IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

The Georgia Advocacy Office, et al.,

Plaintiffs,

v. Civil No.: 1:17-CV-3999-MLB

State of Georgia, et al.,

Defendants.

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Table of Contents

I. Introduction 1
II. Statement of Facts 2
A. Unnecessary Segregation 3
B. Unequal Educational Opportunities 7
III. Legal Argument 9
A. Legal Standard 9
B. Class Certification is Common in ADA Title II Cases 11
C. The Proposed Class Satisfies the Rule 23(a) Requirements for Class Certification 14
1. Ascertainability 14
2. The Class is so Numerous that Joinder is Impractical 15
3. Members of the Class Share Common Questions of Law and Fact 17
4. The Claims of the Named Representatives are Typical of the Class 23
5. The Class Representatives Will Fairly and Adequately Represent the Interests of the Class 25
D. The Proposed Class Meets the Standards for Class Certification under Rule 23(b)(2) 27
IV. Conclusion 29

Table of Authorities

Cases

A.R. by & through Root v. Sec'y Fla. Agency for Health Care Admin., 769 F. App'x 718 (11th Cir. 2019) 14

A.R. v. Dudek, 2015 WL 11143082 (S.D. Fla. Aug. 7, 2015) 14, 15

Amchem Products, Inc., 521 U.S. 591 (1997) 10, 27

Amgen Inc. v. Conn. Ret. Plans & Tr. Funds, 568 U.S. 455 (2013) 10

Anderson v. Garner, 22 F.Supp.2d 1379 (N.D. Ga. 1997) 16

Ass'n for Disabled Americans v. Amoco Oil Co., 211 F.R.D. 457 (S.D. Fla. 2002) 18

Ault v. Walt Disney World Co., 692 F.3d 1212 (11th Cir. 2012) 23, 24

Baby Neal ex rel. Kanter v. Casey, 43 F.3d 48 (3rd Cir. 1994) 17, 27, 29

Ball v. Kasich, 307 F. Supp. 3d 701 (S.D. Ohio 2018) 12

Belton v. Georgia, 2011 WL 925565 (N.D. Ga. Mar. 14, 2011) 11

Campos v. ChoicePoint, Inc., 237 F.R.D. 478 (N.D. Ga. 2006) 15

Cherry v. Dometic Corp., 986 F.3d 1296 (11th Cir. 2021) 9, 14

Cobb et al. v. Georgia Department of Community Supervision et al., No. 1:19-CV-03285 (N.D. Ga. Oct. 13, 2022) 11

Cox v. Am. Cast Iron Pipe Co., 784 F.2d 1546 (11th Cir. 1986) 16

Dunakin v. Quigley, 99 F. Supp. 3d 1297 (W.D. Wash. 2015) 12

Dunn v. Dunn, 318 F.R.D. 652 (M.D. Al. 2016) 12

East Texas Motor Freight Sys. v. Rodriguez, 431 U.S. 395 (1977) 24

Fitzmorris et al v. NH Dept. of Health and Human Services, Commissioner et al, 2023 WL 8188770 (D.N.H. Nov. 27, 2023) 12, 13, 14

G.T. by Michelle v. Bd. of Educ. of Cnty. of Kanawha, 2021 WL 3744607 (S.D.W. Va. Aug. 24, 2021) 13, 19

Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147 (1982)....................24, 26

Griffin v. Carlin, 755 F.2d 1516 (11th Cir. 1985) 26

Hoffer v. Jones, 323 F.R.D. 694 (N.D. Fla. 2017)....................12

J.N. v. Oregon Dep't of Educ., 2021 WL 408093 (D. Or. Feb. 5, 2021) 13, 19

J.R. v. Oxnard School District, 2019 WL 4438243 (C.D. Cal. July 30, 2019)..13, 19

July v. Bd. of Sch. Comm'rs, 291 F.R.D. 653 (S.D. Ala. 2013) 10

Justice v. Rheem Mfg. Co., 318 F.R.D. 687 (S.D. Fla. 2016) 26

Karhu v. Vital Pharms., Inc., 621 F. App'x 945 (11th Cir. 2015) 14

Kenneth R. ex rel. Tri-Cnty. CAP, Inc./GS v. Hassan, 293 F.R.D. 254 (D.N.H. 2013) 12, 13, 14, 20

Kilgo v. Bowman Transp., Inc., 789 F.2d 859 (11th Cir. 1986) 16

Kincade v. General Tire and Rubber Co., 635 F.2d 501 (5th Cir. 1981) 10

Kornberg v. Carnival Cruise Lines, Inc., 741 F.2d 1332 (11th Cir. 1984)..............24

Lane v. Kitzhaber, 283 F.R.D. 587 (D. Or. 2012) 12, 18, 20

Meza by & through Hernandez v. Marstiller, 2023 WL 2648180 (M.D. Fla. Mar. 27, 2023)....................9, 12, 14, 16, 18

Murray v. Auslander, 244 F.3d 807 (11th Cir. 2001) 24

Olmstead v. L.C., 527 U.S. 581 (1999)....................11, 13

Oster v. Lightbourne, 2012 WL 685808 (N.D. Cal. March 2, 2012)....................18

Parent/Pro. Advoc. League v. City of Springfield, Massachusetts, 934 F.3d 13 (1st Cir. 2019)....................12

Parsons v. Ryan, 754 F.3d 657 (9th Cir. 2014) 17, 18, 23

Piazza v. Ebsco Industries, Inc., 273 F.3d 1341 (11th Cir. 2001) 25

Prado-Steiman v. Bush, 221 F.3d 1266 (11th Cir.2000) 23, 26

S.S. by S.Y. v. City of Springfield, Massachusetts, 318 F.R.D. 210 (D. Mass. 2016) 12

Steward v. Janek, 315 F.R.D. 472 (W.D. Tex. 2016) 12, 20, 28

Thompson v. Jackson, 2018 WL 5993867 (N.D. Ga. Nov. 15, 2018) 14, 15, 25

Thorpe v. D.C., 303 F.R.D. 120 (D.D.C. 2014) 12

Valley Drug Co. v. Geneva Pharmaceuticals, Inc., 350 F.3d 1181 (11th Cir. 2003) 9, 25

