UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EVERETT HADIX, et al.,

Plaintiffs,

v.

PATRICIA CARUSO, *et al.*,

Defendants.
_____/

CASE NO. 4:92-CV-110

HON. ROBERT J. JONKER

OPINION AND ORDER

This matter is before the Court on Plaintiffs' Motion to Add New Named Plaintiffs and Supplemental Motion to Add New Named Plaintiffs (docket ## 3034, 3037). Based on its review of the record, and after thoroughly reviewing the parties' motion papers, hearing oral argument on the motions, and carefully considering the applicable law, the Court now decides the motions in favor of Plaintiffs.

Factual and Procedural Background

This prisoner civil rights class action began in 1980, when twenty-three inmates filed suit to protest conditions of confinement at the State Prison of Southern Michigan – Central Complex (the "SPSM-CC"). The class was certified in August, 1981 and defined as "all prisoners who are, or will be, confined at the [SPSM-CC]." The Court approved a proposed Consent Decree on May 13, 1985. In approving the Consent Decree, the Court noted that structural changes would likely occur in the SPSM-CC and might involve renaming parts of that facility. Therefore, the Court clarified that "the facility at issue in this lawsuit, [the SPSM-CC], including the Reception and Guidance Center, shall

be defined as 'all areas within the walls of . . . the [SPSM-CC] at the time this cause commenced and all areas which will supply support services under the provisions of this Consent Judgment, e.g. food service and Boiler Plant operations.'" (Order Accepting Consent J., docket # 213, *Hadix v. Johnson*, CA No. 80-73581.) Under the Consent Decree, the Court retained jurisdiction to enforce the terms of the judgment. (*Id.*)

The case has changed shape dramatically since it began. Among other things, the primary long-term housing units of the SPSM-CC have closed. The number of class members has diminished as a result. The nature of the class has also changed. At the outset of the case, the class consisted mainly of prisoners housed long-term in the SPSM-CC. Now the class consists mainly of prisoners housed temporarily in a *Hadix* facility before moving to the correctional facilities where they will be housed longer-term. As *Hadix* prisoners move to non-*Hadix* facilities, they cease to be members of the *Hadix* class. The focus of the case has also narrowed. Most of the Consent Decree provisions have been resolved and closed. Only certain subsections, all having to do with medical care, remain open at this point.

All twenty-three of the original named *Hadix* plaintiffs have died. A single named plaintiff, Clarence Moore, most recently represented the entire class. However, Mr. Moore is no longer housed in a *Hadix* facility, and therefore no longer a member of the class. Plaintiffs now seek to name new class representatives under FED. R. CIV. P. 24(a). Plaintiffs move to intervene Mark Gilman, 692705; Deandre Benson, 532243; Richard Girard, 49744; Mark Litwalk, 429994; Steven Hines, 230467; and Arnold Elijah, 140333, under FED. R. CIV. P. 24(a). According to Plaintiffs, Mr. Gilman is confined in Duane Waters Health Center ("DWH"); Mr. Benson is confined in the Reception and Guidance Center ("RGC"); Mr. Girard is confined in C Unit; and Messrs. Litwalk,

Hines, and Elijah are all confined in Cellblock 3 of the Egeler Correctional Facility. Plaintiffs assert that each of the proposed named plaintiffs has non-routine medical needs. Defendants call into question whether each of these proposed named plaintiffs remains at the location Plaintiffs specify. (docket # 3052 at 7.) For the purpose of deciding Plaintiffs' motion, the gravamen of which concerns whether inmates housed in RGC, DWH, C Unit, and Cellblock 3 are members of the *Hadix* class, it is unnecessary to resolve this factual dispute. Because inmates are no longer housed long-term in the SPSM-CC, it is to be expected that membership in the *Hadix* class will be temporary and that turnover in the named representatives will occur.

Legal Standard

It is a prerequisite to maintaining a class action that the named representatives "fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a)(4). Affording plaintiffs the opportunity to provide substitution of adequate class representatives "is the common practice in cases where, although the current named representatives are inadequate, adequate representatives are known and available as substitutes." *Little Caesar Enterprises, Inc. v. Smith*, 172 F.R.D. 236, 244 at n. 3 (E.D. Mich. 1997). "It is firmly established that where a class action exists, members of the class may intervene or be substituted as named plaintiffs in order to keep the action alive after the claims of original named plaintiffs are rendered moot." *Graves v. Walton County Bd. of Educ.*, 686 F.2d 1135, 1138 (5th Cir. 1982) (citing, *inter alia*, *Rogers v. Paul*, 382 U.S. 198, 199 (1965)).

