UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CHRISTIAN RODRIGUEZ, et al., Plaintiff, v. CITY OF LOS ANGELES, et al., Defendants.	Case No. CV 11-01135 DMG (JEMx) **ORDER RE: DEFENDANTS' MOTION FOR CLASS DECERTIFICATION [185]**

This matter is before the Court on Defendants' motion for class decertification [Doc. # 185]. A hearing on the matter took place on November 21, 2014. Having reviewed and considered the parties' written submissions and oral arguments, the Court orders that Defendants' motion for class decertification is **DENIED.**

I.

BACKGROUND[1]

On June 19, 2009, class representative Christian Rodriguez and former class representative Alberto Cazarez (now Estate of Cazarez) were arrested for the violation of

[1] Both parties have filed objections to evidence, and Plaintiffs have filed motions to strike. The Court addresses the objections only where it relies on the evidence as to which objections have been interposed.

a gang injunction known as the Culver City Boys Injunction, specifically for violation of the curfew and for associating with other known gang members in public. February 15, 2013 Order Re: Plaintiffs' Motion for Class Certification ("Class Cert. Order") at 3-4. [Doc. # 89.] Rodriguez was served with the relevant injunction in 2005 and then again on February 25, 2006, and Cazarez was served with the injunction on December 20, 2009. *Id*. Both Rodriguez and Cazarez deny that they have ever been a member of any gang. *Id*. at 5. At the time of the class certification, Rodriguez and Cazarez stated that they lived in fear of immediate arrest for activity that may violate the terms of the gang injunction, including going outside between 10 p.m. and sunrise. *Id*.

Plaintiffs filed a class action complaint on February 7, 2011, a first amended class action complaint on April 13, 2011, and a second amended class action complaint ("SAC") on June 30, 2011, against Defendants City of Los Angeles (the "City"), Carmen Trutanich, Charles Beck, Allan Nadir, and Angel Gomez. The Plaintiffs alleged violations of the First, Fourth, and Fourteenth Amendments to the United States Constitution; Article 1, §§ 1, 2, 7, and 13 of the California Constitution; Cal. Civ. Code § 52.1; Cal. Penal Code § 236; and mandatory duties under Cal. Gov't Code § 815.6.

Specifically, Plaintiffs challenge 26 gang injunctions that have curfew provisions limiting the enjoined parties' ability to go outside between the hours of 10 p.m. and sunrise, with certain exceptions, all of which, Plaintiffs contend, have substantially identical language to the following:

> Being outside between the hours of 10:00 p.m. on any day and sunrise of the following day, unless (1) going to/from a legitimate meeting or entertainment activity, or (2) actively engaged in some business, trade, profession or occupation which requires such presence, or (3) involved in a legitimate emergency situation that requires immediate attention.

Id. at 5.

On October 15, 2007, the California Court of Appeal, in *People ex rel. Totten v.*

Colonia Chiques, 156 Cal. App. 4th 31, 67 Cal. Rptr. 3d 70 (2007), *review denied by People v. Colonia Chiques (Acosta)*, 2008 Cal. LEXIS 906 (2008), found a gang injunction's curfew provision unenforceable. The Court held that the following portions of the injunction were unconstitutionally vague: (a) the provision enjoining gang members from "being outside" in the Safety Zone[2] during curfew hours; and (b) the "legitimate meeting or entertainment activity" exception to the curfew provision. *Id*. at 49-50. The Defendants concede that the curfew provisions in the gang injunctions at issue in this case are "problematic" in that they are "similar" to the curfew provisions declared invalid in *Colonia Chiques*. Defendant City of Los Angeles' Memorandum of Points and Authorities in Support of its Motion for Decertification of the Class ("City Mot. Decert.") at 1. [Doc. # 185-1.]

On February 15, 2013, this Court granted in part and denied in part Plaintiffs' motion for class certification. [Doc. # 89.] The Court granted certification of the following Class:

> All persons who have been served with one or more gang injunctions issued in Los Angeles County Superior Court Case Numbers BC397522; BC332713; BC305434; BC313309; BC319166; BC326016; BC287137; BC335749; LC020525; BC267153; BC358881; SC056980; BC359945; NC030080; BC330087; BC359944; BC282629; LC048292; BC311766; BC351990; BC298646; BC349468; BC319981; SC060375; SC057282; and BC353596.

The Court denied certification of the following Subclass:

> All persons who have been served with one or more of the above gang injunctions who have been seized, arrested, jailed, and/or prosecuted by the City of Los Angeles, its agents and/or

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[2] The "Safety Zone" is the defined geographical area within which certain criminal street gangs existed and to which the gang injunction applies.

