

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

JEFFREY MACHADO¹ & OTHERS²

vs.

DEBORAH GOLDBERG³ & another⁴

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFFS’
MOTION FOR CLASS CERTIFICATION**

The motion currently before the Court is Plaintiffs’ Renewed Motion for Class Certification and a proposed declaratory judgment. After hearing, and for the reasons given by the Plaintiffs, Plaintiffs’ motion is **ALLOWED**. The Court will issue the order proposed by the Plaintiffs. The Court explains briefly.

To obtain class certification, Plaintiffs have the burden of providing “information sufficient to enable the motion judge to form a reasonable judgment that the class meets the requirements of rule 23; they do not bear the burden of producing evidence sufficient to prove that the requirements have been met.” Weld v. Glaxo Wellcome Inc., 434 Mass. 81, 87 (2001). The proposed class must (1) be so numerous that joinder of all members is impracticable [“numerosity”], (2) present questions of law or fact common to the class [“commonality”], (3) propose claims or defenses of the representative parties that are typical of the claims or defenses of the class [“typicality”], and (4) show that the representative parties will fairly and adequately protect the interests of the class [“fairness and adequacy of representation”]. Id. at 86; Mass. R. Civ. P. 23(a). Where these requirements are met, Plaintiffs must also establish that that the

¹ On behalf of himself and others similarly situated.

² Herik M. Espinosa and Washington Santos.

³ In her official capacity as Treasurer and Receiver General.

⁴ Veteran’s Bonus Appeal Board.

questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to the other available methods for the fair and efficient adjudication of the claims. Mass. R. Civ. P. 23(b).

This case concerns the entitlement of Massachusetts veterans to a Welcome Home bonus under a state statute. In 2018, this Court concluded that the named plaintiffs, veterans who had honorably completed at least one enlistment, were entitled to the bonus even though a subsequent enlistment ended under less than honorable conditions. In 2020, the Legislature amended the relevant statute to permit payment only where a veteran's "final enlistment is characterized as discharged or released under honorable conditions for such service." St. 2020, c. 124, §§ 5-7; G. L. c. 10, § 78(g). (The statute was again amended in 2023 to make an exception to this provision.) The initial question is whether the 2020 amendment undermines Plaintiffs' request for class certification.

It does not. There is no basis to apply the 2020 statute retroactively. "Where there is no express legislative directive, this court generally applies the rule of interpretation that statutes operate prospectively. Nevertheless, a statute will be applied retroactively if it appears by necessary implication from the words, context or objects of the amendments that the Legislature intended them to be retroactive in operation and the retroactive intention is unequivocally clear." Sliney v. Previte, 473 Mass. 283, 288 (2015) (citations, internal punctuation omitted). Here, there is no unequivocally clear indication that the Legislature sought this amendment to apply retroactively. As a result, however, the definition of the class has been narrowed to include only those otherwise eligible veterans who completed active service after September 11, 2001 and before July 23, 2020, the effective date of the above amendment.

With this issue aside, class certification is appropriate.

As to numerosity, a class of over 40 typically satisfies the requirements of the rule. See Connor B. ex rel. Vigurs v. Patrick, 272 F.R.D. 288, 292 (D. Mass. 2011). Here, plaintiffs engaged Dr. John Crown to provide an expert analysis of the number of post-9/11 Massachusetts service members with reenlistments and final, less-than-honorable discharges. The Commonwealth does not challenge Dr. Crown's qualifications, and the Court accepts that Dr. Crown possesses the necessary expertise to provide this analysis. His findings identify at least 263 Massachusetts veterans who fall within the proposed class definition. As Plaintiffs correctly argue, there's no need to further parse the subdivisions within that group of potential claimants. This number far exceeds the threshold for numerosity.

The requirements of commonality and typicality are met for the reasons set forth in Plaintiffs' memorandum.

