

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

MATTHEW CATANZARO, MICHAEL  
GARRISON,

Plaintiffs,

v.

MICHIGAN DEPARTMENT OF  
CORRECTIONS, et al,

Defendants.

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Case Number 08-11173

Honorable Thomas L. Ludington

Magistrate Judge R. Steven Whalen

**ORDER ADOPTING REPORT AND RECOMMENDATION, OVERRULING  
PLAINTIFFS' OBJECTIONS, AND DENYING PLAINTIFFS' RULE 23 MOTION FOR  
CLASS ACTION CERTIFICATION**

This matter is before the Court on a report and recommendation issued by Magistrate Judge R. Steven Whalen on May 28, 2009. The magistrate judge recommended that the Court deny Plaintiffs' Rule 23 motion for class action certification [Dkt. # 21] because Plaintiffs cannot adequately represent the class that they seek to represent and appointment of counsel is not justified at this juncture. Plaintiffs filed an objection [Dkt. # 105] on June 11, 2009. In their objection, Plaintiffs emphasize that they possess the same interests and suffer the same injury as the class members that they seek to represent. They emphasize that they have sought to obtain qualified counsel, but have been unable to do so through no fault of their own. Thus, they contend that counsel should be appointed for them and a class certified. As the magistrate judge noted in the report and recommendation, six dispositive motions filed by various Defendants have not yet been decided, which weighs against the appointment of counsel at this stage. The magistrate judge also correctly recognized that a plaintiff is not entitled to counsel under Federal Rule of Civil Procedure

23 simply because the plaintiff seeks to represent a class. On this basis, the report and recommendation will be adopted and Plaintiffs' objection overruled.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [Dkt # 103] is **ADOPTED**.

It is further **ORDERED** that Plaintiffs' objection [Dkt. # 105] is **OVERRULED**.

It is further **ORDERED** that Plaintiffs' Rule 23 motion for class action certification [Dkt. # 21] is **DENIED**.

s/Thomas L. Ludington \_\_\_\_\_  
THOMAS L. LUDINGTON  
United States District Judge

Dated: July 14, 2009

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 14, 2009.

s/Tracy A. Jacobs \_\_\_\_\_  
TRACY A. JACOBS