UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division

JAC'QUANN (ADMIRE) HARVARD, et al.,	
Plaintiffs,	
v.	Case No.: 4:19-cv-00212-AW-MAF
RICKY D. DIXON,[1] et al.,	
Defendants.	

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' EXPERTS DECLARATIONS (ECF 357)

I. INTRODUCTION

In support of their motion for class certification, Plaintiffs submitted declarations from five experts who are among the most reputable and highly respected correctional practitioners and academics in their respective fields. Defendants' remarkable motion to strike *all* of Plaintiffs' expert declarations is a vitriolic and hyperbolic attack on Plaintiffs' experts that they based largely on their own inexperienced experts' ill-informed, outlier—and with respect to Dr. Labrecque, demonstrably duplicitous—declarations. Dr. Haney, at whom

[1] Ricky D. Dixon was appointed Secretary of the Florida Department of Corrections in November 2021, and is automatically substituted in this action under Rule 25(d) of the Federal Rules of Civil Procedure.

Defendants direct most of their criticism, is particularly distinguished in the area of social psychology as applied to penological institutions. His academic writings have been widely published and cited as foundational within the scientific community, and his expert opinions in prison conditions litigation have been cited approvingly and relied upon by federal courts across the country, including the United States Supreme Court. Ex. 1, Haney Decl. at ¶11 n.6.

As each of Plaintiffs' experts described in their declarations, they formed their opinions based on a variety of sources and observations typically and regularly relied on by experts whom courts qualify in prison litigation. Plaintiffs' experts relied on, *inter alia,* the scientific or professional bodies of knowledge in their respective fields concerning the use and effects of solitary confinement, isolation, and restrictive housing in correctional settings; review of policies, procedures, and other documents and data specific to the use of restrictive housing in the Florida Department of Corrections (FDC); in-person inspections and/or review of video footage and photographs of FDC prisons and restrictive housing units;[2] interviews of Named Plaintiffs and putative class members; review of class member custody and/or medical records; and review of relevant deposition testimony by FDC officials. Also, as all of Plaintiffs' experts noted, because discovery in the case is ongoing,

[2] While Dr. Haney was unable to inspect FDC facilities during the height of the COVID-19 pandemic, he reviewed hours of video footage and photographs of FDC's confinement units. ECF-9 at ¶10.

they continue to conduct in-person inspections and interviews, and review documents and information produced by FDC.

Defendants' criticisms of Plaintiffs' experts focus primarily on challenging Plaintiffs' experts' methodology in collecting, reviewing, and analyzing relevant data in this case. However, these criticisms are founded in Defendants' experts' own lack of knowledge, experience with, and understanding of the method and purpose of formulating expert opinions in a litigation context. Defendants and their experts theorize that the task of Plaintiffs' experts in this case was to design and implement scientific experiments and research to test the hypothesis that isolation causes harm to incarcerated people in restrictive housing settings. But Plaintiffs' experts have no such purpose, nor has this ever been the purpose of expert testimony in a prison conditions case. Rather, each of Plaintiffs' experts provided the Court with information about what is *already* known in their respective fields about the effects of isolation in prisons, and, after reviewing data and information specific to FDC, explained how FDC's use of restrictive housing correlates to that knowledge base and what that means for the risk of harm to the putative class.

In support of class certification, Plaintiffs' experts provided opinions to assist the Court in evaluating whether the effects of FDC's use of isolation may properly be analyzed on a systemic or classwide basis, and whether FDC's use of isolation raises common questions about the substantial risk of serious harm to the putative

class and sub-classes from this practice. This is precisely the type and purpose of expert testimony provided for by Federal Rule of Evidence 702, as interpreted and applied through the standards articulated in *Daubert v. Merrell Dow Pharm, Inc.*, 509 U.S. 579, 589-95 (1993). Especially in a case with a bench trial, Defendants' arguments go to the weight of the experts' opinions, not their admissibility. Defendants are free to make these arguments at the point where the Court will weigh conflicting expert testimony, but Defendants have not met the high burden of demonstrating that Plaintiffs' expert should be stricken altogether. Accordingly, this Court should deny Defendants' motion.

II. LEGAL STANDARDS

The Eleventh Circuit distills the expert admissibility inquiry into three factors:

> (1) the expert is qualified to testify competently regarding the matters he intends to address;
> (2) the methodology by which the expert reaches his conclusions is sufficiently reliable as determined by the sort of inquiry mandated in *Daubert*; and
> (3) the testimony assists the trier of fact, through the application of scientific, technical, or specialized expertise, to understand the evidence or to determine a fact in issue.

Moore v. Intuitive Surgical, Inc., 995 F.3d 839, 850–51 (11th Cir. 2021). *See also Hendrix ex rel. G.P. v. Evenflo Co.*, 609 F.3d 1183, 1194 (11th Cir. 2010). The purpose of these standards is to avoid jury confusion and ensure the reliability of expert testimony. *Rink v. Cheminova, Inc.*, 400 F.3d 1286, 1291 (11th Cir. 2005).

When there is no risk of jury confusion, "the rejection of expert testimony is the exception rather than the rule." *Moore*, 995 F.3d at 850 (citing Fed. R. Evid. 702 Advisory Committee's Note to 2000 Amendments). *See also U.S. v. Brown*, 415 F.3d 1257, 1269 (11th Cir. 2005) ("There is less need for the gatekeeper to keep the gate when the gatekeeper is keeping the gate only for himself.").

Defendants misapply each of the three expert admissibility factors with respect to Plaintiffs' experts. The first question—whether an expert is qualified—asks whether an expert has particular "knowledge, skill, experience, training or education" to opine on the testimony's subject matter. *Moore*, 995 F.3d at 852 ("A witness is *qualified* as an expert if he is the type of person who should be testifying on the matter at hand."). Defendants challenge only Plaintiffs' expert Dr. Haney's qualifications. Defendants go to great lengths to argue that Dr. Haney is not qualified to diagnose, differentially diagnose, or provide treatment to patients as a clinical psychologist or psychiatrist—tasks he does not claim to do and qualifications he does not claim to have. Rather, as set forth in detail below, Dr. Haney provides analysis of scientific literature on social isolation and its application to conditions he has observed in FDC as a social psychologist.

The second question asks the Court to assess whether the reasoning or methodology underlying the expert's testimony is reliable. *Daubert*, 509 U.S. at

592-93. The Eleventh Circuit has described a non-exhaustive list of factors that courts can consider in ascertaining reliability, including:

> (1) whether the expert's methodology can be tested; (2) whether the expert's scientific technique has been subjected to peer review and publication; (3) whether the method has a known rate of error; (4) whether the technique is generally accepted by the scientific community.

Rink, 400 F.3d at 1292.

