UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Pensacola Division

LOUIS REYNOLDS, JASON KENNEDY, RONALD MCCRANEY JR., all on behalf of themselves and all others similarly situated; and JEFFERY MILLER;

Plaintiffs,

v.

WENDELL HALL, in his official capacity as Sheriff for Santa Rosa County, Florida,

Defendant.

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No. 3:10-cv-355 MCR/EMT

PLAINTIFFS' MOTION & MEMORANDUM OF LAW FOR CLASS CERTIFICATION

Plaintiffs move this Court pursuant to Fed. R. Civ. P. 23(b)(2) to certify a class comprising of "**all current and future detainees in the Santa Rosa County, Florida, Jail who are subject to or affected by the Postcard-Only Mail Policy**." Plaintiffs also move pursuant Fed. R. Civ. P. 23(g) to appoint the undersigned counsel as class counsel. Plaintiffs argue as following in support of this motion:

Introduction

Plaintiffs challenge Sheriff Hall's recently instituted policy and practice ("Postcard-Only Mail Policy") that forbids inmates of the Santa Rosa County, Florida, Jail ("Jail") from sending letters enclosed in envelopes to their parents, children, spouses, friends, other loved ones, or other correspondents. Instead, Jail inmates must write all of their correspondences in a postcard format except for privileged/legal mail. This new policy impermissibly restricts inmates' ability to exercise their rights to communicate with correspondents outside the jail and these correspondents' right to receive these inmates' communications and expressions, in violation of the First and Fourteenth Amendments to the United States Constitution. Louis Reynolds, Jason Kennedy, and Ronald McCraney Jr. ("Jail Inmate Plaintiffs") seek injunctive and declaratory relief.

Argument

I. Principles applicable to class certification.

For a district court to certify a class action, every putative class first must satisfy the prerequisites of "numerosity, commonality, typicality, and adequacy of representation" and at least one of the alternative requirements

of Rule 23(b). Fed.R.Civ.P. 23; *Mills v. Foremost Ins. Co*., 511 F.3d 1300, 1307-08 (11th Cir. 2008) (citations omitted). Here, the putative class satisfies each of the four requirements of Rule 23(a) and—because the Sheriff applies his unconstitutional Postcard-Only Policy generally to all inmates—it qualifies through Rule 23(b)(2) for class certification.

Class certification is solely a procedural issue, and the court's inquiry is limited to determining whether the proposed class satisfies the requirements of Rule 23. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-78 (1974). In ruling on the motion for class certification, the court must take the substantive allegations of the complaint as true. *Drayton v. Western Auto Supply Co*., 2002 WL 32508918, *6 (11th Cir. Mar. 11, 2002) ("It, therefore, is proper to accept the substantive allegations contained in the complaint as true when assessing Rule 23 requirements.")

II. The requirements of Rule 23(a) are satisfied.

In order for a class to be certified, the following requirements must be satisfied: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly

and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). As Plaintiffs demonstrate below, all four requirements of Rule 23(a) are easily met in this case.

A. Impracticability of Joinder – Rule 23(a)(1).

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." While there is no magic number of putative class members necessary to satisfy the numerosity standard, the Eleventh Circuit has indicated that more than forty class plaintiffs is generally enough to satisfy the rule. *See Cox v. Amer. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir.1986).

The jail's average daily population is over 500 inmates. *Compare* Santa Rosa County, Florida, Sheriff's Office, Department of Detention, available at http://www.santarosasheriff.org/departments/detention.shtml[1] (stating that the current capacity of the jail is 506 inmates); *with* Santa Rosa County, Florida, Board of County Commissioners' Meeting Minutes (Oct.

[1] Pursuant to Fed. R. Evid. 201(b)(2), this Court may take judicial notice of that website, which is a public record. *See In re Everglades Island Boat Tours, LLC*, 484 F. Supp. 2d 1259, 1261 (M.D. Fla. 2007) (in treating motion to strike as motion to dismiss, district court judicially noted information found on website of South Florida Water Management District); *see also Coleman v. Dretke*, 409 F.3d 665, 667 (5th Cir. 2005) (taking judicial notice of state agency website).

11, 2007),[2] (recording that Sheriff Hall reported that the jail was overcrowded and that some inmates were sleeping on plastic cots) *and id.* (July 24, 2008),[3] (recording that Sheriff Hall anticipated being 50-75 beds short in three years (2011)). Although not every inmate of the Santa Rosa County jail desires to write letters to family and friends while in jail, unquestionably over 40 persons desire to do so. *See, e.g.,* Inmate Grievance Form (Aug. 5, 2010), attached as Exhibit 1 (including a petition by over 100 inmates to reverse the Postcard-Only Mail Policy). Thus, with nearly five-hundred inmates in the Jail at any one time and a great number of them desiring to write letters to friends and family, the sheer numbers satisfy the numerosity requirements of Rule 23(a)(1).

