

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION

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SOUTHERN DISTRICT
OF INDIANA
GERALDINE
TREUTELA ARBROCKETT
CLERK

INDIANAPOLIS CHAPTER OF THE)
NAACP;)
DAVID SMITH, on his own behalf)
and on behalf of a class of those)
similarly situated,)

Plaintiffs,)

v.)

THE CITY OF CARMEL, INDIANA;)
THE CARMEL POLICE DEPARTMENT;)
PHILLIP HOBSON,)

Defendants.)

CIVIL ACTION NO. IP 97-104 C M/S

MOTION FOR CLASS CERTIFICATION

Comes now David Smith, by his counsel and moves this Court, pursuant to Rule 23 (a) and (b)(2) of the Federal Rules of Civil Procedure, to certify this cause as a class action. In further support of this Motion he states that:

1. This action is brought pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure on behalf of a class of those similarly situated with David Smith as the class representative. The class is defined as:

All persons, past, present and future, who have been, are, or will be driving through Carmel, Indiana, and who have been, are being, or will be, stopped or subject to being stopped without lawful cause pursuant to the practice and policy of the Carmel Police Department of stopping certain cars even though no lawful cause exists to stop the cars.

2. This action is also brought pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules

of Civil Procedure on behalf of a sub-class of those similarly situated with David Smith as the sub-class representative. The sub-class is defined as:

All members of racial minorities, past, present, and future, who have been, are or will be driving through Carmel, Indiana, and who have been, are being, or will be, stopped or subject to being stopped without lawful cause pursuant to the practice and policy of the Carmel Police Department of stopping cars driven by members of racial minorities even though no lawful cause exists to stop the cars.

3. The class and sub-class are so numerous that joinder of all members is impracticable.

The exact size of the class and sub-class are unknown, but it is believed that hundreds of persons fall within the class and sub-class.

4. There are questions of law or fact common to the class, namely whether the policy and practice of the Carmel Police Department violates the Fourth and Fourteenth Amendment rights of plaintiff Smith and the class. There are questions of law or fact which are common to the sub-class as well, namely, whether the policy and practice of the Carmel Police Department violates Equal Protection and 42 U.S.C §1981.

5. The claims of the representative party are typical of those of the class and sub-class.

6. The representative party will fairly and adequately protect the interests of the class and sub-class.

7. The further requirements of Rule 23(b)(2) are met in this cause in that the parties opposing the class and sub-class have acted and refused to act on grounds generally applicable to the classes, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the classes as a whole.

8. In further support of this Motion he submits his Memorandum of Law.

WHEREFORE, plaintiffs respectfully request that the case be certified as a class action with

a class and sub-class as certified above, and for all other proper relief.

MEMORANDUM OF LAW

I. INTRODUCTION

David Smith seeks to bring this action on his own behalf and on behalf of a class and a subclass. The class is defined as follows:

All persons, past, present and future, who have been, are, or will be driving through Carmel, Indiana, and who have been, are being, or will be, stopped or subject to being stopped without lawful cause pursuant to the practice and policy of the Carmel Police Department of stopping certain cars even though no lawful cause exists to stop the cars.

The sub-class is defined as follows:

All members of racial minorities, past, present, and future, who have been, are or will be driving through Carmel, Indiana, and who have been, are being, or will be, stopped or subject to being stopped without lawful cause pursuant to the practice and policy of the Carmel Police Department of stopping cars driven by members of racial minorities even though no lawful cause exists to stop the cars.

Both the class and the sub-class meet the requirements of Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. Therefore, certification of both the class and sub-class must be granted.

II. THE CLASS AND SUB-CLASS ARE SO NUMEROUS THAT JOINDER OF ALL MEMBERS IS IMPRACTICABLE

The first requirement for certification of a class action is that the class must be so numerous that joinder of all members is impracticable. Rule 23(a)(1), Federal Rules of Civil Procedure. This does not impose an absolute numerical requirement for class certification. Rather, courts must consider each case on its facts to determine the practicability of joining all class members. Swanson v. American Consumer Industries, Inc., 415 F.2d 1326 (7th Cir. 1969). However, it has been held that "as few as 25-30 class members should raise a presumption that joinder would be impracticable and that the class should be certified. Newburg, Class Actions §1105(b) at 174 (1977)." Equal

Employment Opportunity Commission v. Private Industry, 92 F.R.D. 51, 53 (D.D.C. 1981).

There are factors other than the number of class members to be considered on the issue of practicability of joinder.

Among the factors to be considered along with the number of class members, are geographic diversity, In Re Penn Central Securities Litigation, 62 F.R.D. 181 (E.D. Pa. 1974), judicial economy, Philadelphia Electric Co. v. Anaconda American Brass Co., 43 F.R.D. 452 (E.D. Pa. 1968), and the ability of the individual class members to institute individual lawsuits. Swanson v. American Consumer Industries, Inc., 415 F.2d 1326, 1333 (7th Cir. 1969).

Tenants Associated for a Better Spaulding v. United States Department of Housing and Urban Development, 97 F.R.D. 726, 729 (N.D. Ill. 1983).

In this case David Smith seeks to represent both a class and sub-class of geographically diverse persons who are subject to the City of Carmel's policy and practice of unlawfully stopping motorists without probable cause. The number of persons in the class and sub-class has yet to be determined, but is believed to be in excess of a hundred. Moreover, since this is an ongoing policy and practice the Court may also consider the numbers in the future class and draw an inference that joinder is impracticable. Lewis v. Gross, 663 F.Supp. 1164, 1169 (E.D. N.Y. 1986). Numerosity is present here.

III. THERE ARE QUESTIONS OF LAW OR FACT COMMON TO THE CLASS

Rule 23(a)(2) requires that there be questions of law or fact common to the class and sub-class in order for a class action to be certified. Several federal courts have held that the existence of a common scheme applied to all members of a class fulfills the requirement of Rule 23(a)(2). In Like v. Carter, 448 F.2d 798 (8th Cir. 1971), the Court ruled that a state policy affecting all welfare recipients presented common questions of law, even though each member of the class presented

minor differences of fact. The Seventh Circuit applied a similar rule in Fujishima v. Board of Education, 460 F.2d 1355 (7th Cir. 1972). See also, Jones v. Blinzinger, 536 F.Supp. 1181, 1189 (N.D. Ind. 1982).

In this case, all members of the class and sub-class are subject to the same unlawful policy and practice. Defendants are violating the United States Constitution by engaging in this policy and practice of conducting traffic stops without probable cause. There are, therefore, questions of law or fact common to the class.

IV. THE CLAIMS OF THE PLAINTIFF ARE TYPICAL OF THE CLAIMS OF THE PLAINTIFF CLASS AND SUB-CLASS

Rule 23(a)(3) requires that the claims of the representative parties be typical of those of the class. The standard for determining typicality is not that there need be identity of interest between the named plaintiffs and the class, but rather that there be "sufficient homogeneity of interests." Sosna v. Iowa, 419 U.S. 393, 403 n. 13 (1975). Another view is that the typicality requirement is satisfied if the representative parties have no interests antagonistic to those of the class. Mersay v. First Republic Corporation of America, 43 F.R.D. 465 (S.D. N.Y. 1965). The fundamental inquiry is whether all members of the class would benefit in some way from a judgment favorable to the plaintiffs. Ellis v. Naval Air Rework Facility, 404 F.Supp. 391, 396 (N.D. Calif. 1975), rev'd on other grounds, 608 F.2d 1308 (9th Cir. 1979).

Plaintiff David Smith meets this requirement. He seeks to change policy and practices applicable to all class members and sub-class members. All members of the class and sub-class would benefit in some way from a judgment favorable to the plaintiff and the plaintiff presents no unique problems in pursuing their claims. He is, therefore, typical of the class and sub-class which

he seeks to represent. Kobos v. First National Bank of Peoria, 496 F.2d 1162 (7th Cir. 1974).

V. DAVID SMITH WILL FAIRLY AND ADEQUATELY PROTECT THE INTERESTS OF THE CLASS AND SUB-CLASS

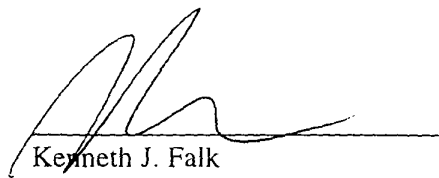
Rule 23(a)(4) requires that the class representatives' interests and their counsel be such that they can and will vigorously pursue the class' interests as well as their own. Homan v. Packard Instrument Co., 399 F.2d 711 (7th Cir. 1968). David Smith is represented by counsel skilled and experienced in this type of litigation. Moreover, he seeks injunctive and declaratory relief which "is identical to the relief sought for the entire class, it is not inconsistent in any way with the interests of the members of the class." Jones, 536 F.Supp. at 1190. Likewise, he has a stake in the proceedings that will "insure diligent and thorough prosecution of the litigation." Rodriguez v. Swank, 318 F.Supp. 289, 294 (N.D. Ill. 1970), aff'd 496 F.2d 1110 (7th Cir. 1974). David Smith is an adequate class representative.

VI. THE FURTHER REQUIREMENTS OF RULE 23(b)(2) ARE MET HERE

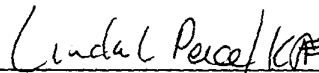
The final requirement for class certification is stated in Rule 23(b)(2). In order to meet the requirement of Rule 23(b)(2), the party who opposes the class must have "acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the class as a whole." Defendants City of Carmel and the Carmel Police Department have pursued an unlawful policy and practice which violates the constitutional rights of both David Smith, the class and sub-class which he seeks to represent. Therefore, the requirements of Rule 23(b)(2) are met.

CONCLUSION

For the above reasons, the Plaintiff's Motion for Class Certification should be granted.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the below named parties by first class U.S. postage, pre-paid, on this 31st day of January, 1997.

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