IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK CHAMBERS, WOODROW FALLS, JR., M.H., PHILLIP K., GERALD SCOTT, MARY T. and THE INDEPENDENT LIVING RESOURCE CENTER OF SAN FRANCISCO, et al.,

Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO,

Defendant.
_____/

No. C 06-06346 WHA

ORDER GRANTING MOTION FOR CLASS CERTIFICATION

INTRODUCTION

In this disability-rights case, individual plaintiffs — Mark Chambers, Woodrow Falls, Jr., M.H., Phillip K., Gerald Scott, and Mary T. — move for class certification. Defendant City and County of San Francisco filed a statement of non-opposition. For the below-stated reasons, the motion is **GRANTED**.

STATEMENT

In this action, plaintiffs seek declaratory and injunctive relief under (1) the Americans with Disabilities Act, 42 U.S.C. 12131–34; (2) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 & 794a; and (3) California Government Code Section 11135, Cal. Gov't Code 11135. The ADA and the Rehabilitation Act prohibit the unnecessary segregation of people

with disabilities from society. Section 11135 also prohibits unnecessary institutionalization by entities receiving state funds (Compl. ¶¶ 2, 111–12, 118–19, 125–30).

Plaintiffs in this action are disabled individuals who need long-term care services. Many plaintiffs and members of the class they seek to represent are elderly. Plaintiffs assert that they and other class members have been unnecessarily institutionalized for many years at Laguna Honda Hospital and Rehabilitation Center, an institution owned and operated by defendant. Plaintiffs allege that they are forced to live on large, open wards with approximately 37 beds, each separated only by hospital curtains. These wards allegedly lack privacy and a home-like environment. Over one thousand residents live in these conditions at Laguna Honda (Comp. ¶¶ 2, 17–52, 81).

According to the complaint, plaintiffs and the putative class should be but are not receiving long-term care services in the most integrated setting appropriate to their individual needs. The complaint contends that the majority of Laguna Honda's residents are capable of living and would prefer to live in a more integrated setting. Plaintiffs allege that defendant is responsible for offering plaintiffs and proposed class members community-based services and housing that could meet many of the needs of class members (Compl. ¶¶ 7 51, 53, 54, 67–71).

The complaint further alleges, and discovery has revealed, that many in the proposed class are capable of living and would prefer to live in a setting more integrated into the community. One consultant's assessment was that putative class members could be integrated if, for example, high-quality residential options had vacancies. Apparently, however, such vacancies are rare. Furthermore, the consultant also found that putative class members at Laguna Honda could be discharged if adequate community options were offered to them. The complaint alleges that such options are not being offered (Compl. ¶¶ 4, 79–80, 130; Su Decl. Exh. A at 7254–55).

Specifically, over a thousand Laguna Honda residents have been assessed by defendant's Targeted Case Management Program as being capable of living at home or in the community if housing and appropriate services were provided to them. Despite this assessment,

there are numerous barriers preventing these residents from being discharged. Plaintiffs cite a letter by San Francisco City Controller, Ed Harrington, to Mayor Gavin Newsom. The letter states, in relevant part:

> San Francisco's approach to long-term care and skilled nursing is different in both scale and delivery method from that of any other public health system, but not in progressive ways. . . . As a result, approximately one out of every 700 people in the City is living in Laguna Honda Hospital. The City has effectively institutionalized more of its population, across a wider spectrum of needs, than anywhere in the country. By [the Department of Health's] own assessments, a significant fraction of the Laguna Honda population does not need hospital-based long term care and could be effectively treated in another setting — at home or in the community.

(Su Decl. Exh. A at 7210).

A 2003 letter from the United States Department of Justice found "that the City continues to be in violation of the ADA and continues to fail to ensure that [Laguna Honda] residents are being served in the most integrated setting appropriate to meet their needs," specifically explaining that a "significant number of [Laguna Honda] residents are unnecessarily isolated in the nursing home" (Su Decl. Exh. C at 7388–89).

Plaintiffs allege that defendant's failure to carry out the "integration mandate" of federal law has caused them to be either unnecessarily institutionalized or at risk of unnecessary institutionalization. Plaintiffs further contend that defendant has failed to utilize existing long-term care options appropriately and has also failed to adjust community options to meet plaintiffs' needs. Defendant's policies have allegedly caused plaintiffs and other putative class members to be segregated and isolated. They seek to receive services allowing them to remain in or return to their homes and communities if they so choose (Compl. ¶¶7, 89–105, 79–80, 130).

Plaintiffs here seek to represent a class defined as:

> All adult Medi-Cal beneficiaries who are:
>
> (1) residents of Laguna Honda Hospital and Rehabilitation Center; or

> (2) on waiting lists for Laguna Honda Hospital and Rehabilitation Center; or
>
> (3) within two years post-discharge from Laguna Honda Hospital and Rehabilitation Center; or
>
> (4) patients at San Francisco General Hospital or other hospitals owned or controlled by the City and County of San Francisco, who are eligible for discharge to Laguna Honda Hospital and Rehabilitation Center.

Only the individual named plaintiffs move for class certification. The organizational plaintiff, Independent Living Resource Center of San Francisco, has not joined in the motion and would not be part of the proposed class.

ANALYSIS

Pursuant to Federal Rule of Civil Procedure 23(a), a class can only be certified if "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." If those four requirements are met, the Court must then find that the action falls into one of the categories of class actions recognized in Rule 23(b). Plaintiffs here move pursuant to Section (b)(2) of Rule 23 for certification of the class. Rule 23(b)(2) requires that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole."

Although defendants do not oppose class certification here, the Court "has an independent obligation to decide whether an action brought on a class basis is to be maintained even if neither of the parties moves for a ruling under [Rule 23(c)(1)]." *Rodriguez v. East Texas Motor Freight*, 505 F.2d 40, 49–50 (5th Cir. 1974), *cited with approval in Gibson v. Local 40, Supercargoes & Checkers of the Int'l Longshoremen's & Warehousemen's Union*, 543 F.2d 1259, 1263 n.2 (9th Cir. 1976).

1. RULE 23(A) REQUIREMENTS.

A. Numerosity.

Pursuant to Rule 23(a)(1), a class action may be maintained only if "the class is so numerous that the joinder of all parties is impracticable."

The numerosity requirement in this case is satisfied. Laguna Honda is a 1,200-bed skilled-nursing facility with over 1,100 residents. One exhibit submitted by plaintiffs indicated that there were about 960 Medi-Cal beneficiaries living in Laguna Honda as of June 2006 (Su Decl. Exh. D, diagram 2). In addition, the proposed class would extend even beyond the hundreds currently residing at Laguna Honda to include people who are on waiting lists to get into Laguna Honda, people who have been discharged from Laguna Honda in the past two years, and patients at other defendant-controlled hospitals eligible for discharge to Laguna Honda.

This order also notes that courts have recognized that joinder may be impracticable when "members of the class, who are by definition poor and disabled, do not have the economic means to pursue remedies on an individual basis." *Lynch v. Rank*, 604 F. Supp. 30, 36 (N.D. Cal. 1984). The proposed class here is made up entirely of individuals who qualify for Medi-Cal benefits based on their inability to pay for medial care (Compl. ¶ 67). Joinder of these individuals, many of whom may be indigent, would be impractical.

B. Commonality.

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." The commonality requirement is satisfied where a "lawsuit challenges a system-wide practice or policy that affects all of the putative class members." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001). The Ninth Circuit explained in *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir.1998): "Rule 23(a)(2) has been construed permissively. All questions of fact and law need not be common to satisfy the rule. The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class."

This action alleges, on a class-wide basis, that defendants are not in compliance with federal and state statutes requiring it to afford access to home and community-based services for persons with disabilities, where those people are able to live in the community. This order agrees with plaintiffs that questions of law and fact common to the class include, for example, whether defendant has violated the ADA and Rehabilitation Act by allegedly requiring plaintiffs to be segregated unnecessarily from their communities (Compl. ¶ 111–12).

Plaintiffs also allege that defendant, as a recipient of federal Medicaid funding, must offer qualified individuals support services to enable them to live in the most integrated setting appropriate to their needs. Plaintiffs allege that defendant fails to offer and promptly provide Medicaid services that all class members are eligible to receive. These services are also necessary for class members to live in more integrated, community settings. Defendant's alleged noncompliance with these federal requirements is also an issue common to all class members.

Plaintiffs state that they do not seek to relocate all individuals with disabilities out of Laguna Honda into the community. They do, however, request relief that would compel defendant "to offer and provide, as appropriate, class members with long-term care services in their homes and communities, instead of in an unnecessarily segregated institutional facility" (Br. 10–11).

The Court is concerned that determining whether defendant is handling each class member's situation appropriately *may* need to be evaluated on a case-by-case basis. At the present time, this concern is not enough to overcome the "permissive" Rule 23(a)(2) commonality requirement. Plaintiffs allege that as to *all* class members, defendant is violating the above-described federal and state anti-discriminatory provisions. Moreover, it is reasonable to assume that all patients would prefer to live in more home-like or integrated settings instead of the huge open wards described by plaintiffs. This order finds that the commonality requirement is satisfied.

C. Typicality.

Rule 23(a)(3) requires that the claims of the class representatives "be typical of the claims . . . of the class." The claims of the purported class representative need not be identical to the claims of other class members, but the class representative "must be part of the class and possess the same interest and suffer the same injury as the class members." *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982). The test "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

Here, each of the named plaintiffs is typical of the class as a whole. Each named plaintiff is a person with a disability who is or has been institutionalized at Laguna Honda. Each plaintiff alleges that defendant has an established policy that has caused plaintiff to be denied reasonably prompt access to home or community-based services. Plaintiffs' claims that they are unable to leave Laguna Honda notwithstanding an expressed desire to live in a more integrated setting is typical of the class they seek to represent.

Plaintiffs' claims — like those they assert on behalf of unnamed class members — are that defendant has uniformly failed to provide long-term care services appropriate for living in a home or community-based setting as required by law. Although the circumstances of each individual class member will undoubtedly differ, this order finds that the named plaintiffs' claims are sufficiently typical of the proposed class to satisfy Rule 23(a)(3).

D. Adequacy of Representation.

Under Rule 23(a)(4), individuals representing the class must be able "fairly and adequately to protect the interests" of all members in the class. There are two adequacy requirements. "First, the named representatives must appear able to prosecute the action vigorously through qualified counsel, and second, the representatives must not have antagonistic or conflicting interests with the unnamed members of the class." *Lerwill v. Inflight*

Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978). This order finds that Rule 23(a)(4) is satisfied.

The class representatives' interests here do not conflict with those of the proposed class. The individual plaintiffs do not seek personal damages or other individualized relief to the exclusion of other class members. Instead, plaintiffs seek broad injunctive relief for the benefit of the entire class. The papers submitted do not suggest any collusion that would hinder individual plaintiffs' ability to pursue the litigation on behalf of the class.

Additionally, plaintiffs' attorneys here — four public-interest organizations and one private law firm — all have extensive experience litigating federal class actions involving disability and health programs. Nothing suggests that plaintiffs' counsel are unqualified to prosecute this action.

2. RULE 23(B)(2) REQUIREMENTS.

Plaintiffs seek to certify the class under Rule 23(b)(2), which requires that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Courts have interpreted Rule 23(b)(2) to mean that where the primary purpose in bringing the action is to seek injunctive relief, the action is appropriately certified under Rule 23(b)(2). *Elliott v. Weinberger*, 564 F.2d 1219, 1228 (9th Cir. 1977). With respect to Rule 23(b)(2) actions, the Ninth Circuit has explained: "It is sufficient if class members complain of a pattern or practice that is generally applicable to the class as a whole. Even if some class members have not been injured by the challenged practice, a class may nevertheless be appropriate." *Walters v. Reno*, 145 F.3d 1032, 1046 (9th Cir. 1998).

Certification here is appropriate under Rule 23(b)(2). Defendant's policies affect all members of the proposed class. The alleged violations of federal law appear to have equal application to all class members. The proposed class seeks injunctive relief that will require defendant to create a plan that would ensure that all class members are given the choice to

receive long-term care at home or in the community. Rule 23(b)(2) certification is appropriate in this case.

3. NOTICE.

With respect to notice, the Ninth Circuit has held: "When an action is certified under Rule 23(b)(2), . . . absent class members are not required to receive notice or to have the opportunity to opt-out of the suit. Due process requires only that the class members be adequately represented. The trial court may in its discretion in a class action certified under Rule 23(b)(2) direct that notice be given under Rule 23(d)." *EEOC v. Gen. Tel. Co.*, 599 F.2d 322, 334 (9th Cir. 1979) (citations omitted). Plaintiffs here request that because this action only involves claims for declaratory and injunctive relief, there is no need to provide absent class members with notice and the opportunity to opt out. They request that the Court not require notice to unnamed plaintiff class members.

Nonetheless, notice will be required. Given the potential importance of the issues to various community groups and individuals and the myriad ways in which the issues might arise, the Court wishes to have the benefit of as much input as practical and, at all events, to give class members a say in any relief that is ordered. It has also been the Court's experience that circumstances such as those before the Court can lead to collusive settlements. To mitigate this risk, the Court would like to allow broad community participation in the suit. To effectuate this, broad notice will be required to protect the class members. This will give the class members an opportunity to intervene and share their views.

CONCLUSION

For the foregoing reasons, the class proposed by plaintiffs is hereby **CERTIFIED**. By **NOON ON JULY 20, 2007,** counsel shall meet and confer and submit a proposed form of class notice in plain English, a proposed method of serving and/or publication, and a timetable for

effecting notices, all to be done consistently with the case schedule previously set. The notice should state that the Court desires broad community involvement and invites intervention consistent with Federal Rule of Civil Procedure 24.

IT IS SO ORDERED.

Dated: July 12, 2007.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE