SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 613

TOMMY O. JOHNSON, by and through his Attorney-in-Fact REV. DORIS WHITE and JOHN DOE on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO, CITY AND COUNTY OF SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH, LAGUNA HONDA HOSPITAL AND REHABILITATION CENTER, MIVIC HIROSE, and DOES ONE through TWENTY,

Defendants.

Case No. CPF-20-517064

ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

INTRODUCTION

This matter came on regularly for hearing on May 24, 2024, in Department 613, the Honorable Andrew Y.S. Cheng, presiding. Brian Umpierre (Stebner Gertler Guadagni & Kawamoto), Sara Peters (Walkup, Melodia, Kelly & Schoenberger), and Blair Kittle (Cotchett, Pitre, & McCarthy, LLP) appeared for Plaintiffs. Deputy City Attorneys Mark Lipton, Zuzana Ikels, and Henry Lifton appeared for

Defendants.

Having reviewed and considered the arguments, pleadings, and written submissions of all parties, the Court **GRANTS** Plaintiffs' motion for class certification.

RELEVANT BACKGROUND

This class action lawsuit is brought under the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code § 15600 et seq.), the Confidentiality of Medical Information Act (Civ. Code § 56 et seq.), Health and Safety Code section 1430(b), the Information Practices Act (Civ. Code §§ 1798 et seq.), and California Health & Safety Code section 1280.15. (Second Amended Compl. ("SAC") ¶ 1.) Plaintiffs allege Laguna Honda Hospital and Rehabilitation Center acquired sensitive medical and private information during the course of care and then disseminated that information to persons not privileged to receive it without Plaintiffs' consent. (*Ibid.*)

On or about July 31, 2019, Plaintiff Doe ("Doe") filed an individual claim for damages with the City based on an incident date of March 15, 2019, which did not allege a class. (*Id.*, ¶ 73.)

On or about September 12, 2019, Doe amended his claim and asserted a class of 23. Doe still based the claim on the March 15, 2019 incident. (*Id.*, ¶ 74.) The City did not take action on the September 12, 2019 claim and the claim was deemed denied as a matter of law on or about October 27, 2019. (*Id.*, ¶ 75.)

On January 6, 2020, Doe filed an individual action against the City. (*Id.*, ¶ 77.)

On February 13, 2020, Doe filed a supplemental claim based on the March 15, 2019 incident, which included a class size of "130 or more similarly situated persons." (*Id.*, ¶ 78.) The City returned the February 13, 2020 claim without action. (*Ibid.*)

On March 24, 2020, Plaintiff Johnson and Doe filed a putative class action against the City based on Doe's February 13, 2020 claim. (*Id.*, ¶ 79.) The City moved for judgment on the pleadings alleging that the February 13, 2020 claim was void and that Doe and Johnson's claims failed to support a class. The Court granted the motion with leave to amend.

On July 7, 2021, plaintiffs filed a First Amended Complaint. The City demurred to the First Amended Complaint on July 27, 2021.

On January 7, 2022, this Court sustained in part and overruled in part the demurrer to the First Amended Complaint and granted the motion to strike with leave to amend.

On February 4, 2022, Plaintiffs filed a Second Amended Complaint ("SAC"). The City demurred to the SAC on February 23, 2022. On May 13, 2022, the Court overruled in part and sustained in part without leave to amend the demurrer and denied the motion to strike.

On January 16, 2024, Plaintiffs filed a motion for class certification, which is the motion before the Court.

REQUEST FOR JUDICIAL NOTICE

Pursuant to Evidence Code section 452, subdivision (h), the Court **GRANTS** Plaintiffs' requests for judicial notice and takes judicial notice of Exhibits D, F, H, EE, and JJ attached to the Umpierre Declaration and Exhibit QQ attached to the Umpierre Reply Declaration. The Court notes that it did not rely on Exhibit QQ in its analysis below.

EVIDENTIARY OBJECTIONS

The Court reviewed the City's evidentiary objections numbers 1 and 2 and **OVERRULES** them. As to the City's objection to Exhibit QQ, the Court **OVERRULES** the objection and notes that it did not rely on Exhibit QQ in its analysis below.

