

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:06-CT-3135-FL

JOSEPH JOHN URBANIAK, JR., )  
)  
Plaintiff, )  
)  
v. )  
)  
SERGEANT DONNIE STANLEY, et )  
al., )  
)  
Defendants. )

ORDER

NO. 5:07-CT-3145-H

EDWARD ALLEN, et al., )  
)  
Plaintiffs, )  
)  
v. )  
)  
SECRETARY THEODIS BECK, et al., )  
)  
Defendants. )

ORDER

This case is before the court on the motion for class certification (DE # 2)<sup>1</sup> filed by plaintiffs Edward Allen (hereinafter “plaintiff Allen”), Shawn Derrick Bonnett (hereinafter “plaintiff Bonnett”), Angel Guevera (hereinafter “plaintiff Guevera”), Soviet Howie (hereinafter “plaintiff Howie”), Lyle May (hereinafter “plaintiff May”), Saiyd Muhammad (hereinafter “plaintiff Muhammad”), S. Shane Smith (hereinafter “plaintiff S. Smith”), and Larry Eugene Smith, Jr.

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<sup>1</sup> Plaintiffs’ motion for class certification was filed in the action captioned, Allen v. Beck, No. 5:07-CT-3145-H (E.D.N.C. Oct. 26, 2007).

(hereinafter “plaintiff L. Smith”). Also before the court is the parties’ joint motion to consolidate related cases and to certify the class as a class action pursuant to [Fed.R.Civ.P. 23](#) (DE # 21).<sup>2</sup> These motions are ripe for adjudication. For the reasons set forth below, the parties’ joint motion to consolidate related cases and to certify the class as a class action pursuant to Rule 23 is granted, and the motion for class certification filed in [Allen v. Beck](#), No. 5:07-CT-3145-H (E.D.N.C. Oct. 26, 2007), is denied as moot.

#### STATEMENT OF THE CASE

On December 12, 2006, plaintiff Joseph Urbaniak (hereinafter “plaintiff Urbaniak”), a state inmate, filed this action pursuant to [42 U.S.C. § 1983](#), against Sergeant Donnie Stanley (hereinafter “defendant Stanley”), Captain John Meeks (hereinafter “defendant Meeks”), Lieutenant Thomas Tart (hereinafter “defendant Tart”), Captain A.L. Gregory (hereinafter “defendant Gregory”), Sherwood R. McCabe (hereinafter “defendant McCabe”), Joseph B. Hall (hereinafter “defendant Hall”), Jerry McQueen (hereinafter “defendant McQueen”), James Currin (hereinafter “defendant Currin”), Officer Rodney S. Jackson (hereinafter “defendant Jackson”), Gerotha R. Spain (hereinafter “defendant Spain”), Officer Kenneth Jones (hereinafter “defendant Jones”), J. Baker Williams (hereinafter “defendant Williams”), Norma Batten (hereinafter “defendant Batten”), Cordelia Clark (hereinafter “defendant Clark”), R. C. Lewis (hereinafter “defendant Lewis”), and B.A. Thompson (hereinafter “defendant Thompson”). In his complaint, plaintiff Urbaniak alleged that his First Amendment and due process rights were violated because he was denied several book and magazine publications. Plaintiff Urbaniak also alleged that defendants violated his constitutional rights because they refused to permit him to participate in the grievance process.

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<sup>2</sup> The parties’ joint motion to consolidate related cases and to certify the class as a class action pursuant to Fed. R. Civ. P. 23 was filed in the action captioned, [Urbaniak v. Stanley](#), No. 5:06-CT-3135-FL (E.D.N.C. Dec. 12, 2006).

On January 18, 2007, this court conducted a frivolity review and dismissed as frivolous plaintiff Urbaniak's claim against defendants McCabe, McQueen, Hall, Jones, Williams, Thompson, and Spain. The court allowed plaintiff Urbaniak's claim to proceed against the remaining defendants.

On May 11, 2007, plaintiff Urbaniak filed an amended complaint, alleging that defendants Theodis Beck (hereinafter "defendant Beck"), Boyd Bennett (hereinafter "defendant Bennett"), and Joseph Hall (hereinafter "defendant Hall") violated his rights pursuant to the First Amendment of the United States Constitution when they arbitrarily and capriciously denied him access to his publications without reference to legitimate penological interests. Plaintiff Urbaniak also alleges that these defendants violated his rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution when they failed to give him the opportunity to appeal rejected publications to the Publications Review Committee. Following the submission of his amended complaint, plaintiff Urbaniak voluntarily dismissed his claims pursuant to [Fed.R.Civ.P. 41\(a\)\(1\)](#) against the following defendants named in his original complaint: defendants Currin, Jackson, Batten, Clark, Lewis, Stanley, Meeks, Tart, and Gregory.

On October 26, 2007, plaintiffs Allen, Bonnett, Guevera, Howie, May, Muhammad, S. Smith, and L. Smith filed essentially the same claims as those alleged in this action in a separate action captioned Allen v. Beck, No. 5:07-CT-3145-H (E.D.N.C. Oct. 26, 2007) (hereinafter "Allen"). Plaintiffs in Allen brought their action against defendants Beck, Bennett, and Clark. On November 19, 2007, the court conducted a frivolity review and allowed plaintiffs' claims to proceed. On October 26, 2007, plaintiffs filed a motion for class certification in Allen. Then, on November

29, 2007, the parties filed a joint motion to consolidate the related cases and to certify the class in this action.

A. Motion to Consolidate

The parties jointly request that his court consolidate the above-captioned actions. [Federal Rule of Civil Procedure 42\(a\)](#) provides: “If actions before the court involve a common question of law or fact, the court may . . . consolidate the actions.” The Fourth Circuit has held that a district court has “broad discretion under [F.R.Civ.P. 42\(a\)](#) to consolidate causes pending in the same district.” [A/S J. Ludwig Mowinckles Rederi v. Tidewater Constr. Corp.](#), 559 F.2d 928, 933 (4th Cir. 1977).

Upon a careful review of both cases, the court finds that the actions present common questions of law and fact. As a result, the court grants the parties’ joint request to consolidate the cases. All future filings shall bear both captions and all future docket entries shall be docketed in the lead case, [Urbaniak v. Stanley](#), No. 5:06-CT-3135-FL.

B. Motion to Grant Class Certification

ANALYSIS

To be certified as a class action an action must meet the requirements of both [Fed. R.Civ.P. 23](#) (a) and (b). [Haywood v. Barnes](#), 109 F.R.D. 568, 575 (E.D.N.C. 1986). [Rule 23\(a\)](#) requires that a precisely defined class exist and that the proposed class representatives be members of the putative class. [Haywood](#), 109 F.R.D. at 576; [see East Texas Motor Freight Sys., Inc. v. Rodriguez](#), 431 U.S. 395, 403 (1977) (“a class representative must be a part of the class”). In addition, the four prerequisites expressly set out in [Rule 23\(a\)](#) must be satisfied. [Haywood](#), 109 F.R.D. at 576. They are that: (1) the class is so numerous that joinder of all members is impracticable (hereinafter

“numerosity requirement”); (2) there are questions of law or fact common to the class (hereinafter “commonality requirement”); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (hereinafter “typicality requirement”); and (4) the representative parties will fairly and adequately protect the interests of the class (hereinafter “adequacy-of-representation requirement”). [Fed. R. Civ. P. 23\(a\)](#).

If the prerequisites under [Rule 23\(a\)](#) are met, the action must then satisfy one of the three alternative sets of conditions under [Rule 23\(b\)](#). The conditions under [Rule 23\(b\)](#) include:

- (1) prosecuting separate actions by or against individual class members that would create a risk of:
  - (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
  - (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;
- (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; or
- (3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. . . .

1. Satisfaction of [Rule 23\(a\)](#) Prerequisites

As an initial matter, the court finds that plaintiffs have proposed a precisely defined class and that they are members of the class. The court now must determine whether plaintiffs are able to satisfy the four prerequisites of [Rule 23\(a\)](#).

Beginning with the numerosity requirement of [Rule 23\(a\)\(1\)](#), the court finds that the putative class is reasonably estimated by the parties to contain over thirty-eight thousand (38,000) inmates currently housed by the North Carolina Department of Correction (hereinafter “DOC”). The class also consists of future North Carolina inmates. (Mem. in Supp. of Pl.s’ Mot., pp. 4-5.) The class is therefore so numerous that joinder of all putative class members is impracticable. Therefore, the court finds that the numerosity requirement is satisfied.

