IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RILEY BENJAMIN, on behalf of himself and others similarly situated, Plaintiff, v. NICOLE COLBERT, et al., Defendants.	No. 23-cv-_____

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

Pursuant to Federal Rule of Civil Procedure 23(b)(2) and Local Rule 23.1, Plaintiff Riley Benjamin moves the Court to certify the following class for the purpose of seeking injunctive relief in this matter:

> All Jewish people who are or will be in District of Columbia Department of Corrections (DOC) custody and request a kosher diet as a religious accommodation.

Mr. Benjamin further moves to appoint his counsel as class counsel. Defendants' counsel has not yet been assigned and therefore cannot be asked about Defendants' position on this motion. Mr. Benjamin assumes the motion will be opposed.

INTRODUCTION

This case arises from DOC's denial of religious meals to Jewish individuals in its custody, thereby preventing them from eating a diet in accordance with their faith and substantially burdening their religious exercise. Defendants are DOC chaplains or supervisory officials. As a matter of practice, Defendants require that Jews in DOC custody who request kosher food provide proof of their faith, through either the name and telephone number of their rabbi and synagogue,

or a letter of conversion. Defendants' religious verification practice violates putative class members' rights under the Religious Freedom Restoration Act (RFRA) because it impermissibly requires external verification of faith in order to obtain a religious accommodation.

Mr. Benjamin seeks to enjoin Defendants' actions under RFRA on behalf of himself and the class. Because Defendants' practice of requiring external religious verification violates the rights of all class members, class treatment of the RFRA claim is warranted for the purpose of seeking injunctive relief.

The putative class meets the prerequisites of Federal Rule of Civil Procedure 23(a). First, joinder is impractical because the class is sufficiently numerous, it includes future members who are currently unknowable, and all members face substantial barriers to filing individual actions. Joinder is particularly impracticable because the transient nature of the D.C. Jail population makes identification of all of the class members nearly impossible. Second, the class members' claims share common questions of fact, including whether Defendants have a policy or practice of denying kosher meals in the absence of external verification, and common questions of law, including whether Defendants' policy or practice violates RFRA. Third, Mr. Benjamin's claim is typical of the class claim because he suffers the same harm and is subject to the same religious verification practice as all class members. He also seeks relief based on the same legal theory. Fourth, Mr. Benjamin and his experienced counsel will fairly and adequately protect class interests and will vigorously prosecute the action on behalf of the class.

The prerequisites having been satisfied, certification of the proposed class for the purpose of seeking injunctive relief is warranted under Rule 23(b)(2), because Defendants are acting in the same manner with respect to the class, such that a declaration and injunction with respect to the whole class is appropriate. Class members' claims are not dependent on facts regarding their

underlying (alleged or adjudicated) criminal conduct or on any other individualized determinations. The central question is whether it is lawful for Defendants to require Jews who request kosher meals provide external verification of their faith before granting them accommodations to practice their religion.

This Court should therefore certify the proposed class and appoint class counsel.

STATEMENT OF FACTS

Having recounted the relevant facts in his Complaint and Motion for Preliminary Injunction and declarations in support thereof, Plaintiff summarizes them here briefly. Mr. Benjamin, the proposed class representative, has been in DOC custody since June 27, 2022. Benjamin Decl. ¶ 3. He has identified as Jewish for several years and chose Judaism as his religion after learning about different faiths and watching films involving Judaism. *Id.* at ¶ 2. Mr. Benjamin's fiancée and friends know that he is Jewish, and D.C. Jail authorities have informed Mr. Benjamin that he is classified as Jewish in DOC's case management system. *Id.* at ¶¶ 2, 4. As far as Mr. Benjamin knows, he has been classified as Jewish in the system throughout his incarceration. *Id.* at ¶ 4

Mr. Benjamin has made repeated requests for kosher meals, all of which Defendants have denied. *Id.* at ¶¶ 5–9, 11–16. On September 7, 2022, Defendant Nicole Colbert, Supervisory Chaplain, responded to Mr. Benjamin by requiring that Mr. Benjamin provide "the name and number of [his] rabbi and temple that will verify [his] connection to this faith community or provide [his] letter of conversion as required by the laws of the Jewish faith." *Id.* at ¶ 7; Ex. A. Mr. Benjamin filed a "Step 1" informal grievance that same day, writing "I am Jewish and was denied my Jewish religion items by Rev Colbert," and again requesting kosher meals. Benjamin Decl. ¶ 8; Ex. B. On September 27, 2022, Defendant Jimmie Allen denied that grievance, providing the same boilerplate language requiring external verification: "Please provide the name

and number of your rabbi and temple that will verify your connection to this faith community or your letter of conversion as required by the laws of the Jewish faith." Benjamin Decl. ¶ 9; Ex. B.