LEGAL STANDARD

Class actions are authorized under California law "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court...." (Code Civ. Proc., § 382.) "Drawing on the language of Code of Civil Procedure section 382 and federal precedent, [California courts] have articulated clear requirements for the certification of a class." (*Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1021.) "The party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives." (*Ibid.*) "In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Ibid.* [internal citations and quotation marks omitted].)

"Generally, a class suit is appropriate 'when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer.' [Citations.]" (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) "But because group action also has the potential to create injustice, trial courts are required to carefully weigh respective benefits and burdens and to allow maintenance of the class action only where substantial benefits accrue both to litigants and the courts." (*Ibid.* [internal citations and quotation marks omitted].) Although "issues affecting the merits of a case may be enmeshed with class action requirements," a plaintiff need not prove up the merits of his or her claims at certification; the focus of the inquiry is on the procedural feasibility of class treatment. (*Id.* at p. 443; accord *Hewlett-Packard Co. v. Super. Ct.* (2008) 167 Cal.App.4th 87, 95.) "Trial courts have great discretion with regard to class certification." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 655; accord *Linder, supra*, 23 Cal.4th at p. 435.)

DISCUSSION

Plaintiffs move to certify the following classes:

> **Patients' Rights Class**: All patients of Laguna Honda Hospital from April 14, 2022 to August 16, 2023.
>
> **Confidentiality Class**: All patients of Laguna Honda Hospital from March 23, 2017 to the present (or their responsible party) to whom the San Francisco Department of Public Health sent written notice that their private medical and health information was acquired and disseminated by Defendants to persons not privileged to receive it without the patient's consent.

At the outset, the Court addresses the proposed class definitions and the City's arguments that the classes should not be certified because the definitions are different from or broader than the class alleged in the Government Claim or complaint.

The claims in the SAC are consistent with the Government Claims Act claims filed by Mr. Doe and Mr. Johnson. (Compare SAC with Lipton Decl., Exs. A–D.)

In Plaintiffs' SAC, Plaintiffs allege the following classes:

> a. A General Class consisting of all patients of Laguna Honda Hospital, including without limitation those identified in investigations conducted by Defendant, who resided at Laguna Honda Hospital during the class period, who were subjected to inadequate staffing, neglect, violations of their patients' rights, discrimination, misconduct, and other violations as herein alleged and who did not receive adequate assistance with their activities of daily living as a result.

b. A subclass of the General Class consisting of individuals who were determined in the course of the DPH or Defendants' internal investigation to be victims of verbal, mental, sexual or physical abuse

c. A subclass of the General class consisting of individuals were determined in the course of the DPH or Defendants' internal investigation to be victims of chemical restraints.

d. A subclass of the General Class consisting of individuals who were determined in the course of the DPH or Defendants' internal investigation to be victims of privacy violations through photography or video without consent or other unlawful disclosure of individually identifiable medical information.

e. A subclass of the General Class consisting of individuals with qualified disabilities who require assistance with activities of daily living and who have resided at Laguna Honda Hospital during the class period, including their successors-in-interest if deceased.

f. Plaintiffs reserve the right to modify, change, or expand the definitions of the Class and Subclasses based upon discovery and further investigation.

g. The class period is defined as commencing four years prior to the filing of this action.... (SAC, ¶ 81.)

The City raises four arguments: (1) "the purported class definition for the Patients' Rights Class bears no resemblance to the Government Claims or any of the three complaints;" (2) "the factual allegations in the SAC are entirely different than the evidence offered in support of the present motion;" (3) "the proposed class definition is broader than the General Class defined in the SAC;" and (4) "Plaintiffs advance a legal theory that does not appear in the Government claim or the pleadings." (Opp. at pp. 14–19.) Plaintiffs argue that the proposed classes are encompassed within the SAC's allegations and the Government Claims.