> subdivisions for violation of the curfew provision of the injunction(s).

Class Cert. Order at 29.

The Court declined to certify the Subclass because of its concerns regarding whether commonality of legal or factual claims existed. *Id*. at 17. The Court reasoned that the determination of whether a person is arrested solely for violation of the unenforceable curfew provision or also on the basis of another crime that would have justified detention or arrest is an individualized one. *Id*. at 20 ("Each arrest of a class member, even if ostensibly on the basis of a curfew violation, would raise a host of potential alternative unique, fact intensive defenses"). The Court found that common issues of law might exist were the Subclass definition "narrowed to those detained *only* for curfew violations." *Id*. "[T]he individualized inquiry into the basis for a putative class member's arrest or detention prevents the application of uniform relief where the Subclass is defined broadly to include those who were seized for additional reasons, beyond a curfew violation." *Id*. at 25.

The Court certified the Class under both 23(b)(2)("the party opposing the class has acted or refused to act on grounds that apply generally to the class so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.") and 23(b)(3) ("questions of law or fact common to class members predominate over any questions affecting only individual members" and "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."). *Id*. at 21-28. The Court found that individual issues did not predominate with regards to the Class, because Plaintiffs sought "uniform relief from a practice applicable to all members of the Class, *i.e.*, to enjoin Defendants' service and enforcement of gang injunctions that contain unconstitutional curfew provisions." *Id*. at 25. The Court also found that, to the extent Plaintiffs seek statutory damages for the harm caused to class members by the service of the unconstitutionally vague gang injunctions, a class action is superior to other methods of dispute resolution. *Id*. at 28.

The Court certified Rodriguez and Cazarez as representatives of the Class. *Id*. at 29. The Court noted that while Rodriguez and Cazarez were suitable representatives for the Class, "the facts presented by Rodriguez and Cazarez illustrate why their claims of illegal detention are not typical of the Subclass." *Id*. at 18. The Court found that Rodriguez was precluded from challenging the lawfulness of his detention because of a final decision by the Appellate Division of the Los Angeles County Superior Court that the officer who arrested him had reasonable suspicion to detain him for reasons unrelated to the curfew violation. *Id*. at 18-19. The Court also found that Plaintiffs failed to present any evidence rebutting Defendants' claim that the officer in question arrested Cazarez for violating a different law, rather than for violating the gang injunction. *Id*. at 20.

The Court found that, in spite of the fact that Defendants had presented evidence that LAPD had already adopted an official policy of non-enforcement of the unconstitutional curfew provisions,[3] Defendants failed to meet the "heavy burden" of establishing that it was "absolutely clear" that the allegedly wrongful behavior would not recur if the lawsuit were dismissed that is required to show mootness on the basis of voluntary cessation of illegal conduct in response to pending litigation. *Id*. at 23, *citing Rosemere Neighborhood Ass'n v. U.S. Environmental Protection Agency*, 581 F.3d 1169, 1173 (9th Cir. 2009). The Court found that the policy change neither indicated that the 26 gang injunctions at issue in this case will be modified before further service nor requires that any of the individuals previously served with an unenforceable gang

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[3] On August 30, 2012, in opposition to Plaintiffs' motion for preliminary injunction, Defendants submitted to the Court a copy of Operations Order No. 3 ("Op. Ord. No. 3"), Modification of Enforcement of Four Provisions Contained in Permanent Civil Gang Injunctions, dated August 2, 2012, issued by Assistant Chief Earl C. Paysinger. Class Cert. Order at 5-6. Defendants provided evidence that Op. Ord. No. 3 was distributed to the LAPD network, and that Paysinger met with and emailed the Bureau chiefs and area commanding officers to direct them to ensure compliance by their subordinates. *Id*. at 6.

injunction be informed of the change. *Id*. at 23. The new policy states that "violations of the 'Obey Curfew' provision must not be used as a reasonable suspicion or probable cause to detain or arrest an enjoined gang member" and "establishes protocols to ensure that Civil Gang Injunctions are implemented uniformly, equitably, and in accordance with changes in the law." *Id*. (internal brackets omitted). The Court found that it was not clear that Plaintiffs and putative class members would not be subjected to the repeated injury of being served with injunctions containing unenforceable curfew provisions in spite of the new policy, and that individuals already served remained subject to the deterrent effect of the curfew until they had notice that it would no longer be enforced. *Id*. at 24. This finding was partially based on statements by Assistant City Attorney and Supervisor of the Anti-Gang Section of the Los Angeles City Attorney's Office Ann C. Tremblay suggesting that the City might continue to serve gang injunctions with potentially unenforceable curfew provisions for the sake of consistency. *Id*.

