

STATE OF INDIANA)
)SS:
COUNTY OF MONROE)

IN THE MONROE CIRCUIT COURT VI

CAUSE NO. 53C06-1810-PL-002169

JADEN THOMAS,
RYAN BRAVERMAN,
KATIE DEDELOW, et al.
 Plaintiffs,

v.

INDIANA UNIVERSITY,
by and through its Board Of Trustees,
 Defendant.

ORDER ON MOTION FOR CLASS CERTIFICATION

Plaintiffs filed their Motion for Class Certification on June 3, 2019. The Court held a hearing on the Motion on October 10, 2019, and has considered the evidence presented in support and in opposition to the Motion, along with the briefs submitted by both parties. The Court, being duly advised, now finds and orders as follows:

I. Proposed Classes

The Plaintiffs seek to certify three “Damages Classes” to pursue claims for monetary damages alleged in Counts 1, 2, 9, 10, and 11 of the Amended Complaint. These counts rest on breach of contract and breach of implied warranty of habitability claims or alternative equitable principles, and the Plaintiffs seek to limit certification to the issues of liability and damages. The proposed “Damages Classes” are outlined as follows:

1. “Moldy Dorms Class”, defined as all residents of Foster, McNutt, and Teter dorms during the 2018-2019 school year, and the proposed Class Representative is Madeline O’Connell.
2. “Noise Polluted Dorms Class”, defined as all residents of Ashton, Collins, Hillcreas and Wright dorms during the 2018-2019 school year, and the proposed Class Representative is Aaron Klawun.
3. “Overcrowded Dorms Class”, defined as all residents of Forest and Eigenmann dorms during the 2018-2019 school year, and the proposed class representative is Marley Muhlada.

In addition, the Plaintiffs seek to certify the “Moldy Dorms Class” as to liability for the claims raised in Counts 3-8, specifically on the following questions, classified as “Tort Issues”:

4. Whether the University owed a duty not to expose member of the Moldy Dorms Class to the mold condition that existed in their dorms during the 2018-2019 school year, included

whether the University knew of the hazardous conditions and mold related problems in the dorms’

5. Whether the University breached that duty by housing them in those dorms, including the duty to truthfully inform the students of the hazardous conditions and mold related problems; and
6. Whether exposure to the Hazardous Conditions in the dorms *generally* causes the types of adverse health conditions experienced by the member of the Moldy Dorms Class.

II. Standard

Indiana Trial Rule 23 governs class action proceedings. The Plaintiffs have the burden of satisfying all of the requirements of Trial Rule 23(A) with respect to each proposed class. Then, each proposed class must meet one of the requirements of T.R. 23(B). Failure to meet any one of the requirements results in denial of class status. *LHO Indianapolis One Lessee, LLC v. Bowman*, 40 N.E.3d 1364, 1269 (Ind. Ct. App. 2015). Whether an action is maintainable as a class action is up to the discretion of the trial court, and is procedural in nature. *NIPSCO v. Bolka*, 693 N.E.2d 613, 616-617 (Ind. Ct. App. 1998).

Defendant has raised the issue that the proposed Damage Classes have not been specifically plead. The Plaintiffs base their Damages Classes on Counts 1, 2, 9, 10, and 11 of the Amended Complaint. As a preliminary matter, the Court has dismissed Count 9, and therefore, the Court finds that any support cited by the Plaintiffs arising from the Deceptive Consumer Sales Act does not apply.

Counts 1, 2, 9, and 11 are contractual or quasi-contractual in nature. Plaintiffs have specifically alleged in Count 1 that the Defendant agreed to provide residential dormitories to Plaintiffs that were suitable and ready for inhabitation by students attending and residing at IU, and breached that agreement by “providing dormitories and rooms to each of the Plaintiffs and putative class members that were infested with mold and the Hazardous Conditions.” Plaintiffs define “Hazardous Conditions” as “environmental hazards and concerns-including but not limited to problems such as mold infestation as well as by being designed, equipped and maintained in a manner that caused continuing air quality issues, water and moisture problems, and mold growth and regrowth—that created a dangerous and harmful environment for Plaintiffs and member of the putative Class.” In Count 2, Plaintiffs have alleged that Defendant made an implied warranty as to the nature of the rooms and living areas “that they would be clean, safe and habitable for the intended use as a residential dwelling,” and breached that warranty by providing dormitories and rooms to each of the Plaintiffs and putative class members that were infested with mold, contained Hazardous Conditions, and that were otherwise not clean, safe, or habitable, but instead dangerous and injurious to the health and property of the Plaintiffs and members of the putative class. The allegations of Counts 9 and 11 are similar, and are plead as alternative to Counts 1 and 2.

The Complaint does not allege breach of contract or breach of implied warranty for “receiving housing of reduced value” and suffering “diminished student experience due to overcrowding.” Rather, the Complaint specifically refers to damages caused by exposure to “Hazardous Conditions” as defined by the Plaintiffs. To allow Plaintiff to certify the

“Overcrowding Class” would be to certify a class of plaintiffs which do not exist within the parameters of the Amended Complaint. The Court therefore denies the Plaintiffs’ request to certify the “Overcrowding Class”. The Court does not find that the same analysis holds true for either the Moldy Dorms or Noise-Polluted Dorms classes. The following analysis addresses the remaining Damages Classes and Tort Issues Classes.

