Vermont Superior Court
Filed 09/30/26
Washington Unit

VERMONT SUPERIOR COURT
Washington Unit
65 State Street
Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 24-CV-02255

Vermont Human Rights Commission v. Vermont Department of Human Resources

ENTRY REGARDING MOTION

Title: Motion to Strike Class Allegations (Motion: 8)
Filer: Peter A. Sterling
Filed Date: August 06, 2026

A motion hearing shall be scheduled

Defendant Vermont Department of Human Rights has filed a motion to strike Plaintiff Vermont Human Rights Commission's class allegations in the present matter. This matter presents the Court with somewhat unique procedural circumstances.

Normally, when a party seeks to bring claims on behalf of a class, they must at the outset satisfy the requirements of V.R.C.P. 23. This rule requires a showing by a plaintiff that at a minimum, the class is (1) large enough to make joinder impracticable; (2) share common questions of law or fact; (3) that the representative is bringing claims or defenses typical of the class; and (4) that the representative parties will fairly and adequately protect the interests of the class. V.R.C.P. 23(a). No such showing has been made in the present case.

Under 9 V.S.A. § 4553(a)(6)(A)(iii), however, the Vermont Human Rights Commission is uniquely empowered to bring actions seeking "Compensatory and punitive damages on behalf of an aggrieved individual or class of individuals similarly situated." The Department of Human Resources concedes that this provision includes the authority for the Human Rights Commission to pursue claims on behalf of a class of similarly situated individuals. Neither the Department, nor the Commission, however, have adequately explained in their briefing how Section 4553(a)(6)(A)(iii) interacts with Rule 23. While the Department references Rule 23 in its reply, it does not rely on Rule 23 but suggests that the Court use it as a compass to map out a review of the Commission's complaint. The Commission reads the Department's motion more narrowly and focuses solely on the mechanics of a motion to strike under V.R.C.P. 12(f) without addressing any of the issues of class certification or implementing the requirement "similarly situated" found in Section 4553(a)(6)(A)(iii). Instead, the Commission suggests that the Department's motion is both too late (under Rule 12(f)) and too early as the Commission reads a right of discovery into its class certification process.

The Court finds neither approach entirely satisfactory. Section 4553 is an enabling statute. It empowers to Commission to act on the behalf of others and to investigate, negotiate, contract, and litigate on behalf of individuals and classes of individuals regarding discrimination issues. It does not create new substantive rights, or unique court processes. The authority under Section 4553(a)(6)(A)(iii) may not correspond strictly to Rule 23, but the current complaint

appears to fall directly into the type of class action that Rule 23 was intended to cover. In this respect Section 4553(a)(6)(A)(iii) gives the Commission standing to bring the present claim and to act as a class representative, but it does not create or indicate what process a court should adopt to ensure that any proposed class meets the constitutional requirements that go into creating, certifying, and rendering decisions on behalf of a class of individuals.

For these reasons, the Court will set this matter for a 90-minute hearing with the parties to allow them to supplement their filings with argument and any necessary representations to address the Court's concerns. To provide additional clarity, the Court will outline its general concerns as follows:

1) Does V.R.C.P. 23 apply to the present matter?

2) If Rule 23 does not apply to the present case, then what process should apply to a complaint brought under 9 V.S.A. § 4553(a)(6)(A)(iii) on behalf of an amorphous class of individuals?

3) When and how should the Court review the components of the proposed class?

4) Apart from the language of "similarly situated" in 9 V.S.A. § 4553(a)(6)(A)(iii), what other criteria should the Court apply in evaluating the proposed class?

5) Is the Commission entitled to limited discovery before the class can be certified? If so what reasonable standards should apply to the discovery timeline?

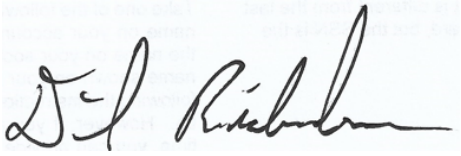
6) Does 12 V.S.A. § 511 apply to the claims of any member of the class?

While the Court may have additional questions and issues as it continues to consider the motion, these questions reflect the initial concerns of the Court and are included to help orient the parties to the intended purpose of the hearing.

The Court Clerk is directed to set this matter for a 90-minute hearing at the next available hearing date.

So Ordered.

Electronically signed on 9/30/2026 1:27 AM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge