UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

M.C. and T.G., on behalf of themselves and all similarly situated individuals,

Civil Action No.:
6:22-CV-190 (DNH/ML)

Plaintiffs,

v.

JEFFERSON COUNTY, NEW YORK; COLLEEN M. O'NEILL, as the Sheriff of Jefferson County, New York; BRIAN R. McDERMOTT, as the Undersheriff of Jefferson County; and MARK WILSON, as the Facility Administrator of Jefferson County Correctional Facility,

Defendants.

MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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Defendants Jefferson County, Colleen M. O'Neill, Brian R. McDermott and Mark Wilson (collectively, the "County Defendants"), submit this memorandum of law in opposition to the motion of Plaintiffs M.C. and T.G., on behalf of themselves and all similarly situated individuals ("Plaintiffs"), for a preliminary injunction, (1) enjoining the County Defendants to provide Plaintiffs and the putative class with agonist medication for opioid use disorder during their detention in the County Defendants' custody, either: (a) as prescribed to them at their time of entry to Defendants' custody; or (b) as subsequently prescribed to them based on an appropriate clinical evaluation by a physician licensed to prescribe methadone and buprenorphine.

For the reasons set forth below and in the accompanying Declaration of Teresa M. Bennett, Esq. and Affidavit of Mark Wilson, Esq., Plaintiffs' motion should be denied.

PRELIMINARY STATEMENT

Plaintiffs brought this action on behalf of themselves and a purported class of individuals as follows: all non-pregnant individuals who are or will be detained at the Jefferson County Correctional Facility and had or will have prescriptions for agonist medication for opioid use disorder ("MOUD") ***at the time of entry*** into the County Defendants' custody. Dkt. 2. Plaintiffs presently seek a preliminary injunction "permitting members of the putative class to access their prescribed treatment for OUD until this Court can evaluate the lawfulness of the jail's practice."

However, Plaintiffs' motion must necessarily fail for several reasons. First, The putative class members assert that they face irreparable harm by the ending of their prescribed treatment for opioid use disorder. However, there is no imminent risk that an incarcerated individual entering Jefferson County Correctional Facility with a prescription for agonist MOUD will be denied their prescribed treatment by the County Defendants, who presently screen all incarcerated individuals who report MOUD and refer them to Credo Community Center for the Treatment of Addiction

("Credo") and Crouse Hospital ("Crouse") for treatment. Second, Plaintiffs' motion seeks to compel the County Defendants to recommence treatment to those incarcerated individuals who have already allegedly been successfully withdrawn from MOUD. However, there is no indication that those incarcerated individuals will be irreparably harmed by maintaining the status quo while this case is resolved. Two of the individuals who submitted Affidavits in support of Plaintiffs' motion confirm that they only suffer drug cravings. Third, Plaintiffs have failed to demonstrate likelihood of success on either their Eighth Amendment or ADA Claims. The County Defendants have maintained there is no policy, custom or practice of denying MOUD treatment and there are at least seven individuals who receive prescribed MOUD at Credo/Crouse. In light of the fact that Plaintiffs have failed to demonstrate either irreparable harm nor likelihood of success, and that the County Defendants are currently transporting several incarcerated individuals for treatment, the balance of the equities do not favor an injunction.

Finally, despite the fact that Plaintiffs' motion for class certification is limited to non-pregnant individuals who are detained by the County Defendants and who had or will have prescriptions for agonist MOUD at the time of entry into the Jefferson County Jail, Plaintiffs seek injunctive relief for individuals who are subsequently prescribed OUD treatment based on an appropriate clinical evaluation by a physician licensed to prescribe methadone and buprenorphine. Not only are these individuals not at risk of irreparable harm, there is no class representative for such individuals.

For the reasons discussed more fully below, Plaintiffs' motion for a preliminary injunction should be denied.

