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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DOE ET AL,

No. C04-04914 MJJ

Plaintiff,

**ORDER RE MOTION FOR CLASS
CERTIFICATION**

v.

CITY AND COUNTY OF SAN FRANCISCO
ET AL,

Defendant.

Pending before the Court is Plaintiff Marie Doe, a minor, through her mother and next friend, Melba Doe’s Renewed Motion for Class Certification (Doc. #51). Defendant City and County of San Francisco has filed an Opposition (Doc. #96), to which Plaintiff filed a Reply (Doc. #97). For the following reasons, the Court **DENIES** Plaintiff’s Motion.

I. Background

Plaintiff brings this civil rights action based on events that occurred on October 29-30, 2003, when Plaintiff was arrested and booked into jail. Plaintiff seeks declaratory and injunctive relief, as well as damages on behalf of herself and on behalf of others similarly situated. The material facts from her First Amended Complaint (Doc. #30) are summarized as follows.

At the time of the events giving rise to this lawsuit, Plaintiff was twelve years old, and attending the seventh grade in San Francisco. While at school on October 21, 2003, a male student kicked Plaintiff and engaged in “horseplay” with her and another female student. At some point during this interaction, the female student brought the male student to the ground and kned him in the stomach. The following

1 week, the school reported the incident to the San Francisco Police Department. The school
2 administration also provided statements from Plaintiff and the two other students involved in the
3 incident to police Officer Jacqueline Selinger, who thereafter interrogated Plaintiff and the other
4 students. On October 29, 2003, Officer Selinger, along with Officer #1770, Officer Neil, Sergeant Lee,
5 and Sergeant Thorne, arrested Plaintiff and the other female student for violation of California Penal
6 Code § 245(a)(1), for “assault with a deadly weapon (feet).” Before taking Plaintiff to Juvenile Hall for
7 processing, the officers physically searched Plaintiff at the school. The search did not uncover any
8 drugs, weapons, or contraband on Plaintiff’s person. Defendants did not contact Plaintiff’s mother
9 before they interrogated, arrested, or searched Plaintiff, or before they transported her to Juvenile Hall.

10 At Juvenile Hall, Defendants booked Plaintiff into custody, took her photograph and fingerprints,
11 ordered her to take a shower and to change into a jail uniform, and placed her in a cell. Thereafter, a
12 Juvenile Probation Department employee interrogated Plaintiff about her sexual and menstrual history,
13 and conducted medical testing on Plaintiff, including taking blood and urine samples from her. That
14 night, Plaintiff met with her mother during a supervised visitation. Later that night, a female Juvenile
15 Probation Department employee ordered Plaintiff to disrobe to reveal her genital area, and directed
16 Plaintiff to squat and cough. Defendants held Plaintiff overnight. The following day, on October 30,
17 2003, Defendants released Plaintiff to her mother. Defendants never brought charges against her.

18 On November 18, 2004, Plaintiff filed her initial Complaint against Defendants. (Doc. #1.)
19 Defendants thereafter moved to dismiss certain claims in the Complaint. (Doc. #7.) On August 16, 2005,
20 the Court granted Defendants’ Motion in part, and denied it in part. (Doc. #29.) Specifically, the Court
21 dismissed Plaintiff’s Count IV for violation of California Civil Code § 52.1 based on governmental
22 immunities set forth in California Government Code §§ 844.6 and 820.02. Additionally, the Court
23 dismissed Count V for violation of California Penal Code § 4030. Finally, the Court dismissed
24 Plaintiff’s assault and battery claim in Count VI with respect to the supervisor’s vicarious liability for
25 damages, based on the governmental immunities in §§ 820.2 and 820.8. The Court granted Plaintiff
26 leave to amend with respect to Counts IV and VI.

27 Plaintiff thereafter filed her First Amended Complaint for Class Action and Individual Relief
28 (Doc. #30), wherein she brings the following claims. In Count One, Plaintiff asserts a claim pursuant

1 to 42 U.S.C. § 1983 against all Defendants for violation of her rights under the Fourth and Fourteenth
2 Amendments, including: (a) “the right to be free from unreasonable searches and seizures”; (b) the right
3 to be free from invasion of privacy”; (c) “the right to be free from the deprivation of life, liberty, and
4 property without due process o law, including the right to be free from invasion of privacy and violation
5 of bodily integrity[.]” In Count Two, Plaintiff asserts a § 1983 claim against the City and County of San
6 Francisco, the Juvenile Probation Department, and Tim Diestel, alleging that the individual defendants
7 were acting pursuant to Defendants’ customs, policies, practices, and/or procedures. In Count Three,
8 Plaintiff asserts a claim against all Defendants for violation of the California Constitution, Article 1, §§
9 1 and 13. In Count Four, Plaintiff asserts a claim against all Defendants for violation of California Civil
10 Code § 52.1, based on violations of her rights under the California and United States Constitutions and
11 California law. In Count Five Plaintiff asserts claim for assault and battery against Defendants City and
12 County of San Francisco and th Juvenile Probation Department.¹

13 On September 19, 2006, Plaintiff filed a Renewed Motion for Class Certification. This Motion
14 is now before the Court.