Mr. Benjamin continued to grieve this issue, and eventually submitted a Level 2 Appeal, also known as a "Step 4"—the final step in the grievance process—on December 26, 2022. Benjamin Decl. ¶ 14; Ex. C. Defendant Jacqueline Williams, Deputy Director of Education, Reentry, and Case Management denied Mr. Benjamin's appeal on December 28, 2022. Benjamin Decl. ¶¶ 15–16; Ex. D. Defendant Williams wrote that under DOC policy, Mr. Benjamin was required to "provide documentation to verify [his] Faith affiliation," and that his "religious diet [could] not be approved until [his] religious affiliation ha[d] been established and verified." Benjamin Decl. ¶ 16; Ex. D.

Between his arrival at the Jail and December 26, 2022, Mr. Benjamin submitted at least fifteen request slips, grievances, or appeals of grievances regarding his requests for religious literature, materials, and kosher meals. *See id.* at ¶¶ 5–9, 11, 14–16. Because of the consistent denials of his religious meal requests, Mr. Benjamin's religious exercise has been obstructed, and he "ha[s] felt frustrated, discriminated against, and disrespected in [his] faith." *Id.* at ¶ 17.

Other Jews in DOC custody have been subject to the same verification practice as Mr. Benjamin. John Henri has been in DOC custody since January 20, 2023. Henri Decl. ¶ 3. He "ha[s] been Jewish for many years and ha[s] eaten kosher for about ten years." *Id.* at ¶ 2. Mr. Henri requested kosher meals shortly after entering DOC custody, explaining that he ate only kosher food prior to being incarcerated. *Id.* at ¶ 4; Ex. A. Mr. Henri received responses from Defendant Colbert and Defendant Allen denying his requests. Henri Decl. ¶¶ 5, 8. Defendants Colbert and Allen informed Mr. Henri that he needed to provide the name and number of his rabbi and synagogue, or his letter of conversion. *Id.* On February 6, 2023, Mr. Henri informed

Defendant Colbert that he was going on a hunger strike in response to the denial of kosher meals. *Id.* at ¶¶ 5–6. Despite submitting multiple grievances and appeals, Mr. Henri has yet to receive kosher meals, and "feel[s] humiliated and discriminated against." *Id.* at ¶ 7, 11.

Keith Barnes is another Jewish individual who was denied kosher meals while in DOC custody. Barnes Decl. ¶¶ 2, 6–8. Mr. Barnes grew up celebrating Jewish holidays like Passover and Hanukkah. *Id.* at ¶ 2. As far as he knows, he is listed as Jewish in DOC's case management system. *Id.* at ¶ 5. Shortly after arriving at the D.C. Jail, Mr. Barnes requested to be placed on a kosher diet, just as he had been during a prior period of incarceration at the D.C. Jail. *Id.* at ¶¶ 4, 6. This time, though, Mr. Barnes' requests were refused. *Id*. When Mr. Barnes grieved the issue, Defendant Allen informed him that he could not receive kosher meals unless he could verify his faith by providing the name and number of his rabbi and synagogue or his letter of conversion. *Id.* at ¶¶ 7–8; Ex. A. Since Mr. Barnes' last period of incarceration, DOC also eliminated all Jewish religious services or informal worship meetings, and Defendant Allen's denial caused Mr. Barnes to feel frustrated and that he was being intentionally and unfairly denied any spiritual outlet, whether it be group worship or the ability to connect with his faith in private. Barnes Decl. ¶¶ 10–11.

ARGUMENT

A plaintiff whose suit meets the requirements of Federal Rule of Civil Procedure 23 has a "categorical" right "to pursue his claim as a class action." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). To meet these requirements, the "suit must satisfy the criteria set forth in [Rule 23(a)] (*i.e.*, numerosity, commonality, typicality, and adequacy of representation), and it also must fit into one of the three categories described in subdivision (b)."

