IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

R.J., B.W., D.F., D.G., and M.D., on behalf of themselves and all others similarly situated, by their next friend Jeffrey Shaman,	)	
Plaintiffs,	)	Case No. 1:12-cv-07289
v.	)	Hon. Matthew F. Kennelly
ARTHUR D. BISHOP, in his official capacity as Director of the Illinois Department of Juvenile Justice,	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF
JOINT MOTION FOR CLASS CERTIFICATION AND
APPROVAL AND ENTRY OF CONSENT DECREE

The named plaintiffs are youth confined by the Illinois Department of Juvenile Justice ("IDJJ"). The named plaintiffs and the IDJJ Director have negotiated a proposed class action consent decree regarding IDJJ conditions, treatment, and services. To effectuate this putative settlement, the parties now jointly move for class certification and approval and entry of the proposed decree.

BACKGROUND

Counsel for plaintiffs investigated conditions, services, and treatment in IDJJ facilities. Then they filed administrative grievances with the IDJJ on behalf of 38 youth. These grievances addressed mental health services, general and special education services, room confinement, safety from violence, and commitment beyond release dates for lack of a community placement. Subsequently, the parties engaged in intensive, arm's

length settlement negotiations that included numerous face-to-face meetings and the exchange of many draft agreements. These negotiations culminated in the proposed consent decree attached hereto as Exhibit 1. The following are its principal terms.

1. Investigation by court-appointed experts.

The Court would appoint experts to investigate IDJJ mental health services, general and special education services, room confinement, safety, and commitment beyond release dates for lack of a community placement. *See* Exh. 1 ¶ 6. The jointly proposed experts are Dr. Peter E. Leone, as to education issues; Dr. Louis Kraus, as to mental health issues; and Dr. Barry Krisberg, as to general juvenile justice issues. *Id.* ¶ 7. The experts would recommend solutions to any problems they find. *Id.* ¶ 11.

Each proposed expert is highly qualified in his field and has served in similar court-appointed positions. Dr. Leone is an education professor at the University of Maryland with extensive knowledge about incarcerated youth. *See* Exh. 2 (his vitae). In numerous cases regarding education services for detained youth, Dr. Leone has served as an expert, as a monitor, or in a similar role. *United States v. Commonwealth of Puerto Rico*, No. 94 C 2080 (D.P.R.); *Jerry M. v. D.C.*, No. 1519-85 (Sup. Ct. D.C.); *Handberry v. Thompson*, No. 96 C 6161 (S.D.N.Y); *Clark v. California*, No. 96 C 1486 (N.D. Cal.).

Dr. Kraus is the Chief of Child and Adolescent Psychiatry and a professor at Rush University Medical Center. *See* Exh. 3 (his vitae). He has chaired the American Psychiatric Society Committee on Juvenile Justice Issues, and the National Commission on Correctional Health Care Committee on Juvenile Health Care. *See id.* He has served as a psychiatric consultant to the U.S. Department of Justice, the Arizona Department of Corrections, the Maryland Department of Corrections, and the IDJJ facility at Joliet. *Id.*

He recently served as an expert in *United States v. Arkansas*, No. 09 C 0033 (E.D. Ark.) (services for the developmentally disabled at state residential facility).

Dr. Krisberg is the Director of Research and Policy at the Warren Institute of the University of California, Berkeley School of Law. *See* Exh. 4 (his vitae). He was the longstanding president of the National Council on Crime and Delinquency, with expertise about juvenile justice policy. *See id.* He served as an expert and monitor regarding the California Youth Authority in *Farrell v. Cate*, No. 03 C 79344 (Sup. Ct. Cal.).

2. Creation of the remedial plan.

Following the experts' investigation and recommendations, the parties would develop a remedial plan, with input from the experts. *See* Exh. 1 ¶¶ 12-14. The parties would file with the Court an agreed plan, or separate plans. *Id.* ¶ 15. Subject to its review, the Court would enter a final remedial plan as a new order. *Id.* ¶ 16. In accordance with the Prison Litigation Reform Act ("PLRA"), the remedial plan approved by the Court would be narrowly drawn and extend no further than necessary to correct any violations of plaintiffs' federal rights. 18 U.S.C. § 3626(a).