Defendants' arguments, however, presume to replace these factors with one of their own creation: whether the methodology fits within the idealized and specific statistical and quantitative method of analysis preferred by Defendants' outlier experts, who have almost no first-hand experience gathering and assessing information about prison conditions, either as part of scientific research or prison litigation. Such a standard is both inappropriate to the subjects of inquiry at issue in this case, and impossible for any expert gathering evidence as part of an adversarial litigation process to meet. Moreover, Defendants' preference for one type of methodology over another reliable methodology does not render the latter inadmissible because the *Daubert* standard is "broad enough to permit testimony that is the product of competing principles or methods in the same field of expertise." *Moore*, 995 F.3d at 850 (quoting Fed. R. Evid. 702 Advisory Committee's Note to 2000 Amendments).

The third expert admissibility factor—whether the expert's testimony assists the trier of fact to understand the evidence or determine a fact in issue—is a test for

relevance. *See U.S. v. Williams*, 865 F.3d 1328, 1340 ("Indeed, at its core, the *Daubert* 'fit' question is one of relevance."). That is, "the expert testimony must be relevant to the task at hand" such that the testimony "fits." *McDowell v. Brown*, 392 F.3d 1283, 1298–99 (11th Cir. 2004) (internal quotations and citations omitted).

While *Daubert* describes this relevance standard as "liberal," 509 U.S. at 587, Defendants narrow it to one specific framing: "[r]elevance means the evidence has a scientific connection to the facts of the case such that it 'logically advances a material aspect of the proposing party's case.'" *Lee-Bolton v. Koppers, Inc.*, 319 F.R.D. 346, 371 (N.D. Fla. 2017) (quoting *Allison v. McGhan Medical Corp.*, 184 F.3d 1300, 1312 (11th Cir. 1999)). Defendants then use out-of-context lines from Plaintiffs' experts' declarations and depositions to argue that none of the opinions "advance" Plaintiffs' arguments. For example, Defendants contend that because Dr. Haney discusses implications of "long-term" restrictive housing but Plaintiffs do not define the class by a durational aspect, none of his opinions "fit" the case; and that because Dr. Burns acknowledged in deposition that restrictive housing may be necessary for a short duration, none of her opinions can "fit" a case challenging FDC's use of restrictive housing. Defendants' arguments are plainly nonsensical, especially when the next sentence of the *Allison* case that *Lee-Bolton* quotes explains there need only be a "connection to the disputed facts in the case," 184 F.3d at 1312,

and that *Lee-Bolton* too recognizes "the relaxed standard of relevance requires only that the evidence makes a fact more or less probable." 319 F.R.D. at 371–72.

As detailed below, Plaintiffs' experts squarely address the facts and issues that this Court must consider at class certification regarding whether FDC's systemic use of restrictive housing subjects the proposed class and subclasses to a substantial risk of serious harm.

III. DEFENDANTS' FLAWED METHODOLOGY ANALYSIS

Before refuting Defendants' respective challenges to each of Plaintiffs' experts, it is important to address the core of Defendants' motion to strike: their flawed analysis under the reliable methodology prong of the *Daubert* inquiry. Defendants dispute the reliability of Plaintiffs' experts opinions based on: 1) an aberrant view—contradicted by their own expert's peer-reviewed publications—of the scientific consensus supporting virtually every national healthcare and correctional organizations' united stance about the harms caused by solitary confinement; 2) a failure to distinguish between and appropriately use the scientific and legal standards for causation, and a related ill-founded exaltation of statistical proof as the be-all-end-all; 3) contempt for the self-reports of people experiencing restrictive housing; 4) disagreements about which records are necessary to review; and 5) factual disputes. None of these are valid grounds for exclusion.

A. Plaintiffs' Experts' Opinions are Grounded in the Mainstream Scientific Consensus that Restrictive Housing Causes Harms.

Despite Defendants' expert Dr. Labrecque's presumptuous dismissal of the scientific literature identifying harms associated with solitary confinement, there is a robust body of research to support this conclusion that includes, conservatively, at least 150 studies spanning decades across disciplines and continents. *See generally*, ECF 311-9 at ¶¶19-54; ECF 311-12 at ¶¶19-26; 311-11 at ¶¶18-21; 311-10 at ¶¶13-14; Ex. 1, Haney Decl. at ¶¶67-74. Tellingly, in a peer-reviewed article he published just this year, Dr. Labrecque cites to this same body of research (including an article by Dr. Haney) to conclude there is a broad consensus in the scientific community that the use of restrictive housing causes "psychological and physiological detriments." Ex. 2, Labrecque Dep. 49:7-55:12; Ex. 1, Haney Decl. at ¶¶75-76. Indeed, Dr. Labrecque's position that there is no consensus appears to be one he has taken only in declarations (not subject to peer review before being published) in litigation defending the use of restrictive housing by the State of Florida. Ex. 1 (Haney) at ¶¶ 75-77; Ex. 2, Labrecque Dep. at 51:5-17; 53:1-24, 62:23-65:18, 117:3-118:9; 112:12-123:17; 142:5-114:10. *See also, e.g.*, David Pyrooz, Ryan M. Labrecque, et. al., *Views on Covid-19 from Inside Prison: Perspectives of High-security Prisoners*, 3(2) JUSTICE EVALUATION J. 294, 302 (2020) (internal citations omitted) ("There are well-documented concerns about the psychological harms of isolation, as well as placement in solitary confinement."); Ryan Labrecque, et. al.,

Reforming solitary confinement: the development, implementation, and processes of a restrictive housing step down reentry program in Oregon, HEALTH & JUSTICE, 2 (noting that "most studies find some level of psychological or physiological detriment, and that "a new consensus has emerged . . . that it would be desirable to reduce the scale and scope of restrictive housing.").

In reality, the scientific consensus finding harms in solitary confinement is so well-established that the American Bar Association, American Psychiatric Association, American Psychological Association, American Public Health Association, American Academy of Child and Adolescent Psychiatry, National Academy of Sciences, United States Department of Justice, American Correctional Administration, Association of State Correctional Administrators, National Commission on Correctional Healthcare, United Nations, and many others have issued position statements or standards calling for severe limitations on the use of solitary confinement. Ex. 3 at 4, 92-95, 410, 767-96, 811-12, 944-48, 1242-44, 1247-48, 1251. *See generally*, ECF 311-9 at ¶¶19-54; ECF 311-12 at ¶¶19-26; ECF 311-11 at ¶¶18-21; ECF 311-10 at ¶¶13-14; 311-13 at ¶¶18-19; Ex. 1, Haney Decl. at ¶¶67-74; Ex. 4, Saathoff Dep. at 56:25-57:7, 57:25-60:6, 60:9-63:4; Ex. 2, Labrecque Dep. at 62:23-65:18, 117:3-118:9. Indeed, none of Defendants' experts could identify any national or international correctional, medical, or professional organization that has taken the position that solitary confinement, isolation, or

restrictive housing do not cause harm to human beings. Ex. 5, Paulson Dep. 95:14-97:6, 140:14-141:7; Ex. 4, Saathoff Dep. at 62:1-63:4; Ex. 2, Labrecque Dep. at 257:8-258:7.