On February 15, 2013, this Court issued an Order granting in part and denying in part Plaintiffs' motion for a preliminary injunction. [Doc. # 90.] On March 6, 2013, this Court issued an amended version of the Order ("Am. Order Prelim. Inj."). [Doc. # 96.] The Court found that Defendants had provided proof that the LAPD had already adopted a policy of non-enforcement of the unconstitutional curfew provisions, and reasoned that this new policy addressed Plaintiffs' concerns that irreparable harm could arise from future detentions or arrests stemming from curfew violations. Am. Order Prelim. Inj. at 8. The Court found, however, that even in the absence of enforcement of the curfew, class members were likely to be discouraged from participating in lawful activities as long as they believed the gang injunctions were in full force. *Id*. The Court ordered that the City personally serve notice to all class members that the unconstitutional curfew provisions would not be enforced. *Id*. On appeal, the Ninth Circuit found that the appeal was moot because the terms of the injunction (serving class members with notice) had been "fully and irrevocably carried out." Ninth Circuit Mandate at 3. [Doc. # 150.]

On October 24, 2014, the City moved to decertify the certified class on the grounds

that a class action is no longer procedurally viable or appropriate. [Doc. # 185.] Defendants seek to decertify the class in its entirety or, in the alternative, as to Plaintiffs' state law causes of action. On October 31, 2014, Defendant Angel Gomez filed a joinder in motion for order for decertification of the class. [Doc. # 193.] On October 31, 2014, Plaintiffs filed an Opposition to the motion for decertification of the class. [Doc. #195.] On November 7, 2011, the City filed a Reply in support of its motion. [Doc. # 200]. Both parties have filed objections to evidence, and Plaintiffs have filed motions to strike. [Doc. ## 196, 201, 221].

II.

Legal Standard

Rule 23 provides district courts with broad discretion in making a class certification determination. *Navellier v. Sletten*, 262 F.3d 923, 941 (9th Cir. 2001). A district court retains "the flexibility to address problems with a certified class as they arise, including the ability to decertify." *United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO, CLC v. ConocoPhillips Co.*, 593 F.3d 802, 809-10 (9th Cir. 2010) ("Federal Rule of Civil Procedure 23 provides district courts with broad discretion to determine whether a class should be certified, and to revisit that certification throughout the legal proceedings before the court.") (internal citations and quotation marks omitted). However, "[o]nce a class is certified, the parties can be expected to rely on it, conduct discovery, prepare for trial, and engage in settlement discussion on the assumption that it will not be altered except for good cause." *O'Connor v. Boeing N. Am., Inc.*, 197 F.R.D. 404, 409-10 (C.D. Cal. 2000).

"The standard used by the courts in reviewing a motion to decertify is the same as the standard used in evaluating a motion to certify." *O'Connor* at 410. Rule 23 permits certification of a class if the following prerequisites are met:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

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

Fed. R. Civ. P. 23(a).

If the Rule 23(a) requirements are satisfied, a class action may be maintained pursuant to Rule 23(b)(2) if "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). If the Rule 23(a) requirements are satisfied, a class action may also be maintained pursuant to Rule 23(b)(3) if "questions of law or fact common to class members predominate over any questions affecting only individual members" and "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

IV.

Discussion

A. Relief Sought

1. Injunctive Relief

No material facts have changed since the Court made its original determination that Plaintiffs were entitled to seek injunctive relief. Then, as now, Defendants did not meet the "heavy burden" of establishing mootness of the injunctive relief. *See Rosemere Neighborhood Ass'n v. U.S. Environmental Protection Agency*, 581 F.3d 1168, 1173 (9th Cir. 2009). It is the Defendants' burden to "demonstrate why repetition of the wrongful conduct is highly unlikely." *Id.*

At the time the Court granted certification of the Class, Defendants had already provided evidence that Op. Ord. 3 had been put into place. Class Cert. Order at 23. The Court found then that the policy change did not indicate that (1) the 26 gang injunctions would be subject to court modification of the pre-*Colonia Chiques* curfew provisions, nor

(2) require anyone previously served with these gang injunctions be informed of the change with respect to the curfew provision. *Id*.