The remedial plan would ensure the provision of adequate mental health services; general and special education services; physical exercise, recreation, and work details; and, for youth with a high school diploma or GED, supervised programming reasonably directed towards rehabilitation. The remedial plan also would address room confinement; physical safety of youth from assaults by youth and staff; minimization of continued commitment of youth solely because a community placement has not been secured for them; and planning for and assistance with successful re-entry. *Id.* ¶¶ 17-25.

3. Monitoring and enforcement of the remedial plan.

The court-appointed experts would serve as independent monitors of the IDJJ's compliance with the consent decree and the remedial plan. *Id.* ¶ 29. They would identify non-compliance, mediate disputes, and bring issues and recommendations to the Court. *Id.* Defendant and the monitors would file with the Court annual compliance reports. *Id.* ¶¶ 28, 32. Plaintiffs' counsel also would monitor compliance. *Id.* ¶ 33.

4. Termination.

When an issue at a facility is found to be in substantial compliance with the remedial plan for two years, monitoring regarding that issue at that facility would end, except that, for good cause, the monitors could continue such monitoring, subject to either party's request for Court review. *Id.* ¶ 37. The remedial plan and consent decree would terminate when monitoring ends for all issues at all facilities. *Id.* ¶ 38.

5. PLRA compliance.

The parties would stipulate to Court findings that the consent decree and the remedial plan comply in all respects with the PLRA, 18 U.S.C. § 3626(a). *Id.* ¶¶ 3, 15. Specifically, the parties would stipulate to, and request Court findings that, the terms of the consent decree and remedial plan are narrowly drawn; extend no further than necessary to correct the alleged violations of federal rights; and are the least restrictive means necessary to correct the alleged violations. *Id.*

6. Attorneys' fees.

Defendant would pay plaintiffs' reasonable attorneys' fees, costs, and expenses for prosecution of this action and for monitoring and enforcement of the remedial plan and consent decree. *Id.* ¶ 44.

7. Class certification.

The proposed decree anticipates the certification of a plaintiff class of all youth who now are, and/or in the future will be, confined by the IDJJ, and a sub-class of youth with special education needs. *Id.* ¶ 2.

DISCUSSION

The parties jointly move for certification of a plaintiff class and sub-class pursuant to Rules 23(a) and (b)(2), *see infra* Part I, and for approval and entry of the proposed consent decree pursuant to Rule 23(e), *see infra* Part II.

I. CLASS CERTIFICATION UNDER RULES 23(A) AND 23(B)(2).

The proposed plaintiff class, which seeks only declaratory and injunctive relief pursuant to Rule 23(b)(2), would comprise all youth who now are, and/or in the future will be, confined by the IDJJ. The proposed sub-class would comprise class members with special education needs. The proposed class and sub-class satisfy Rules 23(a) and (b)(2). Settlement classes are a common and accepted device. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 618 (1997).

A. Plaintiffs satisfy Rule 23(a).

1. Numerosity.

A class may be certified only if it is "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "[T]he crux of the numerosity requirement is not the number of interested persons per se, but the practicality of their joinder into a single suit." *Arenson v. Whitehall Convalescent & Nursing Home*, 164 F.R.D. 659, 663 (N.D. Ill. 1996). In addition to the number of members, important factors include "judicial economy, geographic diversity of class members, and the ability of individual

class members to institute individual lawsuits . . . ." *Id.* *See also Riordan v. Smith Barney*, 113 F.R.D. 60, 61 (N.D. Ill. 1986).

Here, the IDJJ currently confines approximately 1,000 youth, in eight facilities located great distances from each other. Compl. ¶¶ 12(a), 15-16. Half of these youth have special education needs. *Id.* ¶ 12(a). Many lack the financial resources to file their own lawsuits. *Id.* Every year, thousands of new youth will enter IDJJ custody, and thus class membership, further showing the impracticability of joinder. *See, e.g., Copeland v. Washington*, 162 F.R.D. 542, 544 (N.D. Ill. 1995); *Krislov v. Rednour*, 946 F. Supp. 563, 568 (N.D. Ill. 1996); *Rosario v. Cook County*, 101 F.R.D. 659, 661 (N.D. Ill 1983).

