**UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF WISCONSIN**

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| **J.J.,** by and through his next friend, Sakeena Jackson; *et al.*, for themselves and all others similarly situated,<br><br>**Plaintiffs,**<br><br>**v.**<br><br>**Jon E. Litscher,** in his official capacity as Secretary of the Wisconsin Department of Corrections, *et al.*,<br><br>**Defendants.** | **Civil Action No. 17-CV-47** |

# MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

## I. INTRODUCTION

Plaintiffs ask this Court, pursuant to Federal Rule of Civil Procedure 23, to certify a class consisting of all persons who are now, or will be, confined at Lincoln Hills School for Boys ("LHS") and Copper Lake School for Girls ("CLS"). LHS and CLS are state-run juvenile detention facilities in Irma, Wisconsin. Named Plaintiffs are three youth presently incarcerated at LHS/CLS and one youth who was recently transferred from LHS to Mendota Juvenile Treatment Center, but who remains subject to a juvenile delinquency disposition that makes his return to LHS likely. Defendants, charged with the supervision and administration of LHS and CLS, consistently violate these juvenile Plaintiffs' constitutional rights through the systematic, unlawful, and detrimental use of solitary confinement, physical restraints, and pepper spray.

Plaintiffs seek declaratory and injunctive relief relating to the Defendants' use of solitary confinement, mechanical restraints, and pepper spray. Currently, Defendants keep youth in solitary confinement—for days, weeks, and even months at a time—as punishment and discipline for breaking Defendants' rules. The youth they subject to solitary confinement are locked in small cells for 22 or 23 hours each day and receive little or none of the education and rehabilitative programming the Defendants are required to provide. These youth also often spend their few hours out of their cells tethered to a table or desk and with their hands shackled to belts around their waists. Defendants also use pepper sprays that are designed to protect hikers from charging bears in order to punish youth for minor infractions and to control their behavior. These practices violate Plaintiffs' Eighth and Fourteenth Amendment rights—and the rights of all youth incarcerated at LHS and CLS.

Plaintiffs seek a declaration that Defendants' policies and practices of confining youth in solitary confinement for disciplinary or punitive purposes in any case other than a rare and temporary response to avoid imminent serious physical harm to persons; of routinely using mechanical restraints, including handcuffing juveniles in solitary confinement to a waist belt and tethering them to a table during their only time out of their cells; and routinely using pepper spray to punish youth and control behavior, violates the named Plaintiffs' and Class Members' rights under the Eighth and Fourteenth Amendment to the United States Constitution. Additionally, Plaintiffs seek temporary, preliminary, and permanent injunctive relief prohibiting these practices.

In determining whether to certify a class, courts have "broad discretion to determine whether . . . a class-action lawsuit is appropriate." *Ervin v. OS Rest. Servs., Inc.*, 632 F.3d 971, 976 (7th Cir. 2011) (internal quotation marks and citation omitted). While this Court may

consider the merits of Plaintiffs' allegations, the class certification analysis should not be turned into a "dress rehearsal for the trial on the merits." *Messner v. Northshore University Healthsystem*, 669 F.3d 802, 811 (7th Cir. 2012) (citing *Schleicher v. Wendt*, 618 F.3d 679, 685 (7th Cir. 2010); *Kohen v. Pacific Investment Management Co.*, 571 F.3d 672, 677 (7th Cir. 2009); *Payton v. County of Kane*, 308 F.3d 673, 677 (7th Cir. 2002)). Further, "merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Bell v. PNC Bank, Nat. Ass'n.*, 800 F.3d 360, 376 (7th Cir. 2015) (citation omitted). While Plaintiffs bear the burden of showing that the proposed class meets the elements of Rule 23, "they need not make that showing to a degree of absolute certainty. It is sufficient if each disputed [Rule 23] requirement has been proven by a preponderance of evidence." *Messner*, 669 F.3d at 811 (citation omitted).

Plaintiffs seek declaratory and injunctive relief on their own behalf and on behalf of those similarly situated, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2). Plaintiffs J.J., K.D., C.M., and R.N. seek to represent a class, defined as follows:

> All prisoners who are now, or in the future will be, confined at LHS and CLS ("the Class").

Plaintiffs are entitled to class certification under Rules 23(a) and 23(b)(2): First, the Class Members are sufficiently numerous such that joinder of all parties would be impracticable. Second, common questions of law and fact regarding the Defendants' unconstitutional policies and practices apply equally to all Plaintiffs and to all potential members of the Class. Third, the representative Plaintiffs' claims are typical of the class—they are all at substantial risk of being seriously harmed as a result of the Defendants' unconstitutional policies and practices. Fourth, Plaintiffs will adequately protect the interests of the Class because they seek relief that will apply identically to each member of the Class. Finally, class-wide declaratory and injunctive relief is

the appropriate remedy—the Defendants' unconstitutional policies and practices apply generally to the Class and must be put to an end for all youth at LHS/CLS.

## II. FACTUAL BACKGROUND

Plaintiffs initiated this lawsuit as a class action on behalf of themselves, other youth at LHS and CLS, and future LHS and CLS prisoners. They allege that Defendants' solitary confinement policies and practices and Defendants' illegal use of pepper spray and mechanical restraints deprive them of their constitutional rights under the Eighth and Fourteenth Amendments.

Defendants extensively use solitary confinement for discipline and punishment of the juveniles at LHS and CLS for violating institutional rules. Solitary confinement means isolating a child in a locked cell, alone, for 22-23 hours per day. While in solitary confinement, youth are only allowed out of their cells one hour each day for "recreation" and another hour on school days for "education." When youth are out of their cells, they are put into mechanical restraints, which is known colloquially as being "on the belt." When on the belt, their hands are placed in handcuffs which are attached to a belt around the waist, and the youth are tethered to a table or desk. As a matter of course, Defendants put all new arrivals to the solitary confinement units on the belt, and they keep many youth on the belt for much or all of their time in solitary.

For non-violent infractions, such as refusing to go into and refusing to leave their cells, Defendants regularly use pepper spray against the youth in ways that are unnecessary, ineffective, and punitive. Defendants use several forms of pepper spray, including Bear Mace, Phantom, Ghost, and OC. While some sprays create a cloud in a youth's cell, others are sprayed directly into a youth's face and eyes. Youth describe pepper spray as "feeling like you were hit a hundred times."

Plaintiffs filed this lawsuit on January 23, 2017 seeking declaratory and injunctive relief to end and prevent these violations of their constitutional rights.

## III. ARGUMENT

### A. The Class Satisfies the Rule 23(a) Certification Requirements.

A court may certify a class if the class satisfies "the requirements of Federal Rule 23(a), as well as one of the three alternatives in Rule 23(b)." *Messner*, 669 F.3d at 808 (citation omitted). To qualify for class certification, the class representatives must show numerosity, commonality, typicality, and adequate representation. Fed. R. Civ. P. 23(a). Once the named Plaintiffs satisfy those four elements, they must show that the class action can be maintained under one of the three class types in Rule 23(b). Plaintiffs bring this motion under Rule 23(b)(2) because Defendants have "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).

For the reasons stated below, the Class meets all of the requirements of Rule 23(a) and (b)(2), and the Court should certify the Class.

#### 1. The Class Members are so numerous that joinder of all members is impracticable.

Rule 23(a)(1) requires that a class be "so numerous that joinder of all members is impracticable." Plaintiffs are not required to determine the exact number or identity of class members. *Dr. Robert L. Meinders D.C., Ltd v. Emery Wilson Corp.*, No. 14-CV-596-SMY-SCW, 2016 WL 3402621, at *3 (S.D. Ill. June 21, 2016) (citing *Marcial v. Coronet Ins. Co.*, 880 F.2d 954, 957 (7th Cir. 1989)). Courts are permitted to "make common sense assumptions in determining numerosity." *Id.* (citation omitted). "Although there is no number requiring or barring a finding of numerosity, a class including more than 40 members is generally believed to

be sufficient." *Barragan v. Evanger's Dog and Cat Food Co., Inc.*, 259 F.R.D. 330, 333 (N.D. Ill. 2009) (citation omitted). "[A] class can be certified without determination of its size, so long as it's reasonable to believe it [is] large enough to make joinder impracticable and thus justify a class action suit." *Arnold Chapman and Paldo Sign & Display Co. v. Wagener Equities, Inc.*, 747 F.3d 489, 492 (7th Cir. 2014) (citation omitted).

It is also well established that "the fluid nature of a plaintiff class—as in the prison litigation context—counsels in favor of certification of all present and future members." *Dunn v. Dunn*, No. 2:14CV601-MHT, 2016 WL 4718216, at *6 (M.D. Ala. Sept. 9, 2016) (internal quotation marks and citation omitted); *see also Clarkson v. Coughlin*, 145 F.R.D. 339, 346 (S.D.N.Y. 1993) ("The class action device is particularly well-suited in actions brought by prisoners due to the fluid composition of the prison population. Prisoners frequently come and go from institutions for a variety of reasons. Veteran prisoners are released or transferred, while new prisoners arrive every day. Nevertheless, the underlying claims tend to remain. Class actions therefore generally tend to be the norm in actions such as this." (internal quotation marks and citations omitted)); *Green v. Johnson*, 513 F. Supp. 965, 975 (D. Mass. 1981) (finding that a class had sufficient numerosity when "considered in light of the fact that the inmate population at these facilities is constantly revolving").

Currently, there are approximately 165 youth at LHS and CLS, which alone satisfies the numerosity requirement. Each Class Member is at risk of being subject to solitary confinement, mechanical restraints and pepper spray and thus equally subject to Defendants' unconstitutional policies and practices. Large numbers of youth are subjected to all of these practices. At LHS alone, at least three dozen cells (one entire housing unit with two wings and one wing of another unit) are devoted to solitary confinement, and CLS has part of a wing devoted to solitary

confinement. (Declaration of Laurence J. Dupuis ("Dupuis Decl.") ¶ 2 & Ex. A at 4, (budget request showing population of 40 in security cells as of Feb. 28, 2016).) Defendants routinely fill these wings to near capacity with prisoners for periods ranging from one week to several months. (*Id.* ¶¶ 5-10 & Ex. C (Midnight Population Breakdown Logs showing between 20-33 youth in solitary in September and October 2016).) Institution documents show nearly 200 uses of pepper spray on these youth from January to October 2016 alone. (*Id.* ¶¶ 11-12 & Ex. D (Chemical Agents & Incapacitating Devices Monthly Reports).) Without a class action, each Class Member would have to bring an action involving similar legal issues resulting in a waste of judicial resources.

The LHS and CLS populations are constantly in flux, in part because of the limited age range of the youth and the length of their sentences. In general, the youths' ages range from 14 to 18 years old, though some sentences may extend until the youth reaches age 25. Wis. Stat. § 938.34(4m). Youth generally receive one or two year disposition orders, while those with more serious offenses may receive up to a five year order. Wis. Stat. §§ 938.34(4h) & 938.538. As this action progresses, more members will be added to the class. Therefore, the fluidity and number of youth make joinder impracticable and the Class satisfies Rule 23(a)(1).

**2. Common questions of law and fact apply to the Class.**

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." A common question "must be 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). Specifically, there must be some "glue" holding all of the plaintiffs' claims together, which could be something like a "procedure" or "general policy." *Chicago Teachers Union,*

*Local No. 1 v. Board of Educ.*, 797 F.3d 426, 434 (7th Cir. 2015).

Courts have consistently held that "the aftermath of *Wal-Mart*" does not act as a barrier to certification of class actions "in cases involving prisoners' claims alleging a pattern and practice of conduct resulting in unconstitutional conditions of confinement." *Scott v. Clarke*, 61 F. Supp. 3d 569, 587 (W.D. Va. 2014) (citing several post-*Wal-Mart* decisions certifying prisoner litigation classes); *see also Hernandez v. Cty. Of Monterey*, 305 F.R.D. 132, 153–54 (N.D. Cal. 2015) (holding that the "Supreme Court's *Wal–Mart* decision reaffirmed that where a system-wide policy or practice is the cause of class members' injuries, plaintiffs satisfy the commonality requirement"); *Hughes v. Judd*, No. 8:12-CV-568-T-23MAP, 2013 WL 1821077, at *23 (M.D. Fla. Mar. 27, 2013) (finding commonality in conditions for juvenile detainees); *Olson v. Brown*, 284 F.R.D. 398, 410-11 (N.D. Ind. 2012) (finding commonality based on the Defendants' "standard course of conduct" regarding jail policies).

Named Plaintiffs and the Class Members seek injunctive and declaratory relief from systematic deficiencies within Defendants' policies and practices, which violate their Eighth Amendment and Fourteenth Amendment rights. Plaintiffs allege that all Class Members are, through system-wide application of Defendants' policies and the actions of LHS and CLS personnel, subject to cruel and unusual punishment and have been deprived of their substantive due process rights. (Compl. ¶¶ 143-208.)

Factual questions common to named Plaintiffs and all Class Members include, but are not limited to: whether youth are placed in solitary confinement for periods lasting more than a few hours; whether placing youth in solitary confinement causes mental, psychological, and emotional harm; whether placing youth "on the belt" in restraints for their limited daily time out of cell for weeks at a time causes physical, psychological, and emotional harm; whether youth in

solitary confinement have been deprived of a rehabilitative environment and rehabilitative services; and whether Defendants routinely use pepper spray to punish youth or in circumstances where it is not necessary to prevent an imminent threat of serious harm.

Legal questions common to named Plaintiffs and all Class Members include, but are not limited to: whether Defendant's policy of placing youth in solitary confinement violates the Eighth and/or Fourteenth Amendments to the United States Constitution; whether Defendants' policies and practices resulting in the excessive and/or punitive use of mechanical restraints and pepper spray violate the Eighth and/or Fourteenth Amendments to the United States Constitution; and whether Plaintiffs and other Class Members are entitled to the declaratory and injunctive relief they seek.

A class action will produce identical answers to these common questions of law and fact. Therefore, a class action is the appropriate mechanism to resolve Plaintiffs' claims.

Defendants' policies and practices with regard to the use of solitary confinement, restraints, and pepper spray are the "glue" establishing "that the commonality requirement [is] met in cases where prisoners alleg[e] system-wide practices and/or failures resulting in constitutional and statutory violations." *Holmes v. Godinez*, 311 F.R.D. 177, 220 (N.D. Ill. 2015). Even before discovery has commenced, Plaintiffs have significant proof of system-wide practices based on "formal prison policies," documents obtained from Defendants reflecting the extensive use of solitary confinement, handcuff and belt restraints and pepper spray. *See Holmes*, 311 F.R.D. at 219 (significant proof of existence of allegedly illegal practice may be based on, among other things, "formal prison policies, admissions by prison officials in discovery documents . . .").

Defendants produced records to Plaintiffs' counsel in response to requests under the

Wisconsin Open Records Law, Wis. Stat. §§ 19.31 *et seq.* These records reflect extensive use of solitary confinement. Approximately 15-20% of the entire population of LHS and CLS were in "security" status in the Krueger and Roosevelt boys' solitary confinement units and solitary cells in the Wells girls' unit throughout the months of September and October 2016, as reflected in the Midnight Population Breakdown Logs produced by Defendants. (Dupuis Decl. ¶¶ 5-10 & Ex. C.) Defendants' budget request for the next biennium reflects a population of 40 youth in the disciplinary units. (*Id.* ¶ 2 & Ex. A.) Defendants produced disciplinary records for one of the named plaintiffs showing that he was sentenced to solitary confinement multiple times, in either the Kruger unit or the Roosevelt unit, for up to 72 days at one time, and for a variety of disciplinary infractions. (*Id.* ¶ 14 & Ex. E.)