B. Plaintiffs' Experts' Methodologies are Targeted to Meet Plaintiffs' Burden Under the Correct Legal Framework.

Defendants also rely on their experts (Dr. Labrecque and Dr. Barnes) to argue that Plaintiffs must meet a scientific standard, instead of a legal standard, to prove that the conditions to which FDC subjects people in restrictive housing are the *sole* cause of harm and risk of harm. ECF 356 at 14. This is incorrect. Plaintiffs must meet the legal standard of showing Defendants' conduct was the "proximate cause" or a "moving force" leading to the constitutional violation. *LaMarca v. Turner*, 995 F.2d 1526, 1538–39 (11th Cir. 1993) ("The wrong in Eighth Amendment cases is the deliberate indifference to a constitutionally infirm condition; that wrong must, in turn, have been the *proximate cause* of the plaintiffs' injuries …") (emphasis added); *Grech v. Clayton Cty., Ga.*, 335 F.3d 1326, 1330 (11th Cir. 2003) (explaining that in Section 1983 cases the practice must be the "moving force behind the constitutional violation") (punctuation omitted).

Thus, Plaintiffs must prove by a preponderance of the evidence that Defendants' placement of people in restrictive housing is the catalyst leading to an unconstitutional risk of harm they would not otherwise face if they were in the general prison population. *See Weathers v. Lanier*, 280 F. App'x 831, 833 (11th Cir.

2008) (explaining that civil cases require proof by a "preponderance of the evidence," which is "an amount of evidence that is enough to persuade [the jury] that the Plaintiff's claim is more likely true than not true") (internal punctuation omitted); *Balbin v. Concepcion*, 411 F. Supp. 3d 1340, 1356 (S.D. Fla. 2019) ("Causation, the final requirement for a deliberate indifference claim, requires a link between the injury and the constitutional violation."). Nothing under these legal standards requires Plaintiffs to statistically rule out all other factors—such as pre-existing conditions or COVID-19 precaution measures—that may contribute to harms people face in restrictive housing.

Defendants cite to *McClain v. Metabolife Intern., Inc.* to support their misconception of causation, but this case is applicable only to the extent it shows Defendants are focused on the wrong question. 401 F.3d 1233 (11th Cir. 2005); ECF 357 at 11, 13, 22. *McClain* was a toxic tort case regarding drugs the medical community did not recognize as causing harm, and so plaintiffs had to answer "the general question of whether the drug or chemical *can* cause the harm plaintiff alleges." *Id.* at 1239 (emphasis in original). Defendants presume the same question is at play here, but it is not. Despite Dr. Labrecque's claim to the contrary, a scientific consensus that isolation causes harm *already exists*. The national mental health, public health, and correctional communities have unequivocally recognized that solitary confinement can cause devastating health consequences. Solitary

confinement is thus akin to toxins such as "asbestos, which causes asbestosis and mesothelioma; silica which causes silicosis; and cigarette smoke, which causes cancer." *Id.* It is entirely appropriate for Plaintiffs' and their experts to rely on the science that *already* establishes a general causal link between solitary confinement in prison and physical and psychological harm in order to draw conclusions about the link between those same conditions of isolation in FDC, and the harms Plaintiffs' experts observe in the plaintiff class.

The only pertinent causation question, then, is whether Plaintiffs' experts have used the same methodological rigor that is characteristic of experts in prison litigation to demonstrate the link between the conditions in FDC's restrictive housing and the harms posed to the putative class and subclasses. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 150 (1999) (explaining that the reliability of an expert's opinion depends on the field of expertise). *See also Ruiz v. Johnson*, 37 F. Supp. 2d 855, 890 (S.D. Tex. 1999), *rev'd and remanded sub nom. Ruiz v. U.S.*, 243 F.3d 941 (5th Cir. 2001) (finding an expert's review of prison system "is not the type of testimony that necessarily implicates *Daubert*'s requirement of scientific methodology."). They have.

Plaintiffs' experts have used their specialized training and experience in their respective fields (and as seasoned prison litigation experts) to seek out a variety of sources specifically targeted to uncover systemic risks in carceral settings. Ex. 1,

Haney Decl. at ¶¶11-13 (Dr. Haney describing that "[t]he methodology that I employed in this case was entirely consistent with the approach I and other experts have taken to accomplish these tasks in every other prison litigation case of which I am aware."); ECF 356-18 at 29:9-29:18 (Dr. Burns testifying, "In multiple cases, I've been in . . . this is the way these types of evaluations are done."); ECF 356-17 at 33:23-36:22, 54:14-2 (Dr. Venters explaining how correctional health administrators identify systemic risks that must be addressed); ECF 356-16 at 16:18-17:2 (Mr. Pacholke explaining the various sources of information that give him "insight on . . . day-to-day activities or the day-to-day experiences" in restrictive housing); ECF 311-12 at ¶16 (Dr. Kraus describing sources he relied on to form his opinions); ECF 356-20 at 114:11-116:11, 121:13-124:24 (Dr. Kraus describing his interview process). This is in stark contrast to the experts in *McClain* who not only had no medical literature to support their opinions, they also failed to follow any of the methodologies typical of experts in their field. *McClain*, 401 F.3d at 1255.

The same misbelief that causality requires statistical proof underpins Defendants' attack on Plaintiffs' experts' methods for choosing people to interview and records to review. ECF 357 at 12, 27, 38. Reliable methodologies do not require, as Defendants assert, random sampling to reach general conclusions about the harms to people in restrictive housing. ECF 356-19 at 25:8-24; 27:8-15 (Dr. Haney explaining the need for randomness depends on the nature the study and is

not the "hallmark" for reliability); *see also Braggs v. Dunn*, 317 F.R.D. 634, 645 (M.D. Ala. 2016) (collecting cases) ("[A] number of courts have rejected *Daubert* attacks on experts . . . on the grounds that their samples were non-random, and that they did not consider enough prisoners at enough facilities in order to extrapolate conclusions about the system as a whole"); *Ruiz*, 37 F. Supp. 2d at 891 ("The fact that 30 records show excessive uses of force does not change because the records were selected non-randomly.").

Notably, Defendants' experts did not use random sampling in choosing the facilities they inspected, staff they interviewed, or records they reviewed in forming their opinions here or in other prison studies. Ex. 4, Saathoff Dep. at 96:6-97:7 (Dr. Saathoff testifying that Defendants' counsel selected his tours of FDC facilities), 114:9-24 (Dr. Saathoff testifying that a prison administrator and Defendants' counsel would select his interviewees), 118:23-119:3 (Dr. Saathoff testifying that he did not use randomization for his interviews of FDC staff), 119:13-18 (Dr. Saathoff testifying that he did not use any specific list of questions or structured interview for interviews of staff); Ex. 2, Labrecque Dep. at 82:19-86:5 (Dr. Labrecque explaining that in one of his prison studies, interviews were non-randomly screened beforehand), 231:22-232:25 (Dr. Labrecque acknowledging a study he published about a county jail did not use random samples nor validated instruments); Ex. 5, Paulson Dep. at 35:17-25 (Dr. Paulson testifying he did not independently choose

the facilities he toured), 45:1 – 46:12 (Dr. Paulson interviewed senior administrators and staff who were present on his tours of FDC facilities, not at random), 33:6-20 (Dr. Paulson discussing that Defendants' counsel selected records he reviewed). *See also* Ex. 1, Haney Decl. at ¶¶40-42, 45-50 (Dr. Haney discussing Dr. Labrecque's lack of randomization in conducting his own prison studies and research).