Id. All the prerequisite criteria under Rule 23(a) are met here, and this case qualifies for certification of a class seeking injunctive relief under Rule 23(b).

I. The Proposed Class Satisfies All Rule 23(a) Requirements.

Rule 23(a) outlines the following prerequisites for certification of a class: numerosity, commonality, typicality, and adequacy. *See* Fed. R. Civ. P. 23(a). The proposed class satisfies each prerequisite.

A. The Proposed Class Satisfies Rule 23(a)(1) Numerosity.

The proposed class satisfies Rule 23(a)(1)'s requirement that "the class [be] so numerous that joinder of all members is impracticable." *See* Fed. R. Civ. P. 23(a). "[A]lthough the numerosity requirement is often thought of in sheer numerical terms, its 'core requirement is that joinder be impracticable,'" and "the presence of many class members" is not the only way to satisfy Rule 23(a)(1). *N.S. v. Hughes*, 335 F.R.D. 337, 352 (D.D.C. 2020) (quoting 1 Newberg and Rubenstein on Class Actions § 3:11 (6th ed. 2023)), *modified on clarification on other grounds sub nom. N.S. v. Dixon*, 2020 WL 6701076 (D.D.C. Nov. 13, 2020). This Court has identified a class with 40 members as presumptively numerous enough to satisfy Rule 23(a)(1), but the numerosity requirement "imposes no absolute limitations" and is applied on a case-by-case basis. *Radosti v. Envision EMI, LLC*, 717 F. Supp. 2d 37, 51 (D.D.C. 2010) (quoting *Gen. Tele. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980)); *see also Disability Rights Council of Greater Wash. v. Wash. Metro. Area Transit Auth.*, 239 F.R.D. 9, 25 (D.D.C. 2006) ("There is no specific threshold that must be surpassed in order to satisfy the numerosity requirement; rather, each decision turns on the particularized circumstances of the case."). "[A] plaintiff need not provide the exact number of potential class members in order to satisfy this requirement," *Bynum v. District of Columbia*, 214 F.R.D. 27, 32–33 (D.D.C. 2003), "[s]o long as there is a reasonable basis for the estimate provided." *Kifafi v. Hilton Hotels Ret. Plan*, 189 F.R.D. 174, 176 (D.D.C. 1999).

Moreover, "[d]emonstrating impracticability of joinder does not mandate that joinder of all parties be impossible—only that the difficulty or inconvenience of joining all members of the class make[s] use of the class action appropriate." *D.L. v. District of Columbia*, 302 F.R.D. 1, 11 (D.D.C. 2013) (quotation marks and citation omitted), *aff'd* 860 F.3d 713 (D.C. Cir. 2017). Factors related to impracticability include the "financial resources of class members, the ability of claimants to institute individual suits, and requests for prospective injunctive relief which would involve future class members." *N.S.*, 335 F.R.D. at 352 (quoting *D.L.*, 302 F.R.D. at 11).

Numerosity is satisfied in this case both because joinder is impracticable and because the class contains more than forty people. An estimated 29 to 36 kosher adherents enter DOC custody each year. This estimate was reached using DOC's own intake data and the Pew Research Center's research regarding the percentage of Jews in the United States who keep kosher. DOC had 4,062 intakes in fiscal year ("FY") 2022. Follansbee Decl. ¶ 2; Ex. A at 9. According to DOC, Jewish individuals comprised 4.33% of DOC intakes during the fourth quarter of FY 2022. Follansbee Decl. ¶ 2; Ex. A at 16. Applying the percentage from the fourth quarter of 2022 to the entirety of the fiscal year, roughly 171 of DOC's 4,062 total intakes in FY 2022 were Jewish. Research from the Pew Research Center shows that 17% of all U.S. Jews keep a kosher diet. Follansbee Decl. ¶ 5; Ex. D at 70. These data suggest that roughly 29 of the estimated 171 Jewish individuals entering DOC custody in FY 2022 were kosher adherents. In January 2023, DOC reported that it had 1,111 intakes during the first quarter of FY 2023 and that 4.24% of those intakes identified at Jewish, meaning that approximately 47 Jews and 8 kosher adherents entered DOC custody in the first three months of FY 2023. Follansbee Decl. at ¶ 3; Ex. B at 9, 16. Similarly, DOC recently reported that 3.52% of its 1,509 intakes during the third quarter of FY 2023 were Jewish. Follansbee Decl. at ¶

4; Ex. C at 9, 16.[1] Those figures indicate that approximately 53 Jews and therefore, an estimated 9 kosher adherents, entered the jail during the past three months. At those rates, approximately 32 to 36 kosher adherents are likely to enter the jail over the course of FY 2023. And, of course, many people remain incarcerated at the Jail beyond the year in which they are admitted.