Regulations for the Wisconsin Department of Corrections ("DOC") expressly permit the use of restraints as a matter of course for juveniles in solitary confinement. Wisconsin Adm. Code § DOC 376.09 governs use of mechanical restraints (including "handcuffs with restraining belt or chain") and authorizes use on "a youth who is in security status while the youth is outside the place of confinement." Disciplinary records for one of the named plaintiffs illustrate Defendants' restraint practices. The named plaintiff was expressly required to be "on restraints while out of cell," "on belt," "in waist belt and leg irons (double locked)," etc., numerous times while in solitary confinement. (Dupuis Decl. ¶ 15 & Ex. E.)

Documents produced by Defendants show nearly 200 uses of pepper spray on youth at LHS and CLS from January to October 2016 alone. (*Id.* ¶¶ 11-12 & Ex. D (Chemical Agents & Incapacitating Devices Monthly Reports).) Defendants' policies expressly permit the use of pepper spray in instances in which there is no immediate danger to the safety of youth or staff, such as to "enforce a DOC rule, a posted policy or procedure or an order of staff member." (*Id.* ¶

17.) Disciplinary records for one of the named plaintiffs also reflect Defendants' excessive use of pepper spray. (*Id*. ¶ 16 & Ex. E.)

This evidence is sufficient to demonstrate the existence of the alleged policies and practices regarding solitary confinement, mechanical restraints and pepper spray that generate the common questions of law and fact warranting class certification.

**3. The claims of the representative Plaintiffs are typical of the claims of the Class Members.**

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." A representative plaintiff's claims are typical if they "aris[e] from the same event or practice or course of conduct that gives rise to the claims of other class members" and are based on the same legal theory. *Arreola v. Godinez*, 546 F.3d 788, 798 (7th Cir. 2008) (citation omitted). The claims do not have to be factually identical; instead, the focus is on the defendant's conduct and plaintiff's legal theory. *Id.*; *see also De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983), *overruled on other grounds by Green v. Mansour*, 474 U.S. 64 (1985), ("The typicality requirement may be satisfied even if there are factual distinctions between the claims of the named plaintiffs and those of other class members." (citation omitted)). In prisoner class actions, "the likelihood of some range of variation in how different groups of new detainees were treated does not undermine the fact that the claims of each class share a common factual basis and legal theory." *Young v. Cnty. of Cook*, No. 06 C 552, 2007 WL 1238920, at *6 (N.D. Ill. Apr. 25, 2007); *see also Blihovde v. St. Croix Cty.*, 219 F.R.D. 607, 617 (W.D. Wis. 2003) (holding that, in prisoner strip-search cases, "there will always be at least some factual differences among the circumstances of each plaintiff.").

The named Plaintiffs are youth currently or recently subject to Defendants' policies and practices regarding solitary confinement, mechanical restraints while in solitary confinement,

and pepper spray. For instance, one of the named plaintiffs has spent much of his time at LHS in solitary confinement. (Dupuis Dec. ¶ 14 & Ex. E.) When in solitary confinement, the named plaintiff is often "on the belt." (*Id.* ¶ 15.) During his stay he has been pepper sprayed multiple times. (*Id.* ¶ 16.)

Minor factual differences between the named Plaintiffs and other Class Members do not undermine the uniformity of Defendants' underlying unconstitutional policies and practices, to which all prisoners at LHS and CLS are equally subject. While the lengths of solitary confinement and the frequency of exposure to restraints and pepper spray may differ in details, all the Class Members reasonably fear that they could be placed in solitary confinement or subject to the use of mechanical restraints and pepper spray in the future.