As for the commonality requirement, [Rule 23\(a\)\(2\)](#) does not require that all questions of law or fact be common to each member of the class. See [Haywood](#), 109 F.R.D. at 577. Rather, the commonality requirement is satisfied where the plaintiffs share a single common question. [Id.](#) In this case, there are several common issues of both law and fact among the proposed class members. The common questions include: (1) whether DOC personnel fails to properly screen and review class members’ incoming publications without reference to legitimate penological concerns in violation of the First Amendment and their own regulations; (2) whether DOC personnel fail to allow class members to appeal rejected publications to the DOC Publication Review Committee in violation of due process and their own regulations; (3) whether the Publication Review Committee regularly meets to review class members’ appealed publications; and (4) whether the DOC allows class members to receive hard back and foreign language books and to order individual magazine

issues. (Mem. in Supp. of Pl.s' Mot., p. 5.) The court finds that these common issue are sufficient to satisfy the commonality requirement.

Turning to the Rule 23(a)(3) typicality requirement, this requirement is met where the claim “arises from the same event or course of conduct which gives rise to the claims of other class members and is based on the same legal theory.” See [Haywood](#), 109 F.R.D. at 578. The focus on the inquiry for this requirement is whether the plaintiffs and each member of the class “have an interest in prevailing on similar legal claims.” [Id.](#) Here, the claims of the class representatives and the proposed class all arise from the same operative facts, and they all claim to have suffered the same injury attributed to the defendants’ alleged conduct. Further, the parties have shown that both plaintiffs and the class members have an interest in prevailing on the same legal claims. Based upon the foregoing, the court finds that the typicality requirement is met.

Finally, the court must determine whether the named plaintiffs fairly and adequately represent the class. The inquiry that a court should make regarding the adequacy of representation requirement of Rule 23(a)(4) is to determine that the putative named plaintiffs have the ability and the incentive to represent the claims of the class vigorously, that they have obtained adequate counsel, and that there is no conflict between their individual claims and those asserted on behalf of the class. See [General Telephone Co. v. Falcon](#), 457 U.S. 147, 157 n. 13 (1982).

The named plaintiffs are, as indicated, all members of the proposed class. In addition, plaintiffs Guevera, Allen, L. Smith, May, S. Smith, Muhammad, Bonnett, and Howie submitted an affidavit stating that they are aware of their duties as class representatives, will fairly and adequately represent the interests of the class as a whole, have no conflicts of interest, and have a genuine

personal interest in the outcome of this action.<sup>3</sup> (Mem. in Supp. of Pl.s' Mot., Ex. 1.) Finally, plaintiffs are represented by North Carolina Prisoner Legal Services (hereinafter "NCPLS"), which this court finds has the requisite experience in handling prisoner civil rights litigation. Therefore, the adequacy of representation requirement of [Rule 23\(a\)\(4\)](#) is satisfied.

In summary, the court has applied the certification prerequisites of [Rule 23\(a\)](#) to this case, and found that they are met. Therefore, the court now must determine whether plaintiffs satisfy [Rule 23\(b\)](#).

## 2. Satisfaction of [Rule 23\(b\)](#) Conditions

Plaintiffs contend that this case satisfies the conditions set forth in [Rule 23\(b\)\(1\)\(A\)](#), [23\(b\)\(1\)\(B\)](#), and [23\(b\)\(2\)](#). To satisfy [Rule 23\(b\)](#), the plaintiff only is required to show that the proposed class meets one of its three conditions. [Haywood](#), 109 F.R.D. at 580. The court finds that in this case plaintiffs satisfied [Rule 23\(b\)\(2\)](#). [Rule 23\(b\)\(2\)](#) "has been liberally applied in the area of civil rights, including suits challenging conditions and practices at various detention facilities." [Santiago v. City of Philadelphia](#), 72 F.R.D. 619, 624 (1976). "The essential consideration is whether the complaint alleges that the plaintiffs have been injured by defendants' conduct which is based on policies and practices applicable to the entire class." [Id.](#)

Plaintiffs in this action are challenging the policies and practices of the DOC in handling the distribution of written publications. Plaintiffs allege that they have been injured by the DOC's alleged unconstitutional policies and practices, which apply to the entire class. Plaintiffs seek injunctive relief to remedy the alleged constitutional violations. Based upon the foregoing, plaintiffs have satisfied [Rule 23\(b\)\(2\)](#).

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<sup>3</sup> Regarding the conflict of interest issue, the court notes that the suit seeks injunctive and declaratory relief only, which alleviates the possibility of conflicts of interest involving pecuniary issues.