In fact, randomness is next to impossible when, as here, Defendants control all access to facilities, interviewees, and records through contentious discovery proceedings. *See, e.g.*, Ex. 2, Labrecque Dep. at 180:16-181:5 (Dr. Labrecque testifying he is not aware of any prison litigation case where Plaintiffs' experts had the kind of access necessary for complete randomization), 194:25-195:16 (Dr. Labrecque testifying that if Plaintiffs' experts did not have accurate rosters of people in confinement that "randomizing it would be difficult"); Ex. 1, Haney Decl. at ¶¶24, 30-32 (discussing that Defendants' experts' suggested principles are impractical and unreasonable, and not reflective of how prison research and expert litigation is done).

In a word, Dr. Lacbrecque's and Dr. Barnes's rigid theories about causality based solely on statistical analysis are simply inapplicable here. *See Ruiz*, 37 F. Supp. 2d at 891 (rejecting statistical proof as the sole methodology for proving system-wide violations). *See also, Ohio Org. Collaborative v. Husted*, No. 2:15-CV-1802, 2016 WL 8201848, at *2 (S.D. Ohio May 24, 2016) ("The inability to test opinions based on qualitative data and the lack of peer review does not automatically

render them unreliable"); *Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 507 (S.D.N.Y. 2015) ("[T]hat an analysis may be qualitative does not mean that it is unreliable for the purposes of *Daubert*"); *In re Toy Asbestos*, No. 19-CV-00325-HSG, 2021 WL 1167638, at *3 (N.D. Cal. Mar. 26, 2021) ("[N]either Rule 702 nor *Daubert* precludes qualitative analysis"); *Baldonado v. Wyeth*, No. 04 C 4312, 2012 WL 1965408, at *16 (N.D. Ill. May 31, 2012) (finding "no persuasive reason" to reject an expert's opinion that "relies on a 'qualitative evaluation,' rather than a quantitative assessment"). *See also* Ex. 2, Labrecque Dep. at 165:24-167:4 (acknowledging that "qualitative research is important," and the only way to get at what people are experiencing.).

C. Plaintiffs' Experts Opinions are Reliable Because They are Based on Their Specialized Knowledge, Experience, and Substantial Amounts of Information Reasonably Relied Upon in Their Respective Fields.

As described in-depth below, each of Plaintiffs' experts used reliable methodologies to reach their well-supported conclusions.

Defendants fault Plaintiffs' experts because they did not review certain deposition transcripts or other documents Defendants deem important. But "there is no requirement in the rules of evidence or in the *Daubert* line of cases that an expert's opinion must be based on every conceivable scrap of information or upon only undisputed facts." *Richard v. Hinshaw*, No. CIV.A. 09-1278-MLB, 2013 WL 6632122, at *2 (D. Kan. Dec. 17, 2013). Thus, simply reciting a laundry list of

documents Plaintiffs' experts did not review does not demonstrate that the thousands of pages of documents they *did* review (selected based on their specialized training and experience) makes their methodologies unreliable. *Washington v. City of Waldo, Fla.*, No. 1:15CV73-MW/GRJ, 2016 WL 3545909, at *3 (N.D. Fla. Mar. 1, 2016) ("Defense counsel has not demonstrated that the thousands of pages of documents the experts did review are not of the type reasonably relied upon by psychiatrists who possess jail experience.").

Moreover, Defendants' criticisms of the body of evidence Plaintiffs' experts reviewed are particularly ill-founded when four of their five experts have little to no experience serving as experts in systemic conditions of confinement cases and reviewed very little evidence in this case themselves. Ex. 4, Saathoff Dep. 46:5-21 (Dr. Saathoff has never been retained as an expert in a class action or provided an opinion about restrictive housing); Ex. 5, Paulson Dep. at 11:16-12:5, 24:20-24, 42:9-14 (Dr. Paulson has never served as an expert evaluating a system as a whole, never inspected a facility as an medical expert witness before this case, and never conducted or published research on solitary confinement); ECF 356-8 at 4, 23-35 (Dr. Barnes has never served as an expert in any legal proceeding nor specifically studied prisons' use of restrictive housing); Ex. 2, Labrecque Dep. at 15:6-16:25 (Dr. Labrecque reviewing only the complaint, and Plaintiffs' experts' declarations, notes, and depositions); Ex. 4, Saathoff Dep. at 121:1-16 (Dr. Saathoff reviewed no

healthcare/correctional records other than Named Plaintiffs'); ECF 356-8 at 4 (Dr. Barnes reviewed only Plaintiffs' experts' declarations, notes, and depositions); Ex. 2, Labrecque Dep. at 25:14-16 (Dr. Labrecque has never been inside a Florida prison). *See also*, Ex. 1, Haney Decl. at ¶¶24, 34.

Plaintiffs' experts' reliance on first-hand accounts from people in restrictive housing to inform their opinions also does not render their opinions unreliable nor form a basis for exclusion.[3] When, as here, an "expert witness has consulted numerous sources, and uses that information, together with his own professional knowledge and experience, to arrive at his opinion, that opinion is regarded as evidence in its own right and not as hearsay in disguise." *United States v. Williams*, 447 F.2d 1285, 1290 (5th Cir. 1971).

In addition to reviewing FDC's policies, internal documents, deposition testimony and other materials, each expert used their training and experience to screen for credibility and veracity amongst their interviewees. *See, e.g.*, ECF 356-19 at 10:3-19, 132:19-134:20 (Dr. Haney explaining his use of control questions to help "gauge candor," that he considered context and consistency of reporting across interviewees, and cross-checked records to determine credibility); ECF 356-18 at

[3] There is no reason that, for example, the nine pages Dr. Saathoff dedicates in his declaration to transcribing his notes from nine staff member interviews should be given any more weight than the information Plaintiffs' experts gleaned from interviewing hundreds of people living the experience of restrictive housing. ECF 356-4 at 35-41, 43-44.

101:23-102:15, 236:5-12 (Dr. Burns describing that she measures credibility by checking healthcare records); ECF 356-17 at 99:4-100:17 (Dr. Venters explaining how he engages in a comparison between subjective and objective information to assess credibility); ECF 356-20 at 114:11-115:11 (Dr. Kraus testifying he determines credibility based on his years of experience interviewing similarly situated individuals and by cross-checking statements with available records); ECF 356-16 at 98:16-99:7, 151:1-9, 152:11-154:29 (Mr. Pacholke testifying he assesses credibility based on his years of corrections experience, prevalence of consistent reporting across institutions, and data supporting interviewees' claims).

