UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CAIR FLORIDA, INC.; DERRICK ISSAC BROWN; CHRISTOPHER ADAMS JAMES; HARDIN GERARD JEAN-PIERRE; and MAURICIO HUMBERTO RIVAS-PENAILILLO,

Plaintiffs,

Case No. 1:15-cv-23324-JAL

MIAMI-DADE COUNTY; MARYDELL GUEVARA, in her individual capacity as Director of the MIAMI-DADE COUNTY CORRECTIONS AND REHABILITATION DEPARTMENT; EDDIE DENSON, in his individual capacity as Acting Chief of the MIAMI-DADE COUNTY CORRECTIONS AND REHABILITATION DEPARTMENT; JOSE HERNANDEZ, in his individual capacity as Chaplain of the MIAMI-DADE COUNTY CORRECTIONS AND REHABILITATION DEPARTMENT; TERRY L. BROWNE, in her individual capacity as Commander of the Reentry Program Service Bureau of the MIAMI-DADE COUNTY CORRECTIONS AND REHABILITATION DEPARTMENT; and DEBRA GRAHAM, in her individual capacity as Commander of the Food Services Bureau of the MIAMI-DADE COUNTY CORRECTIONS AND REHABILITATION DEPARTMENT

Defendants.
_____/

PLAINTIFFS' MOTION & MEMORANDUM OF LAW
FOR CLASS CERTIFICATION

Plaintiffs, by and through undersigned counsel, move pursuant to Fed. R. Civ. P. 23(b)(2) to certify a class consisting of "**all current and future Muslim inmates incarcerated in correctional facilities within the Miami-Dade County Corrections and Rehabilitation Department whose sincerely-held religious beliefs require them to maintain a Halal diet**."

Plaintiffs also move pursuant Fed. R. Civ. P. 23(g) to appoint the undersigned counsel as class counsel. Plaintiffs argue as follows in support of this motion:

Introduction

Individual Plaintiffs Derrick Issac Brown, Christopher Adams James, Hardin Gerard Jean-Pierre, and Mauricio Humberto Rivas-Penailillo are Muslim inmates in Miami-Dade County Corrections and Rehabilitation Department (MDCR) facilities. They have each requested a Halal diet pursuant to their sincerely held religious beliefs. Defendant Miami-Dade County, through MDCR and the Individual Defendants, has denied these requests pursuant to the County's Faith-Based Meals Policy, which explicitly provides that Muslim inmates requesting a Halal diet will instead receive the diet for the general population. The Policy also provides that faith-based Kosher meals are available upon approval, although Defendants approve these meals only for non-Muslim inmates. Individual Plaintiffs challenge the Defendants' Faith-Based Meals Policy as it impermissibly burdens their religious practice and discriminates against them on the basis of religion, in violation of the First and Fourteenth Amendments to the United States Constitution.

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 Defendants apply the

Faith-Based Meals Policy generally to all Muslim 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) (per curiam) ("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.

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.

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 members is generally enough to satisfy the rule. *See Cox v. Amer. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986).

On August 10, 2015, the average daily inmate population in MDCR facilities was 4,391. Although not all of these inmates are Muslim, the volunteer Imam who visits MDCR facilities estimates that there were approximately 200 inmates there who identified as Muslim in June 2015, and there is no reason to believe that the number has decreased substantially since then. These numbers easily 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).[1] Here, the inmates in MDCR facilities at any one time are in constant flux. The average length of stay on August 10, 2015 was 29.23 days. While MDCR houses approximately 4,391 inmates, several thousand persons are annually arrested and booked as an inmate. Thus, the class of people who are Muslim inmates seeking a Halal diet in conformance with their sincerely held religious beliefs is ever-changing. The fluid nature of the class, and the inclusion in the class of future Muslim inmates, 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)).[2] The numerosity requirement of Rule 23(a)(1) is therefore satisfied.

[1] 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.

[2] *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

B. Commonality – Rule 23(a)(2).

Rule 23(a)(2) requires that "there [be] 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 Muslim inmates at MDCR facilities who seek to consume a Halal diet but are subject to the County's Faith-Based Meals 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 Defendants' Faith-Based Meals Policy.
2. The scope and nature of Defendants' interest in instituting and maintaining this Policy.
3. Whether the application of Defendants' Faith-Based Meals Policy violates Muslim inmates' rights under the Religious Land Use and Institutionalized Persons Act and the First and Fourteenth Amendments to the United States Constitution.

---

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").

Individual Plaintiffs have alleged that the injuries detailed in the Complaint—both their individual injuries and those of the putative class—stem from Defendants' Faith-Based Meals 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 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) ("[T]he 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 denial of Halal meals, "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 his 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). Moreover, 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, interests, and suffered injury for Individual Plaintiffs are identical to those of the putative class members. All class members are at risk of being subjected – indeed, are subjected – to Defendants' Faith-Based Meals Policy that substantially burdens their religious practices and sincerely-held religious beliefs. Individual Plaintiffs' claims are based on the same legal theory as the claims of the class members – that the Policy violates the free exercise guarantees of RLUIPA and the First Amendment, as well as the Equal Protection Clause. Defendants have uniformly applied the Policy to all Muslim inmates seeking a Halal diet. 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 of whether plaintiffs' counsel are qualified, experienced, and generally able to conduct the proposed litigation, and 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 also Valley Drug Co. v. Geneva Pharms., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003).

