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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Plaintiff B, on behalf of herself and all others similarly situated, Plaintiff, v. XXXXX, Director of the Arizona Department of Economic Security, Defendant.	**No.** **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

Introduction

The Plaintiff seeks an order certifying this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. Rule 23 (c) specifies that as soon as practicable after commencement of an action brought by class action, the court shall determine whether it is to be so maintained.

The Supreme Court has observed that class relief is "peculiarly appropriate" when the issues involved are common to the class as a whole and turn on questions of law applicable in the same manner to each member of the class. *General Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 155 (1982) (citations omitted). This case neatly matches that description.

The named Plaintiff and putative class members are participants in Arizona's food stamp program. Defendant Berns, is responsible for the administration of this program. Specifically, Defendant Berns is responsible for accepting and processing applications, including applications for expedited food stamps and recertifications for benefits.

Plaintiff contends that, as a result of the Defendant's failure to process applications and make eligibility determinations in a timely manner, eligible persons are not receiving the food stamps they desperately need and their health and welfare are being adversely affected. (Complaint ¶ 4). Plaintiff seeks declaratory and injunctive relief to require the Defendant to adhere to the federal law.

This case should be certified as a class action pursuant to Rules 23(a) and (b)(2), Fed. R. Civ. P., and the class defined as: All residents of Arizona who have or will submit an application for food stamps, including expedited food stamps and recertifications, and whose application has not been or will not be processed timely by Defendant.

Argument

As the moving party, the named Plaintiff must satisfy the four provisions of Rule

23(a) and at least one of the subdivisions of Rule 23(b). *Blake v. Arnett*, 663 F.2d 906, 912 (9th Cir. 1981). These requirements are met here.

1. Rule 23(a)(1): Numerosity

The first prerequisite for class certification, Rule 23(a)(1), requires the class to be so numerous that joinder of all parties is impracticable. Rule 23(a)(1) encompasses consideration of several factors, including class size. *Jordan v. County of Los Angeles,* 669 F.2d 1311, 1319 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810 (1982).

With respect to class size, it is well-established that the party seeking class certification need not state the precise size of the proposed class. *See, e.g.*, 5 *Moore's Federal Practice*, § 23.22(3)(b) (3d ed. 2000). Moreover, "where a class is large in numbers, joinder will usually be impracticable." *Jordan,* 669 F.2d at 1319. The Ninth Circuit has recently upheld certification of a class numbering approximately 15,000 members. *See Staton v. Boeing*, 327 F.3d 938, 953 (9th Cir. 2003); *see also Immigrant Assistance Project, L.A. County v. I.N.S.*, 306 F.3d 842, 869 (9th Cir. 2002) (certifying class of approximately 11,000 in number). By comparison, the Ninth Circuit also has found the numerosity requirement is satisfied where there are fewer than 100 class members. *See, e.g., Harik v. California Teachers' Ass'n*, 326 F.3d 1042, 1052 (9th Cir. 2003) (finding "judicial economy served" by certifying 60-member class where plaintiffs sought only prospective relief); *Jordan,* 669 F.2d at 1319 (stating inclination "to find the numerosity requirement . . . satisfied solely on the basis of the number of ascertained class members, i.e. 39, 64, and 71").

Here, the class numbers in the thousands. Data produced by the Defendant show that DES has failed to process over ten thousand applications pursuant to federal requirements in each of several recent months. Katz Declaration in Support of Plaintiff's Motion for Preliminary Injunction and Motion for Class Certification; Exhibits 1-3. Thus, each month thousands of applicants are adversely affected by Defendant Berns' policies and practices. Size alone justifies class certification.

In addition, the Ninth Circuit considers whether other factors demonstrate impracticality, including the geographic diversity of class members, the inability of individual claimants to institute separate suits, the inclusion of unknown individuals who will be affected in the future, and whether the plaintiff's requests are for injunctive or declaratory relief. *See, e.g.*, *Jordan*, 669 F.2d at 1319. All of these factors are present in this case. The class members reside throughout Arizona. *See* Complaint ¶¶ 1 and14. The class consists entirely of individuals who qualify for food stamps, because their financial resources are insufficient to meet all of their basic welfare and food needs. Therefore, members of the class are almost by definition persons lacking the financial means to pursue separate legal actions. *Id.* The class includes unknown food stamp eligible recipients who will be subjected to the Defendant's unlawful policies in the future. Finally, Plaintiff seeks injunctive and declaratory relief. *See* Complaint, Prayer for Relief. The numerosity requirement is clearly met in this case.

2. <u>Rule 23(a)(2): Commonality</u>

The second requirement under Rule 23(a) is that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Rule 23(a)(2) is "construed permissively," and "all questions of law or fact need not be common to satisfy the rule." *Staton*, 327 F.3d at 953. Rather, "[t]he existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Id.* (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1997)). Moreover, the Supreme Court has stated:

> Class relief is "peculiarly appropriate" when the "issues involved are common to the class as a whole" and when they "turn on questions of law applicable in the same manner to each member of the class." [citation omitted] For in such cases, "the class action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion under Rule 23.

General Tel. Co. of Southwest v. Falcon, 457 U.S. 147, 155 (1982) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700-01 (1979)). *See also Armstrong v. Davis,* 275 F.3d 849, 868 (9th Cir. 2001) ("[C]ommonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.").

