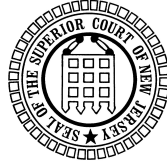


SUPERIOR COURT OF NEW JERSEY

HUNTERDON COUNTY

VICINAGE 13



Chambers of
MICHAEL F. O'NEILL
Judge

Hunterdon County Superior Court
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July 17, 2020

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RE: Brown, et als v New Jersey Department of Corrections, et als
Docket No.: HNT-L-076-19
A-005460-18

Supplemental Letter Opinion on Remand from Appellate Division

(CONFIDENTIAL-SUBMITTED UNDER SEAL)

Dear Counsel:

This matter is before the court on limited remand from the Appellate Division. The Appellate Division granted leave to appeal from the trial court decision of June 28, 2019, denying plaintiffs' motion for class certification. It heard oral argument on May 18, 2020.

Shortly before oral argument, plaintiffs filed a motion seeking to supplement the record with a report titled “Investigation of the Edna Mahan Correctional Facility for Women,” (“DOJ Report”) authored by the United States Department of Justice, publicly released on April 13, 2020. The Appellate Division granted the motion and issued an order, dated May 20, 2020, directing the trial court, on limited remand, to “determine what effect, if any, the [DOJ] report would have on its class certification decision including, but not limited to, the commonality and typicality prongs of Rule 4:32-1(a).” Additionally, the panel directed the court to “make the necessary factual findings and legal conclusions relating to the Rule 4:32-1(b)(3) factors, and to determine, specifically if a ‘class action is superior to other available methods for the fair and efficient’ adjudication of the controversy.” Appellate Division order at 4 (quoting Rule 4:32-1(b)(3)).

The case stems from allegations of long-standing abuse and mistreatment of inmates at the Edna Mahan Correctional Facility for Women (“EMCFW” or “Edna Mahan”), located in Clinton (Hunterdon County), New Jersey. Edna Mahan is the sole women’s prison in the state and is operated by the defendant, New Jersey Department of Corrections (“NJDOC”). The class action complaint, filed on behalf of long-term inmates Marianne Brown and Judith Vasquez, alleges “decades of inappropriate sexual relationships, verbal and physical harassment, rampant discrimination, and widespread assault at EMCFW, creating a hostile environment based on the gender of plaintiffs, and similarly situated inmates.” Letter opinion of Yolanda Ciccone, A.J.S.C., dated June 28, 2019.

The matter was assigned to this judge following the recent retirement of Judge Ciccone, who authored the June 28, 2019 decision. The court subsequently ordered supplemental briefing of the issues to be addressed pursuant to the Appellate Division’s limited remand. Oral argument was heard on July 2, 2020.

The Standard for Determining Class Certification

Before addressing the parties' factual and legal contentions bearing on the questions presented, the court will review the applicable standard for determining class certification motions. The standard was succinctly summarized in our Supreme Court decision in Dugan v. TGI Fridays, Inc., 231 N.J. 24, 46-47 (2017):

A 'class action is 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'" Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 103, 922 A.2d 710 (2007) (quoting Califano v. Yamasaki, 442 U.S. 682, 700-01, 99 S. Ct. 2545, 2557, 61 L. Ed. 2d 176, 192 (1979)). The class action device 'furthers numerous practical purposes, including judicial economy, cost-effectiveness, convenience, consistent treatment of class members, protection of defendants from inconsistent obligations, and allocation of litigation costs among numerous, similarly-situated litigants.' Id. 191 N.J. at 104, 922 A.2d 710. In light of those objectives, our courts have "consistently held that the class action rule should be liberally construed." Lee v. Carter-Reed Co., 203 N.J. 496, 518, 4 A.3d 561 (2010) (quoting Iliadis, supra, 191 N.J. at 103, 922 A.2d 710).

Id. at 46-47.

In determining a motion for class certification, a court 'must 'accept as true all of the allegations in the complaint,' and consider the remaining pleadings, discovery (including interrogatory answers, relevant documents, and depositions), and any other pertinent evidence in a light favorable to plaintiff." Lee, supra, 203 N.J. at 505, 4 A.3d 561 (quoting Int'l Union, supra, 192 N.J. at 376, 929 A.2d 1076); *accord* Iliadis, supra, 191 N.J. at 96, 922 A.2d 710.