Only those who remain incarcerated today are members of the putative class, but the court may "look[] back at the number" of kosher adherents "who have passed through DOC custody in order to inform its prospective determination whether a sufficiently numerous class—made up largely of future claimants—exists." *Hinton v. District of Columbia*, 567 F. Supp. 3d 30, 54 n.13 (D.D.C. 2021). Based on those figures, "commonsense assumptions" suggest roughly 30 individuals who keep kosher come into DOC custody each year. 1 Newberg and Rubenstein on Class Actions § 3:13 (6th ed. 2023) (explaining that plaintiffs "must show enough evidence . . . to enable the court to make commonsense assumptions regarding the number of putative class members").

Generalizing from DOC's intake rate of approximately 30 kosher adherents per year, 40 kosher adherents can be expected to enter DOC custody within approximately sixteen months. As noted, "a class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone." *Id.* § 3:12. The class size grows larger when factoring in the untold number of Jewish individuals who will enter DOC custody in the future and will be subject to the same religious verification practice. Moreover, courts in this district have certified classes with fewer than 40 members and have noted that "as few as 25-30 class members should raise a presumption that joinder would be impracticable, and thus the class should be certified." *EEOC v. Printing Indus. of Metro. Wash., D.C., Inc.*, 92 F.R.D. 51, 53 (D.D.C. 1981); *see Coleman through Bunn v.*

[1] No other quarterly data for 2023 was available on DOC's website.

District of Columbia, 306 F.R.D. 68, 76–79 (D.D.C. 2015) (certifying class of 34 plaintiffs); *Meijer, Inc. v. Warner Chilcott Holdings Co. III, Ltd.*, 246 F.R.D. 293, 306 (D.D.C. 2007) (certifying class of 30 members); *see also Riordan v. Smith Barney*, 113 F.R.D. 60, 62 (N.D. Ill. 1986) (certifying class of 29 members); *Town of New Castle v. Yonkers Contracting Co.*, 131 F.R.D. 38, 40–41 (S.D.N.Y. 1990) (certifying class of 36 members); *Alvarado Partners, L.P. v. Mehta*, 130 F.R.D. 673, 675 (D. Colo. 1990) (certifying class of 33 members).

Nonnumerical factors further show why joinder is impractical. *J.D. v. Azar*, 925 F.3d 1291, 1323 (D.C. Cir. 2019) (noting that such factors can lead to certification for classes with "fewer than 20 members"). For instance, classes, like this one, that include "future claimants generally meet the numerosity requirement due to the impracticality of counting such class members, much less joining them." *Id.* at 1322 (internal citation and quotation marks omitted); *D.L.*, 302 F.R.D. at 11 ("Future members make joinder inherently impracticable because there is no way to know who they will be . . ." (cleaned up)). Because the population at a correctional institution is transitory in nature and "constantly revolving," joinder of these individuals is especially impracticable. *J.D. v. Nagin*, 255 F.R.D. 406, 414 (E.D. La. 2009) (finding numerosity satisfied as to youth detention facility with a capacity of only "around thirty" because the "fact that the population . . . is constantly revolving during the pendency of litigation renders any joinder impractical"), *cited with approval*, *Coleman*, 306 F.R.D. at 80; *accord Decoteau v. Raemisch*, 304 F.R.D. 683, 687 (D. Colo. 2014); *see Ogden v. Figgins*, 315 F.R.D. 670, 673 (D. Kan. 2016) ("[T]he ever-changing nature of jail populations makes identification of all of the class members nearly impossible.").

Another factor militating in favor of certification arises when the "pursuit of individual actions on behalf of the class members would be impracticable." *D.L.*, 302 F.R.D. at 11. Here, all class members are (or will be) incarcerated, which makes it extremely difficult for them to sue

individually—as D.C. law recognizes. *See, e.g.*, D.C. Code § 12-302 ("Disability of Plaintiff") (tolling statutes of limitations for incarcerated individuals on the ground that imprisonment is a disability to filing a lawsuit). That hardship is exacerbated by the poverty that the overwhelming majority of putative class members likely endure. *See D.L.*, 302 F.R.D. at 11 (considering "the financial resources of class members" in assessing Rule 23(a)(1)); *Colo. Cross-Disability Coal. v. Taco Bell Corp.*, 184 F.R.D. 354, 359 (D. Colo. 1999) (holding joinder impracticable where many class members could not afford to bring individual actions); *Jackson v. Foley*, 156 F.R.D. 538, 541-42 (E.D.N.Y. 1994) (holding joinder impracticable where the majority of class members came from low-income households, greatly decreasing their ability to bring individual lawsuits).

Because joining all members of the proposed class is impractical, Rule 23(a)(1) is satisfied.

B. The Proposed Class Satisfies Rule 23(a)(2) Commonality.

Rule 23(a)(2), which requires that there be "questions of law or fact common to the class," is likewise met. The key to commonality is that class members' claims "must depend upon a common contention . . . of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). "Even a single common question" will support a commonality finding, *id.* at 359 (alterations omitted), so long as its resolution will "generate common answers for the entire class," *Thorpe v. District of Columbia*, 303 F.R.D. 120, 146–47 (D.D.C. 2014).

The putative class meets this standard. Commonality is established where plaintiffs "provide significant proof that there exists a common policy or practice that is the alleged source of the harm to class members." *Id.* at 145-146 (internal quotations and citations omitted). Defendants subject all members of the class to their external religious verification practice; if

Defendants do not receive the external verification they demand, class members' meal requests are denied. What happened to Mr. Benjamin was not coincidental or the product of isolated mistakes. Rather, Defendant Williams stated in writing that the verification practice is a matter of DOC policy. Benjamin Decl. ¶ 16; Ex. D. Defendants' routine, copy-paste demands for external verification, followed by denials of kosher meals to three different Jews in custody—Mr. Benjamin, Mr. Henri, and Mr. Barnes—on that basis further demonstrate that the external verification is a matter of practice or policy. Accordingly, all the class members are subject to having their religious accommodations wrongfully denied.

The core question in this case is the lawfulness of Defendants' practice of requiring external verification of Jewish faith in order to grant kosher meal requests. The type of injury Defendants' practice imposes—the burdening of free religious exercise—is shared by the class.

The proposed class has at least the following legal and factual questions in common:

- Do Defendants have a policy or practice of denying kosher meals to Jews in custody in the absence of external verification of their faith?
- Does Defendants' practice of requiring external religious verification before granting religious accommodations violate RFRA?
- Is the plaintiff class entitled to injunctive relief under the four-factor test for the exercise of the court's equitable discretion?

Any one of these shared, central questions establishes commonality, even if there are "factual variations among the class members." *Bynum v. District of Columbia*, 214 F.R.D. 27, 33 (D.D.C. 2003) (noting that such differences "will not defeat the commonality requirement, so long as a single aspect or feature of the claim is common to all proposed class members"). For example, although some class members may have suffered greater hardship than others, "Rule 23 does not require" that all plaintiffs endure "precisely the same injuries." *Id.* at 34 (quoting *Hassine v. Jeffes*, 846 F.2d 169, 177 (3d Cir. 1988)). Nor does the presence of current and future detainees in the same class raise any concerns. *See J.D.*, 925 F.3d at 1323 (affirming certification of such a class).

In sum, the questions central to the propriety of injunctive relief are common to all class members' claims, and the existence of any one of those questions is sufficient to establish commonality.