The representative Plaintiffs' experiences are by no means unique, as documents produced by Defendants in response to open records requests reveal. Dozens of children are in solitary confinement at any given time. (Dupuis Decl. ¶¶ 5-10 & Ex. C (Midnight Population Breakdown Logs showing between 20-33 youth in solitary in Sept & Oct 2016).) DOC regulations expressly permit the use of belt and handcuff restraints while youth in solitary are out of their cells. Wis. Adm. Code § DOC 376.09. Guards have used pepper spray nearly 200 times from January 2016 to October 2016, (*Id.* ¶¶ 11-12 & Ex. D (Chemical Agents & Incapacitating Devices Monthly Reports)), and Defendants' written policy expressly permits its use for infractions as minor as disobeying an order, regardless of whether such disobedience creates any risk of harm, (*Id.* ¶ 17.)

In addition, the named Plaintiffs' constitutional legal theories are identical to the legal theories that other Class Members could assert to enjoin the Defendants' practices. All incarcerated juveniles have a right to a rehabilitative environment and rehabilitative services

under the Fourteenth Amendment's Due Process Clause, *see Nelson v. Heyne*, 491 F.2d 352, 358 (7th Cir. 1974), a right that is violated by Defendants' use of solitary confinement, mechanical restraints and pepper spray. They also have a right, under the Eighth Amendment, to be free from harmful conditions that are imposed with deliberate indifference to the risk of harm, as well as the right, under both the Fourteenth and Eighth Amendments, to be free from excessive uses of force.

Class Members are subject to the same policies and practices that Representative Plaintiffs have experienced, so the typicality requirement is satisfied.

**4. The named Plaintiffs will fairly and adequately protect the interests of the Class Members.**

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." This prerequisite turns on two parts: "(1) the adequacy of the named plaintiffs as representatives of the proposed class's myriad members, with their differing and separate interests, and (2) the adequacy of the proposed class counsel." *Gomez v. St. Vincent Health, Inc.*, 649 F.3d 583, 592 (7th Cir. 2011) (citation omitted).

In order to be adequate representatives of the class, the plaintiffs must demonstrate that (1) they will fairly and adequately represent the interests of the class; (2) their claims are not in conflict with those of the proposed class; and (3) they have a sufficient interest in the outcome of the case. *Bauer v. Kraft Foods Glob., Inc.*, 277 F.R.D. 558, 562 (W.D. Wis. 2012); *see also Retired Chicago Police Ass'n v. City of Chicago*, 7 F.3d 584, 598 (7th Cir. 1993) (holding that the class members cannot "have antagonistic or conflicting claims" (internal quotation marks and citation omitted)).

In the present case, Plaintiffs have a common interest in enjoining Defendants' unconstitutional policies and practices of routine solitary confinement, use of mechanical

restraints while in solitary confinement, and excessive use of pepper spray. Plaintiffs do not have conflicting interests with other Class Members. They do not seek individualized damages awards in this action, only injunctive and declaratory relief. Plaintiffs also have a sufficient interest in the outcome of the case because they are currently subject to or reasonably fear future use of routine and excessive solitary confinement, pepper spray, and mechanical restraints. (Compl. ¶¶ 94-132.)

Plaintiffs' attorneys are also experienced counsel. Plaintiffs are represented by attorneys from the American Civil Liberties Union Wisconsin Foundation, the Juvenile Law Center, and Quarles & Brady LLP. Counsel have many years of experience in civil rights and class action litigation, including prison class actions involving plaintiffs in Defendants' custody. In previous cases, counsel has been found competent to represent the Class. Given that counsel is experienced and qualified in class actions involving prison litigation, they are competent to represent Plaintiffs.

**B. Plaintiffs meet the requirements of Rule 23(b)(2) because injunctive relief is the only remedy available to stop the School's unconstitutional practices.**

To be certified, a class must also meet one of the subsections of Rule 23(b). Subsection (b)(2) requires 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) is also the "appropriate rule to enlist when the plaintiffs' primary goal is not monetary relief, but rather to require the defendant to do or not do something that would benefit the whole class." *Chicago Teachers Union, Local No. 1 v. Bd. of Educ. of City of Chicago*, 797 F.3d 426, 441(7th. Cir. 2015); *see also Walmart*, 131 S.Ct. at 2557.

