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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

C.F., *et al.*,

 Plaintiffs,

 v.

LASHWAY, *et al.*,

 Defendants.

CASE NO. C16-1205RSM

ORDER DENYING PLAINTIFFS’
MOTION FOR CLASS CERTIFICATION

I. INTRODUCTION

This matter is before the Court on Plaintiffs’ Motion for Class Certification. Dkt. #18. Plaintiffs C.F., L.B., and J.P., are developmentally disabled Washington State residents who qualify to receive Medicaid-funded supported living services. Despite their qualification, Plaintiffs allege Defendants’ systemic mismanagement of the provision of these services has deprived them of due process protections and prompt access to those services. Over a hundred individuals are allegedly also in the same position, and Plaintiffs now seek class certification. Defendants, citing to over 4,000 people currently served through the supported living program, dispute Plaintiffs’ allegations and argue that Plaintiffs fail to acknowledge the individualized nature of supported living services and the individuals who use those services. Defendants oppose

1 Plaintiffs’ motion and argue Plaintiffs fail to meet the requirements for class certification. For the
2 reasons discussed herein, the Court agrees Plaintiffs have not demonstrated the propriety of class
3 certification, and their motion for class certification is DENIED.

4 II. BACKGROUND

5 Plaintiffs C.F., L.B., and J.P., are developmentally disabled Washington State residents
6 who qualify for Medicaid-funded community-based habilitative services. Dkt. #1 ¶ 1.
7 Community-based habilitative services are support services, offered outside of an institutional
8 setting, for developmentally disabled individuals who would otherwise require a level of care
9 usually provided in a hospital, nursing facility, or intermediate care facility. 42
10 U.S.C. § 1396n(c)(1). Although federal Medicaid law does not require the provision of these
11 services, Washington State has requested Medicaid “waivers,” that allow it to offer these services
12 to qualifying Medicaid recipients. 42 U.S.C. § 1396n(c)(1). The Core and Community Protection
13 waivers currently allow Washington State to offer these services, and the Washington Health Care
14 Authority (“HCA”) and the Department of Social and Health Services (“DSHS”) administer their
15 provision.
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18 Despite their eligibility, Plaintiffs C.F., L.B., and J.P. have not received the community-
19 based habilitative services they seek, and they allege Defendants, the Acting Secretary of the
20 DSHS and the Director of the HCA, are to blame. Dkt. #1 ¶¶ 1-2. According to Plaintiffs,
21 Defendants and their respective agencies have not established an adequate system to insure
22 individuals with developmental disabilities receive habilitative services in community-based
23 settings. *Id.* ¶ 3. Instead, Plaintiffs allege the provision of these services is not reasonably prompt,
24 individuals are not provided a meaningful choice of community-based habilitative service
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1 providers, individuals are not notified of their right to a hearing when there is a determination or
2 delay in the provision of these services, and the current administration of these services allows
3 community-based habilitative service providers to discriminate against developmentally disabled
4 individuals based on the severity of their disability. *Id.* ¶¶ 2, 31, 44, 62-69.

5 As a result of Defendants’ purported failures, Plaintiffs contend they are at serious risk of
6 institutionalization. Plaintiffs thus allege Defendants’ administration of these services violates the
7 integration mandates of Title II of the Americans with Disabilities Act (“ADA”), Section 504 of
8 the Rehabilitation Act (“RA”), and the Supreme Court’s pronouncement in *Olmstead v. L.C.*, 527
9 U.S. 581 (1999). *Id.* ¶¶ 1-3, 31, 62-69. The “integration mandate,” an implementing regulation
10 of Title II of the ADA, requires public entities to “administer services, programs, and activities in
11 the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28
12 C.F.R. § 35.130(d). A setting is the “most integrated” if it “enables individuals with disabilities to
13 interact with nondisabled person to the fullest extent possible.” 28 C.F.R. § Pt. 35, App. B. The
14 implementing regulations of the RA also require entities that receive federal funding to administer
15 programs and activities in the most integrated setting appropriate. *See* 28 C.F.R. § 41.51(d); *also*
16 45 C.F.R. § 84.4.(b)(2). Plaintiffs also allege Defendants deny them access to community-based
17 habilitative services based on the severity of their disabilities. Dkt. #1 ¶ 66 (citing 28 C.F.R.
18 § 35.130(b)(1)).