Vega v. T-Mobile USA, Inc., 564 F.3d 1256 (11th Cir. 2009). 9, 10, 16, 17

Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011) 2, 10, 13, 17, 18, 23, 27

Walters v. Reno, 145 F.3d 1032 (9th Cir. 1998) 29

Williams v. Mohawk Indus., Inc., 568 F.3d 1350 (11th Cir. 2009) 24

Other Authorities

28 C.F.R. § 35.130 11

7A Wright, Miller & Kane, *Federal Practice & Procedure* § 1775 (2d ed. 1986) .29

Fed. R. Civ. P. 23 .... passim

Fed. Rule Civ. P. 23(b)(2), Advisory Committee Notes, 1966 amendments............. 28

Fourteenth Amendment to the United States Constitution 1, 21

Ga. Comp. R. & Regs. 160-4-7-.15 .... 2, 3, 6, 15

Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794 .... passim

Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132 .passim

I. Introduction

This action challenges Defendants' administration of a segregated network of unequal and inferior facilities and classrooms used to serve students with disability-related behavioral issues. Defendants' operation of this program, known as the Georgia Network for Educational and Therapeutic Support ("GNETS"), violates Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132, Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794, and the Fourteenth Amendment to the United States Constitution.

The unnecessary segregation of students with disability-related behaviors is the direct result of Defendants' administration of GNETS in a manner that fails to ensure an adequate array of services and supports in zoned schools[1] and fails to reasonably modify existing policies and practices to accommodate students with disability-related behaviors. Defendants' policies and practices also deny GNETS students the opportunity to benefit from educational services in a manner equal to that afforded other students. Each failure constitutes a common practice that is a common cause of Individual Plaintiffs' and class members' injuries. A single injunction requiring Defendants to provide necessary services in integrated settings to the maximum extent appropriate as required by federal law could remedy these

---

[1] A zoned school is a local or neighborhood school that a student would normally attend based on where the student lives.

violations "in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

Plaintiffs have moved for an order certifying the following class:

> All students who are now, or in the future will be, in GNETS or at serious risk of being placed in GNETS. For purposes of class certification, a student is "at serious risk" of being placed in GNETS if the student has been referred to GNETS.

Plaintiffs submit this Memorandum of Law in support of their Motion for Class Certification. Plaintiffs have satisfied all relevant requirements of Fed. R. Civ. P. 23. Thus, certification of the Plaintiff Class is appropriate to resolve the common contentions and to systemically redress the common injury caused by Defendants' discriminatory conduct.

II. Statement of Facts

Individual Plaintiffs are Georgia students with disabilities that substantially limit their major life activities, including learning, reading, concentrating, communicating, and developing and maintaining relationships. Report of Judy Elliott, Ph.D. ("Elliott Report") at 26-29 (attached as Exhibit B). Because they exhibit disability-related behaviors, Individual Plaintiffs have been placed in, or are at risk of being placed in, GNETS,[2] a statewide program that segregates them and

[2] GNETS was established in 1970 – 20 years before enactment of the ADA – as a statewide program for students identified as having behavioral support needs due to their disabilities. Compl. ¶¶ 2, 4; Ga. Comp. R. & Regs. 160-4-7-.15 (the "GNETS Rule").

other students in separate buildings (usually referred to as "centers") or in separate wings of zoned schools on account of their disability-related behaviors.

The evidence developed in this case overwhelmingly demonstrates that this segregation is unnecessary and denies GNETS students educational opportunities equal to that provided to non-disabled students. At the very least, as discussed in Section III below, the evidentiary threshold for class certification is met.

A. Unnecessary Segregation

With appropriate supports, the large majority of students in GNETS could be educated alongside their non-disabled peers in zoned schools.[3] Elliott Report at 1-2, 12; Report of Kimm R. Campbell, MSW, LCSW ("Campbell Report") at 13 (attached as Exhibit C). In addition, although the state regulation governing GNETS states that admission to GNETS should occur only after less restrictive placements have been proven unsuccessful, Ga. Comp. R. & Regs. § 160-4-7-.15(3)(c), this requirement is frequently not met. Elliott Report at 13-16; Campbell Report at 14.

[3] Plaintiffs do not argue that all GNETS students can or should be placed full-time in regular classrooms in zoned schools. For example, many GNETS students may need to receive some services in what are known as self-contained classrooms, which are classrooms separate from general education classrooms but still within a zoned school. Even if they spend some time in self-contained classrooms, they interact at other times during the school day with students without disabilities, such as during physical education and music classes, during lunch, or as part of extracurricular activities.

Moreover, Defendants' policies and practices incentivize local districts and zoned schools to send their students with disability-related behaviors to GNETS and away from their non-disabled peers, instead of providing them with the services that would allow them to remain and thrive in integrated settings. Elliott Report at 23; Campbell Report at 14. These practices include Defendants' failure to give local districts the funding necessary to provide needed disability-related services in zoned schools. Campbell Report at 14. Instead, Defendants spend more than $60 million dollars annually to fund the segregated GNETS program. *See* The Governor's Budget Report, Amended Fiscal Year 2022-23 and Fiscal Year 2023 at page 196 (available at www. https://opb.georgia.gov/afy-2022-and-fy-2023-governors-budget-report-0) (relevant excerpt attached as Exhibit D); Campbell Report at 14.

Despite receiving tens of millions of state and federal dollars and its stated therapeutic goals, "GNETS does not provide the individualized support students with disability-related behaviors require as is the accepted practice." Elliott Report at 13. *See generally* Elliott Report at 12-17. Dr. Elliott's review of a statistically significant random sample of GNETS' student records found that crucial therapeutic services either are not provided to GNETS students, or they are provided insufficiently. For example, Dr. Elliott found that students' Individualized Education Plans ("IEPs")

> "were very different from what is customary for students with significant behavior issues. The student IEPs I reviewed did not mention counseling, psychological services, social work services, or services provided by behavior specialists. No student IEP mentioned any 'related services' or supplemental services designed to improve behavior." . . . Students with disability-related behaviors like those in GNETS customarily receive services from school psychologists, behavior specialists, social workers, and counselors, who have specialized training. I saw no evidence that such professionals are involved in providing needed services to GNETS students.

