

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>RAQUEL BROWN,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>NO. 06-1495</b>
	:	
<b>PHILADELPHIA HOUSING</b>	:	
<b>AUTHORITY, et al.</b>	:	
<b>Defendants</b>	:	

**MEMORANDUM**

**STENGEL, J.**

**June 22, 2006**

Plaintiff Raquel Brown brings this motion for class certification and for the appointment of class counsel to convert her complaint against the Philadelphia Housing Authority (“PHA”), and other individual PHA employees, into a class action. The defendants responded to the motion, arguing Brown’s proposed class fails to satisfy the numerosity and commonality requirements of FED. R. CIV. P. 23(a)(1)-(2). Thereafter, Brown filed a motion for leave to reply requesting the court provide her with an additional ninety (90) days for discovery and for the court to conduct an evidentiary hearing on these issues before ruling upon the motion. For the reasons set forth below, I will dismiss Brown’s motion without prejudice.

**I. BACKGROUND**

According to Brown’s complaint, the PHA has established a pattern, practice or policy of failing and refusing to timely issue family packets and vouchers to the prospective class members whose rental agreements were terminated in accordance with

24 C.F.R. § 982.404(a). The prospective class members are renters whose monthly rental payments are subsidized by the PHA through Housing Assistance Payments (“HAP”).<sup>1</sup> As part of its regulations, the PHA terminates its HAP’s for residences that fail to comply with the Section 8 Housing Quality Standards (“HQS”). When the PHA so acts, Brown avers that they unduly delay issuing a second HAP for an alternate residence.

In particular, Brown contends that the defendants require all class members to attend a briefing before they are given a family packet and voucher that enables them to locate and move into a new unit with continued Section 8 assistance.<sup>2</sup> The Defendants also allegedly schedule briefings in excess of two months after a HAP contract has been terminated. Furthermore, once a class member receives the family packet and voucher: (1) that member must locate a new unit; (2) the unit must pass inspection for the HQS; and (3) the defendants must approve the unit and see that the parties enter into an approved lease and HAP contract. Brown avers that the entire process can take months - subjecting class members to eviction and homelessness.

Brown avers that the defendants are depriving the class members of their rental subsidies in violation of both their substantive and procedural due process rights. Her complaint seeks injunctive and declaratory relief on behalf of the class.

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<sup>1</sup>The class members are participants in the PHA’s Section 8 voucher program.

<sup>2</sup>According to Brown, briefings are only required when the defendants select new participants to the program.

## **II. STANDARD FOR CERTIFYING A CLASS**

To be certified as a class under Federal Rule of Civil Procedure 23, a plaintiff must plead numerosity, commonality, typicality and adequacy. FED. R. CIV. P. 23(a). Under the requirements of the Rule, therefore, a purported class must: (a) be so numerous that joinder of all members individually is impracticable; (b) have a question of law or fact common to all members; (c) have a class representative whose claims or defenses are typical to the rest of the class; and (d) have a class representative who will be able to fairly and adequately protect the interests of the class as a whole. Id. Further, in addition to the requirements set forth in subsection (a), at least one of the subsection (b) requirements must also be met. FED. R. CIV. P. 23(b); see also Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 613-614 (1997).

In this case, Brown is proceeding under subsection Rule 23(b)(2). That subsection states: “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).

## **III. DISCUSSION**

### **A. Can Brown Satisfy FED. R. CIV. P. 23(a)(1)?**

Rule 23(a)(1) requires that the proposed class be “so numerous that joinder of all members is impracticable.” FED. R. CIV. P. 23(a). In this case, Brown contends that her class could number in excess of “15,000 members, as each year, hundreds if not thousands of PHA Section 8 participants will be forced to move due to landlords’ failure

to make repairs and will suffer untimely delays.” According to the defendants, as well as an affidavit filed by the PHA General Manager and named defendant Keith Caldwell, however, any delay Brown may have experienced was an abnormality due in large part to her own lack of communication with the defendants. Although courts generally must refrain from inquiring into the merits of the claims when deciding whether to certify a class, in this case the fact that Brown’s experience may have been unique speaks to the possible number of plaintiffs requiring similar legal redress. See Barnes v. Am. Tobacco Co., 161 F.3d 127, 140 (3d Cir. 1998), cert. denied, 526 U.S. 1114 (1999). Furthermore, “mere speculation as to the number of parties involved is not sufficient to satisfy Rule 23(a)(1).” 7A Wright, Miller & Kane, Federal Practice and Procedure, Civil 3d. § 1762, pp. 177-84 (2005); Philips v. Phila. Hous. Auth., No. 93-5645, 1994 U.S. Dist. LEXIS 1807, at \* 2 (E.D. Pa. Feb. 17, 1994) (“The plaintiff must demonstrate that there is a large class, not simply that there are many tenants who could possibly be members of the class.”) (citing In Re Three Mile Island Litig., 95 F.R.D. 164, 165 (M.D. Pa. 1982)).

In Brown’s motion to file a reply, she argues that the court may, and in many instances should, conduct an evidentiary hearing if there is any doubt about the issue of class certification. Merrill v. S. Methodist Univ., 806 F.2d 600, 608-09 (5th Cir. 1986); see also Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 259 F.3d 154, 166 (3d Cir. 2001). In this case, however, the issues and facts are not particularly complex and do not require a hearing to resolve. As admitted by Brown, “the records and evidence needed to resolve [the Rule 23(a)(1), (2), and (b)(2)] issues rest under the exclusive

control of [the] defendants.” If, after discovery of those records, the facts permit the certification of a class, then Brown may refile her motion and the court will make an appropriate determination at that time.

This situation was specifically addressed in Philips, at 1994 U.S. Dist. LEXIS 1807 \* 2-3, where the court denied the plaintiff’s motion to certify a class without prejudice for lack of numerosity and stated that the plaintiff could refile the motion if the facts, once discovered, permitted it. I find the Philips opinion directly on point and will follow it.

**B. FED. R. CIV. P. 23(a)(2) or (b)(2)**

Considering Brown has failed to satisfy the numerosity requirement of Rule 23(a)(1), it is not necessary to further analyze the other Rule 23 subsections at this time.

**IV. CONCLUSION**

Given the overly speculative nature of the number of persons that could possibly be included in Brown’s prospective class, and after finding the court’s decision in Philips persuasive, I will dismiss plaintiff’s motion to certify class without prejudice. An appropriate order follows.

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<b>AUTHORITY, et al.</b>	:	
<b>Defendants</b>	:	

**ORDER**

**AND NOW**, this 22nd day of June, 2006, after consideration of plaintiff's Motion to Certify Class (Document # 4), and plaintiff's Motion for Leave to File a Reply (Document # 12), it is hereby **ORDERED** that the Motion to Certify Class is **DENIED Without Prejudice**. Plaintiff's Motion for Leave to File a Reply is **GRANTED**.

BY THE COURT:

/s/ Lawrence F. Stengel \_\_\_\_\_  
LAWRENCE F. STENGEL, J.