In addition, a court may consider a number of other facts pertaining to numerosity, including the ease with which the class members may be identified and the nature of the action. *Zeidman v. J. Ray McDermott & Co., Inc.*, 651 F.2d 1030, 1038 (5th Cir. 1981).[4] Here, the inmates in the Jail at

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[2] Available from http://www.municode.com/library/clientCodePage.aspx?clientID=7626.

[3] *Id.*

[4] In *Bonner v. City of Prichard,* 661 F.2d 1206, 1207 (11th Cir.1981), the Eleventh Circuit adopted as precedent the decisions of the Fifth Circuit rendered prior to October 1, 1981.

any one time are in constant flux. While the Jail's capacity is close to 500, over 7,000 persons are annually arrested and booked as an inmate. Santa Rosa County, Florida, Comprehensive Annual Financial Report (2009), p. 122 (pdf p. 131), available at http://www.co.santa-rosa.fl.us/financial/2009/Comprehensive Annual Financial Report.pdf (listing the annual number of jail inmates as 8,692 in 2007, 8,234 in 2008, and 7,469 in 2009). The fluid nature of the class, and the inclusion in the class of future prisoners, whose identities obviously cannot now be ascertained, makes joinder of all class members not just impracticable, but literally impossible. *Phillips v. Joint Legis. Comm. on Performance & Expenditure Review of Miss.*, 637 F.2d 1014, 1022 (5th Cir.1981) (noting that future class members are necessarily unidentifiable and therefore joining them is impracticable) (quoting *Jack v. American Linen Supply Co.*, 498 F.2d 122, 124 (5th Cir.1974) (per curiam)).[5] The numerosity requirement of Rule 23(a)(1) is satisfied.

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[5] *See also Monaco v. Stone*, 187 F.R.D. 50, 61 (E.D.N.Y. 1999) (fluidity of class of criminal defendants makes certification particularly appropriate); *Dean v. Coughlin*, 107 F.R.D. 331, 332 (S.D.N.Y. 1985) ("the fluid composition of a prison population is particularly well-suited for class status"); *Andre H. v. Ambach*, 104 F.R.D. 606, 611 (S.D.N.Y. 1985) ("The fact that the [detention center] population ... is constantly revolving establishes sufficient numerosity to make joinder of the class members impracticable"); *Green v. Johnson*, 513 F. Supp. 965, 975 (D. Mass. 1981) (certifying class of prisoners "in light of the fact that the inmate population at these facilities is constantly revolving")

B. Commonality – Rule 23(a)(2).

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." Traditionally, commonality refers to the group characteristics of the class as a whole. *Prado-Steiman ex rel. Prado v. Bush,* 221 F.3d 1266, 1279 (11th Cir. 2000). However, this prerequisite does not mandate that all questions of law or fact are common; a single common question of law or fact is sufficient to satisfy the commonality requirement, as long as it affects all class members alike. *See In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 685 (S.D. Fla. 2004). For that reason, the commonality requirement is "easily met." 1 Herbert B. Newberg, Newberg on Class Actions § 3.10, at 274 (4th ed. 2002). Indeed, "[c]ommonality may be established where there are allegations of common conduct or standardized conduct by the defendant directed toward members of the proposed class." *Strube v. Am. Equity Inv. Life Ins. Co.,* 226 F.R.D. 688, 695 (M.D.Fla. 2005).

In this case, the members of the proposed class are all housed in a single facility and all of them are subject to the Sheriff's Postcard-Only Policy. Accordingly, there are questions of fact and law that are common to the class, including (but not limited to) the following:

1. The scope and nature of Sheriff's Postcard-Only Policy.

2. The scope, criteria, and process for invoking the alleged "privileged mail" exception to defendants' postcard-only policy.

3. The scope and nature of the Sheriff's interest in instituting the Postcard-Only Policy.

4. Whether the application of the Sheriff's Postcard-Only Policy violates Inmates' rights under the First and Fourteenth Amendments to the United States Constitution.

Jail Inmate Plaintiffs have alleged that the injuries and threatened injuries detailed in the First Amended Complaint—both those of the Jail Inmate Plaintiffs and those of the class—stem from a single policy of the Defendant: the Postcard-Only Policy. This fact alone requires a finding of commonality. Plaintiffs need only show a "common nucleus of operative facts" to satisfy Rule 23(a)(2). *Oshana v. Coca-Cola Bottling Co.*, 225 F.R.D. 575, 581 (N.D.Ill.2005); *In re Currency Conversion Fee Antitrust Litigation*, 224 F.R.D. 555, 562 (S.D.N.Y.2004) ("the commonality requirement does not require that each class member have identical claims as long as at least one common question of fact or law is evident"). Although class members will inevitably be affected in different ways by the postcard-only policy, "factual differences among the claims of the putative class members do not defeat certification." *Cooper v. Southern Co.*, 390 F.3d 695, 713 (11th Cir.2004) (*quoting Baby Neal v. Casey*, 43 F.3d 48, 56 (3d

Cir.1994)) (*overruled on other grounds by Ash v. Tyson Foods, Inc.*, 546 U.S. 454, 457 (2006)). The controlling questions of fact and law in this case are common to the entire class. Accordingly, the commonality requirement of Rule 23(a)(2) is satisfied.