15 II. Legal Standard

16 Certification of a class of plaintiffs is governed by Federal Rule of Civil procedure 23. This rule
17 provides, in pertinent part:

18 One or more members of a class may sue or be sued as representative
19 parties on behalf of all only if (1) the class is so numerous that joinder of
20 all members is impracticable, (2) there are questions of law or fact
21 common to the class, (3) the claims or defenses of the representative
22 parties are typical of the claims or defenses of the class, and (4) the
23 representative parties will fairly and adequately protect the interests of
24 the class.

22 Fed. R. Civ. P. 23(a). The party seeking to certify a class bears the burden of demonstrating that each
23 of the four requirements of Rule 23(a) - numerosity, commonality, typicality, and adequacy of
24 representation - are satisfied. *See Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

26 ¹On November 22, 2005, the Court granted Defendants’ Motion to Strike with respect to
27 Plaintiff’s allegations regarding violation of California Penal Code § 4030 and Plaintiff’s damages claim
28 to Dismiss count three of Plaintiff’s Amended Complaint for direct violation of the California
Constitution, and Defendants’ request for a more definite statement regarding Plaintiff’s class
allegations. (*Id.*)

1 Additionally, the movant must establish that one or more of the following grounds for maintaining the
2 lawsuit as a class action pursuant to Rule 23(b): (1) that there is a risk of substantial prejudice from
3 separate actions; (2) that declaratory or injunctive relief benefitting the class as a whole would be
4 appropriate; or (3) that common questions of law or fact predominate and the class action is superior
5 to other available methods of adjudication.

6 The decision whether to certify a class is committed to the district court's discretion. *See*
7 *Doninger v. Pac. Northwest Bell, Inc.*, 564 F.2d 1304, 1309 (9th Cir. 1977). In determining the propriety
8 of a class action, the question is not whether the plaintiffs have stated a cause of action or will prevail
9 on the merits, but, rather, whether the requirements of Rule 23 are met. *See Eisen v. Carlisle &*
10 *Jacquelin*, 417 U.S. 156, 178 (1974). The Court must conduct a rigorous analysis to determine whether
11 the 23 requirements have been met. *See Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 161
12 (1982). In doing so, the Court must accept the substantive allegations in the complaint as true. *See In*
13 *re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 691 F.2d 1335, 1342 (9th Cir.
14 1982); *Blackie v. Barrack*, 524 F.2d 891, 901 (9th Cir. 1975). However, the Court "need not blindly rely
15 on conclusory allegations which parrot Rule 23 requirements [and] may . . . consider the legal and
16 factual issues presented by plaintiff's complaints." 3 Herbert Newberg & Alba Conte, *Newberg on*
17 *Class Actions* 7.26 (4th ed. 1992).

18 III. Discussion

19 Plaintiff requests that the Court certify two classes, defined as:

20 (a) All persons, in the period from and including November 18, 1999
21 [five years before the Complaint was filed], to the present and continuing
22 until this matter is adjudicated and the lawful customs, policies, and/or
23 practices complained of herein cease, who were arrested as minors and
24 subjected to one or more pre-arraignment strip and/or visual body cavity
25 searches at Juvenile Hall without legal basis and without Defendants
26 having, and documenting, probable cause or a reasonable suspicion that
27 the search would produce contraband or weapons. This class also
28 includes persons subjected to strip searches, visual body cavity searches,
and/or physical body cavity searches pursuant to Defendants' policies
and procedures on "intake" or "security & control," or all other policies
requiring or permitting suspicionless strip searches and warrantless body
cavity searches.

(b) All persons, in the period from and including November 18, 1999
to the present and continuing until this matter is adjudicated and the
unlawful customs, policies, and/or practices complained of herein cease,
who were arrested as minors and subjected to pre-arraignment, non-

1 consensual medical procedures, testing, and/or inquiries at Juvenile Hall,
2 without legal basis and in violation of the minor's right to privacy and
3 bodily integrity under the law. This class also includes all persons
4 subjected to unconsented, warrantless medical, urine, DNA, or other
5 testing or inquiries pursuant to Defendants' policies and procedures
6 relating to intake, security & control, health screening, or all other
7 policies requiring or permitting such testing and inquiries.

8 (Mot. at 13.)

9 As indicated above, Plaintiff must demonstrate that the four requirements under Rule 23(a) are
10 satisfied to warrant class certification. However, before the Court engages in the Rule 23 analysis, the
11 Court must make a threshold inquiry as to whether the proposed classes are sufficiently definite, and
12 thus ascertainable. *See DeBremaeker v. Short*, 433 F.2d 733, 734 (5th Cir. 1970). Generally, an
13 identifiable class exists if its members can be ascertained by reference to objective criteria. *See id.* at
14 734-35 (declining to certify a class made up of Texas residents "active in the peace movement" because
15 identification of members was dependent on their subjective states of mind); *see also Lukovsky v. City
16 and County of San Francisco*, 2006 WL 140574 at *2 (N.D. Cal. Jan. 17, 2006). Thus, the Court must
17 be able to determine class members without having to answer numerous fact-intensive questions. *See
18 Daniels v. City of New York*, 198 F.R.D. 409, 414 (S.D.N.Y. 2001).