Federal courts frequently give weight to expert testimony that relies on the accounts of incarcerated people. *See, e,g.*, *Tellis v. LeBlanc*, No. CV 18-541, 2021 WL 4267513, at *6 (W.D. La. Sept. 20, 2021) (giving weight to expert testimony regarding systemic issues in a prison system that was based on inmate interviews); *Lewis v. Cain*, 324 F.R.D. 159, 171 (M.D. La. 2018) (giving weight to expert testimony identifying systemic issues in a prison that, in part, was based on "talk[ing] to multiple inmates"); *Sabata v. Nebraska Dep't of Corr. Servs.*, No. 4:17CV3107, 2019 WL 3975373, at *2 (D. Neb. Aug. 22, 2019), *objections overruled*, 337 F.R.D. 215 (D. Neb. 2020) (rejecting Defendants' motion to strike expert testimony that, in part, relied on inmate interviews); *Coleman v. Wilson*, 912 F. Supp. 1282, 1303 (E.D. Cal. 1995) (describing expert testimony that relied, in

part, on "statements by inmates" as "precisely the type of testimony contemplated by the Federal Rules of Evidence"). Moreover, FDC's own administrators use a similar methodology of speaking with incarcerated people and reviewing their grievances to identify and address trends and issues in their prisons. Ex. 6, Palmer Dep., 52:7-53:22; Ex. 7, Gordon Dep., 15:19-16:11, 23:23-24:10, 31:9-21.

Defendants' factual disputes also do not provide support for exclusion. Such disputes "go to the weight rather than admissibility of the expert's testimony and are more appropriately the subject of cross-examination." *Paramount Disaster Recovery LLC v. Amica Mut. Ins. Co.*, No. 2:16-CV-14566, 2017 WL 11632214, at *3 (S.D. Fla. Dec. 19, 2017). *See also, Fell v. U.S.*, No. 3:15-CV-541/MCR/EMT, 2017 WL 5992464, at *5 (N.D. Fla. July 17, 2017) (explaining that disagreements over "material facts . . . [are] more appropriately addressed by cross-examination at trial.")

In addition, Defendants' views that Plaintiffs' experts have "pre-formed opinions" or are otherwise biased form no basis for exclusion. ECF 357 at 22 (asserting "Dr. Burns' has pre-formed opinions"), 40 (alleging Mr. Pacholke as a "plaintiff-friendly slant"). Rule 702 only "requires courts to determine that the expert's method is reliable, not that it is free of any possibility of bias." *Adams v. Lab'y Corp. of Am.*, 760 F.3d 1322, 1333 (11th Cir. 2014).

Finally, it is disingenuous for Defendants to argue that Plaintiffs' experts' opinions are not based on sufficient evidence when they limited the number and length of the inspections, the number of and categories of people the experts can interview, and the number of and types of documents they can review. ECF 157 (stipulation limiting inspections, interviews, and record reviews); ECF 352 (Defendants' motion to limit inspections). *See also Parsons v. Ryan*, No. CV-12-00601-PHX-NVW, 2014 WL 3721030, at *4 (D. Ariz. July 28, 2014) ("Defendants' strenuous objections to the burdensome nature of the multiple prison tours, the Court's reduction of that burden by limiting the number of tours, and the experts' reliance on other evidence, which Defendants do not discuss, all weigh against complete exclusion of the opinions."). Even so, any limitations to the evidence Plaintiffs' experts reviewed goes to the "weight of the opinions" and does not support exclusion. *Braggs*, 317 F.R.D. at 648-49 (noting expert access was "circumscribed by defendants during the court of an extremely lengthy and discovery mediation.")

IV. DR. CRAIG HANEY'S OPINION IS ADMISSIBLE.

A. Dr. Haney is qualified to proffer his opinions.

Dr. Haney's training, knowledge, and expertise regarding the psychological effects of isolation and prison conditions are beyond dispute. Dr. Haney is a Distinguished Professor of Psychology and former Chair at the University of

California, Santa Cruz. ECF 311-9 at ¶1. He has published a plethora of material on the psychological effects of incarceration, going back to 1971 when he was a principal researcher in the seminal prison conditions study commonly known as the Stanford Prison Experiment. *Id*. at ¶¶2-5. Since then, he has dedicated his career to studying prison conditions, including with a focus on specialized housing units, such as solitary confinement. *Id*. at ¶5. For example, in addition to his many peer-reviewed articles on the topic, the American Psychological Association published Dr. Haney's book, *Reforming Punishment: Psychological Limits on the Pains of Imprisonment*, which was nominated for a National Book Award. *Id*. at 54. Dr. Haney has inspected dozens of correctional facilities and served as a consultant to agencies and institutions seeking to reduce their use of isolation, including testifying before the U.S. Senate's Judiciary Committee on the nature and consequences of solitary confinement. *Id*. at ¶¶3, 6-7.

Unsurprisingly then, numerous courts have qualified Dr. Haney as an expert in cases involving prison conditions. *See, e.g.*, *Davis v. Baldwin*, No. 3:16-CV-600-MAB, 2021 WL 2414640, at *3 (S.D. Ill. June 14, 2021) ("Dr. Haney has spent decades studying the psychological effects of various prison conditions, including the nature and consequences of solitary confinement"); *Ruiz*, 37 F. Supp. 2d at 908 ("Craig Haney, Ph.D., J.D., is perhaps the nation's leading expert in the area of penal institution psychology"); *Matter of Extradition of Manrique*, 442 F. Supp. 3d 1172,

1177–78 (N.D. Cal. 2020), *appeal dismissed sub nom. United States v. Toledo Manrique*, No. 20-10089, 2020 WL 2974858 (9th Cir. Apr. 15, 2020) ("Dr. Haney is no doubt qualified on this subject—especially on the adverse consequences of prison isolation in general. Accordingly, Dr. Haney's opinions received deep consideration"); *Madrid v. Gomez*, 889 F. Supp. 1146, 1159 n. 13 (N.D. Cal. 1995) ("[Haney] has published over 40 articles and book chapters on topics in law and psychology, including works on the conditions of confinement and the psychological effects of incarceration."); *Parsons v. Ryan*, 754 F.3d 657, 671 (9th Cir. 2014) (describing Dr. Haney as having "extensive experience studying the psychological effects of imprisonment and the consequences of solitary confinement"). *See also* ECF 311-9 at ¶8; Ex. 4, Saathoff Dep. at 204:7-13 (Dr. Saathoff acknowledging that he is not aware of any court that has found Dr. Haney's methodology unreliable).