Here, the Plaintiff presents several questions of fact common to all class members. All of the putative class members are or will be eligible for the food stamp program due to their limited incomes and resources. All are or will be subject to Defendant Berns' failure to process food stamp applications and make eligibility determinations pursuant to federal law. As a result of these delays in processing applications Plaintiff is experiencing or will experience difficulties obtaining needed

food for her family. *See* Complaint ¶ 36; Plaintiff B Declaration in Support of Plaintiff's Motion for Preliminary Injunction and Motion for Class Certification ("Dec.") ¶¶ 15-18.

These common facts give rise to common questions to law:

1. Whether Defendant Berns failed to process applications and make eligibility determinations for food stamps, including expedited food stamps and recertifications, in violation of 7 U.S.C. § 2020(e)(3) and (9) and implementing regulations.
2. Whether Defendant Berns' failure to make food stamp eligibility determinations within the federal time requirements violates the Due Process Clause of the U.S. Constitution, U.S. Const. Amend XIV, and the Food Stamp Act, 7 U.S.C. § 2020(e)(10).

Plaintiff's prayer for relief, which seeks uniform declaratory and injunctive relief for her and all class members, evidences the significance of these common questions of law to the resolution of this lawsuit. This case satisfies the requirements of Rule 23(a)(2).

3. <u>Rule 23(a)(3): Typicality</u>

Rule 23(a)(3), the "typicality" factor, requires that the claims or defenses of the representatives must be typical of the claims or defenses of the class. Fed. R. Civ. P. 23(a)(3). The requirement "is designed to assure that the named representative's interests are aligned with those of the class," so that a representative "who vigorously pursues his or her own interests will necessarily advance the interests of the class." *Jordan*, 669 F.2d at 1321. Under the rule's "permissive standards," *Hanlon*, 150 F.3d at 1020, the Ninth Circuit does not "insist that the named plaintiffs' injuries be identical with those of the other class members. . . ." *Armstrong*, 275 F.3d at 869. Rather,

> [a]s long as the named representative's claim arises from the same event, practice, or course of conduct that forms the basis

> for the class claims, and is based upon the same legal theory, varying factual differences between the claims or defenses of the class and the class representative will not render the named representative's claim atypical.

Jordan, 669 F.2d at 1321; *see also Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (stating that the test is whether the action "is based on conduct which is not unique to the named plaintiffs").

The typicality requirement is easily satisfied here. Plaintiff alleges similar injury to that expected of the class members. She and her family must delay or forego needed food because of the delays in DES processing their food stamp application. Plaintiff B Dec. ¶¶ 15-18. Their injury results from the same alleged course of conduct, namely the Defendant's failure to process applications in a timely manner. .

Experiencing similar injuries, the Plaintiff and class share the same legal theories. Moreover, the requested injunctive relief will, if granted, benefit the class and the class representative. The required nexus is present, and the typicality requirement is met.

4. <u>Rule 23(a)(4): Adequacy of Representation</u>

The final prong of Rule 23(a), the "adequate representation" factor, requires the Court to find that the "representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The Ninth Circuit asks two questions: "(1) Do the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Staton*, 327 F.3d at 957 (citations omitted).

With regard to the first of the two adequacy questions, neither the named Plaintiff nor her counsel have any conflicts of interest with other class members. The named Plaintiff and class members raise similar claims giving rise to common questions of law. They share the common interest in seeing that the Defendant process applications in a timely manner pursuant to federal law. They seek the same relief. Similarly, Plaintiff's counsel has no interest in conflict with other class members.

Second, the representative Plaintiff and her counsel will vigorously pursue this case on behalf of the entire class. "Although there are no fixed standards by which 'vigor' can be assayed, considerations include competency of counsel. . . ." *Hanlon*, 150 F.3d at 1021. Plaintiff's attorneys are experienced in litigation involving public assistance beneficiaries. A representative sample of cases in which Plaintiff's counsel has acted as lead counsel include: *Padilla v. Rodgers*, CIV 02-176 TUC WBD, and *Newton-Nations v. Rodgers*, CIV 03-2506 PHX EHC. The requirements of Rule 23(a)(4) are met.

5. <u>Rule 23(b)(2)</u>

The Plaintiff must also satisfy one subdivision of Rule 23(b). This lawsuit meets the requirement of Rule 23(b)(2) that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. . . ." Fed. R. Civ. P. 23(b)(2).

As discussed previously, the Defendant's policies are the same throughout the state and have equal application to all class members. Plaintiff alleges that the Defendant

has refused to act in compliance with federal law on grounds generally applicable to the class. Plaintiff asks the Court to enter final injunctive and declaratory relief with respect to the class as a whole. This is precisely the kind of situation for which certification of a class under Rule 23(b)(2) is appropriate. *See Elliot v. Weinberger*, 564 F.2d 1219, 1228 (9th Cir. 1997), *aff'd in part and rev'd in part on other grounds sub nom., Califano v. Yamasaki*, 442 U.S. 682 (1979).

In many similar challenges to delays in processing public assistance applications, courts have certified the action as a class action. *See, e.g., Robidoux v. Celani*, 987 F.2d 931, 934-937 (2nd Cir. 1993) (delays in processing AFDC and Food Stamps); *Haskens v. Stanton*, 794 F.2d 1273 (7th Cir. 1986) (delays in processing food stamps applications); *Morel v. Giuliani*, 927 F.Supp. 622, 632-34 (S.D.N.Y. 1995) (failure to process requests for administrative hearings for cash assistance and food stamps); *Brown v. Giuliani*, 158 F.R.D. 251, 268-69 (E.D.N.Y. 1994) (applications for cash assistance). This action should be certified pursuant to Rule 23(b)(2).

Conclusion

For the reasons stated above, Plaintiff asks this Court to certify this case as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2).

Respectfully submitted this _____ day of August, 2004.

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