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21 Aside from alleging integration mandate violations, Plaintiffs also claim Defendants’
22 administration of the Core and Community Protection waivers violates Title XIX of the Social
23 Security Act, 42 U.S.C. § 1396. Dkt. #1 ¶¶ 70-75. Defendants allegedly violate Title XIX because
24 they fail to provide Plaintiffs, and the proposed class members, with: (1) reasonably prompt access
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1 to community-based habilitative services; (2) a meaningful choice of providers; and (3) adequate
2 written notification of Defendants’ determinations and Plaintiffs’ right to appeal those
3 determinations. *Id.* ¶¶ 71 and 73. Plaintiffs request declaratory and injunctive relief, and now seek
4 certification of a Rule 23(b)(2) class. Dkts. #1 ¶¶ 62-75 and #18 at 22.

5 III. LEGAL STANDARD

6 Federal Rule of Civil Procedure 23 governs class certification. *Wal-Mart Stores, Inc. v.*
7 *Dukes*, 564 U.S. 338, 345 (2011). Under Rule 23(a), the party seeking certification must
8 demonstrate “(1) the class is so numerous that joinder of all members is impracticable; (2) there
9 are questions of law or fact common to the class; (3) the claims or defenses of the representative
10 parties are typical of the claims or defenses of the class; and (4) the representative parties will
11 fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). After satisfying all
12 four requirements of Rule 23(a), the proposed class must also satisfy at least one of the three
13 requirements listed in Rule 23(b). *Dukes*, 564 U.S. at 345; also *Leyva v. Medline Indus. Inc.*, 716
14 F.3d 510, 512 (9th Cir. 2013). In this case, Plaintiffs seek to certify a class under Rule 23(b)(2).
15 Dkt. #18 at 22-24. Rule 23(b)(2) requires Plaintiffs to demonstrate “the party opposing the class
16 has acted or refused to act on grounds that apply generally to the class, so that final injunctive
17 relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R.
18 Civ. P. 23(b)(2). “Rule 23(b)(2) applies only when a single injunction or declaratory judgment
19 would provide relief to each member of the class.” *Dukes*, 564 U.S. at 360.

20 Notably, Rule 23 “does not set forth a mere pleading standard.” *Id.* at 350. Instead, the
21 party seeking certification must “affirmatively demonstrate his compliance with the Rule—that
22 is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common
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1 questions of law or fact, etc.” *Id.* “Certification is proper only if the trial court is satisfied, after
2 a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied.” *Id.* at 350-51 (internal
3 quotation omitted). “[I]t may be necessary for the court to probe behind the pleadings before
4 coming to rest on the certification question.” *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160
5 (1982). This is because “the class determination generally involves considerations that are
6 enmeshed in the factual and legal issues comprising the plaintiff’s cause of action.” *Id.* (internal
7 quotation omitted). Nonetheless, the ultimate decision regarding class certification “involve[s] a
8 significant element of discretion.” *Yokoyama v. Midland Nat’l Life Ins. Co.*, 594 F.3d 1087, 1090
9 (9th Cir. 2010).
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11 IV. DISCUSSION

12 Plaintiffs assert they meet the requirements of Rule 23(a) and Rule 23(b)(2). Defendants
13 do not agree, and they also challenge Plaintiffs’ reliance on an expert declaration and Plaintiffs’
14 proposed class definition. *See* Dkt. #36 at 20-23. The Court agrees that Plaintiffs’ proposed class
15 definition, along with Plaintiffs’ failure to establish three of Rule 23(a)’s requirements, precludes
16 class certification. However, before the Court commences its Rule 23 analysis, it first considers
17 Defendants’ request for the Court to strike the declaration of Dr. Robin J. Wilson, and Defendants’
18 challenge to Plaintiffs’ proposed class definition.
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20 1. Plaintiffs’ Reliance on the Declaration of Dr. Robin J. Wilson

21 The Court will not strike Dr. Wilson’s declaration. Defendants contend the interest of
22 fairness, and the underlying principles of discovery, warrant striking Dr. Wilson’s declaration.
23 Dkt. #36 at 20. Defendants argue Plaintiffs’ failure to timely disclose Dr. Wilson as their expert
24 deprived them of the opportunity to “properly scrutinize” Dr. Wilson’s qualifications, and
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1 deprived them of the opportunity to arrange their own expert. *Id.* at 21-22. Defendants' arguments
2 are not persuasive.