LEGAL STANDARD

"A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *LaPierre v. Dzurenda*, No. 21-CV-0464(JS)(ARL), 2021 U.S. Dist. LEXIS 50853, at *14-15 (E.D.N.Y. Mar. 17, 2021) (quoting *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). A preliminary injunction is "an extraordinary and drastic remedy which should not be routinely granted." *Id.* (quoting *Jefferson v. Soe*, No. 17-CV-3273, 2017 U.S. Dist. LEXIS 104389, at *2 (E.D.N.Y. July 6, 2017) (quoting *Buffalo Forge Co. v. Ampco-Pittsburgh Corp.*, 638 F.2d 568, 569 (2d Cir. 1981))). Where the moving party seeks a "mandatory injunction that alters the status quo by commanding a positive act, . . . the burden is even higher." *Id.* (quoting *Jefferson,* 2017 U.S. Dist. LEXIS 104389, at *3).

Thus, "a mandatory preliminary injunction should issue only upon a clear showing that the moving party is entitled to the relief requested, or where extreme or very serious damage will result from a denial of preliminary relief. In the prison context, a request for injunctive relief must always be viewed with great caution so as not to immerse the federal judiciary in the management of state prisons." *Id.* (internal quotation marks and citations omitted).

ARGUMENT

POINT I

PUTATIVE CLASS MEMBERS DO NOT FACE IRREPARABLE HARM

Plaintiffs assert that the class members face irreparable harm, claiming that "prematurely ending prescribed methadone or buprenorphine treatment for OUD is exceptionally dangerous and violates the standard of care." Dkt 31, Pl.'s Brief at 9. This certainly addresses those who are

presently entering the JCCF with a prescription for MOUD, and this Court has already determined that those individuals can demonstrate a clear showing of irreparable harm in not receiving prescribed MOUD, based on the side effects associated with withdrawal from methadone treatment.[1] *See P.G. v Jefferson County*, No. 5:21-CV-3882021 U.S. Dist. LEXIS 170593, at *9 (N.D.N.Y. Sep. 7, 2021) (finding the uncontested evidence established that withdrawal from methadone treatment is excruciatingly painful, will cause a number of severe physical and mental symptoms, and will place plaintiff at a significantly heightened risk of relapse and death . . . this amounts to a 'strong showing' of irreparable harm. *Smith v. Aroostook County*, 376 F. Supp. 3d 146, 161-62 (D. Me. 2019) (finding this element satisfied based on a similar evidentiary showing), *aff'd*, 922 F.3d 41 (1st Cir. 2019)). *See also* Dkt. 30, 7-8.

At this time, there is no imminent risk that an incarcerated individual entering JCCF with a prescription for MOUD will be denied their prescribed treatment by the County Defendants. That is, the County Defendants are currently transporting seven individuals to Credo Community Center for the Treatment of Addiction ("Credo") and Crouse Hospital ("Crouse"). *See* Wilson Aff. ¶ 7. The County Defendants' current policy is to refer all incarcerated individuals who report MOUD at the time of entry to JCCF to Credo for evaluation and, in the event that Credo accepts such incarcerated individual for treatment, to transport the incarcerated individual daily to Credo/Crouse on a daily basis. *Id.* at ¶¶ 5, 6. Certainly, this is contrary to Plaintiffs' claim that the County Defendants maintain a policy, custom or practice of denying MOUD treatment to non-pregnant persons committed to their custody, and the County Defendants have repeatedly denied maintaining any such policy, practice or procedure. *Id.* at ¶ 3.

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[1] The County Defendants have not yet retained an expert to address Plaintiffs' claims regarding the benefits and health risks of MOUD and forced methadone withdrawal, and reserve the right to address these claims at a later date.

However, Plaintiffs' present motion is not limited to those who might be forcibly withdrawn from MOUD presently or in the future; rather, Plaintiffs' present motion appears to seek to compel the County Defendants to recommence treatment to those incarcerated individuals who have already allegedly been successfully withdrawn from MOUD. Plaintiffs fail to state how those incarcerated individuals will be irreparably harmed by maintaining the status quo while this case is resolved. That is, the trigger for irreparable harm is alleged to be the ***withdrawal*** from MOUD. Dkt 31, Pl.'s Brief at 5-6 (arguing that the County Defendants' practice of denying MOUD forces class members into harmful withdrawal).