As to adequacy, the Defendants assert that class certification must be denied because the named Plaintiffs received their bonuses after the litigation was filed and thus their claims are no longer "live" and they cannot serve as class representatives. In support, defendants cite Foster v. Comm'r of Correction, 407 Mass. 448, 451 (1990). Defendants' reliance on Foster is misplaced. Indeed, in the earlier appeal in this case, the Appeals Court rejected the substance of the Defendant's claim, noting that "in Gammella v. P.F. Chang's China Bistro, Inc., 482 Mass. 1, 19-20 & n.24 (2019), [the Supreme Judicial Court] held that resolution of the individual plaintiffs' claims do not moot claims for class certification. ... See Cantell v. Commissioner of Correction, 475 Mass. 745, 753-756 (2016) ... Were the rule otherwise, successful prosecution of the class representatives' individual claims would invariably render the class claim moot. Gammella, *supra* at 19. The 'plaintiffs brought this case as a putative class action, and the class action allegations contained in the amended complaint remain operative until a judge has considered and rejected

them on their merits.’ Cantell, *supra* at 753.” Machado v. Treasurer & Receiver Gen., 97 Mass. App. Ct. 1118 at *1 (2020) (Rule 1:28 decision).⁵ Foster relies on Gammella and concludes that the plaintiff in Foster was an inappropriate class representative because his claim was resolved before suit was filed, but had his claim been live when suit was filed, the subsequent resolution of his individual claim “would not have prevented the class from being certified or Santos from continuing to represent it.” 484 Mass. at 714 & n. 15. Such is precisely the case here.

Defendants next argue they need another round of briefing on the merits of this case. This argument is specious, for several reasons.

First, the Court resolved the central legal issue in this matter in 2018 – whether a veteran who had completed one or more enlistments honorably was entitled to the Welcome Home bonus

⁵ Specifically, the SJC in Gammella wrote:

[Deposit Guar. Nat’l Bank v.] Roper [445 U.S. 326 (1980)] is particularly relevant. In that case, as here, the plaintiffs’ motion for class certification was denied; the defendant provided complete tender to the named plaintiffs in the amounts of their individual claims, which the plaintiffs rejected; and the trial judge entered judgment over the named plaintiffs’ objections. Roper, 445 U.S. at 329-330. The Court concluded that this was error: although a “final judgment fully satisfying named plaintiffs’ private substantive claims would preclude their appeal on that aspect of the final judgment,” the plaintiffs would nonetheless retain the “right to take an appeal on the issue of class certification.” Id. at 333. It explained that to “deny the right to appeal simply because the defendant has sought to ‘buy off’ the individual private claims of the named plaintiffs ... would frustrate the objectives of class actions” and “invite waste of judicial resources” by requiring multiple plaintiffs with low-value claims to bring suit. Id. at 339. See id. at 341 (Rehnquist, J., concurring) (rule requiring named plaintiff to “accept a tender” of his or her “individual claims” would “give the defendant the practical power to make the denial of class certification questions unreviewable”). We conclude that, even if the individual plaintiff’s claim had become moot, this reasoning would apply here. We thus reject the defendant’s argument that a plaintiff “has had [his or her] bite at the class action ‘apple’ ” and faces dismissal for mootness when he or she has not yet appealed from the denial of a motion for class certification.

482 Mass. at 19–20 (footnotes omitted)

if the last enlistment ended less than honorably. The Court issued final judgment, and dismissed the case. That dismissal was appealed by the Plaintiffs. The Defendants sought no appeal. Arguably, the Commonwealth's failure to appeal the earlier decision establishes the Court's 2018 ruling as the law of the case. See Peterson v. Hopson, 306 Mass. 597, 599 (1940) ("The 'law of the case' doctrine reflects this court's reluctance 'to reconsider questions decided upon an earlier appeal in the same case.'"); King v. Driscoll, 424 Mass. 1, 7–8 (1996) (citations omitted) (an issue 'once decided, should not be reopened 'unless the evidence on a subsequent trial was substantially different, controlling authority has since made a contrary decision of the law applicable to such issues, or the decision was clearly erroneous and would work a manifest injustice.'"). But even were that so, the Court could still reexamine its judgment. Commonwealth v. Marin, 105 Mass. App. Ct. 1128 at *2 (2025) (Rule 23.0 decision) ("The law of the case doctrine is a permissive, not a mandatory, doctrine."); Kauders v. Uber Techs., Inc., 486 Mass. 557, 569 (2021) ("As a general matter, it is well established that a judge retains discretion to reconsider prior rulings and correct errors at any time until a final judgment is entered, regardless of whether there has been a change in fact or law.").