C. Typicality – Rule 23(a)(3).

Fed. R. Civ. P. 23(a)(3) requires that "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class." The focus of typicality is whether the class representative's interest is aligned enough with the proposed class members to stand in their shoes for purposes of the litigation and bind them in a judgment on the merits. *See General Tel. Co. v. Falcon*, 457 U.S. 147, 156 (1982) (citation omitted); *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984); *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1275 (11th Cir. 2009). "A class representative must possess the same interest and suffer the same injury as the class members in order to be typical under Rule 23(a)(3)." *Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314, 1322 (11th Cir. 2008). Thus, typicality is often met when, in proving her case, the representative plaintiff establishes the elements needed to prove the class members' case. *See Brooks v. Southern Bell Tel. & Tel. Co.*, 133 F.R.D. 54, 58 (S.D. Fla. 1990);

see also Hillis v. Equifax Consumer Serv., Inc., 237 F.R.D. 491, 499 (N.D. Ga. 2006) (citation omitted) ("Typicality cannot be satisfied when a named plaintiff who proved his own claim would not necessarily have proved anybody else's claim."). The "typicality requirement may be satisfied even if there are factual distinctions between the claims of the named plaintiffs and those of other class members," so long as the named representatives' claims share "the same essential characteristics as the claims of the class at large." *Appleyard v. Wallace*, 754 F.2d 955, 958 (11th Cir. 1985) (citations omitted).

Here, the claims, interest, and suffered injury for the Jail Inmate Plaintiffs and the class members are identical. All class members are at risk of being subjected – indeed, are subjected – to the Sheriff's Postcard-Only Policy. The claims of the Jail Inmate Plaintiffs are based on the same legal theory as the claims of the class members – that the policy violates the free expression guarantees of the First Amendment to the United States Constitution. The Sheriff has uniformly applied this policy to all inmates. The typicality requirement is met.

D. Adequacy of Representation – Rule 23(a)(4).

The fourth element of the Rule 23(a) analysis requires that the "representative parties will fairly and adequately protect the interests of the class." Fed.R.Civ.P. 23(a)(4). This requirement "involves questions [1] of whether plaintiffs' counsel are qualified, experienced, and generally able to conduct the proposed litigation, and [2] of whether plaintiffs have interests antagonistic to those of the rest of the class." *Griffin v. Carlin*, 755 F.2d 1516, 1533 (11th Cir.1985); *see Valley Drug Co. v. Geneva Pharmaceuticals, Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003).

These criteria are clearly satisfied in this case. There is no conflict between Plaintiffs or their counsel and other class members. Jail Inmate Plaintiffs are represented by attorneys employed by the ACLU Foundation of Florida and the Florida Justice Institute, which have extensive experience in class action cases involving federal civil rights claims for prisoners. The attorneys have previously litigated constitutional and statutory issues for prisoners in federal courts and are familiar with the issues raised in this litigation. *See Lawson v. Wainwright*,108 F.R.D. 450, 457 (S.D. Fla. 1986) ("In the instant case, this Court has no doubt that Plaintiff [prisoner class] is represented by competent, diligent counsel [from the Florida Justice

Institute]. The Court file reflects that Plaintiff and his counsel will zealously pursue the interests of the class."). The attorneys have litigated numerous class actions and have the personnel and the resources to fully litigate this action.

Jail Inmate Plaintiffs have no interest antagonistic to or in conflict with the interests of the class members they seek to represent. Jail Inmate Plaintiffs and the proposed class share a common goal, the end to the Postcard-Only Policy. There is no likelihood of conflicts or antagonistic interests developing between the Jail Inmate Plaintiffs and the class they represent since Jail Inmate Plaintiffs do not seek monetary relief and do not seek any different or additional relief for themselves, and in particular, request only injunctive and declaratory relief. First Am. Compl. (DE 5).

III. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2).