For example, J.M. alleges he has been incarcerated since August 10, 2021, and his suboxone prescription expired in February. Dkt 34, ¶ 8, 15. J.M. alleges that eight months into his incarceration, he is "tortured by opioid cravings." Dkt 34, ¶ 16. J.M. does not have a current agonist MOUD prescription, and has not alleged that he currently suffers from withdrawal, merely that he suffers from opioid cravings. Likewise, J.C. alleges he has been incarcerated since October 22, 2021 when he was "cut off" from treatment. Dkt 33, ¶ 7, 11. J.C. alleges generally that he still suffers from withdrawal, but only identifies the symptom of feeling manic because he cannot stop thinking about drugs. Dkt 33, ¶ 12. As such there is no risk of irreparable harm to these incarcerated individuals that would be remedied by an injunction to Defendants to provide them with agonist medication for opioid use disorder during their detention.

As there is no imminent risk of termination of prescribed MOUD for those whom the Plaintiffs claim will be irreparably harmed, Plaintiffs' motion for a preliminary injunction must be denied.

POINT II

PLAINTIFFS ARE NOT SUBSTANTIALLY LIKELY TO SUCCEED ON THE MERITS

As this case has only been recently commenced, the County Defendants have not retained an expert to address the alleged benefits and health risks of MOUD and forced withdrawal from MOUD, and reserve the right to address these issues at a later date. This analysis is based solely on the legal principles associated with the claims asserted by the Plaintiffs. Based upon that analysis, it is respectfully submitted that Plaintiffs have failed to establish a likelihood of success on the merits.

1. Eighth Amendment Claim

Plaintiffs' allege the County Defendants maintain an unlawful policy, custom or practice of denying MOUD treatment to non-pregnant persons committed to their custody, in contravention of the Eighth Amendment's prohibition on cruel and unusual punishment, which creates an obligation for the government to provide medical care for those whom it is punishing by incarceration.

"To sustain a claim of deliberate indifference to medical needs, plaintiffs must satisfy a two-part test." *Johnson v. Newport Lorillard*, 2003 U.S. Dist. LEXIS 939, at *8-10 (S.D.N.Y. Jan. 21, 2003). The objective component requires the alleged deprivation to be sufficiently serious. *Id.* (citing *Hudson v. McMillian,* 503 U.S. 1, 9 (1992)). Accordingly, "only those deprivations denying 'the minimal civilized measure of life's necessities,' are sufficiently grave to form the basis of an Eighth Amendment violation." *Id.* (quoting *Wilson v. Seiter,* 501 U.S. 294, 298 (1991) (quoting *Rhodes v. Chapman,* 452 U.S. 337, 347 (1981))). A serious medical need arises where "the failure to treat a prisoner's condition could result in further significant injury or the

unnecessary and wanton infliction of pain." *Id.* (quoting *Chance v. Armstrong,* 143 F.3d 698, 702 (2d Cir. 1998) (internal quotation marks and citation omitted).

To satisfy the subjective prong of the test, it must be shown that the prison officials must have acted with a sufficiently culpable state of mind, i.e., deliberate indifference. *Id.* (quoting *Farmer,* 511 U.S. at 834). Plaintiffs must demonstrate prison officials intentionally denied, delayed access to, or intentionally interfered with prescribed treatment. *See Estelle,* 429 U.S. at 104-05. *See also Farmer,* 511 U.S. at 837 ("A prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference."). "The subjective element of deliberate indifference 'entails something more than mere negligence … [but] something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result." *Hathaway v. Coughlin II,* 99 F.3d 550, 553 (2d Cir. 1996) (quoting *Farmer,* 511 U.S. at 835). Accordingly, subjective recklessness can satisfy the deliberate indifference standard where :the official has actual knowledge that the prisoner faced a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." *Farmer,* 511 U.S. at 847.

