with the cooperation of counsel and parties on both
15 sides. The Court is particularly persuaded by plaintiffs' argument that defendants'
16 database could be used to track the movement and addresses of potential class
17 members.

18 Plaintiffs have satisfied the Rule 23(b) requirements for class certification.

19 **III. Classes and Sub-Classes Certified**

20 Accordingly, for the reasons set forth above, the Court certifies the following
21 classes and sub-classes:

22 **Class One (Pre-Arrestment Arrestees):**

23 Subject to further refinement pursuant to three sub-classes described below,
24 all persons who, from May 3, 2003, to the time of judgment or settlement of the
25 case (or to when the challenged practice ceases), (1) were in SBSD custody,
26 (2) were booked on a charge (misdemeanor or felony) not involving drugs or
27 violence, (3) were subjected to a strip search and/or a visual body cavity search
28 without reasonable suspicion or probable cause to believe that the individual was in

possession of weapons or drugs, (4) all pursuant to a blanket policy, practice and custom of strip searching all arrestees upon admission to Type 2 facility.

Class One, Sub-Class A: Those individuals who were taken to West Valley or CDC upon arrest. Class representatives: Karen Craft and Veronica Williams.

Class One, Sub-Class B: Those individuals who were transferred to West Valley or CDC from another San Bernardino jail before arraignment. Class Representative: Elroy Hardy.¹

Class One, Sub-Class C: Those individuals who were transferred to CDC from a jail other than those operated by San Bernardino. Class Representatives: Rosemary Ryan and Ranette Sanchez.

Class Two (Court Returns Entitled to Release):

All persons who, from May 3, 2003, to the time of judgment or settlement of the case (or to when the challenged practice ceases), (1) were in SBSD custody, (2) were taken from jail to court, (3) became entitled to release after going to court, and (4) were subjected to a strip search and/or a visual body cavity search before release, pursuant to a blanket policy, practice and custom of strip searching court returns. Class Representatives: Betty Welch and Veronica Williams.

Class Three (Challenge to Manner in Which Searches are Conducted):²

All persons who, from May 3, 2003, to the time of judgment or settlement of the case (or to when the practice ceases), (1) were in SBSD custody, and who were (2) pursuant to a blanket policy, practice, or custom, (3) subjected to a strip search

¹ As argued by defendants, Georgina Frost and Betty Welch are not adequate representatives of a class of pre-arraignment detainees, as they were arrested for failure to appear and sentenced to time served and probation, respectively. There is no evidence they were arraigned.

² Class Three is a combination of plaintiffs' proposed classes Three and Four. The distinction between those proposed classes was premised on a legal argument based on Cal. Penal Code § 4030(b), which places limits on strip searches and body cavity searches as applied to individuals "arrested for infraction or misdemeanor offenses." *Id.* By combining these classes, the Court does not intend to preclude plaintiffs' claims based on this statute.


1 and/or a visual body cavity search in an unreasonable, unlawful, and/or
2 unconstitutional manner, including being searched in the presence of persons of
3 the opposite sex, being searched in an overly intrusive, aggressive, or abusive
4 manner, being searched in the presence of persons not necessary to the search,
5 and being searched in an unhygienic manner. Class Representatives: Karen Craft,
6 Ranette Sanchez, Rosemary Ryan, Georgina Frost, Elroy Hardy, Betty Welch, and
7 Veronica Williams.

8 **Class Four (Transports):**

9 All persons who, from May 3, 2003, to the time of judgment or settlement of
10 the case (or to when the practice ceases), (1) were in SBSB custody, (2) were
11 taken from jail to court or another jail, and pursuant to a blanket policy, practice and
12 custom regarding all prisoners to be transported, (3) were subjected to a strip
13 search and/or a visual body cavity search before transport. Class Representatives:
14 Karen Craft, Ranette Sanchez, Rosemary Ryan, Georgina Frost, Elroy Hardy, Betty
15 Welch, and Veronica Williams.

16 IT IS SO ORDERED.

17 DATE: 10-11-06

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19 STEPHEN G. LARSON
20 UNITED STATES DISTRICT JUDGE
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