The Court also found that evidence existed demonstrating that it was not "absolutely clear" that the allegedly wrongful behavior would not recur if the lawsuit were dismissed. Class Cert. Order at 23. Statements by Assistant City Attorney Ann Tremblay suggested that the City might continue to serve gang injunctions with potentially unenforceable curfew provisions. Tremblay also stated that the City Attorney's Office had considered but decided not to serve notice on alleged gang members covered by the curfew provisions that such provisions were unconstitutional and would not be enforced even in the wake of the *Colonia Chiques* decision establishing their illegality. *Id*. At 23-24. Tremblay has stated that police officers have on occasion made arrest or filing decisions of which the City does not approve. Declaration of Ann Tremblay in Support of Opposition to Motion for Preliminary Injunction ("Tremblay Decl.") at ¶¶ 5-6. [Doc. # 22.]

At the same time it certified the Class, the Court issued a preliminary injunction ordering the City to personally serve notice on all class members that the unconstitutional curfew provisions would not be enforced. Am. Order Prelim. Inj. at 8.[4] Defendants point to the fact that, at the preliminary injunction stage, the Court reasoned that the existence of the policy of non-enforcement of the unconstitutional curfew provisions "addresse[d] Plaintiffs' concerns that irreparable harm may arise from future detentions or arrests stemming from curfew violations." Am. Order Prelim. Inj. at 8. That determination is not material to the question of class certification, and does not alter any of the Court's determinations at the class certification stage. The burden to show a likelihood of

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[4] There is no evidence that Defendants have not complied with the preliminary injunction. *See* Ninth Circuit Mandate at 3 (finding that the appeal was moot because the terms of the injunction (serving class members with notice) had been "fully and irrevocably carried out.").

"irreparable harm" at the preliminary injunction stage is much higher than the burden to show that potential injunctive relief is not entirely moot at the class certification stage. *See, e.g.*, Amylin Pharm., Inc. v. Eli Lilly & Co., 456 F. App'x 676, 678 (9th Cir. 2011) ("the party seeking injunctive relief [] has the burden of making a 'clear showing' that it is entitled to injunctive relief, which includes demonstrating a likelihood of irreparable harm.").

Even if the evidence indicated no doubts about perfect compliance with Op. Ord. No. 3 (which it does not) and continuing compliance with the preliminary injunction, Plaintiffs' requested injunctive relief goes beyond ensuring that violations of the unconstitutional curfew provisions are not used as reasonable suspicion or probable cause to detain or arrest an enjoined alleged gang member and that class members will be served with notice of non-enforcement. Plaintiffs seek a permanent injunction that will require that the City (1) cease service of any of the infirm curfew provisions; (2) include a notice of non-enforcement if the City does serve any of the old injunctions; (3) cease enforcing the unconstitutional curfew provisions; (4) provide adequate training to all appropriate LAPD supervisors, officers and deputy city attorneys; (5) document whether the appropriate personnel have been trained; (6) comply with a reporting requirement so that the parties can determine whether there continue to be any continued service or enforcement of the curfew provisions; and (7) take all necessary and appropriate steps to enforce Plaintiffs' rights.

The Court's initial determination that the requested injunctive relief is not moot stands.

2. Damages

The Class is currently certified pursuant to both Rule 23(b)(2) and 23(b)(3), in part because it was not clear whether, post-*Dukes*, statutory damages should be considered incidental damages under Ruler 23(b)(2) or non-incidental damages under Rule 23(b)(3), and because the Court wished to preserve class members' right to opt out. Order at 28 n. 15.

Defendants contend that, if Plaintiffs seek monetary damages under their state law causes of action, Plaintiffs will have to separately identify and adjudicate a separate basis for monetary recovery for injuries occurring before and after December 21, 2009, pursuant to the Government Claims Act.[5] Defendants argue that the class cannot be maintained under Rule 23(b)(2) because this would amount to "individualized" monetary damages. *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2558, 180 L. Ed. 2d 374 (2011) ("individualized monetary claims belong in Rule 23(b)(3)"). Even if some class members were served before December 21, 2009, and therefore may not be eligible to recover monetary damages, it remains the case that questions of law or fact common to all class members predominate over any questions affecting only individual members, and class certification under Rule 23(b)(3) remains proper on that basis. The entire Class may be entitled to class-wide injunctive relief (see above), and certification under 23(b)(2) also remains proper on that basis.[6]

Whether or not Plaintiffs are entitled to statutory damages under the Bane Act is a