C. The Proposed Class Satisfies Rule 23(a)(3) Typicality.

Plaintiff's claims are also "typical of the claims . . . of the class." Fed. R. Civ. P. 23(a)(3). "The typicality requirement is satisfied 'if each class member's claim arises from the same course of events that led to the claims of the representative parties and each class member makes similar legal arguments to prove the defendant's liability.'" *Radosti*, 717 F. Supp. 2d at 52 (quoting *In re Lorazepam & Clorazepate Antitrust Litig.*, 202 F.R.D. 12, 27 (D.D.C. 2001)). The typicality requirement "has been liberally construed." *Bynum*, 214 F.R.D. at 34. As with commonality, "[t]ypicality is not destroyed merely by factual variations." *Wagner v. Taylor*, 836 F.2d 578, 591 (D.C. Cir. 1987) (internal quotations and citations omitted). "Rather, if the named plaintiffs' claims are based on the same legal theory as the claims of the other class members, it will suffice to show that the named plaintiffs' injuries arise from the same course of conduct that gives rise to the other class members' claims." *Bynum*, 214 F.R.D. at 35; *Richardson v. L'Oreal USA, Inc.*, 991 F. Supp. 2d 181, 196 (D.D.C. 2013) ("[C]ourts have found the typicality requirement satisfied when class representatives suffered injuries in the same general fashion as absent class members." (internal quotation marks and citation omitted)).

Mr. Benjamin's claim is typical of the proposed class claim. His claim, like the proposed class claim, arises from the same course of conduct—namely, Defendants' standard practice or policy of requiring external verification of Jewish faith as a prerequisite to granting kosher meal requests. Mr. Benjamin's claim seeks to remedy the same type of injury as the class claim (burdening of free religious exercise). His claim also relies on the same legal theory as the class claim (that it violates RFRA for Defendants to require external verification before granting a

request for religious meals). Notwithstanding any individual differences that may exist between Plaintiff and other members of the proposed class, Plaintiff's claim "[is] sufficiently interrelated with the class claim[] to protect absent class members." *R.I.L.-R. v. Johnson*, 80 F. Supp. 3d 164, 181 (D.D.C. 2015).

Accordingly, the proposed class's claim satisfies the typicality requirement of Rule 23(a)(3).

D. The Proposed Class Satisfies Rule 23(a)(4) Adequacy.

The class representative also "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To establish adequacy, "(1) the named representative must not have antagonistic or competing interests with the unnamed members of the class, and (2) the representative must appear able to vigorously prosecute the interests of the class through qualified counsel." *Twelve John Does v. District of Columbia*, 117 F.3d 571, 575 (D.C. Cir. 1997) (quoting *Nat'l Ass'n of Reg'l Med. Programs, Inc. v. Mathews*, 551 F.2d 340, 345 (D.C. Cir. 1976)).

Mr. Benjamin satisfies both criteria. First, Mr. Benjamin's interests are not antagonistic to those of the class. Mr. Benjamin and the class members are suffering from the same harms. They seek the same declaratory and injunctive relief and would all benefit from such relief. Moreover, Mr. Benjamin's class declaration makes clear his desire to serve as a faithful class steward. Benjamin Decl. ¶ 19 ("By being the class representative, I hope that I can help myself and all other Jewish people at the D.C. Jail get a meaningful chance to receive a kosher diet, without being required to submit external proof of our faith."). For these reasons, there is no conflict between Mr. Benjamin and unnamed class members.

Second, Mr. Benjamin's counsel are competent to represent the class and are prepared to vigorously defend the interests of the class as a whole. They have extensive experience litigating

cases involving people in custody, and in litigating civil rights class actions. *See* Michelman Decl. ¶¶ 2-10.

Accordingly, the proposed class satisfies the adequacy requirement of Rule 23(a)(4).

II. Class Certification Is Appropriate Under Rule 23(b)(2).

In addition to satisfying the four criteria of Rule 23(a), the proposed class must also fit into one of the three categories outlined in Rule 23(b). This case qualifies for certification under Rule 23(b)(2), which permits class certification 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 Supreme Court has explained that Rule 23(b)(2) "applies only when a single injunction or declaratory judgment would provide relief to each member of the class." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011) (quotation marks and citation omitted). Courts in this District have interpreted Rule 23(b)(2) to impose two requirements: "(1) the defendant's action or refusal to act must be generally applicable to the class, and (2) plaintiff must seek final injunctive relief or corresponding declaratory relief on behalf of the class." *Steele v. United States*, 159 F. Supp. 3d 73, 81 (D.D.C. 2016) (internal citations and quotation marks omitted); *R.I.L.-R.*, 80 F. Supp. 3d at 182.