3 Defendants were notified of Plaintiffs' reliance on Dr. Wilson's testimony on April 3, 2017,
4 when Plaintiffs filed their class certification motion. This gave Defendants three weeks within
5 which to depose Plaintiffs' expert, or to obtain their own expert to rebut Dr. Wilson's testimony.
6 *See* Local Civil Rule 7(d)(3) and 7(j). Additionally, Defendants had other procedural devices at
7 their disposal if three weeks did not provide enough time for them to depose Dr. Wilson. For
8 instance, Defendants could have filed a motion for relief from their response deadline. *See* LCR
9 7(d)(2). However, instead of taking active steps to scrutinize Dr. Wilson's declaration, Defendants
10 instead waited until they filed their response to raise any objection to Dr. Wilson's testimony.
11 Given these circumstances, the Court is not convinced that striking Dr. Wilson's declaration is
12 proper.
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14 15 2. Plaintiffs' Proposed Class Definition

16 Before considering the requirements of Rule 23, courts within the Ninth Circuit typically
17 assess whether a plaintiff's proposed class definition is sufficiently definite. *See, e.g., Gray v.*
18 *Golden Gate Nat. Recreational Area*, 279 F.R.D. 501, 508 (N.D. Cal. 2011) ("An implied
19 prerequisite to certification is that the class must be sufficiently definite.") (citation omitted). A
20 class definition is sufficiently definite if it is "administratively feasible" for the Court to determine,
21 through objective criteria, who belongs to the proposed class. *See Jones v. ConAgra Foods, Inc.*,
22 2014 WL 2702726, *8 (N.D. Cal. June 13, 2014) ("A class is not ascertainable unless membership
23 can be established by means of objective, verifiable criteria."); *Lilly v. Jamba Juice Co.*, 308 F.R.D.
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1 231, 236 (N.D. Cal. 2014) (internal quotes and citations omitted). “Administrative feasibility
2 means that identifying class members is a manageable process that does not require much, if any,
3 individual factual inquiry.” WILLIAM B. RUBENSTEIN, NEWBERG ON CLASS ACTIONS § 3:3 (5th ed.
4 2017). How precisely a definition must delineate a class depends on the type of class action a party
5 seeks to certify. *E.g.*, *Thorpe v. District of Columbia*, 303 F.R.D. 120, 139 (D.D.C. 2014). Because
6 Rule 23(b)(2) class actions do not present the same due process and manageability concerns of Rule
7 23(b)(3) class actions, class definitions for 23(b)(2) actions can be less precise, and at least one
8 district court within the Ninth Circuit has indicated the definiteness requirement does not apply to
9 these class actions. *E.g.*, *Multi-Ethnic Immigrant Workers Org. Network v. Los Angeles*, 246 F.R.D.
10 621, 630 (C.D. Cal. 2007); *In re Yahoo Mail Litig.*, 308 F.R.D 577, 597 (N.D. Cal. 2015) (“[A]s a
11 matter of practical application, the ascertainability requirement serves little purpose in Rule
12 23(b)(2) classes, as there will generally be no need to identify individual class members.”).

14 Plaintiffs propose certification of a Rule 23(b)(2) class action comprised of all individuals
15 who:

- 16 a. Are Medicaid recipients with an intellectual or developmental disability;
- 17 b. Need an institutional level of care provided in a Medicaid-certified
18 Intermediate Care Facility for Individuals with Intellectual Disabilities
19 (ICF/IID), in the State of Washington; and
- 20 c. Qualify for and desire home and community-based habilitative services
21 which they are not receiving.”

21 Dkt. #18 at 3.

22 Defendants oppose Plaintiffs’ proposed class definition for two reasons. Dkt. # 36 at 18-
23 20. Defendants first contend the proposed class is not sufficiently definite. To support this
24 argument Defendants argue the phrases “intellectual or developmental disability,” “Need an
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1 institutional level of care provided in a Medicaid-certified [ICF/IID],” and “home and community-
2 based habilitative services,” require the Court to make “numerous assumptions,” and at least one
3 term is susceptible to several meanings. *Id.* at 18-19. Defendants also contend Plaintiffs’ proposed
4 definition does not rely on objective criteria because it contains the word “desire.” *Id.* at 19-20.
5 Use of the word “desire” raises concern for Defendants because it requires the court to make a
6 “subjective determination based on an individual’s state of mind,” to determine if an individual
7 belongs in the class. *Id.* at 20. Finally, Defendants contend Plaintiffs’ reliance on the word
8 “desire” renders the class overbroad, and will result in a class that “significantly exceeds the scope
9 of potential relief,” because people who are not ready for supported living services may also fall
10 within the class definition. *Id.*

12 Plaintiffs do not directly address Defendants’ class definition arguments in their Reply.
13 *See* Dkt. #51. Instead, Plaintiffs’ Reply briefly touches on Defendants’ argument by explaining
14 they “have been explicit that they are alleging actions and inaction that apply to Medicaid
15 beneficiaries with undisputed developmental disabilities” *Id.* at 9.