Elliott Report at 13-14.

A primary reason for the failure to provide needed services is staffing: GNETS lacks necessary therapeutic staff, and the "teachers at GNETS are ill-prepared to handle the task of educating students in GNETS." Elliott Report at 18; *see generally* Elliott Report at 17-19. According to a 2022 Georgia Department of Education (GaDOE) report, the 24 GNETS programs, which are supposed to provide services to approximately 3,000 students, employed just 14 behavior specialists, eight psychologists, and four counselors. Elliott Report at 17. As Dr. Elliott stated in her report:

> Behavior specialists and psychologists, who are key providers of services to students with significant disability-related behavior, are not present at GNETS locations anywhere near the number necessary. Moreover, those school psychologists and behavior specialists who are present in GNETS spend their time on assessments, not on service delivery or on helping teachers create a therapeutic environment.

Elliott Report at 18.

D.J., the parent of Plaintiff W.J., testified that they made "multiple complaints over a prolonged period of time" that W.J. was not receiving therapeutic services required by his IEP. GAO Litigation, Deposition of D.J. at 76:5-6 (excerpt attached as Exhibit E).

> The explanation varied depending on what it [the service] was. But one example was that they were short staffed and that person – they did not have the appropriate staff. . . employed or present physically. They may have been somewhere else or they did not have that position filled. Short staffed or understaffed was a common explanation over several circumstances for W.J. not receiving certain interactions or certain services.

Id. at 76:23-77:9.

Furthermore, despite students' obvious need for mental health services, there is little collaboration between Defendants GaDOE and the Department of Behavioral Health and Developmental Disabilities (DBHDD), or between GaDOE and outside professionals, to ensure that such services are provided in either GNETS or zoned schools. Elliott Report at 17; *United States v. State of Georgia* (hereafter "DOJ Litigation"), Deposition of Matthew Jones at 301:23-304:17 (excerpt attached as Exhibit F). This lack of collaboration exists even though state rules explicitly require that the GNETS program "collaborate with professionals from a variety of agencies to enhance students' social, emotional, behavioral and academic development," GNETS Rule at 160-4-7-.15(2)(e), and despite the existence of many effective practices that could facilitate integration. *See* Campbell

Report at pages 10-15 (describing Medicaid-eligible services that could facilitate integration if leveraged appropriately, including IC3, Apex, and mental health diagnostic assessments).

Even worse, DBHDD has prevented some of its school-based mental health programs from serving GNETS students. For example, DBHDD's Apex program, which imbeds a clinician in schools to conduct individual and group therapy, Campbell Report at 15-17, is not allowed to operate in any of the GNETS centers. *See* DOJ Litigation, Rule 30(b)(6) deposition of Dante McKay at 61:18-63:5 (excerpt attached as Exhibit G); Campbell Report at 16.

B. Unequal Educational Opportunities

In addition to unnecessarily segregating GNETS students, Defendants deny them educational opportunities equal to those provided to non-disabled students. Dr. Elliott, in addition to her review of GNETS students' records, made in-person visits to approximately 116 GNETS classrooms across 22 GNETS sites. Elliott Report at 5. According to Dr. Elliott:

> The instruction and educational opportunities in the GNETS program are significantly inferior to the instruction and opportunities typically provided to general education students and significantly inferior to the instruction and opportunities received by students with disabilities in their zoned schools.

Id. at 2. In addition to the deficiencies discussed in Section II.A. above (e.g. lack of needed therapeutic staff), there are several other systemic causes for the unequal

and inferior education received by GNETS students on a class-wide basis, including:

- The quality of instruction is poor, and there is a gross overreliance on computers to "teach" the students. "I observed little interactive instruction by classroom teachers with individuals or groups of students. Mostly, I saw students working on computers, with little to no involvement with the teacher or other students." Elliott Report at 25; GAO Litigation, Deposition of R.G. at 63:23 (describing complaints of his son "just sitting in a desk on a computer all day long") (excerpt attached as Exhibit H). In addition, a GNETS director testified that students from up to six grades may be lumped together in a single classroom. DOJ Litigation, Deposition of Jacqueline Neal, Ph.D., at 73:1-8 (excerpt attached as Exhibit I).

- Many GNETS students, "especially at the GNETS centers … often do not get a full day of instruction." Elliott Report at 25.

- The physical facilities are deficient. "The majority of centers are unwelcoming and poorly lit. They are more like institutions than schools. The centers I visited were fenced in, some with barbed wire, and some had police cars and officers on site. Indeed, both outside and inside, most have the feel of juvenile corrections facilities." Elliott Report at 3.

- Non-academic amenities, including extracurricular activities, athletics, clubs, gymnasiums, and media centers, are either not available to GNETS students or available on a very limited basis. Elliott Report at 3, 25. GAO Litigation, Deposition of J.A at 85:9-16 (no extracurricular activities at GNETS center) (excerpt attached as Exhibit J); GAO Litigation, Deposition of R.G. at 26:16-27:23 (no extracurricular activities, including sports teams, at GNETS center) and 63:25 (no gym at GNETS center) (excerpt attached as Exhibit H); GAO Litigation, Deposition of D.J. at 24:7-13 ("My understanding is that, with him in GNETS, he is not allowed to participate in any school extracurricular activities.") (excerpt attached as Exhibit E).

III. Legal Argument

A. Legal Standard

Plaintiffs, as the party seeking class certification, bear the burden of demonstrating that the requirements for class certification are met. *Valley Drug Co. v. Geneva Pharmaceuticals, Inc.*, 350 F.3d 1181, 1187 (11th Cir. 2003). In addition, "[c]lass representatives bear the burden to establish that their proposed class is 'adequately defined and clearly ascertainable,' and they must satisfy this requirement before the district court can consider whether the class satisfies the enumerated prerequisites of Rule 23(a)." *Meza by & through Hernandez v. Marstiller*, 2023 WL 2648180, at *7 (M.D. Fla. Mar. 27, 2023), *quoting Cherry v. Dometic Corp.*, 986 F.3d 1296, 1302 (11th Cir. 2021).