Here, both requirements are plainly met. First, as discussed, Defendants' religious verification practice applies to all class members: Defendants subjected Mr. Benjamin, Mr. Henri, and Mr. Barnes to the same religious verification practice, and Defendant Jacqueline Williams stated that this religious verification practice is a matter of DOC policy. Benjamin Decl. ¶ 16; Ex. D. For these reasons, Defendants' actions and the harms they impose are generally applicable to the class. To satisfy Rule 23(b)(2), "it is enough to show that a defendant has acted in a consistent

manner toward members of the class so that his actions may be viewed as part of a pattern of activity." *Bynum*, 214 F.R.D. at 37 (internal citation omitted). That is precisely what the evidence shows here. Second, it follows that a declaration recognizing the unlawfulness of this religious verification practice and a corresponding injunction prohibiting Defendants from maintaining that practice, would "provide relief to each member of the class." *Wal-Mart Stores, Inc.*, 564 U.S. at 360. And it is precisely such relief that Plaintiff seeks. *See* Mot. for Prelim. Injunction at 1.

Finally, if relief is limited to Mr. Benjamin, Defendants would be able to continue to violate the religious freedom of all other Jews in custody because—for the same reasons joinder is impracticable—further RFRA suits will be few and far between. The class action device exists to help seal such gaps in the enforceability of core civil rights.

Accordingly, all the requirements of Rule 23 are met, and the Court should certify the proposed class so that all similarly situated people may benefit from the declaratory and injunctive relief sought.

III. The Court Should Designate Plaintiff's Counsel as Class Counsel.

Should the Court certify the class, it must also appoint class counsel. Fed. R. Civ. P. 23(c)(1)(B); 23(g). Rule 23(g) requires the Court to consider the following four factors:

(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.

Id. at 23(g)(1)(A)(i)–(iv). The Court may also consider "any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." *Id.* at 23(g)(1)(B).

Mr. Benjamin's counsel satisfy these criteria. Counsel from the American Civil Liberties Union of the District of Columbia who represent Mr. Benjamin collectively have considerable expertise in civil rights litigation and in class action litigation. *See* Michelman Decl. ¶¶ 2–10.

As reflected in the complaint and preliminary injunction papers filed in this matter, Plaintiff's counsel have already devoted substantial time to investigating the factual and legal issues in this case and will continue to do so throughout the pendency of the litigation. *See, e.g.*, *Encinas v. J.J. Drywall Corp.*, 265 F.R.D. 3, 9 (D.D.C. 2010) ("The plaintiffs have shown that they will adequately represent the class. . . . Counsel have already committed substantial time and resources to identifying and investigating potential claims in the action.").

Accordingly, the Court should appoint Plaintiff's counsel as class counsel in this case.

IV. Alternatively, the Court Should Provisionally Certify the Class.

The early stage of this litigation should not prevent the Court from certifying the plaintiff class, because the propriety of class treatment here is apparent. Nevertheless, should the Court not be prepared to certify the class at this time, it should certify the class provisionally, subject to later reconsideration or amendment. Courts in this district have done so many times. *See, e.g.*, *Kirwa v. U.S. Dep't of Defense*, 285 F. Supp. 3d 21, 44 (D.D.C. 2017) (granting provisional class certification in context of granting preliminary injunction); *R.I.L.-R.*, 80 F. Supp. 3d at 183 (same); *Chang v. United States*, 217 F.R.D. 262, 274 (D.D.C. 2003) (granting provisional class certification before defendants had filed their opposition to certification); *Bame v. Dillard*, 2008 WL 2168393 at *9 (D.D.C. May 22, 2008) (conditionally granting class certification "without prejudice to Defendant's renewed objections after the close of discovery"); *Kifafi*, 189 F.R.D. at 178 (granting provisional class certification and noting that Rule 23(c)(1) "provid[es] that class certification may be granted provisionally and subsequently altered or amended").

CONCLUSION

For the reasons stated above, Plaintiff's motion should be granted. Plaintiff respectfully requests that the Court:

(1) certify the proposed class, consisting of all Jewish people who are or will be in District of Columbia Department of Corrections custody and request a kosher diet as a religious accommodation;

(2) appoint Plaintiff Riley Benjamin as the class representative; and

(3) appoint undersigned counsel to represent the class.

DATED: August 10, 2023

Respectfully submitted,

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