First, as to the Patients' Rights Class definition, the class is defined as "all patients of Laguna Honda Hospital from April 14, 2022 to August 16, 2023." Including all patients of Laguna Honda Hospital falls within the allegations of the SAC. (SAC, ¶ 81.) The class period is narrowed to the period of decertification of Laguna Honda Hospital and actually narrows the class period, which is defined as commencing four years before the filing of the Complaint. (*Ibid.*) Next, as to the factual allegations and the evidence offered in support of this motion, the evidence appears to be consistent with Plaintiffs' allegations of systemic governance failure that was ongoing in 2020 and eventually led to the evidence produced from Laguna Honda Hospital's period of decertification. (*Id.*, ¶¶ 24, 34–44, 46, 51, 68, 70;

Plaintiffs' Exs. F, LL.) Finally, as to Plaintiffs' legal theory, the theory appears to be alleged generally in the SAC and the Court will not narrow Plaintiffs' legal theory. (SAC, ¶ 74 ["amended his government tort claim to include claims on behalf of all of those similarly situated victims of the systemic pattern and practice that arose from managing agents' willful disregard of known risks of such violations..."].)

Turning to whether class certification is appropriate, the Court examines each class certification factor below to determine if class certification should apply here.

I. Numerosity

A class is numerous if joining all members of the class would be impracticable. (*Hendershot v. Ready to Roll Transp., Inc.* (2014) 228 Cal.App.4th 1213, 1222.) There is no fixed minimum number of class members that must be exceeded for the numerosity criterion to be satisfied. (*Ibid.*) In evaluating whether joinder is impracticable, a court may consider, for example, the nature of the action, size of individual claims, inconvenience of trying individual suits, and any other circumstances bearing on whether all the class members could feasibly be joined. (*Ibid.*) Plaintiffs argue that Laguna Honda's records indicate that approximately 735 individuals were patients at the hospital during the proposed class period. (Umpierre Decl., ¶ 2.) Even if the class may be smaller, the City does not argue that the numerosity element is not met. (*Hendershot, supra*, 228 Cal.App.4th at pp. 1222 [class of ten has been upheld].) The Court finds that the class is sufficiently numerous for class treatment.

II. Ascertainability

A class is ascertainable when "it is defined 'in terms of objective characteristics and common transactional facts' that make 'the ultimate identification of class members possible when that identification becomes necessary.' [Citation.]" (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980.) The focus of the analysis for this criterion is the adequacy of the class definition as relevant to res judicata and determining whether or not absent parties are bound by the class judgment as members of the class or are outside the scope of individuals bound by the judgment. (*Id.* at pp. 980–81.) Although ascertainability's definition includes a reference to "ultimate identification of class members," the California Supreme Court explained and rejected the notion that a showing of the class members' identities is necessary to establishing ascertainability or entitlement to certification. (*Id.* at pp. 980–83 ["due process does not demand that the proponent of class treatment demonstrate, as a prerequisite for

certification, that (much less how) class members eventually will receive individual notice of the action."].) The California Supreme Court also rejected the premise that a plaintiff must show that class members can be identified without unreasonable expense or time in order to establish ascertainability. (*Id.* at pp. 985–86.)

Plaintiffs' proposed class definitions are adequately defined using objective criteria. For the Patients' Rights Class, it includes all patients of Laguna Honda Hospital within a specific time period—April 14, 2022 to August 16, 2023. For the Confidentiality Class, it includes all Laguna Honda Hospital patients (or their responsible party) within a specific time period—March 23, 2017 to the present—to whom the San Francisco Department of Public Health sent written notice that their private medical and health information was acquired and disseminated by Defendants to persons not privileged to receive it without the patient's consent. After examining Plaintiffs' proposed class definitions, the Court determines that Plaintiffs' proposed classes are ascertainable as "[a] member of the class could appreciate from this definition whether he or she is included within it, and thus be in a position to take appropriate steps to protect his or her interests." (*Noel, supra*, 7 Cal.5th at p. 987.)