The deferential standard by which the court views the facts alleged, however, does not apply to a plaintiff's assertion that a given case is appropriate for class certification. To the contrary, a court deciding class certification 'must undertake a 'rigorous analysis' to determine if the *Rule's* requirements have been satisfied.' Iliadis, supra, 191 N.J. at 106-07, 922 A.2d 710 (quoting Carroll v. Cellco P'ship, 313 N.J. Super. 488, 495, 713 A.2d 509 (App. Div. 1998)). 'That scrutiny requires courts to look 'beyond the pleadings [to] . . . understand the claims, defenses, relevant facts, and applicable substantive law.'" Id. 191 N.J. at 107, 922 A.2d 710 (alteration in original) (quoting Carroll, supra, 313 N.J. Super. at 495, 713 A.2d 509).

Id. at 49-50.

The Relevance, if any, of the DOJ Report

A threshold and recurring argument throughout the DOC's supplemental briefing is the contention that the DOJ Report is immaterial to the court's Rule 4:32-1 analysis, because the DOJ acknowledges that its report is not admissible, makes no mention of gender discrimination and makes no findings bearing on class certification. Plaintiffs, not surprisingly, offer a diametrically opposite position on the Report's relevance, citing its findings and conclusions extensively in support of class certification.

While it is true that the DOJ Report itself is not admissible in evidence, that fact does not mandate that this court turn a blind eye to its contents. The court may take judicial notice, pursuant to N.J.R.E. 201, of facts documented and cited in the Report, including references to convictions, guilty pleas, indictments, investigations, etc. These judicially noticeable facts and matters of public record are corroborative of the plaintiffs' allegations of a long-standing atmosphere of "ambient harassment" of inmates at Edna Mahan. The court notes, parenthetically, that none of the contested factual allegations in plaintiffs' complaint are evidentiary, yet the court is required to accept those allegations as true for purposes of considering plaintiffs' motion for class certification.

Further, defendants' contention that the DOJ Report is irrelevant to the class certification inquiry is difficult to reconcile with the Appellate Division's remand order. The court presumes that the appellate panel was familiar with the entirety of the report, including the notation that the report itself was not intended to be admissible in evidence. If the appellate panel were of the view that the inadmissibility of the report rendered it of no potential relevance to the class certification analysis, one would have to question the reason for any remand at all, and question the panel's extensive quoting of the Report's findings and conclusions.

The court is satisfied that, at a minimum, it is appropriate to consider those judicially noticeable facts of guilty pleas, judgments of conviction, investigations, etc. that bear on the alleged historic mistreatment of inmates at Edna Mahan. Consequently, against the backdrop of the DOJ Report, and in particular its recounting of the history of investigations, guilty pleas, convictions etc. relating to EMCFW, the court will revisit the class certification requirements of Rule 4:32-1(a) and Rule 4:32-1(b), pursuant to the Appellate Division's directive.

Analysis of the Rule 4:32-1(a) Factors

The four criteria for determining class certification pursuant to Rule 4:32-1(a) are commonly referred to as numerosity, commonality, typicality, and ^{Suppl}adequacy of representation. In re Cadillac V-8-6-4 Class Action, 93 N.J. 412, 425 (1983).

Numerosity

Judge Ciccone, in her opinion of June 28, 2019, found that plaintiffs satisfied the numerosity requirement of Rule 4:32-1(a). Defendants did not challenge that finding in their supplemental briefing. The court, therefore, adopts and incorporates by reference Judge Ciccone's determination that the numerosity requirement is satisfied by plaintiffs' proposed class.

Commonality

The commonality requirement dictates that there be "some question of fact or law common to the members of the class." W. Morris Pediatrics, P.A. v. Henry Schein, Inc., 385 N.J. Super. 581 (Law. Div. 2004), aff'd, 2006 WL 798952 (App. Div. Mar. 30, 2006); Delgozzo v. Kenny, 266 N.J. Super. 169, 185 (App. Div. 1993) (doctrine of commonality embodied in R. 4:32-1(a)(2) requires that claims of proposed class members share at least one common question of law or fact). A commonality analysis must focus on whether there is a common contention present in the claims which lends itself to the resolution of

each claim “in one stroke.” Sullivan v. DB Invs., Inc., 667 F.3d 273, 335 (3d Cir. 2011). Stated differently, commonality is determined not on the type of questions asked, “but rather the capacity of a classwide proceeding to generate common *answers* apt” to resolve the litigated matter. Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011).

Defendants contend that “[p]laintiffs cannot establish commonality for their hostile environment claims because they can’t show that every EMCFW inmate has a viable NJLAD claim based on first-hand knowledge of sexual misconduct and discrimination.” Defendants June 22, 2020 supplemental brief at 5; see, Godfrey v. Princeton Theological Seminary, 196 N.J. 178, 201 (2008) (“[t]o satisfy the severe-or-pervasive element of a hostile work environment claim, a plaintiff must marshal evidence of bad conduct of which she has first-hand knowledge”). Plaintiffs offer a two-pronged response to defendants’ position. First, plaintiffs allege that the representative plaintiffs possess first-hand knowledge of the hostile living environment at Edna Mahan. The representative plaintiffs are both long-term inmates at the facility. Second, plaintiffs assert that Edna Mahan is a place of public accommodation under the NJLAD and that public accommodation cases are treated differently than hostile work environment cases for purposes of analyzing the level of proof required to establish a hostile environment claim. Plaintiffs June 29, 2020 supplemental brief at 3-4; citing Holmes v. Jersey City Police Dep’t, 449 N.J. Super. 600, 603-604 (App. Div. 2017) (“[T]he prohibition of discrimination in relation to public accommodation is functionally distinct from the ban on employment discrimination. We have also recognized that, in the context of public accommodation discrimination, hostile comments that might not suffice to create a hostile environment in a work context may nonetheless violate the LAD.”). Accordingly, plaintiffs argue, the requirements to state a claim for public accommodation discrimination are less demanding than claims in the employment context. Holmes v. Jersey City Police Dep’t, 449 N.J. Super. at 603-604

(pretrial detainee claimant was uniquely vulnerable because his harassers were his jailers and “in the context of public accommodation discrimination, hostile comments that might not suffice to create a hostile environment in a work context may nonetheless violate the LAD.”). Plaintiffs further contend that first-hand knowledge is not required to state a *prima facie* claim for public accommodation discrimination. See, Franeck v. Tomahawk Lake Resort, 333 N.J. Super. 206, 215-17 (App. Div.), *certif. denied*, 166 N.J. 606 (2000) (single statement made by resort employee, relayed by family member to disabled claimant, was sufficient to state *prima facie* claim for public accommodation discrimination under NJLAD.). In essence, plaintiffs argue, based on the Supreme Court decision in Lehmann v. Toys ‘R’ Us, 130 N.J. 587, 610-611 (1983), that “the individual differences between the proposed class members do not preclude certification because each class member was exposed to the same toxic environment, policies and practices.” Plaintiffs’ June 29, 2020 supplemental brief at 4.

Having analyzed the parties’ competing legal positions, the court is satisfied that plaintiffs here have satisfied the commonality requirement of Rule 4:32-1(a). The court agrees that, at least with respect to the hostile living environment claim, the representative plaintiffs can satisfy the first-hand knowledge requirement -- to the extent that is the proof standard for pursuing a hostile environment claim in the public accommodation setting. As of the filing of the complaint, plaintiff Marianne Brown had been incarcerated at Edna Mahan for approximately 17 years. Plaintiff Judith Vasquez had been incarcerated at the facility for in excess of 22 years. Given the length of their incarceration, it does not require a leap of logic to assume that they can testify on a first-hand basis about what they observed and experienced about the overall living conditions and the alleged sexually hostile environment at Edna Mahan during their lengthy incarceration. They allege as much in the complaint, each asserting that she had witnessed “years of severe and pervasive abuse” by

corrections officers and other NJDOC employees at Edna Mahan. Class action complaint, paragraphs 48, 51.

The court is also persuaded, based on the Appellate Division decision in Franek, and the Supreme Court decision in Lehmann, that first-hand knowledge likely is not required to establish a *prima facie* claim of hostile living conditions in a place of public accommodation. Franek, 332 N.J. Super. at 215-217; Lehmann, 132 N.J. at 610-611. Language from our Supreme Court's decision in Lehmann lends substantial support to plaintiffs' claim that the proofs required to prove a hostile environment claim need not necessarily be based on first-hand knowledge of the plaintiffs. The Lehmann Court held:

The plaintiff's injury need be no more tangible or serious than that the conditions of employment have been altered and the work environment has become abusive. Although the LAD provides for compensatory and punitive damages, it is not primarily a tort scheme; rather, *its primary purpose is to end discrimination*. Because discrimination itself is the harm that the LAD seeks to eradicate, additional harms need not be shown in order to state a claim under the LAD. In a claim of hostile work environment sexual harassment, the hostile work environment is the legally recognized harm. Therefore, *a plaintiff in a hostile work environment sexual harassment case establishes the requisite harm if she shows that her working conditions were affected by the harassment to the point at which a reasonable woman would consider the working environment hostile*.

In making that showing, the plaintiff may use evidence that other women in the workplace were sexually harassed. The plaintiff's work environment is affected not only by conduct directed at herself but also by the treatment of others. A woman's perception that her work environment is hostile to women will obviously be reinforced if she witnesses the harassment of other female workers. Therefore, we hold that the plaintiff need not personally have been the target of each or any instance of offensive or harassing conduct. Evidence of sexual harassment directed at other women is relevant to both the character of the work environment and its effects on the complainant.

....

Accord Hall v. Gus Constr., 842 F.2d 1010, 1015 (8th Cir.1988) ('Although [the plaintiff] was not subjected to sexual propositions and offensive touching, evidence of sexual harassment directed at employees other than the plaintiff is relevant to show a hostile work environment.')

Lehmann v. Toys 'R' Us, 132 N.J. 587 at 610-11 (1993) (emphasis added).

Commenting on the principal objectives of the NJLAD, our Supreme Court has observed that “[f]reedom from discrimination is one of the fundamental principles of our society.” See L.W. ex rel. L.G. v. Toms River Reg’l Sch. Bd. of Educ., 189 N.J. 381, 399-400 (2007). To that end, the legislature enacted the NJLAD in 1945 with “the overarching goal of nothing less than the eradication of the cancer of discrimination.” Id. Since it is clear that the overriding (arguably predominant) claim asserted by the plaintiffs is one seeking injunctive relief in the form of an order ending the hostile environment alleged to exist at Edna Mahan, the court is satisfied that the plaintiffs have met the commonality requirement of class certification.

Typicality

Typicality requires that “the harm complained of be common to the class.” W. Morris Pediatric v. Henry Schein, Inc. 385 N.J. Super. 581, 603 (quoting Hassine v. Jeffes, 846 F.2d 169, 177 (3d Cir. 1988)). The typicality inquiry is “intended to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees’ interests will be fairly represented.” Baby Neal for and by Kanter v. Casey, 43 F.3d 48, 57 (3d Cir. 1994). Class representatives’ claims meet the typicality test if they arise from the same course of conduct giving rise to others class members’ claims and are based on the same legal theory. In re Cadillac V-8-6-4 Class Action, 93 N.J. 412, 425 (1983). Where the legal or factual positions of the class representatives are “markedly different” from those of the putative class members, typicality will not be satisfied. W. Morris Pediatrics, 385 N.J. Super. at 603. The presence of individual claims asserted on behalf of certain plaintiffs, however, is not a bar to class certification. Individualized issues can be addressed through a number of case management tools “including: (1) bifurcating liability and damage trials . . . ; (2) appointing a magistrate judge or special master to preside over

individual damages proceedings; (3) decertifying the class after the liability trial . . .; (4) creating subclasses; or (5) altering or amending the class." Wilson v. Cty. of Gloucester, 256 F.R.D. 479, 490, n. 15 (D.N.J. 2009).

Defendants argue that typicality is not met here because the individual observations, experiences, and impact of living conditions at EMCFW are different for each female inmate. Typicality, however, does not require that all putative class members share identical claims or underlying facts. See Barnes v. Am. Tobacco Co., 161 F.3d 127, 141 (3d. Cir. 1998), *cert. den.* 526 U.S. 1114 (1999). Plaintiffs' assert that typicality is satisfied because the hostile environment at EMCFW and the failure of the administration's policies and practices to correct it are the essential elements of the NJLAD claim shared by each member of the proposed class. See, Laufer v. U.S. Life Ins. Co., 385 N.J. Super. 172, 180 (App. Div. 2006) ("Since the claims only need share the same essential characteristics, and need not be identical, the typicality requirement is not highly demanding.") (quoting *Moore's Federal Practice*, 232.4 [4] 3d ed. 1997).

For the same reasons cited in support of the commonality finding, the court concludes that the typicality requirement is satisfied by plaintiffs' class action complaint. Because the commonality and typicality requirements tend to merge, "a finding of commonality will ordinarily support a finding of typicality". Elkins v. America Showa, Inc., 219 F. R.D. 414 , 419 (S. D. OH., 2002) (quoting Gen'l Telephone of Southwest v. Falcon, 457 U. S. 147, 157, n. 13). Again, the overriding claim sought to be addressed is the hostile living environment that is alleged to have pervaded at Edna Mahan for decades. The DOJ Report cited multiple examples of investigations, convictions, guilty pleas, etc. that are corroborative of the allegations supporting that overriding claim.

Adequacy

While the position of a class representative need not be “identical” to absentee class members, plaintiffs must establish that their claims will adequately represent the interests of the entire class, including absentee members. Laufer v. U.S. Life Ins. Co. in City of New York, 385 N.J. Super. 172, 180 (App. Div. 2006). “It is well settled that to be a class representative on a particular claim, the plaintiff must ... have a cause of action on that claim.” Zimmerman v. HBO Affiliate Group, 834 F.2d 1163, 1169 (3d Cir. 1987). The class representative must have a personal stake in the litigation, or the case must be dismissed. Sosna v. Iowa, 419 U.S. 393, 401 (1975). Furthermore, the plaintiff must not have interests antagonistic to those of the class. Delgozzo v. Kenny, 266 N.J. Super. 169, 188 (App. Div. 1993) (citing In re Asbestos Sch. Litig., 104 F.R.D. 422, 430 (E.D.Pa.1984)).

In arguing that plaintiffs cannot meet the adequacy requirement, defendants again argue that “plaintiffs did not present any evidence that their NJLAD claims were representative of the proposed class of every inmate at EMCFW.” Defendants June 22, 2020 supplemental brief at 8. For the reasons discussed at length above, the court disagrees. Plaintiffs can attempt to prove the NJLAD hostile living environment claim on behalf of all similarly situated class members incarcerated at Edna Mahan, regardless of whether the standard of proof is “first-hand knowledge” or some lesser evidentiary standard.

Analysis of Rule 4:32–1(b) Factors

Under Rule 4:32-1(b), the “core issues are (1) whether common issues of law and fact predominate over individual ones concerning the putative class members, (2) whether the class action is superior to a myriad of individually litigated cases, and (3)

whether a class action -- given the number of individual claims involved -- is manageable.”

Lee, 203 N.J. at 519.

Predominance and Superiority

In Dugan v. TGI Fridays, the Supreme Court commented on what must be shown to establish claim predominance:

To determine predominance under Rule 4:32-1(b)(3), the court decides ‘whether the proposed class is ‘sufficiently cohesive to warrant adjudication by representation.’ Iliadis, supra, 191 N.J. at 108, 922 A.2d 710 (quoting Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623, 117 S. Ct. 2231, 2249, 138 L. Ed. 2d 689, 712 (1997)). Rule 4:32-1(b)(3) does not demand a showing ‘that there is an ‘absence of individual issues or that the common issues dispose of the entire dispute,’ or ‘that all issues [are] identical among class members or that each class member [is] affected in precisely the same manner.’ Lee, supra, 203 N.J. at 520, 4 A.3d 561 (alterations in original) (quoting Iliadis, supra, 191 N.J. at 108-09, 922 A.2d 710). Nor must a plaintiff demonstrate that the number of common issues exceeds the number of individual issues. Varacallo v. Mass. Mut. Life Ins. Co., 332 N.J. Super. 31, 45, 752 A.2d 807 (App. Div. 2000).

The predominance factor, however, is ‘‘far more demanding’ than Rule 4:32-1(a)(2)’s requirement that there be questions of law or fact common to the class.’ Castro v. NYT Television, 384 N.J. Super. 601, 608, 895 A.2d 1173 (App. Div. 2006) (quoting Amchem Prods., supra, 521 U.S. at 624, 117 S. Ct. at 2250, 138 L. Ed. 2d at 713). As the Court observed in Lee, supra, the predominance requirement mandates ‘a qualitative assessment of the common and individual questions rather than a mere mathematical quantification of whether there are more of one than the other.’ 203 N.J. at 519-20, 4 A.3d 561 (citing Iliadis, supra, 191 N.J. at 108, 922 A.2d 710). As the Court has observed, ‘the answer to the issue of predominance is found . . . in a close analysis of the facts and law.’ Iliadis, supra, 191 N.J. at 109, 922 A.2d 710 (alteration in original) (quoting Cadillac, supra, 93 N.J. at 434, 461 A.2d 736).

Dugan v. TGI Fridays, Inc., 231 N.J. at 48.

The Dugan Court also summarized the proofs required to meet the superiority requirement;

A class action plaintiff must also demonstrate that ‘a class action is superior to other available methods for the fair and efficient adjudication of the controversy.’ R. 4:32-1(b)(3). A court analyzing that factor must undertake ‘(1) an informed consideration of alternative available methods of adjudication of each issue, (2) a comparison of the fairness to all whose

interests may be involved between such alternative methods and a class action, and (3) a comparison of the efficiency of adjudication of each method.’ Iliadis, supra, 191 N.J. at 114-15, 922 A.2d 710 (quoting Cadillac, supra, 93 N.J. at 436, 461 A.2d 736); see also Int’l Union, supra, 192 N.J. at 383, 929 A.2d 1076 (holding that ‘superiority’ requirement mandates “a comparison with alternative procedures’ to evaluate both fairness and efficiency of the class action proceeding’ (quoting Iliadis, supra, 191 N.J. at 114, 922 A.2d 710)).

Dugan v. TGI Fridays, Inc., 231 N.J. 24, 49. Further, in Lee v. Carter-Reed Co., L.L.C., 203 N.J. 496, 520 (2010), the Supreme Court observed:

Whether a class action is superior to thousands of minor, individual actions or some other ‘alternative procedure[.]’ involves considerations of fairness to the putative class members and the defendant, and the ‘efficiency’ of one adjudicative method over another. In re Cadillac, supra, 93 N.J. at 436, 461 A.2d 736. One factor in this assessment is whether any one individual who has suffered a wrong will have the financial wherewithal or incentive to prosecute a claim that might cost more than its worth. Int’l Union, supra, 192 N.J. at 384, 929 A.2d 1076.

Predominance does not require that “all issues be identical among class members or that each class member be affected in precisely the same manner.” See, Int’l Union of Operating Eng’rs Local no. 68 Welfare Fund v. Merck & Co., Inc., 192 N.J. 372, 383 (2007) (citing Fiore v. Hudson Cnty. Employees Pension Comm’n, 151 N.J. Super. 524, 528 (App. Div. 1977)). Defendants’ lack of predominance and lack of superiority arguments, like its arguments against commonality, typicality and adequacy, are based on the representative plaintiffs’ alleged lack of “first-hand knowledge.” Defendants argue that plaintiffs cannot establish predominance or superiority “because their proposed class definition is impermissibly broad and incompatible with the requirements of a NJLAD hostile environment claim.” Defendants’ June 22, 2020 supplemental brief at 8. As discussed above, however, defendants offer too narrow an interpretation of the permitted scope of a NJLAD hostile environment claim. The court is not satisfied that first-hand knowledge is a prerequisite to the representative plaintiffs pursuing a claim, on behalf of similarly situated inmates, seeking an end to the alleged sexually hostile living conditions

at EMCFW. To the extent that the representative plaintiffs must possess first-hand knowledge as a prerequisite to pursuing a NJLAD hostile living environment claim, however, the court is satisfied that the representative plaintiffs are possessed of sufficient first-hand knowledge to meet that requirement.