To meet the requirements of Rule 23(a), Plaintiffs must show that (1) the class is so numerous that joinder of all members is impracticable; (2) class members share common questions of law or fact; (3) the claims or defenses of the named representatives are typical of those of class members; and (4) the persons representing the class are able to fairly and adequately represent the interests of class members. Fed. R. Civ. P. 23(a). *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1265 (11th Cir. 2009).

Once compliance with Rule 23(a) is established, Plaintiffs must satisfy at least one of the three subdivisions of Rule 23(b). *Amchem Products, Inc v. Windsor*, 521

U.S. 591, 614 (1997); *Vega*, 564 F.3d at 1265. As discussed below, Plaintiffs meet the requirements of Rule 23(b)(2), which allows 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). "Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples" of candidates for Rule 23(b)(2) certification. *July v. Bd. of Sch. Comm'rs*, 291 F.R.D. 653, 657–58 (S.D. Ala. 2013) (*citing Amchem Products, Inc.* 521 U.S. at 614); *see also Kincade v. General Tire and Rubber Co*., 635 F.2d 501, 506 n.6 (5th Cir. 1981) ("(S)ubdivision (b)(2) was added to Rule 23 in 1966 primarily to facilitate the bringing of class actions in the civil rights area").

Rule 23 requires a careful analysis of whether each element has been met. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350-51 (2011). Such an analysis, however, does not grant license for "free-ranging merits inquiries at the certification stage" but rather allows merits determinations only insofar as they are relevant to evaluating Rule 23 prerequisites for class certification. *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013).

B. Class Certification is Common in ADA Title II Cases

Courts commonly certify classes in cases challenging noncompliance with Title II of the ADA.[4] This is particularly true in cases involving Title II's mandate that services be provided in the most integrated setting appropriate to individuals' needs. *See Olmstead v. L.C.*, 527 U.S. 581 (1999); 28 C.F.R. § 35.130(d) ("A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities"). Certification is common in Title II cases precisely because, as here, the claims focus on the defendants' systemic practices, not the plaintiffs' individual circumstances. *See Cobb et al. v. Georgia Department of Community Supervision et al.,* No. 1:19-CV-03285 (N.D. Ga. Oct. 13, 2022) (certifying a class of all present and future deaf or hard of hearing people supervised by GDCS.") (attached to this Memorandum as Exhibit K); *Belton v. Georgia,* 2011 WL 925565, at *1 (N.D. Ga. Mar. 14, 2011) (certifying a class of "deaf Georgia citizens who are, or

[4] *See* Schwartz & Rucker, *The Commonality of Difference: A Framework for Obtaining Class Certification in ADA Cases After Wal-Mart*, 71 Syracuse L. Rev. 841, 901 n.6 (2021) (List of Selected ADA Class Action Cases, Ctr. for Pub. Representation, available at https://www.centerforpublicrep.org/wp-content/uploads/ADA-Class-Certification-Case-List.2020.pdf); ADA Class Action Cases, available at https://www.centerforpublicrep.org/wp-content/uploads/ADA-Class-Action-Cases.pdf; Institutional Class Action Cases, available at https://www.centerforpublicrep.org/wp-content/uploads/Institutional-Class-Action-Cases.pdf.

will be in need of public mental health services, but who cannot receive therapeutic benefit from said services due to the Georgia Department of Behavioral Health and Developmental Disabilities' lack of accommodations for the Deaf."); *Meza,* 2023 WL 2648180, at *13; *Hoffer v. Jones,* 323 F.R.D. 694, 700 (N.D. Fla. 2017); *Dunn v. Dunn*, 318 F.R.D. 652, 683–84 (M.D. Al. 2016).[5]

ADA Title II integration cases, like the instant case, focus on the standard conduct of the defendants and do not depend on the individualized circumstances of class members. Classes are certified in such cases because they raise common issues susceptible to a common resolution through a single injunction: the modification of the defendants' program to provide services in the most integrated setting. Similarly, Plaintiffs here seek a single injunction that would require Defendants to make reasonable modifications to ensure that all class members have access to appropriate mental health and other therapeutic services in the most integrated setting. This Court can, "in one stroke," *Wal-Mart Stores, Inc.*, 564 U.S.

---

[5] For cases outside of the Eleventh Circuit where courts certified classes in Title II cases, *see Fitzmorris et al v. NH Dept. of Health and Human Services, Commissioner et al,* 2023 WL 8188770 (D.N.H. Nov. 27, 2023); *Ball v. Kasich*, 307 F. Supp. 3d 701 (S.D. Ohio 2018); *Steward v. Janek*, 315 F.R.D. 472 (W.D. Tex. 2016); *Dunakin v. Quigley*, 99 F. Supp. 3d 1297 (W.D. Wash. 2015); *Thorpe v. D.C.*, 303 F.R.D. 120 (D.D.C. 2014); *Kenneth R. ex rel. Tri-Cnty. CAP, Inc./GS v. Hassan*, 293 F.R.D. 254 (D.N.H. 2013); *Lane v. Kitzhaber*, 283 F.R.D. 587 (D. Or. 2012); *but see S.S. by S.Y. v. City of Springfield, Massachusetts,* 318 F.R.D. 210 (D. Mass. 2016), *aff'd sub nom. Parent/Pro. Advoc. League v. City of Springfield, Massachusetts,* 934 F.3d 13 (1st Cir. 2019).

at 350, ensure that class members avoid needless segregation in separate GNETS facilities and classrooms and have the opportunity to be educated with their non-disabled peers.