III. Community of Interest

a. Predominant Common Questions of Law or Fact

i. Background Law

"[T]he 'ultimate question' for predominance is whether 'the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.' [Citation.]" (*Duran v. U.S. Bank Nat'l Assn.* (2014) 59 Cal.4th 1, 28 ("*Duran I*").) "The answer hinges on whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment." (*Ibid.* [internal citations and quotation marks omitted].) "'As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.' [Citation.]" (*Brinker, supra*, 53 Cal.4th at p. 1022.) On the other hand, "class treatment is not appropriate if every member of the alleged class would be required to litigate numerous and substantial questions determining

his individual right to recover following the class judgment on common issues." (*Duran I, supra*, 59 Cal.4th at p. 28 [internal citations and quotation marks omitted].)

The Court next analyzes manageability. When there are common questions of law and fact but also some individualized issues, the propriety of certification may come down to whether the individualized issues can be managed so that they do not overwhelm common questions and render the action unsuitable for class treatment. (*Duran I, supra*, 59 Cal.4th at pp. 28–30.) Courts have often found that issues of damages may be managed, while "intricately detailed factual questions" that must be resolved on a plaintiff-by-plaintiff basis (*e.g.*, whether a worker was misclassified as an independent contractor) may render an action unsuitable for class treatment. (*Id.* at p. 30 [discussing *Brinker*]; see, e.g., *Walsh v. Ikon Office Sols., Inc.* (2007) 148 Cal.App.4th 1440, 1453–55 [defenses may undermine predominance; outside sales exemption required too much individualized inquiry for class treatment].)

ii. Application

1. Patients' Rights Class

Plaintiffs argue that they "advance a theory of recovery based on Defendant's pattern and practice of non-compliance with statutory authorities requiring the establishment of, and adherence to, policies for the protection of patients' rights, and the resulting harm when persons obligated to ensure those policies are implemented abrogate their duties and let fester a culture of neglect." (MPA at p. 18.) Specifically, Plaintiffs argue that "the single overarching common and predominant question in this case is whether the totality of Defendant's governance failures amounted to a policy and practice of non-compliance with statutory authorities requiring the establishment of and adherence to policies for the protection of patients' rights that permitted the culture of neglect alleged." (*Id.* at pp. 18–19.) Plaintiffs argue that Plaintiffs and the Patients' Rights class were exposed to Laguna Honda policies that were developed and purportedly implemented for the protection of patients' rights, such as Policy 22-03 (Resident Rights), Policy 22-01 (Abuse and Neglect Prevention, Identification, Investigation, Protection, Reporting, and Response), Policy 21-04 (HIPAA), but that these rights were violated due to Laguna Honda's culture of neglect. (*Id.* at pp. 19–20.)

Plaintiffs also raise the following common questions: "(1) whether LHH's uniform practice of failing to adhere to its duty to protect patients' rights permitted the culture of neglect that resulted in the

systemic violations of patients' rights alleged herein; (2) whether LHH owed Plaintiffs and the Class a duty to protect their rights as patients in compliance with statutory and regulatory requirements including Health & Saf[ety] Code § 1430, 22 C.C.R. § 72527(a), and 42 C.F.R. § 483.12; (3) whether LHH's conduct giving rise to CMS' decertification of the hospital on or about April 14, 2022 amounted to a violation of Laguna Honda patients' rights to live in a facility that has implemented policies and procedures prohibiting abuse and neglect pursuant to Health & Saf. Code §1430(b), 22 CCR § 72527(a), and 42 CFR § 483.12; (4) whether LHH failed to implement policies and procedures ensuring the protection of its residents from abuse, neglect, and exploitation, including but not limited to corporal punishment and non- medically necessary physical or chemical restraints, in violation of Health & Saf[ety] Code §1430(b), 22 CCR § 72527(a), and 42 CFR § 483.12; (5) Whether LHH failed to implement policies and procedures ensuring that its residents are treated with consideration and respect, in violation of Health & Saf[ety] Code §1430(b) and 22 CCR § 72527(a); [and] (6) Whether LHH failed to implement policies and procedures ensuring the confidentiality of patients' financial and health records in violation of Health & Saf[ety] Code §1430(b), 22 CCR § 72527(a), and Civil Code § 56.36(b)." (MPA at p. 19, fn. 5.)