Under Rule 24(a)(2), if a timely motion is filed,

> the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Defendants challenge the propriety of substituting the proposed new class representatives on only one basis: namely, Defendants assert that the proposed new class representatives are not members of the *Hadix* class because, Defendants claim, the facilities in which they are housed are not *Hadix* facilities.

Discussion

The core issue Plaintiffs' motions raise is whether DWH, the RGC, C-Unit, and Cellblock 3 are *Hadix* facilities. If the answer is yes, then the inmates confined within those facilities are members of the *Hadix* class, and the Consent Decree applies to them. If not, then it would seem futile to add these new plaintiffs. The question turns on the definition of the *Hadix* facilities established in the Order approving the Consent Decree. That order explicitly describes the RGC as a *Hadix* facility. Defendants emphasize that RGC has moved to a different area within the walls of the SPSM-CC, but this does not change the analysis; it is undisputed that RGC remains within the walls of the original SPSM-CC. Under the Court's Order approving the Consent Decree, RGC remains a *Hadix* facility. Moreover, the RGC continues to perform the same fundamental function it did at the time of the Consent Decree. Cellblock 3, similarly, is both part of RGC and within the walls of the original SPSM-CC. It too is a *Hadix* facility. DWH provides medical care to inmates housed in RGC. DWH thus supplies a support service to a *Hadix* facility and is itself a *Hadix* facility. Finally, the parties do not dispute that C-Unit, an extended care facility, supports DWH and RGC. Accordingly, inmates confined in RGC, DWH, C-Unit, and Cellblock 3 must at this time be treated as part of the *Hadix* class, under the terms of the class certification and the Order approving the Consent Decree.

The proposed intervenors, as members of the *Hadix* class on this record, are positioned to fairly and adequately protect the interests of the class, as required by Rule 23(c)(4). *Graves*, 686 F.2d at 1138. The proposed intervenors also satisfy all the requirements of Rule 24(a)(2) on this record. Defendants have not challenged timeliness. It is undisputed that the proposed named plaintiffs claim interests relating to the subject of the action, the areas of medical care still open under the Consent Decree. Indeed, any member of the *Hadix* class could reasonably claim such interests. Disposition of the case may as a practical matter impair or impede their interests, and in the absence of a named plaintiff, existing parties do not adequately represent that interest. For these reasons, intervention is appropriate.

Next Steps

Defendants argue that because inmates are no longer housed long-term in the SPSM-CC, circumstances have changed so fundamentally that the *Hadix* class no longer exists, and there is no need to name new class representatives. A response to a motion to intervene is not the proper vehicle for such an argument. In effect, Defendants are seeking a modification of the Consent Decree under FED. R. CIV. P. 60(b). If Defendants wish to pursue such a modification based upon "a significant change either in factual conditions or in law[,]" they are free, of course, to file a motion under *Rufo* and its progeny. *Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367 (1992).

More generally, it is now essential to identify with specificity the issues left to be litigated on the merits under the Consent Decree and applicable law. The starting point for the process will be a Joint Status Report to be prepared by the parties. The parties shall identify in that report the issues they believe are still open for litigation under the Consent Decree and applicable law. For each issue identified, the parties shall cite the section or sections of the Consent Decree they believe

apply; a brief summary of their position on the issue; the discovery, if any, necessary to develop facts on the issue; the time needed to frame the issue for adjudication; and any other information they believe would be useful in assisting the Court to develop a litigation plan for whatever remains to be litigated in this case. The Joint Status Report shall be filed not later than March 16, 2012. Upon receipt and review of the Report, the Court will schedule a hearing, either by phone or in person, to discuss the Report and set deadlines for completion of the case.

Conclusion

For these reasons, the Court concludes that Plaintiffs are entitled to the relief they seek.

ACCORDINGLY, IT IS ORDERED:

Plaintiffs' Motion to Add New Named Plaintiffs and Supplemental Motion to Add New Named Plaintiffs (docket ## 3034, 3037) are **GRANTED**.

Dated: January 17, 2012

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE