UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

JOSEPH LEWIS, JR., ET AL. CIVIL ACTION

certification hearing on November 2, 2017, where the Parties presented argument and evidence regarding class certification.[5] Subsequently, the Parties were allowed to submit post-hearing briefs for the Court's consideration.[6] For the following reasons, Plaintiffs' motion shall be granted.

I. BACKGROUND AND PARTIES' ARGUMENTS

This suit is brought by several inmates incarcerated at the Louisiana State Penitentiary ("LSP"). Plainti

the same way," and (2) a single injunction could not "provide relief to each member of the class."[11]

In addition, Defendants assert that, even if the ADA Subclass meets the requirements of FRCP 23(a) and (b)(2), the ADA Subclass of individuals have failed to meet the Prison Litigation Reform Act's ("PLRA")[12] exhaustion requirement. Thus, Defendants argue that the ADA Subclass - regardless of meeting the class certification requirements - cannot bring legal action until administrative remedies are exhausted.

II. STANDING AND THE PLRA EXHAUSTION REQUIREMENT

Only after the Court has determined if the Named Plaintiffs have standing may it consider whether they have representative capacity to assert the rights of others. Indeed, the Fifth Circuit holds that "[s]tanding is an inherent prerequisite to the class certification inquiry."[13] Defendants contend that several Named Plaintiffs lack standing to represent a class because their claims are moot for various reasons. Named Plaintiffs Joseph Lewis, Jr., Edward Giovanni, Shannon Hurd, and Alton Batiste are now deceased. Cedric Evans has been released from DOC custody, and Alton Adams is no longer at LSP.[14] Defendants also argue that Named Plaintiffs Kentrell Parker ("Parker") and Farrell Sampier ("Sampier") have failed to exhaust administrative remedies prior to filing suit as required by the PLRA.

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[11] Rec. Doc. No. 174.
[12] 42 U.S.C. § 1997e(a).
[13] *Bertulli v. Indep. Ass'n of Cont'l Pilots*, 242 F.3d 290, 294 (5th Cir. 2001).
[14] Plaintiffs dispute whether Alton Adams is still a Named Plaintiff: "Plaintiffs dispute whether Defendants' decision to transfer Mr. Adams to a different prison, transfer him back to LSP, and transfer him out again moots his claim." Rec. Doc. No. 222, p. 2 (citing Rec. Doc. 201-3 at 2-3). Nevertheless, the Court cannot consider his ARP as it was filed after the filing of the *Complaint* on May 20, 2015.

The PLRA mandates that “[n]o action shall be brought with respect to prison conditions ... by a prisoner ... until such administrative remedies as are available are exhausted.”[15] The Supreme Court has held that “the PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances

As to the ADA Subclass, Parker's ARP includes the following summarization of his complaint: "COMPLAINS THAT THE TREATMENT CENTER IS NOT SUITABLE [sic] STAFFED OR EQUIPPED TO ACCOMMODATE QUADRIPLEGIC PATIENTS SUCH AS HIMSELF."[26] Sampier's ARP complains of several inadequacies in medical care and ultimately requests the following relief: "Complainant seek [sic] to be released to a medical facility that is equipped to adequately handle the basic and serious medical needs required for a quadriplegic."[27] The record reflects that both grievances were investigated, denied, appealed, and denied again. Carter also exhausted an ARP complaining about not being able to walk on "the uneven grounds" at LSP due to his knee disability.[28] The ARP of Ricky Davis complains of the failure of LSP to transfer him to the hospital for surgery in a handicap accessible transport vehicle.[29] It is undisputed that this claim was exhausted on April 1, 2015, prior to filing suit.