2. Commonality.

Class certification requires "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). One common question will suffice. *Ross v. RBS Citizens, N.A.*, 667 F.3d 900, 908 (7th Cir. 2012), citing *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011).

Commonality requires "some glue" holding the claims together, meaning "a common contention" that is "capable of classwide resolution." *Wal-Mart*, 131 S. Ct. at 2545, 2551-52. "What matters to class certification . . . is not the raising of common questions . . . but, rather the capacity of a classwide proceeding to generate common *answers* . . . ." *Id.* (emphasis in original). Such glue exists where class certification will generate common answers regarding "overarching systemic deficiencies" in a government agency that create "risk of harm" for all class members. *Connor B. v. Patrick*, 278 F.R.D. 30, 31, 34 (D. Mass. 2011). *See also, e.g., Rosas v. Baca*, 2012 WL 2061694, *3 (C.D. Cal. 2012); *Spalding v. City of Oakland*, 2012 WL 994644, **2-3 (N.D. Cal. 2012);

Ortega-Melendres v. Arpaio, 836 F. Supp. 2d 959, 989 (D. Ariz. 2011); *D.G. v. Yarbrough*, 278 F.R.D. 635, 638 (N.D. Okla. 2011); *Abadia-Peixoto v. U.S. Dept. of Homeland Sec.*, 277 F.R.D. 572, 577 (N.D. Ill. 2011).

"Rule 23(a)(2) does not demand that every member of the class have an identical claim, and some degree of factual variation will not defeat commonality provided that common questions yielding common answers can be identified." *Boundas v. Abercrombie & Fitch Stores, Inc.*, 280 F.R.D. 408, 413 (N.D. Ill. 2012). *See, e.g., Ross*, 667 F.3d at 909 (holding that class certification would yield a "common answer" regarding an unofficial policy, despite "slight variations" in enforcement).

Here, the requisite "glue" binds the claims of all class members.[1] Specifically, class-wide resolution of the claims of all IDJJ youth would yield a common answer to a common question: whether IDJJ policies and practices applicable to all class members violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, and the federal Individuals with Disabilities Education Act.

Based in part on numerous reports about the IDJJ written by Illinois Models for Change, the John Howard Association, and the Illinois State Board of Education, plaintiffs assert that all members of the proposed class are at significant risk of injury due to systemic deficiencies within the IDJJ. *See* Exhs. 5 through 11 (these reports). Plaintiffs assert that all class members are at significant risk of receiving inadequate mental health services (Compl. ¶¶ 17-22.) and education services (*id*. ¶¶ 23-25, 30-34);

[1] While the class here fully complies with *Wal-Mart*, it bears emphasis that the facts here (1,000 class members in eight facilities in one state who need not allege discriminatory intent) are very different than those in *Wal-Mart* (1.5 million class members in 3,400 facilities in all 50 states who must prove discriminatory intent). *See* 131 S. Ct. at 2557.

that all members of the sub-class are at significant risk of receiving inadequate special education services *(id.* ¶¶ 26-29) ; and that all class members are at a significant risk of improper room confinement (*id.* ¶¶ 35-41), violence from youth and staff (*id.* ¶¶ 42-45), and continued confinement solely for failure to secure a community placement (*id.* ¶¶ 46-49). Plaintiffs also assert that all male class members are at risk of suffering harms at all male facilities, due to frequent transfers. *Id.* ¶ 52.

Finally, class certification would generate common answers to common questions, because the proposed decree would require the court-appointed experts to identify, and recommend solutions to, any inadequate IDJJ conditions.