That Dr. Haney is not a clinical psychologist has no bearing on his qualification to opine on the psychological effects of isolation. His purpose is not to diagnose (he defers to Defendants' diagnoses) or opine on an individual's clinical treatment. Ex. 4, Saathoff Dep. at 203:17-204:6 (testifying that he did not understand the goal of Dr. Haney's interviews to be making diagnostic assessments). Instead, Dr. Haney provides an overview of the scientific research about solitary confinement and analysis of whether the conditions and symptoms he observed in FDC are consistent with the findings in the research such that putative class and

subclass members are at risk of harm. ECF 311-9 at ¶¶13-15. *See also* Ex. 1, Haney Decl. at ¶¶5, 7, 8. Not only does he have decades of experience synthesizing this type of information, this is precisely within his field of expertise as a social psychologist trained "in the study of mental processes and behaviors." Federal Judicial Center Reference Manual on Scientific Evidence, 824 (3d ed. 2011). Dr. Haney is undoubtedly qualified to render his opinion in this matter.

B. Dr. Haney's methodology is reliable.

Dr. Haney's opinion is not only supported by his decades of experience and the peer-reviewed research he evaluated in this area,[4] it is also based on copious amounts of information particular to FDC. ECF 311-9 at ¶¶9, 10; Ex. 1, Haney Decl. at ¶¶6, 12. Specifically, Dr. Haney reviewed policies and procedures; data showing the rate and length of time FDC uses restrictive housing; data regarding suicide rates in FDC's general and restrictive housing populations; reports about the prevalence of mental illness in FDC's restrictive housing; and FDC's interrogatories responses. ECF 311-9 at ¶10; *id.* at 95-100. He also interviewed 33 people who have experienced FDC's restrictive housing (including five Named Plaintiffs), and cross-checked their responses with their healthcare and correctional records for veracity.

[4] The fact that Dr. Haney authored some of this literature as a lead researcher and academic in the field does not undermine his methodology; indeed, it bolsters it. *Compare Scheinberg v. Smith*, 550 F. Supp. 1112, 1119 (S.D. Fla. 1982) (crediting the opinions of experts who had published research findings about the topic at hand) *with McClain*, 403 F.3d at 1251 (faulting the plaintiff's expert for "fail[ing] to present any evidence of any peer review of his opinions.").

Id. at ¶10; ECF 356-19 at 132:19-134:2; Ex. 1, Haney Decl. at ¶11 n.5. Dr. Haney also viewed the conditions in multiple restrictive housing units through hours of video footage and photographs of FDC's confinement units, and recalled his previous tours of FDC isolation units in 2001 to 2003. ECF 311-9 at ¶10; Ex. 1, Haney Decl. at ¶¶6, 11 n. 5. This is the same methodology he has used in numerous cases. *See e.g.*, *Gell v. Town of Aulander*, No. 2:05-CV-21-FL, 2008 WL 5545036, at *13–14 (E.D.N.C. Dec. 1, 2008), *report and recommendation adopted in part*, No. 2:05-CV-00021-FL, 2009 WL 166379 (E.D.N.C. Jan. 22, 2009) (recognizing Dr. Haney's consistent methodology in conditions of confinement cases). *See also*, Ex. 1, Haney Decl. at ¶¶11, 19-20. In his over 40-year career, Dr. Haney has "never been found not to be qualified and the factual basis of [his] testimony has never been found to be insufficient to support [his] opinions." *Id*. at ¶19.

Defendants' challenge Dr. Haney's reliability based on their misunderstanding of legal causation and outlier belief that there is no scientific consensus regarding the harms of solitary confinement addressed in Section III(A), *supra*. Dr. Haney did not "perform a differential diagnosis" or any type of diagnosis because he is not a clinician, and, most importantly, because Plaintiffs do not have to prove that conditions in restrictive housing cause people to be diagnosed with certain illnesses. ECF 357 at 11-12. Instead, Plaintiffs must show that isolating people in restrictive housing increases the risk of health consequences to such a

degree that Defendants—who have an obligation to care for the people in their custody—must reasonably respond to that risk. Thus, it is entirely appropriate for Dr. Haney to rely on his peer-reviewed social psychology methodologies[5] to assess any patterns and consistencies of the symptomology in FDC's restrictive housing and compare it to the symptomology in the widely accepted scientific research to determine if the risk in FDC rises to the constitutional threshold of "substantial."

The symptomology that Dr. Haney identified as consistent with the scientific literature through various sources goes far beyond the "headaches, sleeplessness, and anxiety" Defendants highlight, to include depression, hallucinations, ruminations, cognitive decline, and social withdrawal. ECF 357 at 15; ECF 311-9 at ¶69. Most alarmingly, Dr. Haney used data from FDC's records to demonstrate the predictable and dramatically disproportionate rate of suicides that occur in FDC's restrictive housing compared to its general prison population. ECF 311-9 at ¶¶80-81 (describing FDC suicide data), ¶29 (describing published studies about the prevalence of suicides and self-mutilation in solitary confinement).

Defendants' argument that Dr. Haney's opinions regarding Named Plaintiffs should be excluded is mistaken. Based on his same methodology, Dr. Haney

[5] Defendants also mischaracterize Dr. Haney's testimony to argue that his questionnaire is not "psychometrically validated." ECF 356 at 13. Dr. Haney explained that his questionnaire *is* psychometrically validated because the questions come from validated instruments and he has published data derived from the same questionnaire in peer-reviewed journals. ECF 356-19 at 18:19-21:4.

reasonably concluded Named Plaintiffs are experiencing harms in restrictive housing consistent with the scientific literature. ECF 311-9 at ¶82. Defendants offer no evidence to dispute Dr. Haney's findings that Plaintiffs Harvard, Johnny Hill, and Dean repeatedly engaged in self-mutilation or suicide attempts in restrictive housing, and their own psychiatry expert, Dr. Saathoff, agrees that removing Ms. Harvard from restrictive housing alleviated her self-harm incidents. ECF 311-9 at ¶¶74, 76, 78; ECF 356-4 at ¶67. Defendants also do not dispute Dr. Haney's findings that Plaintiff Kendrick became more depressed in restrictive housing—Dr. Saathoff focuses only on the programming and mental health treatment he receives. ECF 311-9 at ¶77; ECF 356-4 at ¶¶51-55. Regarding Plaintiff Burgess, Dr. Saathoff focuses solely on Mr. Burgess's purported security risks and provides no information from his healthcare providers to dispute whether Mr. Burgess has in fact suffered from the "ruminations, depression, and discomfort around others" he reported to Dr. Haney. ECF 356-4 at ¶¶43-50; ECF 311-9 at ¶75.

As such, Defendants' characterization of Dr. Haney's methodology as unreliable is grossly inaccurate and forms no basis to exclude his testimony.

C. Dr. Haney's Opinions are Relevant to Class Certification.

Dr. Haney's opinions provide evidence of the classwide psychological harms posed to the putative class(es) in restrictive housing in FDC, making it clearly relevant to the issue of class certification. Yet, Defendants argue Dr. Haney's use

of the term "long-term segregation" makes his declaration irrelevant, ignoring that the putative class includes people who are in long-term segregation. ECF 346 at 15-16 (listing evidence of people in long-term isolation). Moreover, Dr. Haney does not opine there is no risk of harm from short stays in segregation. Instead, he opines the risk of harm in isolation increases the longer the duration, and for people with serious mental illness, the risk of harm in isolation is so great, "even for short periods of time," they should be completely excluded from these conditions. ECF 311-9 at ¶¶43, 61.[6] This opinion is consistent with Plaintiffs' claims.