Plaintiffs cite to this Court's recent decision in *Hacker v. Cain*,

unit need only grieve their placement in that unit, not each of the various alleged unconstitutional conditions present in the unit; '[o]therwise the defendants could obstruct legal remedies to unconstitutional actions by subdividing the grievances....')."[35]

Additionally, the Supreme Court has held that "extra-statutory limitations on a prisoner's capacity to sue" generally excuse any lack of detail in named plaintiffs' grievances.[36] In this context, it is important to note that Defendants do not allow multiple complaints in a single grievance.[37] Plaintiffs contend the Defendants exhaustion requirements necessitate little specificity, multiple complaints are not allowed in a single grievance, and inmates are barred from filing more than one grievance at a time.[38] Thus, following Supreme Court precedent, Plaintiffs argue that any lack of detail in the Named Plaintiffs' grievances is excused due to these extra-statutory limitations on [Plaintiffs'] capacity to sue.

Plaintiffs also argue that Defendants read the PLRA's exhaustion requirement too broadly as Defendants appear to argue that each of the subdivided claims must be individually exhausted by one of the Named Plaintiffs. Plaintiffs maintain that many of these subdivided claims may be exhausted by a single grievance. Thus, Plaintiffs contend that violations of the ADA/RA for non-compliance by the facilities housing and treating inmates and violations of the ADA/RA relating to the medical care and treatment provided (or not provided) to inmates with disabilities may both be exhausted by a single grievance claiming any violation of the ADA/RA with sufficient facts to place LSP on notice

[35] *Id.* at 521 (quoting *Lewis v. Washington*, 197 F.R.D. 611, 614 (N.D.Ill.2000)).
[36] *Ross v. Blake*, 136 S.Ct. 1850, 1857 n. 1 (2016).
[37] Rec. Doc. No. 187, Exhibit B at 6.
[38] Rec. Doc. No. 180, p. 5.

governed by Rule 23 of Federal Rules of Civil Procedure. To obtain class certification, parties must satisfy Rule 23(a)'s four prerequisites:

> (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 that class; and
> (4) the representative parties will fairly and adequately protect the interests of the class.

traditionally construed this directive to require a district court to "look beyond the pleadings to understand the claims, defenses, relevant facts, and applicable substantive law in order to make a meaningful determination of the certification issues."[51]

However, Rule 23 does not require Plaintiffs to show that questions common to the class "will be answered, on the merits, in favor of the class."[52] "Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage. Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied."[53]

Class Certification of the Class and ADA Subclass

Numerosity

Under Rule 23(a)(1), certification is only appropriate where "the class is so numerous that joinder of all members is impracticable." The numerosity requirement "requires examination of the specific facts of each case and imposes no absolute limitations."[54] However, the Fifth Circuit has repeatedly noted that "the number of members in a proposed class is not determinative of whether joinder is impracticable."[55] "must Tw[3 Tm.ert

appropriate cases be less significant where classwide discrimination has been alleged. In addition, the fluid nature of a plaintiff class, as in prison-litigation context, counsels in favor of certification of all present and future members. Although there is no strict threshold, classes containing more than 40 members are generally large enough to warrant certification.[57]

Plaintiffs' proposed Class consists of approximately 6400 incarcerated individuals.[58] While the number of members in Plaintiffs' proposed ADA Subclass is not exact, Plaintiffs estimate that hundreds of inmates at LSP have mobility, visual, cognitive, or other medical impairments.[59] To further support that the ADA Subclass satisfies the numerosity requirement, Plaintiffs cite a 2014 statistic demonstrating that 14.4% of non-institutionalized males in Louisiana reported a disability.[60] Applying this rate to LSP's amount of inmates, Plaintiffs estimate that the ADA Subclass would consist of 900 members with disabilities.[61] Defendants have conceded that numerosity is established in this case: "Defendants do not contest that Plaintiffs have satisfied the numerosity required in order for them to establish the purported Class and purported ADA Subclass *as that class and subclass have been identified by Plaintiffs*."[62] Therefore, the Court finds that the numerosity requirement is satisfied.

[57] *Braggs v. Dunn*, 318 F.R.D. 653, 661 (M.D. Ala. 2017).
[58] Doc. 140 at 15.
[59] *Id.*
[60] *Id.* (discussing Doc. 133-42).
[61] *Id.*
[62] Rec. Doc. No. 174, p. 8 (emphasis original).

will resolve an issue that is central to the validity of each of the claims in one stroke."[69] Commonality requires the plaintiff to demonstrate that the class members "have suffered the same injury."[70] Yet, the Fifth Circuit has clarified that "this contention need not relate specifically to the damages component of the class members' claims. Even an instance of injurious conduct, which would usually relate more directly to the defendant's liability than to the claimant's damages, may constitute 'the same injury.'"[71]

As to typicality, "Rule 23(a) requires that the named representatives' claims be typical of those of the class."[72] Prior to *Wal-Mart*, the typicality test was "not demanding."[73] The extent to which *Wal-Mart TD.0Tc0Tw6TDJ24TT8(telate)5na[ththej-26Wal-Mart TD.0*

Plaintiffs claim that Defendants have failed in their constitutional obligations by subjecting the Class and ADA Subclass members to unreasonable risks of harm.[78] Failure to act can also constitute a policy or practice.[79] To prove an Eighth Amendment violation, Plaintiffs will need to prove that Defendants were deliberately indifferent to the risk posed to LSP's inmates.[80]

The conceptual gap between an individual person's Eighth Amendment claim and "the existence of a class of persons who have suffered the same injury," must be abridged by significant proof that Defendants operated under a general policy that subjected all inmates to unreasonable risks of serious harm.[81] Such proof appears to be present here. Defendants admit that "policies and procedures regarding medical care apply across the board to all prisoners."[82] Additionally, Plaintiffs have offered a wide variety of evidence alleging systemic deficiencies within Defendants' medical healthcare policies and procedures. Such allegations, if found to be true, subject all inmates to unreasonable risks of serious harm.

To determine whether Plaintiffs present "common questions of law and fact, a court must trace the class claims and conclude that the common questions, and answers, will resolve them without the need for additional extensive individualized inquiry."[83] Plaintiffs' "the -1

increases inmates' risk of serious harm; (c) whether the staffing levels at Angola are adequate to provide constitutionally sufficient medical care; (d) whether correctional staff perform medical functions that are inappropriate given their limited training and lack of licensure; (e) whether the DOC applies its "medically necessary" policy in a way that impedes Class members' ability to receive timely diagnosis and treatment; (f) whether Defendants' malingering and co-pay policies impede Class members' ability to receive timely diagnosis and treatment; and (g) what remedial measures are appropriate to mitigate the deficiencies in Defendants' practices.[84]

necessarily destroy commonality.[88] The commonality requirement is satisfied, as long as the Class's common questions are "dispositive of their claim and the claim arises out of a single course of conduct and on a single theory of liability."[89]

The Named Plaintiffs of the Class claim that Defendants violated their Eighth Amendment rights. The claim arises out of Defendants' alleged failure to provide a minimally adequate medical system that does not subject prisoners to a "substantial risk of serious harm," by knowingly providing care that falls below the constitutional minimum.[90] Thus, the Class's common questions of law and fact establish commonality.

While Defendants assert that the individually Named Plaintiffs' disabilities and alleged denied accommodations

disabled. Plaintiffs offer common complaints that Defendants' policies pose a substantial risk of serious harm to the health of all inmates and argue Defendants have been deliberately indifferent to this risk.

At the certification hearing, Plaintiffs' expert, Dr. Michael Puisis, was accepted by the Court as an expert in correctional medicine without opposition from the Defendants.[92] In their post-hearing brief, Defendants make much of the fact that nurse practitioner Madeleine LaMarre ("LaMarre") and Dr. Suzi Vassallo ("Vassallo") contributed to the report submitted by Dr. Puisis, arguing that, to the extent Dr. Puisis relied on findings by

of prisons and jails, that "the number of inmates per physician is extremely high at Angola."[104] Dr. Puisis testified:

> If you look at the numbers and you say one doctor is seeing --responsible for 1600 people, and you review records and you note that when medics are seeing people, both in the ATU and in sick call, there is seldom a physician related evaluation. And you also note that the physicians seldom write histories and physical examinations. In part, I believe that is due to staffing. In part, I believe it is due to practice, inter-credential. But it became clear to us that under any scenario we could think of, both nursing and physicians midlevels and doctors were deficient.[105]

Dr. Puisis was also critical of the credentialing and training of the Angola physicians. Dr. Puisis explained that, in a typical practice, physicians are credentialed, meaning that the hiring authority reviews a physician's experience and training and then gives the physician privileges based on the credentials. Dr. Puisis testified that, in a prison setting, the need for physicians is typically primary care medicine, so physicians should be trained and privileged in either family practice or internal medicine, which typically includes emergency room training.[106] Yet, at Angola, Dr. Puisis testified that "there really is no credentialing at all that I could tell."[107] Further problematic, in Dr. Puisis' opinion, "the organization goes out of its way to just hire any physician they can get, because they're desperate for physicians."[108] Thus, the practice is "that the system approaches the state licensing board to solicit physicians who have problems with their license who are not permitted by the state to otherwise see civilian patients. But they are permitted to see prisoners."[109] Dr. Puisis testified that, "the character issues of all five of

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[104] *Id.* at p. 46, lines 5-6.
[105] *Id.* at p. 46, lines 6-16.
[106] *Id.* at p. 47.
[107] *Id.* at p. 48, lines 6-7.
[108] *Id.*, lines 10-12. Dr. Puisis testified about a comment in a newspaper article by Dr. Singh, who said the prison just needed to get any doctors because they were desperate. *Id.*
[109] *Id.*, lines 15-19.

the physicians that we looked at [at Angola] had prior state sanctions. And at one point were not permitted to work in the civilian community for a variety of reasons."[110] Also problematic for Dr. Puisis is that one of the five doctors is an orthopedic doctor who would not be appropriate to provide general medical care in a prison based on the general kinds of conditions presented. Dr. Puisis posed the question: "People have diabetes, what is an orthopedic doctor going to do to manage the diabetes?"[111]

Dr. Puisis testified that there is a problem with Angola hiring doctors with insufficient training and potential character issues because those doctors need to be monitored and managed; however, "because everyone is in the same boat, the monitoring will probably not occur, and we did not see evidence of it. So that's my concern with the credentialing at LSP."[112]

Dr. Puisis was also critical of the use of emergency medical technicians ("EMTs") to provide care for sick calls. He explained that state regulations typically require EMTs to work under direct supervision of a physician under a set of clearly defined protocols. However, at LSP:

> The way medics are used … is extremely different. So it's out of the ordinary with respect to their training. So you would not have medics in the community going house to house, for example, when people have complaints about shortness of breath, or a rash, and then making a decision and giving them medication based on an evaluation without a communication with a provider. And what we noticed on multiple chart reviews was there was no documented communication to a provider, none. And we noticed that repeatedly on hundreds and hundreds of episodes of care.
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> And so basically the emergency medical technicians are working independently it appears based on the documentation. And we believe that

[110] *Id.* at p. 49, lines 5-8.
[111] *Id.*, lines 13-14.
[112] *Id.* at p. 49, lines 24-25 through p. 50, lines 1-2.

> it is out of the scope of their license, and we believe it's a direct impediment to access to care, because the patient in access to care is seeking a professional opinion with respect to their condition, and they're not receiving it. Very few medic evaluations result in a physician evaluation.[113]

This was particularly troubling to Dr. Puisis because:

> some of the deaths that we saw were inmates who were repeatedly trying to access care and were being seen by a medic and basically managed by a medic without physician intervention over

Another policy troubling to Dr. Puisis is the restriction of access to specialty care. Dr. Puisis testified that, "[w]hen the seriousness of a patient's condition exceeds the ability of a physician at the site to care for the patient, the patient should be referred to a consultant who can properly care for the patient. That's the kind of backdrop of what specialty care is in a prison."[115] However, Dr. Puisis testified that Angola utilizes a facility in New Orleans, nearly two hours away, and the system of managing specialty care "makes it extremely difficult to track whether people actually have received their care."[116] Dr. Puisis further testified that there are also numerous problems with the system utilized to refer a patient for offsite care, including timely scheduling, getting "lost" in the system, and timely appointments.[117] Another problematic discovery regarding specialty care is that patient inmates would report to the specialist without the appropriate relevant testing done beforehand to provide to the specialist.[118] Dr. Puisis also ascertained that there was "hardly ever"[119] a follow-up with a primary care doctor to discuss what treatment the specialist had recommended. Dr. Puisis described one incident demonstrating this problem:

> And tragically, in one circumstance a patient was admitted to a hospital and was diagnosed with atrial fibrillation and started on a blood thinner. Because, as you know, blood thinners prevent atrial fibrillation from causing emboli. And the patient, the patient was not evaluated post-hospitalization with respect to what the recommendations were, so the anti-coagulant was never ordered. And within ten days the patient died of multiple pulmonary emboli in a cardiac thrombus.[120]

[115] *Id.* at pp. 64, lines 23-23 through p. 65, lines 1-2.
[116] *Id.* at p. 65, lines 7-9.
[117] *Id.* at pp. 65-66.
[118] *Id*. at p. 66.
[119] *Id.* at p. 67, lines 8-9.
[120] *Id.*, lines 9-18.

Considering the claim regarding access to programs, benefits, and services, Plaintiffs have presented sufficient evidence to certify an ADA Subclass on this issue. Inmate Davis testified about the lack of a handicap accessible van to transport him back to LSP from a hospital following his back surgery and the fact that he was laid face down across the front seat in a rodeo van with staples in his back.[132] A plethora of physical barriers and inappropriately equipped facilities were found and documented in the Evaluation by Plaintiffs' architectural expert Mark Mazz.[133] Evidence was presented showing that disabled inmates with a duty status[134] were prohibited from certain programs and activities,[135] were not provided reasonable accommodations, modifications, and medical aids,[136] and were not considered in LSP's evacuation plans or emergency planning.[137]

With regard to methods of administration, Plaintiffs submitted evidence regarding, *inter alia*, the inadequacy of the current LSP ADA Coordinator as required by 28 C.F.R. 35.107(a),[138] the failure to adequately train employees on the implementation of disability policies,[139] placing disabled inmates in "medical dormitories" not equipped for the

[132] Rec. Doc. No. 358-5 at 14-16.
[133] Rec. Doc. No. 358-2 at 294-296.
[134] A "duty status" is a written designation assigned by a prison medical doctor indicating an inmate's physical or mental ability to perform hard labor in accordance with his sentence. Duty statuses are generally assigned by physicians following a medical evaluation, and they are subject to change depending on changes in the medical condition of a particular inmate. Duty statuses may range from no duty (indicating a need for bed rest), to light duty or regular duty with restrictions, and finally to regular duty without restrictions (indicating the inmate is capable of performing any and all hard labor). *Armant v. Stalder*, 287

disabled,[140] and LSP's alleged failure to provide adequate procedures for requesting accommodations and appealing denials.[141]

Because all of the ADA policies and procedures pose multiple common questions of fact and law and apply across the board to all disabled inmates, the Court finds that certification of the ADA Subclass is appropriate. Whether Defendants had knowledge of insufficient accommodations for persons with disabilities can be evaluated in "one stroke" for this entire Subclass.[142] As the District Court for the Northern District of California