3. Typicality.

A class may be certified only if "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Rule 23(a)(3). The named plaintiffs' claims must "arise[] 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." *Boundas*, 280 F.R.D. at 412, quoting *De La Fuente v. Stokely-Van Camp*, 713 F.2d 225, 232 (7th Cir. 1983). The named and represented plaintiffs need not suffer precisely the same injury. *Id.*; *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992).

Here, the named plaintiffs are youth currently confined by the IDJJ, and named plaintiff R.J. has special education needs. Plaintiffs assert they have suffered and/or are at great risk of suffering the identified harms as a result of systemic deficiencies within the IDJJ.

4. Adequacy of representation.

A class may be certified only if "the representative parties will fairly and

adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Courts look to whether the named plaintiffs have "interest in the outcome sufficient to ensure vigorous advocacy," *Rosario*, 101 F.R.D. at 663, as well as any interests "antagonistic to the interests of the class," *Riordan*, 113 F.R.D. at 64. Here, the named plaintiffs' interests are entirely coextensive with those of the class. As youth currently confined by IDJJ, they have a genuine concern with the outcome of this class action. Also, there are no conflicts.

Rule 23(a)(4) further requires that the named plaintiffs' counsel be "qualified, experienced, and able to conduct the proposed litigation." *In re Sulfuric Acid Antitrust Litig.*, 2007 WL 898600, *5 (citing *Rosario*, 963 F.2d at 1018). Relatedly, a court that certifies a class must appoint class counsel. Fed. R. Civ. P. 23(g)(1).

Plaintiffs assert that they satisfy Rules 23(a)(4) and 23(g). They are represented by attorneys at the Roger Baldwin Foundation of ACLU, Inc. ("RBF") and Sidley Austin LLP. Lead RBF counsel Adam Schwartz and lead Sidley counsel Maja Eaton have, respectively, 16 years and 28 years of experience litigating and resolving complex class actions. Plaintiffs' counsel also include Kevin Fee (a Sidley partner), Joseph Dosch (a Sidley associate), Harvey Grossman (the RBF Legal Director), Benjamin Wolf (the Director of the RBF Institutionalized Persons Project), and Ruth Brown (an Equal Justice Works Fellow at the RBF). These counsel have spent hundreds of hours investigating the facts of this case, and they have significant knowledge about the applicable law. They commit the resources of the RBF to representing the class.

B. Plaintiffs satisfy Rule 23(b)(2).

In addition to satisfying Rule 23(a), plaintiffs must meet one of the requirements of Rule 23(b). Here, certification is sought under Rule 23(b)(2), which applies if the

defendant "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." Rule 23(b)(2) is "particularly appropriate in class actions brought to vindicate civil or constitutional rights," *Love v. City of Chicago*, 1997 WL 120041, *5 (N.D. Ill. Mar. 11, 1997); *Patrykus v. Gomilla*, 121 F.R.D. 357 (N.D. Ill. 1988), such as cases challenging conditions in prisons or jails. *See, e.g., Copeland v. Washington*, 162 F.R.D. 542, 543 (N.D. Ill. 1995); *Imasuen v. Moyer*, 1992 WL 26705, at *3 (N.D. Ill. Feb. 7, 1992); *Lewis v. Tully*, 96 F.R.D. 370, 378 (N.D. Ill. 1982).

Here, the IDJJ has acted on grounds generally applicable to all plaintiff class and sub-class members. Plaintiffs assert that systemic deficiencies within the IDJJ place all class members at risk of the harms alleged in the Complaint, and that these deficiencies can be remedied by class-wide injunctive and declaratory relief.

II. APPROVAL OF CLASS SETTLEMENT UNDER RULE 23(E).

Under Rule 23(e)(2), a class action cannot be settled absent a judicial finding that the proposed settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Courts consider the following factors:

> [1] the strength of plaintiffs' case compared to the amount of defendants' settlement offer, [2] an assessment of the likely complexity, length and expense of the litigation, [3] an evaluation of the amount of opposition to settlement among affected parties, [4] the opinion of competent counsel, and [5] the stage of the proceedings and the amount of discovery completed at the time of settlement.