The long line of decisions granting class certification in cases challenging systemic practices that segregate or otherwise discriminate against persons with disabilities includes similar cases involving educational policies or placements for students with disabilities. *See J.N. v. Oregon Dep't of Educ.*, 2021 WL 408093 (D. Or. Feb. 5, 2021); *G.T. by Michelle v. Bd. of Educ. of Cnty. of Kanawha*, 2021 WL 3744607 (S.D.W. Va. Aug. 24, 2021), appeal pending, No. 21-260 (4th Cir.); *J.R. v. Oxnard School District*, 2019 WL 4438243 (C.D. Cal. July 30, 2019). As these and other cases certifying classes in Title II/Section 504 cases make clear, *Olmstead*/unnecessary segregation claims must "necessarily be analyzed on a system-wide basis," *Fitzmorris* at *23, because whether integrated placements can be reasonably accommodated must account for the "resources available to the State and the needs of others with [disabilities]." *Olmstead* at 607; *see also Kenneth R.*, 293 F.R.D. at 262 n.3 (*Olmstead* cases well-suited to class treatment because they necessitate "an inquiry into the needs of all persons served by the state's mental health system," which turns on class-wide proof). The holdings and reasoning of those cases are applicable here and strongly support certifying the Plaintiff Class.

C. The Proposed Class Satisfies the Rule 23(a) Requirements for Class Certification

1. Ascertainability

As a threshold requirement, courts in the Eleventh Circuit address whether a class is ascertainable, i.e., whether the class can be defined with reference to objective criteria. *Meza*, 2023 WL 2648180, at *7 (*citing Cherry*, 986 F.3d at 1302). The level of precision, or 'definiteness,' required is lower in 23(b)(2) cases. *A.R. v. Dudek*, 2015 WL 11143082, at *5 (S.D. Fla. Aug. 7, 2015), report and recommendation adopted in relevant part, rejected in part, 2016 WL 3766139 (S.D. Fla. Feb. 29, 2016), *aff'd sub nom*., *A.R. by & through Root v. Sec'y Fla. Agency for Health Care Admin.,* 769 F. App'x 718 (11th Cir. 2019) (*citing Kenneth R.* at 263–64 (D.N.H. 2013).

In establishing ascertainability, a "plaintiff can rely upon a defendant's business records to identify class members," *Thompson v. Jackson*, 2018 WL 5993867, at *3 (N.D. Ga. Nov. 15, 2018) (*citing Karhu v. Vital Pharms., Inc*., 621 F. App'x 945, 948 (11th Cir. 2015), where such records make "identification. . . administratively feasible." *Thompson* at *3; *see also M.H. v. Berry*, 2017 WL 2570262, at *3 (N.D. Ga. June 14, 2017).

The proposed class here is ascertainable through Defendants' own business records. The number and identity of GNETS students are capable of determination through Defendants' enrollment and other records. As they did in discovery,

Defendants are capable of identifying each student in the GNETS program. *See* GAO Litigation, Deposition of Wina Low, Exhibit 6 at 4 (attached as Exhibit L) (during the 2021-22 school year, 3,063 students received GNETS services); untitled document GEORGIA02599074 (during the 2020-21 school year, 2,962 unique students received GNETS services).[6]

Students "at serious risk" of being admitted to GNETS can also be readily identified. Under the class definition, those are students who have been "referred to GNETS." Such students must be tracked according to GNETS' own rules. GNETS Rule, 160-4-7-15(3) *et seq*. Ascertainability is met because students "who meet . . . [this] criteria are in the class. Those who do not are out." *Thompson*, 2018 WL 5993867, at *3; *see also A.R.,* 2015 WL 11143082 at *6 (using specific criteria to identify "at risk" class members).

2. The Class is so Numerous that Joinder is Impractical

Rule 23(a)(1) has two components: the total number of class members and the practicability of joining them individually in the case. A district court is permitted to make "common sense assumptions" in assessing numerosity. *Campos v. ChoicePoint, Inc.,* 237 F.R.D. 478, 485 (N.D. Ga. 2006).

[6] Plaintiffs have not attached this document as an exhibit to this Memorandum in order to maintain the privacy of the GNETS students identified.

There can be no reasonable dispute that Plaintiffs' proposed class is so numerous that joinder is impractical. GaDOE records show that 2,840 students participated in the GNETS program during the 2022-23 school year. *See* Georgia Department of Education, GNETS Student Enrollment by GNETS Program, by Grade Level and by Center/School-based Assignment Types, School Year 2022-23 Student Record Data Collection System (attached as Exhibit M). Courts in the Eleventh Circuit consistently find that proposed classes with more than 40 members satisfy the numerosity requirement. *Vega v. T-Mobile USA, Inc.,* 564 F.3d 1256, 1267 (11th Cir. 2009); *Cox v. Am. Cast Iron Pipe Co*., 784 F.2d 1546, 1553 (11th Cir. 1986).

Regarding the second component, joinder, plaintiffs "need only show that it would be extremely difficult or inconvenient to join all members of the class." *Anderson v. Garner,* 22 F.Supp.2d 1379, 1384 (N.D. Ga. 1997). When considering the practicability of joinder, courts evaluate size of the class, geographic dispersion, and the ease of identifying numbers. *Kilgo v. Bowman Transp., Inc.*, 789 F.2d 859, 878 (11th Cir. 1986). Given that the proposed class members are children with disabilities dispersed across the state, it would be impracticable to join plaintiffs individually. *See, e.g., Meza,* 2023 WL 2648180, at *9 (finding joinder impracticable in a class of state-wide Medicaid beneficiaries turning 21 who required incontinence supplies).

A class action may proceed if the plaintiffs "demonstrate some evidence or reasonable estimate of the number of purported class members." Plaintiffs have provided more than sufficient evidence regarding the size of the class, and thus they meet the requirements of Rule 23(a)(1).

3. Members of the Class Share Common Questions of Law and Fact

Rule 23(a)(2) requires that the claims of the proposed class members share common questions of law or fact. Commonality "does not require that all the questions of law and fact raised by the dispute be common. . ." *Vega*, 564 F.3d at 1268. *Wal-Mart* re-affirmed that commonality is satisfied with a single common question, which, if answered, "will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc.*, 564 U.S. at 350.