"Prison officials have a duty to provide prisoners with the 'reasonably necessary medical care which would be available to him or her … if not incarcerated.'" *Johnson v Newport Lorillard*, 2003 U.S. Dist. LEXIS 939, at *10-11 (S.D.N.Y. Jan. 21, 2003) (quoting *Candeleria v. Coughlin,* No. 91 Civ. 2978, 1996 U.S. Dist. LEXIS 2298, at *7 (S.D.N.Y. Mar. 1, 1996) (quoting *Langley v. Coughlin,* 888 F.2d 252, 254 (2d Cir. 1989)). *See also Edmonds v. Greiner,* No. 99 Civ. 1681, 2002 U.S. Dist. LEXIS 3746, at *8 (S.D.N.Y. Mar. 7, 2002). However,

a prison cannot be required to meet the same standard of medical care found in outside hospitals. *See Archer v. Dutcher,* 733 F.2d 14, 17 (2d Cir. 1984). Moreover, a prisoner has no right to the treatment of his choice. *See McKenna,* 2002 U.S. Dist. LEXIS 3489, at *7.

In *Johnson v. Newport Lorillard*, 2003 U.S. Dist. LEXIS 939, at *14-15 (S.D.N.Y. Jan. 21, 2003), the District Court determined that the Plaintiff had failed to demonstrate likelihood of success on the merits for a preliminary injunction for custom wheelchairs, where evidence was submitted that new wheelchairs are adjusted to the particular needs of the incarcerated individual.

In this case, although Plaintiffs continue to maintain the existence of an unlawful policy, custom or practice, the County Defendants maintain that there is no policy. On the contrary, by the Plaintiffs' own admissions in their Complaint, other incarcerated persons at JCCF have received methadone treatment, negating Plaintiffs' claims that there is such a uniform ban, practice or policy. In fact, at this time, there are seven non-pregnant incarcerated individuals receiving prescribed MOUD at Credo/Crouse. *See* Wilson Aff. ¶ 7. All incarcerated individuals that enter JCCF and report prescribed MOUD are transported to Credo for evaluation and, if accepted as a patient, transported daily to Credo/Crouse. *See* Wilson Aff. ¶ 5-6.

As such, it is unlikely that plaintiffs will succeed on the merits, as there is evidence that incarcerated individuals are receiving daily access to MOUD following evaluation from Credo.

2. ADA Claim

Plaintiffs' further allege the County Defendants maintain an unlawful policy, custom or practice of denying MOUD treatment to non-pregnant persons committed to their custody, in contravention of Title II of the ADA because Defendants' practice of refusing access to agonist MOUD denies class members meaningful access to the jail's medical services on account of OUD.

Title II of the ADA "proscribes discrimination against the disabled in access to public services." *Harper v. Cuomo*, No. 9:21-CV-0019 (LEK/ML), 2021 U.S. Dist. LEXIS 39173, at *41 (N.D.N.Y. Mar. 1, 2021) (quoting *Harris v. Mills*, 572 F.3d 66, 73 (2d Cir. 2009) (citation omitted). The statute provides that "no qualified individual with a disability 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 discrimination by any such entity." *Id*. (quoting *Harris*, 572 F.3d at 73. (citing 42 U.S.C. § 12132)).

In order to establish a prima facie violation, an incarcerated individual must show that "1) he is a qualified individual with a disability; 2) DOCCS is an entity subject to the acts; and 3) he was denied the opportunity to participate in or benefit from DOCCS's services, programs, or activities or DOCCS otherwise discriminated against him by reason of his disability." *Harper*, 2021 US Dist LEXIS 39173, at *41-42 (citing *Henrietta D.*, 331 F.3d at 272). There are three available theories of discrimination that can be used to establish the third prong of an ADA claim: "(1) intentional discrimination (disparate treatment); (2) disparate impact; and (3) failure to make a reasonable accommodation." *Harper*, 2021 US Dist LEXIS 39173, at *42 (quoting *Fulton v. Goord*, 591 F.3d 37, 43 (2d Cir. 2009)).

Plaintiffs' allege that the Jail's practice of denying treatment discriminates against class members. As set out in Point Two(1) above, the County Defendants have submitted evidence that any incarcerated individuals entering the JCCF, and confirmed to have a current prescription for MOUD, are being transported to Credo/Crouse for daily treatment. *See* Wilson Affidavit. As set out in the Affidavit of Mark Wilson dated April 22, 2022 (Dkt. 45-1), whether an incarcerated individual receives MOUD is determined on a case by case basis, based upon the disclosures made by the incarcerated individual upon arrival at the JCCF, the same process as any other disclosure

of prescription drug use. As such, it is unlikely that Plaintiffs will succeed on the merits, as Plaintiffs with OUD are subjected to the same treatment criteria as all other incarcerated individuals that enter JCCF and, as such, Plaintiffs have failed to establish a likelihood of success on their ADA claim.