III. Analysis—Rule 23(A)

A. Numerosity

The members of each proposed class are “so numerous that joinder of all members is impracticable.” This requirement is not contested by the Defendant and Plaintiffs have satisfied this requirement.

B. Commonality

To establish commonality, the Plaintiff must identify a single common question of law or fact. *Bank One Indianapolis, N.A. v. Norton*, 557 N.E.2d 1038, 1042 (Ind. Ct. App. 1990). The primary common question of law relating to the proposed Damage Classes are the questions of whether a contract or implied warranty of habitability existed and whether the Defendant breached the contract or warranty. The primary common questions of law for all of the Tort Issues class are outlined in the proposed issues above, and are not specific to individual members. These are general questions that are applicable to all students living in the dorms. The Plaintiffs have satisfied this requirement.

C. Typicality

The claims of the representative Plaintiffs are typical of the Moldy Dorms Class and the Noise Polluted Class. Claims are typical if the class representative’s interests are not antagonistic of or in conflict with the class as a whole. “Typicality may be satisfied if the claims of the representatives and class members stem from a single event or are based on the same legal theory.” *ConAgra v. Farrington*, 635 N.E.2d 1137, 1141 (Ind. Ct. App. 1994). It does not appear from the evidence that the claims of the representative Plaintiffs in the Moldy Dorms Class and the Noise Polluted Class are antagonistic of the claims of the class. The claims of the Representative Plaintiffs are based on the same legal theory and arise from the same event as those of the proposed class. The Plaintiffs have satisfied the typicality requirement.

D. Adequacy

The proposed representative of the class is adequate if he or she possesses claims that are typical of the class, have a sufficient interest in the litigation to ensure vigorous advocacy, and retain counsel that is competent to conduct the proposed litigation. *Bowman*, 40 N.E.3d at 1273. Aaron Klawen testified that he was aware of his responsibilities as class representative and knew the parameters of the class he was to represent. Madeline O’Connell understood that her responsibility as class representative was to be active in the litigation and maintain contact with class counsel. There is no challenge to counsel’s ability to conduct the litigation. The Plaintiffs

have provided sufficient evidence to establish that the proposed representatives adequately represent the class

VI. Analysis—Rule 23(B)

The Court finds that the questions of law or fact common to the member of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. On the contractual questions, the question as to whether a contract or warranty existed requires the same proof for each member of the class, as each student in the dorms were subject to the same agreement for residence. The common experience of each member of the class—alleged exposure to mold or noise pollution—forms the basis for the Tort Issues class and predominates over the room by room levels of mold for each member of the class. With respect to contractual or implied warranty claims, Plaintiff has supplied adequate evidence to support a theory of measuring damages that is common to class members. With respect to the Tort Issues class, theories of duty and breach of duty are common to all class members. The specific individual issues raised by the Defendant in its objection pertain to the extent of tort damages for each member, which are specifically excluded from the Tort Damages class.

The Court finds that the management of the case and the efficient resolution of the claims presented to the Court merits certification of the classes proposed by the Plaintiffs, with the exception of the Overcrowding Dorms class.

The Court therefore ORDERS as follows:

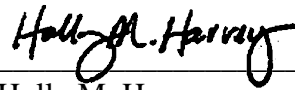
- A. The Court hereby certifies the following Damages Classes under Trial Rules 23(A) and 23(B)(3), and for each Class appoints the corresponding Plaintiff as Class Representative:
 1. **Moldy Dorms Class**, defined as all residents of Foster, McNutt, and Teter dorms during the 2018-2019 school year, and the proposed Class Representative is Madeline O’Connell.
 2. **Noise Polluted Dorms Class**, defined as all residents of Ashton, Collins, Hillcreas and Wright dorms during the 2018-2019 school year, and the proposed Class Representative is Aaron Klawun.
- B. The Court hereby certifies the following Tort Issues Class under Trial Rules 23(A) and 23(B)(3) and 23(C)(4)(a), and appoints Madeleine O’Connell as class representative:

Tort Issues Class: defined as all residents of Foster, McNutt, and Teter dorms during the 2018-2019 school year.

The following issues are certified for the determination of non-individual Tort Issues:

1. Whether the University owed a duty not to expose member of the Moldy Dorms Class to the mold condition that existed in their dorms during the 2018-2019 school year, included whether the University knew of the hazardous conditions and mold related problems in the dorms'
2. Whether the University breached that duty by housing them in those dorms, including the duty to truthfully inform the students of the hazardous conditions and mold related problems; and
3. Whether exposure to the Hazardous Conditions in the dorms *generally* causes the types of adverse health conditions experienced by the member of the Moldy Dorms Class.

SO ORDERED, this 10th day of January, 2020.



Holly M. Harvey
Judge, Monroe Circuit Court VI

DISTRIBUTION:
Plaintiffs
Defendant