There appears to be common questions with common answers as Laguna Honda's policies and practices are facility-wide policies that apply to all Laguna Honda patients. (Umpierre Decl., Exs. GG, LL.) The City argues that failure to implement a policy is not an actionable patient right, there are individualized questions, and that Plaintiffs do not argue that Laguna Honda lacked policies. At this time, the Court is only determining whether the dispute presents common questions amenable to common answers, not whether Plaintiffs' legal theories are viable—and Plaintiffs will need to meet this burden later on. The Court is not saying that there may not be individualized questions, but that the present record suggests that common questions will generate common answers. However, if there are some individualized questions, they do not appear to be unmanageable as overall, common questions predominate and will apply to Plaintiffs and Patients' Rights class members.

2. Confidentiality Class

Plaintiffs also seek to certify a Confidentiality Class. Plaintiffs assert that Civil Code section 56.36(b) prohibits the negligent release of confidential information or records and Plaintiffs can establish

Laguna Honda Hospital's "breach of confidentiality on a classwide basis, thus establishing predominance, by using the same body of common proof establishing the culture of neglect described above." (MPA at p. 26.) Approximately 98 Laguna Honda patients were photographed by Laguna Honda personnel without their consent and for non-medical purposes. (SAC, ¶¶ 37–38, 42–43, 53; Umpierre Decl., Exs. B, HH, JJ, KK.)

The City argues that certification of Confidentiality Class is not appropriate because class actions are inappropriate under the CMIA.

"The CMIA protects the confidentiality of patients' medical information. (*Loder v. City of Glendale* (1997) 14 Cal.4th 846, 859, 59 Cal.Rptr.2d 696, 927 P.2d 1200.) It does so by prohibiting health care providers from disclosing a patient's medical information without authorization (§ 56.10) and imposing a duty on health care providers who create, maintain, or dispose of medical information to do so in a manner that preserves the confidentiality of that information (§ 56.101, subd. (a)). Subdivision (b) of section 56.36 provides remedies to patients for a health care provider's 'release' of confidential medical information in violation of the CMIA. (§ 56.36, subd. (b).)" (*Vigil v. Muir Med. Grp. IPA, Inc.* (2022) 84 Cal.App.5th 197, 208.) Civil Code section 56.36, subdivision (b) provides: "In addition to any other remedies available at law, an individual may bring an action against a person or entity who has negligently released confidential information or records concerning him or her in violation of this part, for either or both of the following: (1) Except as provided in subdivision (e), nominal damages of one thousand dollars ($1,000). In order to recover under this paragraph, it is not necessary that the plaintiff suffered or was threatened with actual damages. (2) The amount of actual damages, if any, sustained by the patient." There is no breach of confidentiality under the CMIA unless an unauthorized party has "actually viewed" the information. (*Sutter Health v. Super. Ct. of Sacramento Cnty.* (2014) 227 Cal.App.4th 1546, 1550.) "[A] breach of confidentiality under the CMIA is an individualized issue…the individual bringing a private cause of action…must establish that the confidential nature of his or her information was breached because of the health care provider's negligence." (*Vigil, supra*, 84 Cal.App.5th at p. 219.) The City argues that individualized issues predominate. However, here, there appears to be a common issue as the Confidentiality Class includes residents who—without their consent—had photographs or videos taken of them and shared among Laguna Honda staff. (Umpierre