POINT III

THE BALANCE OF THE EQUITIES DO NOT FAVOR AN INJUNCTION

Plaintiffs assert that the balance of equities and the public interest support granting the preliminary injunctive relief. However, the "Court's intervention in internal prison operations without an urgently compelling and extraordinary reason is viewed as against the public interest." *Harper*, 2021 US Dist LEXIS 39173, *52 (quoting *Miles v. Kentucky Dep't of Corr.*, 16-CV-P73, 2016 U.S. Dist. LEXIS 84797, at *4 (W.D. Ky. June 29, 2016) (citing *Lang v. Thompson*, 10-CV-379, 2010 U.S. Dist. LEXIS 126890, at *7 (E.D. Ky. Nov. 30, 2010)). Further, although no one factor is controlling, a finding that there is simply no likelihood of success on the merits is usually fatal. *Harper*, 2021 US Dist LEXIS 39173, *52 (citing *Gonzalez v. National Bd. of Med. Exam'rs*, 225 F.3d 620, 625 (6th Cir. 2000).

Because the County Defendants have established that there is no policy or practice banning methadone treatment, and in fact the County Defendants are currently transporting incarcerated individuals for treatment, the Court need not reach a determination that the balance of the equities and public interest support granting the injunction. However, the County Defendants are best suited for policing how to determine whether an incarcerated individual entering JCCF is entitled to be medically treated. At this time, the County Defendants are interviewing new arrestees/detainees to determine whether they are prescribed MOUD and transporting them to a licensed opioid treatment program daily for evaluation and treatment. As such, given there is no

risk of imminent harm of forced withdrawal of any newly admitted arrestee/detainee, it is respectfully submitted that Plaintiffs' motion should be denied.

POINT IV

PLAINTIFFS SEEK RELIEF FOR INDIVIDUALS WHO ARE NOT A PART OF THE PROPOSED CLASS

Plaintiffs seek injunctive relief for individuals who are ***subsequently*** prescribed OUD treatment based on an appropriate clinical evaluation by a physician licensed to prescribe methadone and buprenorphine. As with persons who have already been withdrawn from MOUD, there is no risk of imminent harm, stated or otherwise, to this class of individuals who have presumably never been prescribed MOUD or have not recently been prescribed MOUD.

Moreover, Plaintiffs only sought class certification for all non-pregnant individuals who are or will be detained at the Jefferson County Correctional Facility and had or will have prescriptions for agonist medication for opioid use disorder ("MOUD") ***at the time of entry*** into the County Defendants' custody. *See* Dkt. 2, Motion for Class Certification. In fact, the County Defendants are unaware of a class representative for individuals in the County Defendants' custody without a prescription, but desirous to receive, MOUD while incarcerated. Certainly, none of the individuals who have submitted affidavits in support of Plaintiffs' present motion meet these criteria. To the extent that Plaintiffs seek relief on this motion for incarcerated individuals outside the proposed class, Plaintiffs' motion must be denied. *See generally*, *Cullins v. Bowen*, No. 84 Civ. 5094 (CBM), 1987 U.S. Dist. LEXIS 3547, at *15, n 6 (S.D.N.Y. May 5, 1987) (denying plaintiffs' motion for preliminary injunctive relief for a sub-class that the Court denied certification for, because plaintiff could not show a likelihood of success on their claim).

CONCLUSION

For the reasons set forth herein and in the accompanying Declaration and Affidavit, the County Defendants respectfully request that Plaintiffs' motion for a preliminary injunction be denied in its entirety. The County Defendants respectfully request such other and further relief as the Court deems just and proper.

Dated: April 27, 2022

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CERTIFICATE OF SERVICE

I certify that on April 27, 2022, I electronically filed true and correct copies of Defendants' Memorandum of Law with Supporting Papers, using the CM/ECF system, which sent notification of such filing to all counsel of record in this case.

Dated: April 27, 2022
Syracuse, New York

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