19 Here, Plaintiffs ask the Court to certify one class composed of minors who were subjected to pre-
20 arraignment strip or visual body cavity searches "without legal basis and without Defendants having,
21 and documenting, probable cause or a reasonable suspicion that the search would produce contraband
22 or weapons." Additionally, Plaintiff seeks to certify a class comprised of individuals who were
23 subjected to non-consensual medical procedures, testing, and/or inquiries at Juvenile Hall "without legal
24 basis and in violation of the minor's right to privacy and bodily integrity under the law." As Plaintiff's
25 descriptions illustrate, membership in the putative classes is not based strictly on objective criteria.
26 Rather, membership is contingent on the searches being conducted without probable cause or reasonable
27 suspicion, and the medical procedures and/or testing being conducted without prior consent and without
28 a legal basis. To determine whether a minor arrested during the proposed period qualifies for
membership in either class, the Court would have to engage in a case-by-case examination of the
specific circumstances of the minor's arrest, and whether the Defendants had a valid basis to perform
the search and/or medical testing. As a result, the Court finds that Plaintiff has failed to propose a

1 definite, readily-ascertainable class for certification.

2 This conclusion is further bolstered by examining the Rule 23(a) factors. As to numerosity,
3 Plaintiff alleges that she “does not know the exact number of class members. However, Plaintiff is
4 informed and believes . . . that Defendants arrested and detained 11,791 children at Juvenile Hall during
5 the years 1999-2003, and that Defendants subject[ed] these arrestees to improper strip searches, blood
6 and urine testing, and other medical inquiries, as a matter of custom, ” (FAC ¶59.) In her Motion,
7 Plaintiff then proffers that from 1999 through August 2006, there were 16,828 children detained at
8 Juvenile Hall, and “[a]ll, or nearly all, of these children were subjected to suspicionless strip searches
9 under Defendants’ blanket policies.” Thus, although Plaintiff proposes two putative classes, Plaintiff
10 is unable to estimate the number of potential members that fall into either or both of the proposed
11 classes.² Rather, Plaintiff submits that *every* juvenile taken to Juvenile Hall is a potential class member,
12 without differentiating between juveniles subjected to strip or visual body searches, and those subjected
13 to medical testing or inquiries. This generalized figure highlights the amorphous nature of Plaintiff’s
14 proposed classes.

15 Moreover, the same reasoning undermines Plaintiff’s ability to satisfy the typicality and
16 commonality prongs under Rule 23(a). Plaintiff proffers that “[a] common legal issue running through
17 each child’s claim is whether being subjected to those blanket strip searches violates the United States
18 and California Constitutions[.]” As to typicality, Plaintiff asserts that the nature of her claim is “that
19 defendants’ blanket strip search policies - and overbroad medical and urine testing and inquiries - are
20 unconstitutional.” However, as Defendants point out, Plaintiff was arrested for assault with a deadly
21 weapon. Thus, Defendants assert that any strip search of Plaintiff was completely lawful. Although
22 Plaintiff claims that it is Defendants’ blanket strip searches that violate her state and federal
23 constitutional rights, because Plaintiff was arrested and detained based on a crime of violence - a fact
24 that may affect the reasonableness of any search she was subjected to - Plaintiff’s claims are narrower
25 than those of the proposed classes. Stated differently, although Plaintiff’s proposed classes include all
26 juveniles subjected to searches or medical testing “without [a] legal basis,” it is undisputed that Plaintiff

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28 ²In fact, Plaintiff’s first proposed class is actually comprised of detainees who were subjected to any of at least four different types of searches. Plaintiff has offered no estimate as to how many juvenile detainees were subject to each of the sub-categories of searches.

1 was arrested for a violent crime, which may provide a valid legal basis for any search Plaintiff
2 underwent. As a result, the Court finds that Plaintiff's claims are not typical of those of the putative
3 classes and involve legal issues that are not common to the classes as a whole.


4 The final factor under Rule 23(a) requires the Court to assess whether Plaintiff will adequately
5 represent the proposed classes. Although the Court finds no issue with respect to the ability of
6 Plaintiff's counsel to litigate this case, as detailed above, because Plaintiff's claims are different than
7 those of the proposed class members, certifying the classes and appointing Plaintiff as class
8 representative will not further the classes' interests. Accordingly, the Court finds this factor also weighs
9 against class certification.

10 IV. Conclusion

11 In sum, the Court finds that Plaintiff has failed to establish that certification of the two proposed
12 classes is appropriate in this case. Neither of the proposed classes are sufficiently ascertainable and
13 Plaintiff has not sufficiently demonstrated that the numerosity, commonality, typicality, and adequacy
14 factors under Rule 23(a) militate in favor of class certification. Accordingly, the Court **DENIES**
15 Plaintiff's Renewed Motion for Class Certification without prejudice. (Doc. #51).

16 **IT IS SO ORDERED.**

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18 Dated: 11/29/2006



MARTIN J. JENKINS
UNITED STATES DISTRICT JUDGE

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