17 The Court agrees Plaintiffs’ proposed class definition is not sufficiently definite. Although
18 Rule 23(b)(2) class actions can be less precise than those required by Rule 23(b)(3), here Plaintiffs’
19 definition is amorphous and potentially overbroad. As indicated by Defendants, at least one phrase
20 within Plaintiffs’ proposed class is not defined, and the word “desire” does not allow the Court to
21 determine, based on objective criteria, who is included in the proposed class. Additionally, while
22 Plaintiffs’ Complaint refers to the Core and Community Protection waivers administered by
23 Defendants, Plaintiffs’ proposed class definition does not indicate if the class of “Medicaid
24 recipients with an intellectual or developmental disability,” is limited to those individuals approved
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1 for services on those waivers. Finally, and most importantly, although Plaintiffs allege Defendants
2 do not provide supported living services with reasonable promptness, their class definition does
3 not include a temporal component. As a result, Plaintiffs' proposed class definition may include
4 individuals who have waited less than a day for community-based habilitative services. Given
5 Plaintiffs' allegations, Plaintiffs' class definition would benefit from a time-based component that
6 will allow the Court to properly determine the scope of the proposed class.

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8 Plaintiffs' failure to reply to Defendants' class definition challenge, coupled with the
9 above-identified concerns, leave the Court no choice but to reject Plaintiffs' proposed class
10 definition. However, even if Plaintiffs' definition were accepted, the Court would nonetheless
11 decline to certify the proposed class because Plaintiffs do not satisfy Rule 23(a)'s numerosity,
12 commonality, or typicality requirements.

13 3. Rule 23(a)

14 a. *Plaintiffs Fail to Establish Numerosity.*

15 Under Rule 23(a)(1), a class action may only be maintained if "the class is so numerous
16 that joinder of all members is impracticable." Courts consider several factors to determine if
17 joinder of class members is impracticable, and plaintiffs need not demonstrate that joinder is
18 impossible. 7A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & MARY KAY KANE, FEDERAL
19 PRACTICE & PROCEDURE § 1762 (3d ed. 2017). The size of the proposed class, the location of
20 putative class members, the nature of the action and relief sought, and class members' reluctance
21 or inability to sue on their own may all contribute to a court's Rule 23(a)(1) analysis. *Id.*; also
22 *Gray*, 279 F.R.D. at 508; *Jordan v. Los Angeles Cnty.*, 669 F.2d 1311, 1319 (9th Cir. 1982),
23 *vacated on other grounds*, 459 U.S. 810 (1982).
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1 The deficiencies in Plaintiffs’ proposed class definition do not allow the Court to determine
2 if Plaintiffs satisfy Rule 23(a)(1)’s numerosity requirement. Plaintiffs rely on discovery materials
3 and responses obtained from Defendants to argue that over 100 people are waiting for supported
4 living services. Dkt. #18 at 17; *see* Dkt. #22, Exs. C at 36-37 and Ex. G. However, Defendants
5 estimate that, as of April 2017, only thirty people identified in their discovery responses are now
6 waiting for community-based habilitative services, and they contend Plaintiffs’ estimate of people
7 who expressed interest in supported living services is overly broad and may include people who
8 have waited a minimal amount of time for those services. Dkts. #36 at 16 and #38 ¶ 8. Regardless
9 of the actual number of people currently waiting for community-based habilitative services, the
10 Court finds that Plaintiffs’ failure to properly delineate its proposed class does not allow the Court
11 to properly determine if the class is sufficiently numerous. As previously explained, given
12 Plaintiffs’ allegation that community-based habilitative services are not provided with reasonable
13 promptness, the Court must have some basis by which to determine whether a person waiting for
14 the requested services has waited long enough to be considered a part of the proposed class.
15 Without this guideline, the Court cannot determine, based merely on a disputed estimate, whether
16 Plaintiffs have established numerosity.