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[5] Defendants do not contest that Plaintiffs properly presented their claim for damages pursuant to the Government Claims Act on June 21, 2010. Mot. Class. Decert. at 17. *See also* Plaintiffs' Exhibit 102, Claimant Christian Rodriguez's Claim for damages pursuant to California Government Code section 901. Because the Act requires the claim be filed within six months of the injury giving rise to the claim, neither Plaintiffs nor the Class may seek money or damages before December 21, 2009. *See* Cal. Gov. Code §911.2 (six month requirement for claims for personal injury or property damage; one year requirement for claims other than for personal injury or property damages); *Maynard v. City of San Jose*, 37 F.3d 1396, 1406 (9th Cir. 1994) (restating section 911.2's six month requirement for personal injury claims); *see, e.g., Redon v. San Diego County*, 2014 U.S. Dist. LEXIS 103954 (S.D. Cal. 2014) (six month requirement for state constitutional and Bane Act claims).

[6] Defendants attempt to argue that because Plaintiffs' counsel stated in colloquy at a deposition that Plaintiffs "may" pursue actual damages if they are not waived, Plaintiffs' entire class should be decertified under *Dukes*. Plaintiffs' Opposition to Defendant City of Los Angeles's Motion for Decertification of Class ("Opp. Mot. Decert.") at 8 [Doc. # 195.]; Declaration of Adena M. Hopenstand ("Hopenstand Decl."), Ex. 3 (Transcript of September 29, 2014 Deposition of Christian Rodriguez ("Rodriguez Tr.") at 224:16-225:20 [Doc. # 185-4]. Given that Plaintiffs have not actually pursued this theory of damages, this argument has no bearing on the present decision to certify or decertify the Class and need not be addressed.

question that goes to the merits, and will be addressed in short order in the upcoming summary judgment adjudication. Because a court may modify its certification order at any time prior to final judgment, if it becomes clear that the Class should be altered or redefined with regard to individual types of relief, the Court may do so. *See* Fed. R. Civ. P. 23(c)(1)(C). The Court also notes that it is a well-settled rule in this circuit that "damages calculations alone cannot defeat certification." *Leyva v. Medline Indus., Inc.*, 716 F.3d 510, 513 (9th Cir. 2013) (quoting *Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d 1087, 1094 (9th Cir. 2010)). Obviously, if Defendant ultimately prevail on the merits of the Bane Act claims, the ruling in that regard would apply to the entire class as certified.

General damages may be available to Plaintiffs on the non-statutory claims under the United States and California Constitutions. General damages for pain and suffering, emotional distress, and loss of dignity are available in actions under 42 U.S.C. § 1983. *See Tortu v. Las Vegas Metro. Police Dep't*, 556 F.3d 1075, 1086-87 (9th Cir. 2009) (compensatory damages may be awarded for humiliation and emotional distress even where plaintiff did not submit evidence of economic loss or mental or physical symptoms) (citing *Johnson v. Hale*, 15 F.3d 1351, 1352 (9th Cir. 1994)); *Barnes v. Dist. of Columbia*, 278 F.R.D. 14, 20 (D.D.C. 2011) (general damages based on affront to human dignity were appropriate in class action strip search case); *In re Nassau County Strip Search Cases*, 742 F. Supp. 2d 304, 323 (E.D.N.Y. 2010) (same).

Plaintiffs also seek "presumed damages," which are available for injuries that are "likely to have occurred but difficult to establish."[7] *Memphis Cmty. Sch. Dist. v.*

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[7] Plaintiffs have not asserted that they seek nominal damages, but the Court does note that "[w]hen a plaintiff alleges violation of a constitutional right, the Supreme Court has held that, even if compensatory damages are unavailable because the plaintiff has sustained no actual injury—such as an economic loss, damage to his reputation, or emotional distress—nominal damages are nonetheless available in order to 'make the deprivation of such a right actionable' and to thereby acknowledge the 'importance to organized society that the right be scrupulously observed.'" *Jacobs v. Clark Cnty. Sch.*

Stachura, 477 U.S. 299, 311, 106 S. Ct. 2537, 2545, 91 L. Ed. 2d 249 (1986). Presumed damages are a substitute for ordinary compensatory damages. *Id.* In the civil rights context, damages may not be "presumed to flow from every deprivation of procedural due process." *Carey v. Piphus*, 435 U.S. 247, 263, 98 S. Ct. 1042, 1052, 55 L. Ed. 2d 252 (1978).

The Ninth Circuit has not addressed whether presumed damages are appropriate for constitutional violations or whether a general damages calculation is appropriate in the class action civil rights context post-*Dukes*. Several district courts have addressed the question and reached disparate conclusions. *See, e.g., United States v. City of New York*, 276 F.R.D. 22, 42-43 (E.D.N.Y. 2011) (presumed or general damages were not appropriate in employment discrimination class action because calculation of damages required individualized determinations); *Barnes v. Dist. of Columbia*, 278 F.R.D. 14, 20-21 (D.D.C. 2011) (allowing for general damages in civil rights class action based on testimony of sample of class members); *Amador v. Baca*, 299 F.R.D. 618, 633-34 (C.D. Cal. 2014) (presumed damages not appropriate in class action strip search case because Plaintiffs' injuries were "not difficult to establish" and depended on "the manner and conditions under which otherwise presumptively valid strip searches were conducted.")

In *Hazle v. Crofoot*, the Ninth Circuit addressed the question of damages in a case where the plaintiff sued his parole agent and other state officials for violating his First Amendment rights when they revoked his parole and sent him back to prison for refusing to participating in a religion-based drug treatment program. 727 F.3d 983 (9th Cir. 2013). The court did not find it necessary to reach the question of whether presumed

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Dist., 526 F.3d 419, 426 (9th Cir. 2008) (quoting *Carey*, 435 U.S. at 266, 98 S. Ct. 1042) (internal brackets omitted). Nominal damages are distinguished from presumed damages because they do not compensate the plaintiff for an actual injury. *See Hazle v. Crofoot*, 727 F.3d 983, 992 (9th Cir. 2013) (nominal damage awards provide insufficient compensation "for unlawful conduct resulting in the loss of liberty."). Nominal damages *must* be awarded in cases of violations of substantive constitutional rights in which no actual injury occurred or can be proven. *Id*. at n. 6.

damages were available, because it found that it was too obvious that plaintiff had been injured as a result of his constitutional deprivation. *Id*. at 993. The Court did, however, approvingly quote *Kerman v. City of New York*, 374 F.3d 93, 124 (2d Cir. 2004), a case requiring presumed damages jury instructions in section 1983 case for constitutional violations. The *Hazle* court quoted *Kerman* for the proposition that "where the jury has found a constitutional violation and there is no genuine dispute that the violation resulted in some actual injury to plaintiff, the plaintiff is entitled to an award of compensatory damages as a matter of law" and that this rule regarding compensatory damages "applied with particular force to claims for loss of liberty." *Hazle* at 993 (quoting *Kerman* at 124). The *Hazle* court noted that this holding was "consistent with decisions by other circuits rejecting awards of merely nominal damages for unlawful conduct resulting in the loss of liberty." *Id*.

None of Plaintiffs' requested monetary damages are individualized damages such that they preclude certification of the Class.

B. Class Representatives

No new facts or considerations alter the Court's determination that Christian Rodriguez is an appropriate class representative. The Estate of Alberto Cazarez remains an acceptable class representative in that there is no evidence that the Estate's interests are adverse to unnamed members, and the Estate retains an interest in any monetary damages. *See Ellis v. Costco Wholesale Corp.*, 240 F.R.D. 627, 641 (N.D. Cal. 2007) ("[t]o serve as representatives, the named plaintiffs must have similar but not identical interests to those in the class.").

C. Joinder of Defendant Angel Gomez

Defendant Angel Gomez's Joinder in the City's Motion for Decertification, was filed on October 31, 2014, a week after the City's motion was filed and on the same day that Plaintiffs' Opposition brief was due. The Joinder was filed impermissibly late per Central District of California Local Rule 7-13. Gomez also failed to meet and confer with Plaintiffs' counsel as required by Local Rule 7-3.

The Court therefore strikes the Joinder. Plaintiffs request compensation for the time spent preparing the Opposition to the Untimely Joinder and motion to strike. The Court **DENIES** Plaintiffs' request for monetary sanctions.

D. Anti-Injunction Act

Defendants raise the argument for the first time in their Reply that the Anti-Injunction Act forecloses Plaintiffs' claims of additional relief regarding enforcement or service of the injunctions. The Court does not propose to enjoin any state court proceedings by confirming the class certification at this stage. The Anti-Injunction Act is irrelevant. Moreover, the issue should have been raised earlier in order to give Plaintiffs an opportunity to respond.

IV.

CONCLUSION

In light of the foregoing, Defendants' Motion to Decertify the Class is **DENIED**.

IT IS SO ORDERED.

DATED: November 21, 2014

DOLLY M. GEE
UNITED STATES DISTRICT JUDGE