Decl., Ex. B.) The situation here is distinguishable from *Vigil* because in *Vigil* there were individual issues as to whether the information was even viewed whereas here, there appears to be acknowledgement after an investigation that the Confidentiality Class members' confidential medical information was viewed. (*Ibid.*; *Vigil, supra*, 84 Cal.App.5th at p. 221 ["The record demonstrates that Centeno may have viewed some of the information on the patient spreadsheet, but Vigil presented no evidence indicating whose information was viewed. There is also no evidence suggesting that other unauthorized parties viewed the information in the patient spreadsheet or that it was posted or disclosed in a public forum like the information at issue in *Stasi* or in *Berkeley Police Assn.* Therefore, most, if not all, of the almost 5,500 potential class members would be unable to maintain their CMIA claims against Muir unless they could establish that an unauthorized party viewed their confidential medical information and that Muir's negligence caused this breach of confidentiality"].) Broadly, this same legal theory will apply to all of the Confidentiality Class members. The Court is not saying that there was or was not a breach of confidentiality under the CMIA or whether this theory is viable as these are issues for another day and Plaintiffs will need to meet their burden. Here, the Court is only looking at whether there is a common issue. While there could be *some* individualized questions, they do not appear to be unmanageable; thus, the Court narrowly determines that a common question appears to predominate and will apply to Plaintiffs and all putative class members.

b. Typicality

In assessing whether there is a sufficient community of interest for purposes of class certification, a court must also determine whether the class representatives have claims or defenses typical of the class and can adequately represent the class. (*Brinker Rest. Corp., supra*, 53 Cal.4th at p. 1021.) "The typicality requirement's purpose is to assure that the interest of the named representative aligns with the interests of the class. [Citations.]" (*Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375 [internal quotation marks omitted].) "Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought. [Citations.]" (*Ibid.*) "The test of typicality 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." (*Ibid.*) A class representative cannot satisfy the

typicality requirement if he or she does not have a claim against the defendant. (*Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 98.) The fact that a defendant may raise a particular defense to the class representative's claim does not, in and of itself, establish atypicality. (*Id.* at p. 99.) "It is only when a defense unique to the class representative will be a major focus of the litigation..." that questions regarding typicality or adequacy of representation may arise. (*Ibid.*) A named plaintiff can be typical of the class members even if the named plaintiffs' circumstances are not the same as all the other class members. (See *Daniels v. Centennial Grp., Inc.* (1993) 16 Cal.App.4th 467, 473.) To be typical, the named plaintiffs need only to assert the same claims and defenses generally. (See *Fireside Bank v. Super. Ct.* (2007) 40 Cal.4th 1069, 1090–91; see *Medrazo, supra,* 166 Cal.App.4th at p. 99.)

Plaintiffs argue that their claims are typical of the proposed absent class members because they arise out of the same course of conduct by Laguna Honda Hospital and how Plaintiffs and the putative class were supposed to be protected by Laguna Honda Hospital's policies and procedures. Plaintiffs alleged that Plaintiffs and the putative class were exposed to systemic violation of their rights due to Laguna Honda Hospital's culture of neglect. The City asserts that Plaintiffs are not similarly situated. However, the City did not provide any argument that Plaintiffs have a unique defense or that Plaintiffs' interests are antagonistic or in conflict with those of the class in its Opposition or at hearing. (Opp. at pp. 1–21.) Here, Plaintiffs assert the same claims as the class. (Johnson Decl. ¶¶ 2, 8–9, 13–15; Doe Decl. ¶¶ 2–5; SAC, ¶¶ 81–86; *Fireside Bank, supra,* 40 Cal.4th at p. 1090; *Medrazo, supra,* 166 Cal.App.4th at p. 99.) The Court determines that Plaintiffs meet the typicality element.

c. Adequacy

"'The adequacy of representation component of the community of interest requirement for class certification comes into play when the party opposing certification brings forth evidence indicating widespread antagonism to the class suit.'" (*Martinez, supra,* 231 Cal.App.4th at p. 375, quoting *Capitol People First v. State Dept. of Developmental Servs.* (2007) 155 Cal.App.4th 676, 696.) The adequacy inquiry looks to the existence of conflicts of interest between the representative and the rest of the class, "but representative status will only be defeated by a conflict that goes to the very subject matter of the litigation." (*Martinez, supra,* 231 Cal.App.4th at pp. 375–76 [internal citations and quotation marks omitted].) A court "will evaluate the seriousness and extent of conflicts involved compared to the

importance of issues uniting the class; the alternatives to class representation available; the procedures available to limit and prevent unfairness; and any other facts bearing on the fairness with which the absent class member is represented." (*J.P. Morgan & Co. v. Super. Ct.* (2003) 113 Cal.App.4th 195, 213.)