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19 *b. Plaintiffs Fail to Establish Commonality.*

20 Plaintiffs also do not meet the evidentiary burden necessary to demonstrate commonality.
21 Commonality can be established if Plaintiffs demonstrate they and the proposed class members
22 “have suffered the same injury.” *Dukes*, 564 U.S. at 349-50 (quoting *Falcon*, 457 U.S. at 157).
23 This can be done if Plaintiffs raise a “common contention” between them and the proposed class
24 members of “such a nature that it is capable of classwide resolution.” *Id.* at 350. Here, Plaintiffs’
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1 Complaint raises no common contentions.¹ Instead, Plaintiffs attempt to meet their burden by
2 simply asserting Defendants are violating provisions of the Medicaid Act, the ADA, and the RA,
3 and by listing five questions they claim are common to the proposed class. Dkt. #18 at 18-19.
4 However, as explained by the Supreme Court in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338,
5 349-350 (2011), to demonstrate commonality plaintiffs must do more than merely allege they and
6 the proposed class have suffered violations of the same provisions of law. Plaintiffs also must do
7 more than simply identify questions they claim are common to the entire class. *Id.* at 350 (“What
8 matters to class certification . . . is not the raising of common questions-even if doves-but, rather
9 the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of
10 the litigation.”) (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*,
11 84 N.Y.U. L. REV. 97 (2009)).

13 Plaintiffs’ identification of questions they claim are common to the entire class fails to
14 establish commonality because Plaintiffs do not demonstrate resolution of these questions will
15 “generate common *answers* apt to drive the resolution of the litigation.” *Id.* The questions raised
16 by Plaintiffs include: (1) Do Defendants’ policies and practices facilitate authorization of
17 Supported Living services with reasonable promptness?; (2) Do Defendants have a referral and
18 reimbursement system that effectively provides Supported Living with reasonable promptness?;

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22 ¹ Plaintiffs’ Complaint alleges their rights under the ADA, RA, and MA have been violated as a
23 result of Defendants’ failure to establish “an adequate system” to ensure Plaintiffs receive community-
24 based habilitative services in integrated settings. Dkt. #1 ¶¶ 2-4, 31, 32. However, neither Plaintiffs’
25 Complaint nor their Motion for Class Certification identifies which of Defendants’ acts, omission,
practices, or policies Plaintiffs seek to challenge. Instead, Plaintiffs’ motion merely references an
inflexible reimbursement model, the lack of a guarantee of continued services, as well as Defendants’
failure to issue a “Planned Action Notice” to DDA clients, in the “FACTS” section of their Motion for
Class Certification. Dkt. #18 at 9-16.

1 (3) Do Defendants provide appropriate due process when Supported Living services are terminated
2 or unavailable? (4) Do Defendants have an adequate oversight and quality assurance system for
3 ensuring that its contracted Supported Living providers are delivering sufficient supports to meet
4 individuals' needs?; and (5) Do Defendants' policies and practices result in unnecessary
5 institutionalization or risk of institutionalization? Dkt. #18 at 18-19. Because Plaintiffs do not
6 raise common contentions, the Court cannot determine whether these questions will "resolve an
7 issue that is central to the validity of each one of the [individual class members'] claims in one
8 stroke." *Dukes*, 564 U.S. at 350. Additionally, the first, second, third, and fifth questions posed
9 by Plaintiffs merely ask if Defendants violate the law. However, simply asking whether
10 Defendants violate the law is not a sufficient basis to certify a class. *See Dukes*, 564 U.S. at 349
11 (finding that recitation of questions, including the question "Is that an unlawful employment
12 practice?," is "not sufficient to obtain class certification"); *also M.D. ex rel. Stukenberg v. Perry*,
13 675 F.3d 832, 844 (5th Cir. 2012) ("mere allegations of systemic violations of the law . . . will not
14 automatically satisfy Rule 23(a)'s commonality requirement") (quotation marks and citations
15 omitted). Plaintiffs must instead demonstrate they and proposed class members suffer the same
16 injury. *Dukes*, 564 U.S. at 349-50. This may be done if Plaintiffs identify a specific policy or
17 practice which they claim underlies the denial of the community-based habilitative services they
18 seek. *See Parsons v. Ryan*, 754 F.3d 657, 678-679 (9th Cir. 2014) (commonality met where
19 plaintiffs specified statewide policies and practices and district court confirmed the class members
20 were "as one in their exposure to a particular and sufficiently well-defined set of allegedly illegal
21 policies and practices"); *also DL v. District of Columbia*, 713 F.3d 120, 126 (D.C. Cir. 2013) ("In
22 the absence of identification of a policy or practice that affects all members of the class in the
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1 manner *Wal-Mart* requires, the district court's analysis is not faithful to the Court's interpretation
2 of Rule 23(a) commonality.”).