Dr. Haney's testimony of a more expansive definition of "solitary confinement" also does not make his opinion irrelevant. First, Plaintiffs' counsel defines the class, not retained experts. *See Montgomery v. Aetna Cas. & Sur. Co.*, 898 F.2d 1537, 1541 (11th Cir. 1990) (an experts' purpose is not to offer legal conclusions). Second, Dr. Haney's opinion is consistent with Plaintiffs' definition of solitary confinement. ECF 311-9 at ¶17 (Haney Declaration); ECF 309 at ¶2 (Third Amended Complaint). Third, his conclusion that all types of FDC restrictive housing are solitary confinement is not "based on an incorrect assumption" as Defendants claim; it is based, in part, on the 33 interviews he conducted. ECF 357

[6] Defendants' own expert testified that he does not disagree with the American Psychiatric Association's position that prolonged segregation of adult inmates with serious mental illness should be avoided because of the potential for harm. Ex. 4, Saathoff Dep. at 59:17-60:6; Ex. 3, at 1242.

at 19; ECF 356-19 at 66:18-67:10. Finally, Dr. Haney does not opine, as Defendants assert, that a lack of adequate health care is one of the causes of harm in restrictive housing. ECF 357 at 19. His opinion is that the conditions and deprivations in restrictive housing cause a risk of harm, and it is not possible to address that risk of harm by providing mental health care in isolation conditions. ECF 311-9 at ¶72. Accordingly, Plaintiffs do not seek a remedy to address the adequacy of mental health care in restrictive housing, and Dr. Haney's opinions fit the allegations in this matter and questions before this Court for class certification.

V. DR. KATHRYN BURNS'S OPINION IS ADMISSIBLE.

A. Dr. Burns's methodology is reliable.

Dr. Burns used a reliable methodology to proffer her preliminary opinions by relying on her specialized knowledge and experience, interviews, and various FDC documents. ECF 311-10 at ¶6. As a psychiatrist in this field for almost 30 years and the former Chief Psychiatrist overseeing all mental health services in the Ohio Department of Corrections, Dr. Burns reviewed the scientific literature and professional standards including those issued by the American Correctional Association, National Commission on Correctional Health Care, American Psychiatric Association, and the DOJ.[7] *Id.*; ECF 356-18 at 9:7-13:13 (listing chief

[7] Defendants mischaracterize Dr. Burns's testimony about the applicability of the scientific literature by omitting that because the studies involve different institutions, she could not base her opinions solely on that literature and it was necessary for her to review the conditions specific to

psychiatry responsibilities). Dr. Burns also reviewed FDC's isolation and mental health policies and procedures, internal FDC documents, and American Correctional Association audits of FDC institutions, among other materials. ECF 311-10 at ¶8; *id*. at 36-41. She inspected four FDC facilities, looking in-depth at restrictive housing units and related healthcare areas. *Id*. at ¶9.

Additionally, Dr. Burns interviewed 139 people in restrictive housing at cell front. *Id.* She then conducted comprehensive one-on-one interviews with 34 of them, as well as Plaintiff Espinosa. *Id*. Far from taking the "inmates at their word," she reviewed available healthcare records of the interviewees to gain FDC's perspective of these individuals and corroborate accounts. ECF 357 at 23; ECF 311-10 at ¶¶9-11; ECF 356-18 at 101:23-102:15 ("you look at not only what the person says, but what other people say about them."). She did not "drill-down" in the ways Defendants suggest she should have in her interviews because she deferred to FDC's staff's documentation of treatment, and the clinical judgments of FDC's clinicians. ECF 357 at 23; ECF 287-2 at ¶7. Nor was it necessary for her to explore why someone refuses mental health counseling because the substantial risk of harm is the same even when people refuse services. ECF 356-18 at 206:24-207:19.

FDC to fully inform her opinions about the risk of harm in FDC. ECF 357 at 21; ECF 356-18 at 92:14-93:10.

This is the same methodology Dr. Burns has used as a consulting, testifying, and monitoring expert in correctional litigation cases to assess prison systems across the nation, which numerous courts have credited. ECF 311-10 at ¶4; ECF 356-18 at 29:9-18. *See also, e.g.*, *Braggs*, 317 F.R.D. at 645–47; *M.H. v. Cnty. of Alameda*, 2015 WL 894758, at *6 (N.D. Cal. Jan. 2, 2015); *Hinshaw*, 2013 WL 6632122, at *2; *Tellis*, 2021 WL 4267513, at *5; *Richard v. Bd. of Cty. Comm'rs of Sedgwick Cty.*, No. CIV.A. 09-1278, 2014 WL 631289, at *18 (D. Kan. Feb. 18, 2014); *Quinn v. Wexford Health Sources, Inc.*, 8 F.4th 557, 568 (7th Cir. 2021). To the extent her opinions about restrictive housing are consistent across cases, as Defendants point out, it is because her findings comport with the prevailing consensus within the mainstream scientific research. ECF 357 at 22.

Fundamentally, Defendants' entire argument against Dr. Burns's methodology rests on the unwarranted, wholesale discreditation of her considerable experience as a psychiatrist, healthcare administrator, and prison litigation expert and the same flawed assumption that the only valid science is based on experimental design or statistical analysis addressed in Section III(B), *supra*. In actuality, Dr. Burns relied on her specialized knowledge to assess whether there are enough indicators of harm in FDC's restrictive housing—that are so consistent with the well-known positions and standards in the correctional community—FDC should be

taking appropriate action to address them. *See generally* ECF 311-10 at ¶¶23-26, 39-41.

These indicators include FDC's own data showing the high rate of suicide and psychiatric hospitalization in its restrictive housing, which their own administrators repeatedly acknowledge. ECF 356-18 at 94:2-95:1, 213:2-21 (Dr. Burns testifying about the rate of inpatient care and suicide in FDC); ECF 346-3 at 133 (PowerPoint by FDC Director of Mental Health Services, Dr. Aufderheide, describing suicide risk); ECF 311-18 at 25-26 (Report by Dr. Aufderheide describing the disproportionate rate of inpatient treatment for people in Close Management); ECF 346-3 at 137 (FDC training document stating "[p]eople are more likely to attempt suicide while in segregated housing"); Ex. 6, Palmer Dep. at 91:17-92:10 (FDC regional director testifying he has observed trends demonstrating the higher rate of suicide in FDC's restrictive housing).

