

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL ARNOLD,

Plaintiff,

v.

Civil Case No. 13-14137
Honorable Linda V. Parker

HEIDI WASHINGTON,¹

Defendant.

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**OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR
CLASS CERTIFICATION (ECF No. 113)**

Plaintiff Michael Arnold (“Arnold”) brings this action against Michigan Department of Corrections (“MDOC”) Director Heidi Washington, claiming that Jewish inmates requiring a kosher diet are receiving food not prepared or served in a kosher manner. Arnold alleges that this conduct violates the putative class members’ First Amendment rights and their rights under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc-1. Arnold seeks declaratory and injunctive relief.

¹ Arnold initially named several additional MDOC officials as defendants in his complaint. However, in his amended complaint, filed June 29, 2017, Arnold identifies only Washington as a defendant. (*See* ECF Nos. 90-1, 106.) The Court therefore is now dismissing the remaining officials as defendants.

Presently before the Court is his motion for class certification, filed October 9, 2017. (ECF No. 113.) In the motion, Arnold proposes the following class definition:

Jewish prisoners who are designated to receive religious meals and have been served Vegan meals prepared in a non-Kosher manner, including, but not limited to, where the utensils used in the preparation of the Vegan meals are not certified as being Kosher; where all the area where the Vegan meals are prepared is not Kosher; and where all the equipment used to clean the utensils is not Kosher are included within this class.

The deadline for Defendants to respond to the motion was October 30, 2017. *See* E.D. Mich. LR 7.1(e). No response has been filed. For the reasons set forth below, the Court is granting Arnold's motion.

Applicable Law and Analysis

A party seeking class certification must meet the requirements of Federal Rule of Civil Procedure 23(a) and 23(b)(1), (2), *or* (3). The movant bears the burden of “establish[ing] his right” to class certification. *Beattie v. Centurytel, Inc.*, 511 F.3d 554, 560 (6th Cir. 2007). A proposed class must meet four prerequisites before being certified as a class, namely: (1) it must be “so numerous that joinder of all members is impractical;” (2) there must be “questions of law or fact common to the class;” (3) “the claims ... of the representative parties” must be “typical of the claims ... of the class;” and (4) “the representative parties” must be

capable of “fairly and adequately protect[ing] the interests of the class.” Fed. R. Civ. P. 23(a).

Numerosity

As to the first requirement, there is no “strict numerical test” that must be met for class certification. *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 523 n.24 (6th Cir. 1976). The requirement can be satisfied with a class size as low as 35 people. *See Afro Am. Patrolmen’s League v. Duck*, 503 F.2d 294, 298 (6th Cir. 1974) (finding class sufficiently numerous at 35); *Ham v. Swift Transp. Co.*, 275 F.R.D. 475, 483 (W.D. Tenn. 2011) (“Where the number of class members exceeds forty, Rule 23(a)(1) is generally deemed satisfied.”). Rather, numerosity “requires examination of the specific facts of each case . . .” *Gen. Tel. Co. of the N.W., Inc. v. EEOC*, 446 U.S. 318, 330 (1980). In addition to the number of proposed members, then, courts commonly consider such factors as the ability of the members to bring individual lawsuits and whether class certification would promote judicial economy. *See Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 56 (N.D. Ill. 1996).

Arnold believes that there are at least 50 to 100 MDOC inmates who are similarly situated to him—that is, they are Jewish individuals incarcerated in an MDOC facility and are designated to receive a kosher diet. Arnold contends that

their joinder is impractical. This Court agrees, particularly because these individuals are prisoners housed at various MDOC facilities throughout the State of Michigan. The ability of these inmates to bring individual lawsuits is unlikely, particularly in light of the filing fee, which is not waived for indigent prisoners (although it can be paid incrementally). *See* 28 U.S.C. § 1915. Moreover, these individuals are unlikely able to afford counsel to represent them and finding pro bono counsel is difficult. Judicial economy therefore is promoted by joining their claims in one action. As such, the Court finds that Arnold meets the numerosity requirement.

Commonality and Typicality

Rule 23(a)(2)'s commonality requirement "simply requires a common question of law or fact." *Bittinger v. Tecumseh Prods. Co.*, 123 F.3d 877, 884 (6th Cir. 1997). As the Sixth Circuit subsequently explained: "The interests and claims of the various plaintiffs need not be identical. Rather, the commonality test is met when there is at least one issue whose resolution will affect all or a significant number of the putative class members." *Fallick v. Nationwide Mut. Ins. Co.*, 162 F.3d 410, 424 (6th Cir. 1998) (quoting *Forbush v. J.C. Penney Co., Inc.*, 994 F.2d 1101, 1106 (5th Cir. 1993)).

Meanwhile, Rule 23(a)(3)'s typicality requirement demands that the representative be a member of the class and share at least a common element of fact or law with the class. *Senter*, 532 F.2d at 525. Like the test for commonality, the test for typicality is not demanding and the interests and claims of the various plaintiffs need not be identical.² *Bittinger*, 123 F.3d at 884. The Sixth Circuit has explained the typicality requirement as follows:

“Typicality determines whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct. In other words, when such a relationship is shown, a plaintiff’s injury arises from or is directly related to a wrong to a class, and that wrong includes the wrong to the plaintiff. Thus, a plaintiff’s claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory.”

In re Am. Med. Sys., Inc., 75 F.3d 1069, 1082 (6th Cir. 1996) (quoting 1 Herbert B. Newberg & Alba Conte, *Newberg On Class Actions*, § 3-13, at 3-76). A representative’s claim remains typical, then, even where the evidence relevant to his or her claim varies from other class members, some class members are subject

² The Sixth Circuit has recognized that the commonality and typicality requirements “tend to merge,” and that “[b]oth serve as guideposts for determining whether . . . maintenance of a class action is economical and whether the named plaintiff’s claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.” *Rutherford v. City of Cleveland*, 137 F.3d 905, 909 (6th Cir. 1998) (quoting *Gen. Tel. Co. of the S.W. v. Falcon*, 457 U.S. 147, 157 n.13 (1982)).

to different defenses, and the members suffer varying levels of injury. *See Bittinger*, 123 F.3d at 884-85.

The common question for all members of the proposed class is the same: Does MDOC provide meals that in fact are kosher to Jewish prisoners designated to receive kosher meals? Arnold alleges that MDOC uses non-kosher items in preparing kosher meals and uses non-kosher equipment, utensils, and areas to prepare and serve the meals. Arnold's RLUIPA and First Amendment claims are typical of the claims he seeks to assert on behalf of the putative class. Therefore, Rule 23(a)'s second and third elements are satisfied.

Adequacy of Representation

To satisfy the fourth, and final, class-action prerequisite, the Court must find that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This is a two-pronged inquiry: "1) [t]he representative must have common interests with unnamed members of the class, and 2) it must appear that the representatives will vigorously prosecute interests of the class through qualified counsel." *Senter*, 532 F.2d at 525 (citation omitted). As discussed above, the Court finds that Arnold has common interests with the members of the proposed class. With respect to the second criteria, Defendant has not challenged the competency or desire of Arnold or his counsel to prosecute the

interests of the class, nor does the Court believe that it would have any basis to do so.

In short, Rule 23(a)'s four requirements for class certification are satisfied.

Rule 23(b)'s Requirements

In addition to satisfying Rule 23(a)'s requirements, a party seeking class certification must meet at least one of Rule 23(b)'s requirements. Arnold seeks certification under Rule 23(b)(2). Pursuant to this provision,

[a] class action may be maintained if Rule 23(a) is satisfied and if: ...
(2) 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).

Arnold alleges that Defendant fails to provide kosher-certified meals to Jewish prisoners throughout MDOC's facilities, resulting in the systemic violation of their religious rights pursuant to RLUIPA and the First Amendment. He seeks injunctive relief against any such future violations. This is a "prime example" of a case properly certified as a class under Rule 23(b)(2). *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2557-58 (2011) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997)) ("Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples[]' of what (b)(2) is meant

to capture.”). The Court concludes that the proposed class meets the standard imposed by Rule 23(b)(2).

Conclusion

For the reasons set forth above, the Court holds that Arnold satisfies all of the prerequisites for class certification under Rule 23(a) and (b)(2). Accordingly, the Court **GRANTS** Arnold’s motion for class certification (ECF No. 113) and **CERTIFIES** the following class with respect to the claims in Arnold’s First Amended Complaint:

All Jewish individuals confined with the Michigan Department of Corrections who are designated by the prison system to receive kosher meals.

The Court **DESIGNATES** Arnold as the representative plaintiff for that certified class and, pursuant to Federal Rule of Civil Procedure 23(g), Daniel E. Manville and Michael Steinberg as lead class counsel.

IT IS SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: November 16, 2017

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, November 16, 2017, by electronic and/or

U.S. First Class mail.

s/ R. Loury
Case Manager