Generally, identifying common questions is straightforward in injunction cases like this one, particularly those challenging governmental policies and practices that discriminate under federal law in a manner common to the class. In such cases, "the commonality requirement can be satisfied by proof of the existence of systemic policies and practices that allegedly expose [class members] to a substantial risk of harm." *Parsons v. Ryan*, 754 F.3d 657, 681 (9th Cir. 2014); **Error! Bookmark not defined.***see also Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 57 (3rd Cir. 1994) ("[i]njunctive actions 'by their very nature often present

common questions satisfying Rule 23(a)(2)'"). Such exposure to "systemic and centralized policies or practices" will suffice – even if some members experience different injuries or none at all – because "these policies and practices are the 'glue' that holds together the putative class…" *Parsons*, 754 F.3d at 678, 684; *see also Ass'n for Disabled Americans v. Amoco Oil Co*., 211 F.R.D. 457, 463 (S.D. Fla. 2002) ("Plaintiffs' allegations of common discriminatory practices of ADA noncompliance, as a matter of law, satisfy the requirement that the representative plaintiffs share at least one question of fact or law with the grievances of the putative class.") (citations omitted).

Defendants' common conduct need not affect every class member the same way.[7] *Meza,* 2023 WL 2648180, at *10 (class certification granted despite lack of incontinence supplies affecting class members in different ways); *Oster v. Lightbourne,* 2012 WL 685808 at *5 (N.D. Cal. March 2, 2012) (class certification granted where cuts to in-home support services affected named plaintiffs and class members in different ways); *Lane v. Kitzhaber*, 283 F.R.D. 587, 598 (D. Or. 2012)

---

[7] Plaintiffs seek class-wide systemic relief from Defendants' policies and practices that lead to students with disability-related behaviors being unnecessarily segregated in GNETS settings. Once these discriminatory policies and practices have been remediated through an injunction, decisions about the specific services each class member will receive will continue to be made through the IEP process described in the Individuals with Disabilities Education Act.

("As in other cases certifying class actions under the ADA and Rehabilitation Act, commonality exists even where class members are not identically situated.").

As noted above in Section III.B., classes have been certified in Title II and Section 504 cases challenging discriminatory policies and practices affecting students with disabilities. Whether such practices exist and violate the law raise common questions sufficient to satisfy Rule 23(a)(2). *See J.N. v. Oregon Dep't of Educ*., 2021 WL 408093 (D. Or. Feb. 5, 2021) (common question of whether defendants failed to prevent the misuse of shortened school days and whether such failure constituted disability discrimination); *G.T. by Michelle v. Bd. of Educ. of Cnty. of Kanawha*, 2021 WL 3744607 (S.D.W. Va. Aug. 24, 2021), appeal pending, No. 21-260 (4th Cir.) (common question of whether failure to provide services and supports for students with disability-related behaviors violates Title II and Section 504); *J.R. v. Oxnard School District*, 2019 WL 4438243 (C.D. Cal. July 30, 2019) (common question of whether school district policy of failing to provide instruction to incarcerated students violated discrimination statutes).

Lane, a Title II/Section 504 case challenging segregated employment practices in which a class was certified, strongly supports class certification here. The claims in *Lane* focused on the defendants' standard systemic conduct, raising the common question of "whether the defendants have failed to plan, administer, operate, and fund a system that provides employment services that allow

individuals with disabilities to work in the most integrated setting." *Lane*, 283 F.R.D. at 598. The court specifically declined inquiry into how much each class member would benefit from such employment services, saying "[t]hat is. . . not the common question of whether they are being denied supported employment services for which they are qualified." *Id*. As in *Lane,* Plaintiffs' claims raise common questions applicable to the class as a whole, including whether Defendants' policies and practices cause students to be unnecessarily segregated in GNETS. *See also Steward v. Janek*, 315 F.R.D. 472, 482 (W.D. Tex. 2016) ("The State may fail individual class members in unique ways, but the harm that the class members allege is the same: denial of specialized services. . . and unnecessary [segregation] in violation of the ADA and Rehabilitation Act"); *Kenneth R.,* 293 F.R.D. at 267 (class certified based on common questions, among others, of "whether there is a systemic deficiency in the availability of community-based services, and whether that deficiency follows from the State's policies and practices.").

Plaintiffs have identified several common questions of fact and law raised by the claims of the class and applicable to the class that can be resolved by this Court "in one stroke," including:

a) Whether Defendants' policies and practices lead to the unnecessary segregation of GNETS students, including by leading school districts to remove students unnecessarily from zoned schools and discouraging the development of the infrastructure needed to provide services in zoned

schools, thereby denying students the right to be educated with their non-disabled peers;

b) Whether Defendants' policies and practices result in students being denied the intensive and individualized interventions they require both to improve their behavior and to be educated in zoned schools, including by failing to ensure the availability of a sufficient number of properly qualified and trained staff in zoned schools and at GNETS;

c) Whether Defendants' policies and practices deny GNETS students educational opportunities equal to those received by general education students and students with disabilities in zoned schools, including due to poor teaching and instruction; inadequate and deficient facilities; and unequal access to non-academic amenities such as extracurricular activities, athletics, clubs, gymnasiums, and media centers; and

d) Whether Defendants' policies and practices, as required by the ADA, Section 504, and the Fourteenth Amendment:

i. Provide class members opportunities to participate in and benefit from educational services that are equal to the opportunities afforded students without disabilities;

ii. Provide class members educational services that are as effective in affording equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement as those provided for other students;

iii. Provide class members the opportunity to receive education and other services in the most integrated setting appropriate to their needs; and

iv. Fail to reasonably modify educational programs and activities as needed to avoid discrimination.

The facts developed in this case, including the findings and opinions of Plaintiffs' experts, support the conclusion that common questions of law and fact exist sufficient to satisfy the commonality requirement of Rule 23(a)(2). Plaintiffs'

expert Judy Elliott found that, among other things, GNETS students could, but do not, receive services they need in their zoned schools and thus are unnecessarily segregated from their non-disabled peers (Elliott Report at 1-2; 19-24); Defendants fail to effectively implement accepted approaches to improving student behaviors (Elliott Report at 12-13); Defendants fail to provide the individualized and intensive supports required by students with disability-related behaviors (Elliott Report at 13-16); and GNETS students receive inferior teaching and instruction in inadequate facilities and are denied resources and extracurricular activities routinely available to students without disabilities (Elliott Report at 2-3; 24-26).