Synfuel Techs., Inc. v. DHL Express (USA), Inc., 463 F.3d 646, 653 (7th Cir. 2006) (quoting *Isby*, 75 F.3d at 1199); *see also ACLU v. U.S. Gen. Servs. Admin.*, 235 F. Supp. 2d 816, 818 (N.D. Ill. 2002) (holding that two additional Rule 23(e) considerations are the "presence of collusion" and the "public interest").

Here, the parties jointly move to approve and enter the proposed consent decree attached hereto as Exhibit 1. As shown by the following discussion of the foregoing Rule 23(e) factors, the proposed consent decree is fair, reasonable, and adequate. Also, the parties' proposed form and method of class notice is appropriate. *See infra* Part II(H).

In deciding Rule 23(e) motions, "[f]ederal courts favor settlement . . . ." *Uhl v. Thoroughbred Tech. & Telecomms., Inc.*, 309 F.3d 978, 986 (7th Cir. 2002); *see also, e.g., Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); *Williams v. Quinn*, 748 F. Supp. 2d 892, 897 (N.D. Ill. 2010); *Hispanics United of DuPage County v. Village of Addison, Ill.*, 988 F. Supp. 1130, 1149 (N.D. Ill. 1997) ("Compromise is particularly appropriate in complex class actions."); *see generally Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010) (the "especially strong" presumption favoring settlement in class action litigation derives from the "strong policy favoring the finality of judgments and the termination of litigation"; the need for "conservation of judicial resources"; the desirability of "the amicable resolution of disputes"; and the benefit to the parties of avoiding the "costs and risks of a lengthy and complex trial").

Federal courts employ a two-step procedure when evaluating a proposed class settlement pursuant to Rule 23(e):

> First, counsel submit the proposed terms of settlement and the court makes a preliminary fairness evaluation. . . . If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice under Rule 23(e) be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.

Manual for Complex Litigation § 30.41 (3d ed. 1997). *See also In re Northfield Labs.,*

Inc. Sec. Litig., 2012 WL 366852, at *5 (N.D. Ill. 2012) (citing *Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 314 (7th Cir. 1980)). "[A]t the preliminary approval stage, the court's task is merely to 'determine whether the proposed settlement is within the range of possible approval,' not to conduct a full-fledged inquiry into whether the settlement meets Rule 23(e)'s standards." *Butler v. Am. Cable & Tel., LLC*, 2011 WL 4729789, at *9 (N.D. Ill. 2011) (quoting *Armstrong*, 616 F.2d at 314). The parties submit this joint memorandum in support of both this Court's preliminary evaluation of the proposed consent decree, and its final merits determination.

A. The strength of plaintiffs' case compared to defendant's offer.

Plaintiffs assert that federal law is violated by certain IDJJ conditions, services, and treatment, to wit, mental health services, general and special education services, room confinement, violence, and commitment beyond release dates for lack of a community placement. *See* Compl. ¶ 1. Plaintiffs believe that systemic deficiencies within the IDJJ are shown by numerous independent reports written by Illinois Models for Change ("IMFC"), the John Howard Association ("JHA"), and the Illinois State Board of Education ("ISBE"). *Id.* ¶¶ 19-20, 23, 28-30, 33, 36, 41, citing: IMFC report about IDJJ behavioral health services (July 2010); JHA report about IYC St. Charles (May 2011); JHA report about IYC Joliet (April 2011); JHA report about IYC Harrisburg (March 2011); JHA report about IYC Kewanee (June 2011); JHA report about IDJJ education services (2009); and Memorandum from ISBE to IDJJ (Jan. 2009). *See also* Exhs. 5 - 11 (these independent reports).

The proposed consent decree is precisely tailored to remedy these alleged deficiencies. The court-appointed experts would identify any deficiencies and

recommend remedies, forming the basis of a remedial plan entered as a court order. That plan would address mental health services; general and special education; physical exercise, recreation, and work details; and, for youth with a high school diploma or GED, supervised programming reasonably directed towards rehabilitation. The remedial plan also would address room confinement; physical safety; and minimization of continued IDJJ commitment of youth solely for lack of a community placement. *See* Exh. 1 ¶¶ 17-25.

