IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

JAC'QUANN (ADMIRE) HARVARD, et al.,

Plaintiffs,

v. **Case No. 4:19-cv-212-AW-MAF**

RICKY DIXON, Secretary of Florida Department of Corrections, et al.,

Defendants.
_____/

ORDER DENYING MOTION FOR CLASS CERTIFICATION AND DENYING AS MOOT MOTIONS TO STRIKE

Plaintiffs use of solitary confinement, and they seek class certification. The Secretary and the Department FDC moved to strike certain expert declarations related to the class-certification motion. FDC has also moved to strike evidence attached to or alternatively for leave to file a surreply. This order denies all three motions.

I. CLASS CERTIFICATION

Plaintiffs seek to certify one primary class and three subclasses. The primary

309 ¶¶ 169, 176, 183, 190. The subclasses are for (1) youth (those under 21); (2) those who meet FDC definition of serious mental illness; and (3) those with disabilities under the ADA or RA.

Parties seeking class certification must show Rule 23(a) prerequisites

as well

.[1]

It is likewise no answer to argue that Plaintiffs seek

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Plaintiffs effectively concede they cannot specify the injunctive relief sought.

Plaintiffs

they have not shown a single injunction would benefit all class (or subclass) members. Rule 23(b)(2) does not authorize class certification when each individual

Wal-Mart Stores, 564 U.S.

at 360. And Plaintiffs cannot sidestep this rule by requesting an injunction so broad that it technically covers the entire class

of the claims or defenses of the class

they must show common questions

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Establishing that a condition (or interrelated combination of conditions) violates the Eighth Amendment requires showing both objective seriousness and deliberate indifference. First, u

prove that the condition he complains of is sufficiently serious to violate the Eighth

Chandler, 379 F.3d at 1289 (quoting *Hudson v. McMillian*, 503 U.S. 1, 8 (1992)). To be sufficiently serious, the condition must be . *Hudson*, 503 U.S. at 9.

An inmate can challenge an extreme condition even before it causes harm. *See Helling*, 509 U.S. at

future harm,

so the issue is the constitutional permissibility of the *condition*

is contrary to current standards of decency and

the risks it poses. *Id.* at 35.

Second, a prisoner must show deliberate indifference. *See Helling*, 509 U.S. at 35-37.]eliberate indifference has three components: (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere negligence. *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999) (citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Farmer v. Brennan*, 511 U.S. 825, 837, 842 (1994)). Like the objective showing, th0 [(L)-0 o3.0 [(L)-0 o3.045.9.2 reW*nBT/F1 14.04

the defendant be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists and [that] he [] also draw[s] the inference *Farmer*, 511 U.S. at 837. In other words, FDC would have to be aware of the *conditions* that expose an inmate

programming, radios, and tablets all under the umbrella of denial of *id.*

common answers. Class certification is not for different questions that might yield the same answer.[3]

Plaintiffs have not shown commonality or typicality as to their Eighth Amendment claims.

ii. ADA and Rehabilitation Act Claims

Plaintiffs have not shown commonality or typicality as to their ADA or Rehabilitation Act claims either. For starters, they have not described these claims with any clarity, so it is unclear which questions of law and fact will even be relevant. Plaintiffs certainly have not shown common questions capable of driving resolution of these claims. Nor have they demonstrated that the class representatives have suffered the same injury as the class.

shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to

[3] As discussed above in connection with the (b)(2) requirements, if the conduct (or conditions) giving rise to the claim are different even if they all lead to a serious risk then an appropriate injunction must provide different relief to different class members. Consider, for example, one inmate receiving deficient medical care and another inmate 7LWOH„

di 12132.[4]

someone

substantially limits one or more major life activities of such individual; (B) a record of such an

. . . meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a 12102, 12131.

A successful plaintiff must show (1) he is a qualified individual with a disability; (2) he was either discriminated against or denied participation in (or denied benefits of) services, programs, or activities; and (3) that the act was by reason of his disability. *Silberman v. Miami Dade Transit*, 927 F.3d 1123, 1134 (11th Cir. 2019) (quoting *Bircoll v. Miami-Dade Cnty.*, 480 F.3d 1072, 1083 (11th Cir. 2007)). Courts have also recognized claims based on a failure to provide reasonable accommodation. *See Bircoll*, 480 F.3d at 1081-82 (citing 28 C.F.R. § 35.130(b)(7)); *Bennett-Nelson v. La. Bd. of Regents*, 431 F.3d 448, 454-55 (5th Cir. 2005); *cf. also Tennessee v. Lane*, 541 U.S. 509, 532 (2004) requires only

[4] The Rehabilitation Act also requires federal funding, *see* 29 U.S.C. § 794(a), which is undisputed here. Otherwise, the claims are essentially the same, *see Cash v. Smith*, 231 F.3d 1301, 1305 (11th Cir. 2000) iscrimination claims under the Rehabilitation Act are governed by the same standards used in ADA cases . . . .), so I will discuss both claims together and refer to them collectively as ADA claims.

Again, Plai Contending that their claims are

individuals in isolation, 311 at 46, Plaintiffs phrase the inquiry in terms of whether FDC has a system that *ensures* accommodations. *See* ECF No. 311 at 43 discriminates against people with disabilities by failing to provide systems that consistently provide equal access to programs, services, and activities in *id*. at system to ensure reasonable modifications of isolation policies and practices so that people with disabilities can access even the minimal programs, activities, and services in isolation impacts all *id.* [T]his case calls for FDC to implement a system-wide policy and procedure for ensuring that people with

ad

ADA claim.

First, Plaintiffs have not specified which services they have been denied or which programs or activities they have been excluded from. And they seem to acknowledge that class members have experienced different denials or exclusions without even providing evidence (or even arguing) that certain subclasses share a common exclusion. They do not contend that all class (or subclass) members have the same disability or the same limits on their ability to receive services or participate in programs. *See* ECF No. 311 [a]ll people wi

meet the eligibility criteria for some of the denied programs and not others. So even if all class members were excluded from the same program,

eligibility for that program would remain an open question.

Finally, even if all class members shared the same exclusion or denial, an accommodation might be reasonable for some but not others. Indeed, Plaintiffs do not contend that every class member should have the same accommodation they instead point to various, wide-ranging accommodations that they say FDC should provide. That only highlights the fact that the reasonableness determination cannot be made for everyone in one stroke. *See Bircoll*, 480 F.3d at 1085-86 (he reasonable-modification inquiry in Title II-ADA cases is a highly fact-specific inquiry must be decided case-by-case based on numerous factors (marks and citation omitted)).

Put simply, Plaintiffs have not provided - and context-specific claims together. *Cf. Wal-Mart Stores*

some glue holding the alleged *reasons* for all those decisions together, it will be impossible to say that examination of all the class members claims for relief will produce a common answer to the crucial question *why was I disfavored*.

II. MOTIONS TO STRIKE

FDC moved to strike the five expert declarations plaintiffs submitted to

satisfy *Daubert*