Plaintiffs' expert Kimm R. Campbell analyzed Defendants' provision of mental health services to children and found that Defendants could reasonably modify their policies and practices in order to prevent the unnecessary segregation of students in GNETS by, among other things, increasing capacity to deliver needed services to students with disability-related behaviors in their schools and in their communities (Campbell Report at 1; 13-21); expanding Georgia's System of Care so that it serves all children with disability-related behaviors, including students in GNETS and students referred to GNETS (Campbell Report at 6-8; 19-20); and making better use of available resources, especially by more effectively leveraging Medicaid funding, to provide services that help children with disability-related behaviors avoid unnecessary segregation (Campbell Report at 19-21).

Plaintiffs thus have submitted ample evidence showing the "capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc.*, 564 U.S. at 350. Plaintiffs' evidence reveals specific systemic deficiencies that harm GNETS students "as a matter of formal policy and systemic practice." *Parsons,* 754 F.3d at 680. The Court can resolve the common questions identified by Plaintiffs in one stroke, answering "yes or no." Defendants' policies and practices are unlawful as to every class member, or they are not. As such, Rule 23(a)(2) is satisfied.

4. The Claims of the Named Representatives are Typical of the Class

The third component of Rule 23(a)(3) requires that the claims of the class representatives be typical of the claims of the unnamed class members. The typicality requirement does not demand a showing of complete identity between the claims of a representative and each class member. Instead, "there need only exist 'a sufficient nexus ... between the legal claims of the named class representatives and those of individual class members to warrant class certification.'" *Ault v. Walt Disney World Co*., 692 F.3d 1212, 1216 (11th Cir. 2012) (*citing Prado-Steiman v. Bush*, 221 F.3d 1266, 1278–79 (11th Cir.2000)). In other words, typicality exists "if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." *Kornberg v.*

Carnival Cruise Lines, Inc., 741 F.2d 1332, 1337 (11th Cir. 1984). For this reason, typicality is achieved when the class representatives generally "possess the same interest and suffer the same injury" as unnamed class members. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982) (*quoting East Texas Motor Freight Sys. v. Rodriguez*, 431 U.S. 395, 403 (1977)); *see also Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001). The typicality requirement may be satisfied despite substantial factual differences when there is a "strong similarity of legal theories." *Williams v. Mohawk Indus., Inc*., 568 F.3d 1350, 1357 (11th Cir. 2009) (*citing Murray*, 244 F.3d at 811); *see also Ault,* 692 F.3d at 1216 (difference in class member's disability or needs does not undermine typicality.).

The typicality requirement is satisfied here because the claims of Individual Plaintiffs W.F. and C.R. are based on the same policies and practices and the same legal theories as the claims of the class as a whole. The harms they have experienced result from the same systemic policies and practices that have led to the class being segregated in GNETS or being referred to GNETS. The remedy they request is based on the same legal theories as those of the class. Individual Plaintiffs and the members of the class are students with disabilities either segregated or at serious risk of segregation in GNETS, who, according to Plaintiffs' expert, "could and should be served in zoned schools in a general education setting for all or most of the school day." Elliott Report at 12. Dr. Elliott identified policies and practices of Defendants

that have impacted Individual Plaintiffs and unnamed class members alike, including a failure to provide the individualized and intensive services they need to improve their disability-related behaviors and avoid placement in GNETS and the provision of poor and inadequate educational services while at GNETS. Elliott Report at 26-29; Declaration of Judy Elliott, dated December 13, 2023, at 2-4 (attached as Exhibit N). Since Individual Plaintiffs' claims arise from the same course of conduct as, and are typical of, the claims of the class, the requirement of typicality under Rule 23(a)(3) is satisfied.

5. The Class Representatives Will Fairly and Adequately Represent the Interests of the Class

Rule 23(a)(4) requires that that the class representatives show that they have "common interests with unnamed class members and will vigorously prosecute the interests of the class through qualified counsel." *Thompson v. Jackson*, 2018 WL 5993867, at *9 (N.D. Ga. Nov. 15, 2018) *citing Piazza v. Ebsco Industries, Inc*., 273 F.3d 1341, 1346 (11th Cir. 2001). To satisfy this requirement, two criteria must be evaluated: "(1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action." *Valley Drug Co. v. Geneva Pharm., Inc.,* 350 F.3d 1181, 1189 (11th Cir. 2003) (citation omitted). Both elements of Rule 23(a)(4) are met in this case.

The interests of Individual Plaintiffs and the unnamed class members coincide: they desire access to needed services in integrated settings and educational opportunities equal to their non-disabled peers. *See generally, Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147 (1982); *Prado-Steiman v. Bush*, 221 F.3d at 1279 (the interests of the class representative must "align with those of absent class members so as to assure that the absentees' interests will be fairly represented"). There are no known conflicts of interest among the members of the proposed class.

In addition, class counsel are qualified, experienced, and generally able to conduct this litigation. *Griffin v. Carlin*, 755 F.2d 1516, 1533 (11th Cir. 1985). "[A]bsent specific proof to the contrary, the adequacy of class counsel is presumed." *Justice v. Rheem Mfg. Co*., 318 F.R.D. 687, 695 (S.D. Fla. 2016) (citations omitted). Plaintiffs' counsel have extensive experience litigating disability rights and complex civil cases, and they have competently and vigorously litigated this case for several years, including investigating relevant claims, engaging expert witnesses, conducting depositions, and analyzing documents. Plaintiffs' counsel have resources adequate to represent the Plaintiff Class and have no professional or personal interests antagonistic to the interests of the Plaintiff Class.

Accordingly, because no conflicts exist between Individual Plaintiffs and unnamed class members, and Plaintiffs' counsel are highly qualified and experienced, the requirements of Rule 23(a)(4) have been met.