As the party opposing class certification, the City bears the burden to bring forth evidence indicating widespread antagonism to the lawsuit, and the City did not provide any evidence indicating that Plaintiffs have a conflict "going to the very subject matter of the litigation" and "indicating widespread antagonism to this class lawsuit." (*Martinez, supra*, 231 Cal.App.4th at pp. 375–76.) Here, there is no evidence demonstrating that Plaintiffs are not adequate class representatives. Plaintiffs appear to be adequate class representatives. (Johnson Decl., ¶¶ 13–17; Doe Decl., ¶¶ 2–11.) As to Plaintiffs' counsel's adequacy, the Court determines Plaintiffs' counsel is adequate. The City does not raise any concerns with Plaintiffs' counsel's adequacy and the Court does not find any issues with Plaintiff's counsel's adequacy. (Opp. at pp. 1–31; Stebner Decl., ¶¶ 1–14; Murphy Decl., ¶¶ 1–10; Baghdadi Decl., ¶¶ 1–7.)

IV. Superiority of Class Proceeding

The final issue is whether a class action is superior to alternative means of adjudicating Plaintiffs' claims. A court is tasked with determining whether a class proceeding is advantageous to the litigants and the courts such that it is superior to the alternative means of adjudication. (*Sav-On Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal.4th 319, 332.) For example, a class action may be superior when it "allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress for claims which otherwise would be too insignificant to warrant individual litigation." (*ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 299–300 [internal quotation marks and citations omitted]; see also *Johnson v. GlaxoSmithKline, Inc.* (2008) 166 Cal.App.4th 1497, 1509.)

Plaintiffs argue that a class action is superior because adjudication of the claims as a class action will be more beneficial to litigants and the Court. (MPA at p. 25.) Plaintiffs assert that class certification will allow for all of the 1430(b) claims of Laguna Honda residents to be resolved at the same time, which eliminates the possibility of repetitive litigation and permitting relief for damages that are relatively small and cannot justify individual prosecution. (*Ibid.*) The City argues that a class action is not superior because federal and state regulators have already regulated the conduct at issue and individual claims

were filed. (Opp. at pp. 27–28.) The Court disagrees and finds that a class action proceeding is superior. First, any individual issues can be managed fairly and efficiently. "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Brinker*, *supra*, 53 Cal.4th at p. 1022 [internal quotations and citations omitted].) Second, there are numerous common questions of law and fact that predominate. A class proceeding provides for efficient adjudication of these issues—to the benefit of litigants, the Court, and the City—and eliminates the risk of inconsistent rulings on threshold legal questions. Given the predominance of common questions, it is better for the Court and the use of judicial resources to adjudicate the claims and the City's defenses on a class-wide basis rather than through individual cases that will raise largely the same factual and legal issues. Third, putative class members are unlikely to bring a lawsuit against the City as the amount of damages is small and it is unlikely that the putative class members would seek to individually obtain redress for the amount at issue. A class proceeding is superior and is the more advantageous way to adjudicate the claims at issue in comparison to alternatives, such as individual litigation.

CONCLUSION

The Court **GRANTS** Plaintiffs' motion for class certification.

No later than **August 27, 2024**, the parties must meet and confer and file a stipulation and proposed order with a proposed form of notice and plan of administration, including all pertinent dates and deadlines, administrator, and the total costs and allocation of costs among the parties. If the parties are unable to agree on a notice process, then the parties must file a joint statement setting forth their respective proposals. Electronic courtesy copies of the parties' proposed order on the stipulation and the proposed form of notice in Word and PDF format are due to the Department 613 email inbox at the time of e-filing.

IT IS SO ORDERED.

Dated: July 26, 2024

ANDREW Y.S. CHENG
Judge of the Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.251)

I, Sean Kane, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On July 26, 2024, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: July 26, 2024

Brandon E. Riley, Court Executive Officer

By: _____
Sean Kane, Deputy Clerk