These criteria are clearly satisfied in this case. There is no conflict between Individual Plaintiffs or their counsel and putative class members. Individual Plaintiffs are represented by attorneys employed by CAIR-FL and the ACLU Foundation of Florida. The ACLU has extensive experience in class action cases involving federal civil rights claims. The ACLU has previously litigated constitutional and statutory issues in federal courts on behalf of prisoners and other plaintiffs. *See, e.g.*, *Underwood v. Manfre*, 2014 WL 67644 (M.D. Fla. Jan. 8, 2014) (certifying a class in a First Amendment challenge to jail policy and appointing attorneys from the ACLU Foundation of Florida as class counsel); *Lebron v. Wilkins*, 277 F.R.D. 664, 668 (M.D. Fla. 2011) (same, in Fourth Amendment challenge to suspicionless drug testing of welfare applicants); *Pottinger v. City of Miami*, No. 88-2406 (S.D. Fla.) (certifying class in challenge to city's anti-homeless ordinances); *Jonas v. Stack*, No. 76-06086 (S.D. Fla.) (certifying class in challenge to prison conditions at Broward County jail). The attorneys have previously litigated class actions and have the personnel and the resources to fully litigate this action.

Individual Plaintiffs have no interest antagonistic to or in conflict with the interests of the class members they seek to represent. Individual Plaintiffs and the proposed class share a common goal: an end to Defendants' unconstitutional Policy of denying them Halal meals or other meals that are consistent with their sincerely-held religious beliefs. There is no likelihood of conflicts or antagonistic interests developing between Individual Plaintiffs and the class they represent because Individual Plaintiffs seek only nominal damages, and principally request only injunctive and declaratory relief.

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., Lawson v. Wainwright*, 108 F.R.D. 450, 458 (S.D. Fla. 1986) ("The class action is the most appropriate means for resolving [ ] conflicting [constitutional and penological] interests, especially when the alleged system-wide violations of prisoner First Amendment rights hang in the balance.").

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. Int'l Union of Operating Eng'rs., 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." *Holmes*, 706 F.2d 1155 n. 8.

Here, a challenge to Defendants' unconstitutional Faith-Based Meals Policy, which uniformly harms a specific class of people (Muslim inmates whose sincerely held religious beliefs require them to consume a Halal diet), falls squarely within the ambit of Rule 23(b)(2). The injuries apply uniformly to the entire class.[3] Individual Plaintiffs requested a remedy that both will provide relief to the entire class and satisfies the strictures of Rule 65(d). *See* Compl., Relief Requested (asking the Court to enjoin Defendants from refusing to offer Muslim inmates a Halal diet). As putative class members are all Muslim inmates whose sincerely-held religious beliefs require them to consume a Halal diet, they are bound by a common trait that predominates in 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.

[3] Of course, it is not required that all class members have actually been denied a Halal meal. Certification is appropriate even if the Defendants' 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).

All of these factors militate in favor of appointing the undersigned as class counsel. As already noted, the undersigned counsel are attorneys employed by CAIR-FL and the ACLU Foundation of Florida who have extensive experience in class action cases for prisoners involving federal civil rights claims. They are familiar with the applicable law and have extensive experience in handling class actions, federal civil rights claims, and prisoners' rights litigation. In addition, the undersigned have already done substantial work investigating and identifying the claims of the plaintiff class. They have sufficient resources that they will commit to representing the class.

WHEREFORE, Plaintiffs request that the Court certify a class of Muslim inmates whose sincerely-held religious beliefs require them to maintain a Halal diet, and appoint Plaintiffs' counsel as the class counsel and Individual Plaintiffs as class representatives.

S.D. FLA. LOC. R. 7.1(A)(3) CONFERENCE COMPLIANCE

Plaintiffs' counsel has not consulted opposing counsel with respect to this motion because no counsel has yet appeared. Plaintiffs' counsel will confer once opposing counsel has appeared and supplement this motion once Defendants' positions are known.

CERTIFICATE OF SERVICE

I hereby certify that Defendants MIAMI-DADE COUNTY, MARYDELL GUEVARA, EDDIE DENSON, JOSE HERNANDEZ, TERRY L. BROWNE, and DEBRA GRAHAM will receive a copy of this Motion when served via expedited service with the Complaint. Furthermore, a courtesy copy of this Motion is being emailed to:

Mayor Carlos A. Gimenez
Miami-Dade County, Florida
Stephen P. Clark Government Center
111 NW 1st Street, Suite 220
Miami, Florida 33128
mayor@miamidade.gov

R.A. Cuevas Jr.
Miami-Dade County Attorney
111 NW 1st Street, Suite 2810
Miami, FL 33128-1930
rac1@miamidade.gov

Dated: September 3, 2015

Respectfully Submitted,

/s/ Thania Diaz Clevenger
Thania Diaz Clevenger (Fla. Bar No. 97301)
tclevenger@cair.com
CAIR Florida
8076 N 56th Street
Tampa, FL 33617
Tel: 813-514-1414
Fax: 813-987-2400

/s/ Nancy G. Abudu
Nancy G. Abudu (Fla. Bar No. 111881)
nabudu@aclufl.org
Shalini Goel Agarwal (Fla. Bar No. 90843)
sagarwal@aclufl.org
ACLU Foundation of Florida, Inc.
4500 Biscayne Blvd., Suite 340
Miami, FL 33137
Tel: 786-363-2700
Fax: 786-363-1448

Attorneys for Plaintiffs