In analyzing the predominance and superiority requirements, the court notes that the DOJ Report sheds new light on, and requires a fresh look at, the hostile living environment claims set forth in the complaint. The judicially noticeable facts cited in the Report lend considerable support to the overriding (predominant) contentions set forth in the complaint. They require that particular attention be focused on the representative plaintiffs' claim for injunctive relief – which seeks an end to the alleged long-standing toxic atmosphere of sexual misconduct at the facility.

As framed by the pleadings, the court finds that the common questions of law and fact asserted on behalf of the proposed class members predominate and that a class action is superior to requiring the filing of individual claims by inmates. To require inmates to file individual lawsuits seeking to end the alleged toxic atmosphere at Edna Mahan would be impractical, and economically unfeasible, to say the least. Further, since the court does not foresee the need for thousands of mini-trials, as contended by defendants, it sees no prejudice to defendants in granting certification of the class. For these reasons and for the reasons discussed throughout this opinion, the court concludes that the common questions of law and fact identified in the complaint, as framed by the proposed class, can be adjudicated more fairly and efficiently through a class action than through any other alternative methods of adjudication. In the court's view, all parties will ultimately benefit from class certification in this case.

Manageability

Managing a state-wide class action almost always will be a difficult undertaking because ‘[c]omplexity is an inherent trait of class litigation.’ Iliadis, supra, 191 N.J. at 117-18, 922 A.2d 710. A court should not ‘simply close its doors to . . . litigants because their actions present novel and difficult questions.’ Id. at 118, 922 A.2d 710 (citation and internal quotation marks omitted). Although class certification may be denied on manageability grounds, such an approach is strongly disfavored. Id. at 117, 922 A.2d 710 (citing Klay v. Humana, Inc., 382 F.3d 1241, 1272-73 (11th Cir. 2004) (finding manageability; will rarely, if ever, be in itself sufficient to prevent certification of a class’’)).

Lee v. Carter-Reed Co., L.L.C., 203 N.J. 496, 520-21 (2010).

As noted in the previous section, the court is of the view that the proposed class action carries with it certain advantages over individual complaints brought on behalf of Edna Mahan inmates. At least with respect to the overriding NJLAD claim seeking injunctive relief, the court is satisfied that a class action is preferable to managing hundreds of individual lawsuits. As noted earlier, to the extent that there are individual claims asserted on behalf of certain class members, they can be effectively managed through a variety of case management tools, “including: (1) bifurcating liability and damage trials . . .; (2) appointing a magistrate judge or special master to preside over individual damages proceedings; (3) decertifying the class after the liability trial . . .; (4) creating subclasses; or (5) altering or amending the class.” Wilson v. Cty. of Gloucester, 256 F.R.D. at 490, n. 15 (D.N.J. 2009); see, Lee, 203 N.J. at 530 (approving subdividing class, if necessary, as case management tool and “in a worst-case scenario decertifying the class if justice cannot be achieved through a class action”). The United States District Court in Wilson certified a class action filed on behalf of Gloucester County Jail inmates, noting that a class action is particularly appropriate in certain “institutional reform cases” seeking injunctive relief. 256 F.R.D. at 491.

CONCLUSION

For all the foregoing reasons, the court is satisfied that the plaintiffs have met the requirements for class certification under Rule 4:32-1. The court will withhold entry of an order approving class certification, however, pending further review and direction from the Appellate Division.

Very truly yours,

/s/ MICHAEL F. O'NEILL, J.S.C.

MICHAEL F. O'NEILL, J.S.C.

cc: Superior Court of New Jersey, Appellate Division (via email)
Thomas C. Miller, A.J.S.C. (via email)
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