It is well established that civil rights actions are classic 23(b)(2) suits because "they seek classwide structural relief that would clearly redound equally to the benefit of each class member." *Marcera v. Chinlund*, 595 F.2d 1231, 1240 (2d Cir. 1979), *vacated on other grounds*, 442 U.S. 915 (1979); *see, e.g.*, A. Conte & H. Newburg, *Newberg on Class Actions* § 25.20 (4th ed. 2002). Further, Rule 23(b)(2) classes are "especially appropriate vehicles for civil rights actions seeking such declaratory relief for prison and hospital reform" because of the potential for classwide resolution. *Coley v. Clinton*, 635 F.2d 1364, 1378 (8th Cir. 1980). Courts often certify class actions where prisoners challenge prison policies and conditions. *See Unknown Parties v. Johnson*, 163 F. Supp. 3d 630, 643 (D. Ariz. 2016) (certifying a class where prisoners challenged "unconstitutional conditions of confinement stemming from [defendants'] systemic policies and practices."); *Dockery v. Fischer*, No. 3:13-CV-326-WHB-JCG, 2015 WL 5737608, at *12 (S.D. Miss. Sept. 29, 2015) (certifying a class where prisoners challenged conditions of confinement); *Butler v. Suffolk Cty.*, 289 F.R.D. 80, 101 (E.D.N.Y. 2013) (certifying a class where prisoners challenged inhumane conditions of a prison); *Meisberger v. Donahue*, 245 F.R.D. 627, 631 (S.D. Ind. 2007) (certifying a class where prisoners challenged a property policy).

Here, certification is appropriate because Plaintiffs allege that Defendants, through their policies and practices, have acted to deprive Plaintiffs of their Eighth Amendment and Fourteenth Amendment rights. Although there are some factual distinctions among the experiences of named Plaintiffs and other potential Class Members, it is the Defendants' system-wide practice of routine solitary confinement and excessive use of pepper spray and mechanical restraints that is at issue in this case. Plaintiffs and all Class Members suffer from the same systematic deprivation of rights caused by these policies and practices. Plaintiffs do not seek

individualized monetary damages or fact-specific equitable relief; instead the Class seeks uniform injunctive relief from Defendants' unconstitutional policies and practices. This Court can efficiently resolve the unconstitutional use of solitary confinement, restraints and pepper spray against juveniles through a class action and by granting appropriate and systematic equitable relief.

## IV. CONCLUSION

For the reasons set forth above, the Class meets all of the requirements of Rule 23(a) and (b)(2), and the Court should certify the Class.

Dated this 24th day of January, 2017.

ACLU OF WISCONSIN FOUNDATION
Laurence J. Dupuis, SBN 1029261
Karyn L. Rotker, SBN 1007719
R. Timothy Muth, SBN 1010710
207 E. Buffalo Street, Suite 325
Milwaukee, WI 53202
Telephone: (414) 272-4032
Facsimile: (414) 272-0182
ldupuis@aclu-wi.org
krotker@aclu-wi.org
tmuth@aclu-wi.org

JUVENILE LAW CENTER
Jessica Feierman
Karen Lindell
Marsha Levick
The Philadelphia Building
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
Telephone: (215) 625-0551
jfeierman@jlc.org
klindell@jlc.org
mlevick@jlc.org

QUARLES & BRADY LLP

s/ Rachel A. Graham

Matthew J. Splitek, SBN 1045592
Rachel A. Graham, SBN 1069214
33 East Main Street, Suite 900
Madison, WI 53703
Telephone: (608) 251-5000
matthew.splitek@quarles.com
rachel.graham@quarles.com
Emily L. Stedman, SBN 1095313
Zachary T Eastburn, SBN 1094676
411 East Wisconsin Avenue, Suite 2400
Milwaukee, WI 53202-4426
Telephone: (414) 277-5000
emily.stedman@quarles.com
zachary.eastburn@quarles.com

Attorneys for Plaintiffs