B. Complexity, length, and expense of further litigation.

Further litigation and trial of this case would be complex, lengthy, and expensive, because of the myriad complex legal and factual issues posed.

C. Opposition to settlement.

Discussion of this factor is premature until the plaintiff class receives formal notice and the Court holds a fairness hearing.

D. Opinion of competent counsel.

The Court is entitled to consider the opinion of competent counsel that a compromise is fair, reasonable, and adequate. *Isby*, 75 F.3d at 1200; *Armstrong*, 616 F.2d at 325. Counsel for both parties recommend the proposed decree. The suit at bar is complex, the negotiations occurred at arm's length, and counsel for the parties are competent and experienced in class action and constitutional litigation.

E. Stage of the proceedings and amount of discovery completed.

Plaintiffs filed their complaint at the same time that the parties filed this Rule 23(e) motion. By agreeing to the proposed decree prior to the filing of the complaint, the parties have ensured that their scarce resources, and those of this Court, will be dedicated

to identifying and remedying inadequate IDJJ conditions, services, and treatment.

Plaintiffs assert that their counsel conducted a thorough investigation of IDJJ conditions, services, and treatment. Their fact-finding methods included: (a) one-on-one interviews with more than 50 IDJJ youth; (b) review of hundreds of pages of public reports about the IDJJ by independent organizations; (c) review of hundreds of pages of IDJJ records obtained pursuant to the Illinois Freedom of Information Act; and (d) information exchanged during settlement discussions. This "significant amount of informal discovery" supports Rule 23(e) approval. *In re AT&T Wireless Data Servs. Litig.*, 270 F.R.D. 330, 350 (N.D. Ill. 2010).

Moreover, the proposed decree would require a thorough investigation of the IDJJ by court-appointed experts. The subsequent remedial plan will be framed by the findings and opinions of these experts, and subject to this Court's ultimate review.

F. Presence of collusion.

The proposed consent decree is not the result of collusion, but rather of intensive, arms-length settlement negotiations over a period of many months.

G. The public interest.

The proposed consent decree would advance the public interest by ensuring the rights of IDJJ youth while avoiding costly and protracted litigation. *See ACLU*, 235 F. Supp. 2d at 819-20 (citing *Hiram Walker*, 768 F.2d at 888-89).

H. Class notice.

Under Rule 23(e)(1), this Court must direct reasonable notice to class members who would be bound by the proposed consent decree. The parties propose Exhibit 12 hereto as the form of notice to the putative plaintiff class of this suit, class certification,

the proposed decree, the opportunity to object, and the fairness hearing.

The parties further propose that this Court instruct defendant to distribute the notice by means of: (a) posting it in a prominent location in the day and visitation rooms in all IDJJ youth centers; (b) placing it in the mailbox of each youth committed to the IDJJ at the time of notice; (c) mailing it first class to each parent or guardian whose address is known to the IDJJ and whose child is committed to the IDJJ at the time of notice; and (d) mailing it to the Illinois Department of Children and Family Services, which has custody over some IDJJ youth.

CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court enter the proposed order attached hereto as Exhibit 13, which would: (a) certify the plaintiff class and sub-class; (b) make a preliminary finding that the proposed consent decree is within the range of fair, reasonable, and adequate resolutions; (c) command notice to the class in the form of Exhibit 12 and by the means proposed above; and (d) set a schedule for any objections, any responses by the parties to such objections, and a fairness hearing.

The parties further request that following the fairness hearing, this Court grant final approval to, and enter, the proposed consent decree.

DATED: September 12, 2012

Respectfully submitted,

For the plaintiffs:

By: _/s/Adam Schwartz_____

Date: _9/12/2012_____

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2012, I caused true and correct copies of the foregoing **MEMORANDUM IN SUPPORT OF JOINT MOTION FOR CLASS CERTIFICATION AND APPROVAL AND ENTRY OF CONSENT DECREE** to be served upon all counsel of record via the Court's ECF filing system.

/s/ Adam Schwartz
Adam Schwartz