D. The Proposed Class Meets the Standards for Class Certification under Rule 23(b)(2)

A class may be certified when the requirements of Rule 23(a) are met and "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). The requirements of Rule 23(b)(2) are "almost automatically satisfied" in actions seeking injunctive relief for common legal claims. *Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 58 (3rd Cir. 1994). Courts have long recognized that certification under Rule 23(b)(2) is an appropriate and important vehicle for civil rights actions. *Wal-Mart Stores, Inc.*, 564 U.S. at 361 ("'[c]ivil rights cases against parties charged with unlawful, classbased discrimination are prime examples' of what (b)(2) is meant to capture.") (*quoting Amchem Prods., Inc., v. Windsor*, 521 U.S. 591, 614 (1997)).

Here the elements of Rule 23(b)(2) are satisfied because Plaintiffs allege systemic policies and practices that affect the class as a whole and seek declaratory and injunctive relief to benefit the class as a whole. This is exactly the type of

litigation that the Federal Rules Advisory Committee anticipated would proceed under Rule 23(b)(2). *See* Fed. Rule Civ. P. 23(b)(2), Advisory Committee Notes, 1966 amendments ("Illustrative are various actions in the civil-rights field where a party is charged with discriminating unlawfully against a class. . .").

Prior decisions from this court likewise support certification under Rule 23(b)(2). For example, in *M.H. v. Berry*, 2017 WL 2570262 (N.D. Ga. June 14, 2017), plaintiffs, as here, sought injunctive and declaratory relief from defendant's unlawful policies and practices, the results of which led to reductions in Medicaid service hours for individual children.[8] In finding the requirements of Rule 23(b)(2) had been met, the court said: "To be sure, the issue of whether a specific GAPP member is receiving all medically necessary hours is an individualized inquiry. But the Plaintiff is not seeking an individualized review of each GAPP member's nursing hours as injunctive relief. Rather, he seeks injunctive or declaratory relief that certain GMCF policies and practices are unlawful." *Id.* at *7; *see also Steward v. Janek*, 315 F.R.D. 472, 491 (W.D. Tex. 2016).

To satisfy Rule 23(b)(2), it is not necessary that every class member suffer the same injury at the same time. *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir.

---

[8] As previously mentioned, no individualized remedy is sought or needed in this case. Thus, decisions that have denied certification because a process was needed to determine whether an injunctive order should issue for each class member are not applicable here. Rather, because Plaintiffs' claims can be remedied by a single injunction, certification of the proposed class is appropriate under Rule 23(b)(2).

1998) (*citing* 7A Wright, Miller & Kane, *Federal Practice & Procedure* § 1775 (2d ed. 1986)). "It is sufficient if class members complain of a pattern or practice that is generally applicable to the class as a whole." *Walters*, 145 F.3d. at 1047. *See also id.* ("Even if some class members have not been injured by the challenged practice, a class may nevertheless be appropriate."); *Baby Neal*, 43 F.3d at 56 ("[C]lass members can assert such a single common complaint. . . demonstrating that all class members are *subject* to the same harm will suffice" (emphasis in original)).

The policies and practices of which Plaintiffs complain here – resulting in unnecessary segregation and unequal educational opportunity – are precisely the kind of conduct Rule 23(b)(2) class actions were designed to address. Accordingly, Plaintiffs meet the requirements of Rule 23(b)(2).

IV. Conclusion

For the reasons set forth above, Plaintiffs respectfully request that the Court:

1) Certify the following Class:

> All students who are now, or in the future will be, in GNETS or at serious risk of being placed in GNETS. For purposes of class certification, a student is "at serious risk" of being placed in GNETS if the student has been referred to GNETS; and

2) Pursuant to Fed. R. Civ. P. 23(g), appoint Georgia Advocacy Office, DLA Piper LLP, Center for Public Representation, The Judge David L. Bazelon Center

for Mental Health Law, The Goodmark Firm, The Arc of the United States, and Nelson Mullins as co-class counsel in this action.

Date: December 15, 2023

Respectfully submitted,

*/s/ Jessica C. Wilson*______
Jessica C. Wilson (GA #231406)
DLA PIPER LLP (US)
33 Arch Street, 26th Floor
Boston, MA 02110-1447
Tel. 617-406-6000
Fax 617-406-6100
jessica.wilson@us.dlapiper.com

Christopher G. Campbell (GA #789533)
DLA PIPER LLP (US)
One Atlantic Center
1201 West Peachtree Street, Suite 2800
Atlanta, GA 30309-3450
Tel. 404-736-7800
christopher.campbell@us.dlapiper.com

Mark J. Murphy (*Pro Hac Vice*)
CENTER FOR PUBLIC REPRESENTATION
5 Ferry Street, #314
Easthampton, MA 01027
Tel. 413-586-6024
mmurphy@cpr-ma.org

Ira A. Burnim (*Pro Hac Vice*)
BAZELON CENTER FOR MENTAL HEALTH LAW
1101 15th Street, N.W., Suite 1212
Washington, D.C. 20005
Tel. 202-467-5730
irabster@gmail.com

Devon Orland (GA #554301)
GEORGIA ADVOCACY OFFICE
1 West Court Square
Decatur, GA 30030
Tel. 404-885-1234
dorland@thegao.org

Craig Goodmark (GA #301428)
GOODMARK LAW FIRM
1425 A Dutch Valley Place
Atlanta, GA 30324
Tel. 404-719-4848
cgoodmark@gmail.com

Shira Wakschlag (*Pro Hac Vice*)
THE ARC OF THE UNITED STATES
1825 K Street, N.W., Suite 1200
Washington, D.C. 20006
Tel. 202-534-3708
wakschlag@thearc.org

Counsel for Plaintiffs

L.R. 7.1(D) CERTIFICATION

I certify that Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Class Certification has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1(C). Specifically, this document has been prepared using 14-pt Times New Roman Font on this 15th day of December 2023.

*/s/ Jessica C. Wilson*______

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Class Certification with the Clerk of Court using the CM/ECF system on this 15th day of December 2023.

*/s/ Jessica C. Wilson*______