Certification is appropriate pursuant to Rule 23(b)(2) when the party opposing the class has 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). "The writers of Rule 23 intended that subsection (b)(2) foster institutional reform by facilitating suits that challenge widespread rights

violations of people who are individually unable to vindicate their own rights." *Baby Neal*, 43 F.3d at 64. Class certification under Rule 23(b)(2) is particularly appropriate in the prison litigation context where injunctive and declaratory relief are sought. *See, e.g., Pugh v. Locke*, 406 F.Supp. 318 (M.D.Ala.1976), *aff'd sub nom. Newman v. Alabama*, 559 F.2d 283 (5th Cir.1977), *cert. denied*, 438 U.S. 915, 98 S.Ct. 3144, 57 L.Ed.2d 1160 (1978); *Lawson*, 108 F.R.D. 458.

In certifying a class pursuant to Rule 23(b)(2), two basic requirements must be met: (1) the class members must have been harmed in essentially the same way by the defendant's acts; and (2) the common injury may properly be addressed by class-wide injunctive or equitable remedies. *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1155 (11th Cir.1983) ("[T]he claims contemplated in a [Rule 23] (b)(2) action are *class* claims, claims resting on the same grounds and applying more or less equally to all members of the class.") (emphasis in original). Where these two requirements are met, the class members' interests are sufficiently cohesive that absent members will be adequately represented. *Id.* at 1155 n. 8 ("[T]he (b)(2) class is distinguished from the (b)(3) class by class cohesiveness .... Injuries remedied through (b)(2) actions are really group, as opposed to individual injuries."); *Lemon v. International Union of Operating Engineers, Local No.*

139, AFL-CIO, 216 F.3d 577, 580 (7th Cir. 2000) ("Rule 23(b)(2) operates under the presumption that the interests of the class members are cohesive and homogeneous such that the case will not depend on the adjudication of facts particular to any subset of the class nor require a remedy that differentiates materially among class members."). "The members of a [Rule 23](b)(2) class are generally bound together through 'pre-existing or continuing legal relationships' or by some significant common trait such as race or gender" that transcends the specific set of facts giving rise to the litigation." *Holmes*, 706 F.2d, 1155 n. 8.

Here, a challenge to the Sheriff's Postcard-Only Policy, which uniformly harms a specific class of people (Jail inmates), falls squarely within the ambit of Rule 23(b)(2). The injuries apply uniformly to the entire class.[6] Jail Inmate Plaintiffs requested a single remedy that both will provide relief to the entire class and satisfies the strictures of Rule 65(d). *See* First Am. Compl, Prayer for Relief (asking that for "[a]n order permanently enjoining Defendant … from continuing their unlawful

[6] Of course, it is not required that all class members have actually been denied the ability to send a specific piece of outgoing correspondence. Certification is appropriate even if the defendant's action or inaction "has taken effect or is threatened only as to one or a few members of the class, provided it is based on *grounds* which have general application to the class." Fed. R. Civ. P. 23(b)(2), 1966 Amendment advisory committee note (emphasis added).

Postcard-Only Mail Policy or any other policy that limits outgoing mail to postcards, thus restoring the status quo that previously existed"). As they are all Jail inmates, they are bound by a common trait that pre-exists the litigation. Accordingly, the requirements of Rule 23(b)(2) are easily met.

IV. The Court should appoint the undersigned as class counsel.

Fed. R. Civ. P. 23(g)(1) provides that "unless a statute provides otherwise, a court that certifies a class must appoint class counsel." Fed. R. Civ. P. 23(g)(1)(A) outlines the factors relevant to the appointment of class counsel:

> (i) the work counsel has done in identifying or investigating potential claims in the action;
>
> (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
>
> (iii) counsel's knowledge of the applicable law; and
>
> (iv) the resources that counsel will commit to representing the class.

All of these factors militate in favor of appointing the undersigned as class counsel. As already noted, the undersigned counsel are attorneys employed by the ACLU Foundation of Florida and the Florida Justice Institute who

have extensive experience in class action cases for prisoners involving federal civil rights claims. They are thoroughly familiar with the applicable law and have extensive experience in handling class action, civil rights, and prisoners' rights litigation. In addition, the undersigned have already done substantial work investigating and identifying the claims of the plaintiff class. The undersigned have sufficient resources that it will commit to representing the class.

WHEREFORE, Plaintiffs request that the Court certify a class of inmates, and appoint the Plaintiffs' counsel as the class counsel and Plaintiffs Louis Reynolds, Jason Kennedy, Ronald McCraney Jr. as class representatives.

N.D. FLA. LOC. R. 7.1(B) CONFERENCE COMPLIANCE

Plaintiffs' counsel has not consulted opposing counsel with respect to this motion because no counsel has yet appeared.

CERTIFICATE OF SERVICE

I certify one true and accurate copy of the foregoing document has been furnished by U.S. Mail on September 21, 2010, to the following:

Wendell Hall
Sheriff for Santa Rosa County, Fla.
5755 East Milton Road
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Dated: September 21, 2010

Respectfully Submitted,

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