3 In summary, because Plaintiffs fail to demonstrate they and proposed class have suffered
4 the same injury, commonality has not been established.

5 c. *Plaintiffs Fail to Establish Typicality.*

6 Plaintiffs’ failure to establish commonality also affects their ability to demonstrate
7 typicality. Rule 23(a)(3) requires that “the claims or defenses of the representative parties are
8 typical of the claims of the class.” Fed. R. Civ. P. 23(a)(3). Under this requirement, the Court
9 must “focus on whether the named representatives’ claims have the same essential characteristics
10 as the claims of the class at large.” 1 JOSEPH M. McLAUGHLIN, McLAUGHLIN ON CLASS ACTIONS:
11 LAW AND PRACTICE § 4:16 (13th ed. 2016). To make this determination, the Court must compare
12 Plaintiffs’ claims or defenses, with the claims or defenses of the class. *Id.* Notably, the
13 “commonality and typicality requirements of Rule 23(a) tend to merge,” as “both serve as
14 guideposts for determining whether under the particular circumstances maintenance of a class
15 action is economical and whether the named plaintiff’s claim and the class claims are so
16 interrelated that the interests of the class members will be fairly and adequately protected in their
17 absence.” *Falcon*, 457 U.S. at 157 n.13.

18 Here, Plaintiffs do not demonstrate their claims and those of the proposed class have the
19 same essential characteristics. Instead, Plaintiffs merely allege their claims are typical of the
20 proposed class’ claims because they, like the proposed class members, are denied due process
21 protections, are denied prompt access to supported living services, and they are all either
22 unnecessarily institutionalized or at risk of being unnecessarily institutionalized. Dkt. #18 at 20-
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1 21. This argument fails to demonstrate typicality because it alleges generalized violations of the
2 law without explaining how Plaintiffs' claims are similar to the claims of the proposed class.
3 Instead, Plaintiffs allude to unspecified policies and practices, but their failure to specify even one
4 policy or practice prevents the Court from determining if Plaintiffs' claims are typical of the
5 proposed class' claims. *See* Dkt. #18 at 20-21. Consequently, Plaintiffs fail to establish typicality
6 under Rule 23(a)(3).

7
8 *a. Plaintiffs Establish Adequacy of Representation.*

9 A class action will only be certified if plaintiffs can demonstrate "the representative parties
10 will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4).
11 Representation is adequate where: (1) the class representative and their counsel do not have
12 conflicts of interest with other class members; and (2) the class representatives and their counsel
13 will "prosecute the action vigorously on behalf of the class." *Gray*, 279 F.R.D. at 520. Here,
14 Plaintiffs contend their claims and interests do not conflict with the interests of other class
15 members since they all share an interest in "obtaining systemic reform that is necessary to enforce
16 their rights under the law." Dkt. #18 at 22. Plaintiffs have also submitted a declaration by their
17 counsel. *See* Dkt. #19. In that declaration, Plaintiffs' counsel lists her experience litigating class
18 actions and her commitment to litigating Plaintiffs' claims vigorously. *Id.* ¶¶ 5-9. Defendants do
19 not dispute Plaintiffs' satisfaction of Rule 23(a)(4), and the Court is persuaded that Plaintiffs
20 satisfy this subsection of Rule 23.
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22 Despite Plaintiffs' satisfaction of Rule 23(a)(4), the Court is not convinced this case is
23 suited for class action treatment. Because Plaintiffs' class definition is not sufficiently definite,
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1 and because Plaintiffs have not satisfied Rule 23(a)'s numerosity, commonality, and typicality
2 requirements, their motion for class certification is DENIED.²

3 **V. CONCLUSION**

4 Having reviewed Plaintiffs' motion for class certification, the opposition thereto and reply
5 in support thereof, along with the declarations submitted by the parties and the remainder of the
6 record, the Court hereby finds and ORDERS Plaintiffs' Motion for Class Certification (Dkt. #18)
7 is DENIED.
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10 DATED this 14 day of June, 2017.

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13 **RICARDO S. MARTINEZ**
14 **CHIEF UNITED STATES DISTRICT JUDGE**

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² Because Plaintiffs fail to satisfy three of Rule 23(a)'s requirements, the Court will not assess
25 whether Plaintiffs satisfy Rule 23(b)(2). Rule 23(b)(2) requires plaintiffs to demonstrate defendants have
"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).