On the merits, the Court sees no reason to re-examine its 2018 decision and reaffirms it. The Defendants' request to brief the potential retroactive application of the 2020 amendment, G. L. c. 10, § 78(g), discussed above, would be unhelpful. As discussed above, the statute does not apply retroactively. To the extent the defense argues that the subsequent amendment sheds light on the Court's interpretation of the prior version of the statute, that argument is also unpersuasive. "[C]ourts have employed the canon of statutory construction that an amendment to a statute presumably intends a change in the law. ... We have not always applied this canon. Often the Legislature may amend a statute simply to clarify its meaning. The extent to which an

amendment may properly be used to aid in the interpretation of the original statute turns on circumstances.” DiMarzo v. Am. Mut. Ins. Co., 389 Mass. 85, 102–103 (1983) (citations omitted). The 2020 amendment here doesn't clarify the law, it fundamentally changes it. Accordingly, the presumption of an intentional change is fully applicable. See Boyle v. Weiss, 461 Mass. 519, 525–526 (2012) (where changes in the law are significant, they were interpreted as substantive changes and not clarifications).

Second, the Defendants argue that the Court should re-examine the issue with further briefing because the prior decision concerned the named plaintiffs, and not to the class more broadly. This argument is thoroughly unconvincing. The legal issue is the same for the named plaintiffs as for the class; indeed, it is one of the reasons that the named plaintiffs are appropriate and adequate representatives of the class.

Third, the Defendants' tardy request for additional briefing would occasion further, unjustified delay in a case that has been pending for more than *eight years*. If the Defendants had any further arguments to support the Court's reexamination of its 2018 decision, or that otherwise stood in the way of the relief sought by the Plaintiffs in the proposed order, it was incumbent upon them to timely present them in connection with the Court's consideration of Plaintiffs' proposed order. Indeed, at argument, the Defendants made no effort to substantively preview any argument to support their request for full briefing. Instead, the Defendants argued that the litigation in this case should *start over* with new class representatives, and claimed that duplicating *seven years* of litigation would be efficient. The Defendants' approach is the opposite of efficiency..

Fourth, the Defendants argued that additional briefing was appropriate to address the remedy sought by Plaintiffs. Fundamentally, the Defendants' core concern was that the class

device would bypass the administrative review process that governs Welcome Home bonus claims. This is simply incorrect. In their proposed order, Plaintiffs do not seek to bypass the administrative process; instead, they seek an order that will help identify potential claimants and provide them notice of their rights to enable them to pursue claims if they so choose through the administrative process.

Lastly, the Defendants argue that further briefing is required to address superiority. See Mass. R. Civ. P. 23(b) (to grant a motion for class certification, the Court must find that “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”). A case generally meets the “superiority” test if it “presents a classic illustration of the policies of judicial efficiency and access to courts that underlie the class action suit: it aggregates numerous small claims into one action, whose likely range of recovery would preclude any individual plaintiff from having his or her day in court.” Weld, 434 Mass. at 93. This is true in this case, where the bonuses at issue were too small to justify separate actions. The Defendants argue, however, that a class action is not superior to simply issuing the requested declaratory judgment alone. See G. L. c. 231A, § 5 (second paragraph) (“when a decree has already been entered declaring an administrative practice or procedure as defined in section two to be illegal, and a person not a party to the original action involving said practice or procedure is adversely affected by the same or similar practice or procedure by the same agency, said person may seek relief under this chapter by filing a petition for contempt against the agency or agent continuing said practice or procedure after the entry of said decree.”). But as explained by the Plaintiffs, for the seven years since this Court first ruled on veterans’ eligibility for the Welcome Home bonus, the Defendants have taken the position that some or all of otherwise eligible veterans are not entitled to these bonuses. Plaintiffs compellingly argue that notice to potential

class members is thus necessary to clarify their rights and allow them to decide whether to pursue such bonuses.⁶ A Declaratory Judgment, standing alone, would not accomplish this goal. A class action is thus the superior remedial device to simply issuing a declaratory judgment.

ORDER

For the foregoing reasons, Plaintiffs' Motion For Class Certification is **ALLOWED**.

SO ORDERED.

M. D. Ricciuti
MICHAEL D. RICCIUTI
Chief Justice of the Superior Court

Dated: July 18, 2025

⁶ Defendants complain that the identity of the class members is not yet known. This concern does not undermine the appropriateness of the class action device; according to the Plaintiffs, class members can be identified with reasonable effort through the Executive Office of Veteran Services. See Olson v. Energy N., Inc., No. 9800228, 1999 WL 1332362, at *6 (Mass. Super. Jan. 14, 1999) (“the difficulty in identifying and locating the members of the class and ascertaining the amount of damages should not defeat class certification where the alternative is to leave those aggrieved without a remedy”).