Defendants' arguments related to Dr. Burn's analysis of Plaintiff Espinosa do not undercut her methodology. ECF 357 at 25-26. Dr. Burn opines that Mr. Espinosa is typical because FDC subjected him to the same conditions and practices as the larger class, and diagnosed him with a serious mental illness demonstrating he shares the same heightened risk of harm as members of the Subclass of Persons with Serious Mental Illness. ECF 311-10 at ¶¶27-32. Defendants' psychiatry expert, Dr. Saathoff, does not dispute this conclusion. Ex. 4, Saathoff Dep. at 184:8-20.

That Mr. Espinosa is doing well now in general population has no bearing on the risk of harm he suffered in restrictive housing; in fact, it supports it. ECF 357 at 25. Regarding the mental health treatment Mr. Espinosa received in restrictive housing, it is Defendants who are being inconsistent, as opposed to Dr. Burns, by relying on Mr. Espinosa's self-reports only when it is convenient for them and ignoring that Dr. Burns used FDC's documentation of his treatment history to support her opinions. ECF 357 at 25-26; ECF 311-10 at ¶29; ECF 356-18 at 236:5-12.

Defendants' nonsensical assertion that Mr. Espinosa's access to pen and paper is an "accommodation" for his disability ignores that he does not always have such access and is of no use, for example, in an emergency when he is isolated behind a steel door with no call button and staff briskly pass by without so much as a glance inside his cell. ECF 357 at 26; ECF 356-14 at 115:13-117:7 (Plaintiff Espinosa testifying about denial of pen and paper); ECF 309 at ¶26 (alleging Defendants denied him the reasonable accommodation of a call button in his cell); ECF 311-18 at 143-144 (FDC admitting there is no electronic alert system inside cells); ECF 346-1, Ex. 1 at 2:03:23-2:04:31 and Ex. 2 at 9:33:19-9:34:15 [redacted] In any event, to the extent they exist, any minor factual inaccuracies in Dr. Burns's testimony are not fatal to her overall methodology. *Navelski v. Int'l Paper Co.*, 244 F. Supp. 3d 1275, 1298 (N.D.

Fla. 2017) ("[A] minor flaw in an expert's reasoning or a slight modification of an otherwise reliable method will not render an expert's opinion per se inadmissible.").

In sum, given the breadth of her experience and totality of the sources she relied on, Dr. Burns's methodology is reliable.

B. Dr. Burns's Opinions are Relevant to Class Certification.

Dr. Burns's opinions provide evidence of the classwide psychological harms posed to the putative class(es) in restrictive housing in FDC, making it clearly relevant to the issue of class certification. Yet, Defendants argue that Dr. Burns's opinions do not "fit" the claims in this matter because she "concedes that restrictive housing may be appropriately used as a short-term punishment for inmates who break prison rules." ECF 357 at 27. This wholly misconstrues Dr. Burns's deposition testimony. At her deposition, Dr. Burns only confirmed that confinement is used as short-term punishment by prison systems. ECF 356-18 at 56:7–14. When pressed by Defendants' counsel for whether it is "appropriate use," Dr. Burns stated,

> I'm a psychiatrist. I agree that it's used in that way. I am not a corrections person to say it should or shouldn't be used in that way. I'm a psychiatrist. I have to be aware that, even when it's used in that way, people are at risk.

Id. at 56:15-21. In fact, this testimony supports Plaintiffs' theory that FDC's use of isolation, even for short durations, subjects all people to a risk of harm.

Defendants also attempt to limit Dr. Burns's opinion to people with serious mental illness but she has explicitly clarified that her opinion is not so limited. ECF

357 at 27-28; ECF 356-18 at 130:15-131:5. Dr. Burns recognizes the scientific consensus that even people without serious mental illness can suffer devastating psychological health symptoms in restrictive housing, including "self-harm, suicide and psychosis." ECF 311-10 at ¶¶13-14. Thus, her methodology of seeking out interviewees who FDC has prescribed antipsychotic medications, psychiatrically hospitalized, or placed on self-harm observation status allows her to identify any person who has experienced some of the most severe symptoms identified in the scientific literature. And, in fact, she did interview people FDC had classified as S1s or S2s, indicating FDC had not recognized them as having significant psychological impairments. ECF 356-18 at 43:21-44:12.

Finally, Defendants' claim that Dr. Burns's opinion is irrelevant because she makes statements about access to mental health care is wrong. ECF No. 357 at 28. Dr. Burns opines that the conditions in isolation inherently make it difficult to access mental healthcare, which contributes to the substantial risk of suffering psychological consequences. ECF 356-18 at 81:15-82:16. She also opines the totality of the conditions in FDC's restrictive housing create a risk of psychological harm, fitting the allegations in this matter and questions before this Court for class certification. ECF 311-10 at ¶21; ECF 356-18 at 85:22-86:23.

VI. MR. DAN PACHOLKE'S OPINION IS ADMISSIBLE.

A. Mr. Pacholke is qualified to proffer his opinions.

Mr. Pacholke is a qualified expert based on his specialized knowledge and decades of experience in corrections. While Defendants do not explicitly challenge his qualifications as an expert, Defendants claim that Mr. Pacholke offers "no expertise on the facts at hand" and is not qualified to offer opinions related to people with mental illness in FDC. ECF 357 at 39, 46. This is incorrect. For 35 years, Mr. Pacholke has worked in corrections, holding positions from officer to head of the Washington State Department of Corrections. ECF 311-13 at ¶2; *Id*. at 58-63. Mr. Pacholke also has been a corrections consultant in over 25 jurisdictions, including for the U.S. Department of Justice (DOJ). ECF 311-13 at ¶¶2, 5, 7; *id*. at 60. In his various roles, Mr. Pacholke has reviewed correctional isolation policies and implemented reforms to reduce the number of people in isolation while also increasing prison safety. *Id*. at ¶¶3-4; ECF 356-16 at 41:2-41:22.

Mr. Pacholke's correctional experience also includes managing people with mental health needs and overseeing mental health units' staff, practices, and policies. ECF 311-13 at ¶70; ECF 356-16 at 25:14-26:1. In his various roles, Mr. Pacholke had to understand suicide risks and take measures to prevent it; identify signs and symptoms of "mental health crisis and deterioration;" collaborate with mental health staff; and keep abreast of national standards regarding the management of people with serious mental illness. ECF 311-13 at ¶¶70, 74. Thus, there is no basis to

exclude his opinions regarding whether FDC officials are meeting that same obligation in restrictive housing. ECF 357 at 46.

Mr. Pacholke's three decades' plus of experience in correctional administration and security readily makes him qualified to apply this expertise to the facts at issue in this matter, as he has done in other prison litigation cases. *See, e.g.*, *Tay v. Dennison*, 457 F. Supp. 3d 657 n. 6 (S.D. Ill. 2020); *Hampton v. Baldwin*, No. 3:18-CV-550-NJR-RJD, 2018 WL 5830730, at *5 (S.D. Ill. Nov. 7, 2018); *see also, e.g.*, *Gentry v. Robinson*, 837 Fed. App'x 952, 953 (4th Cir. 2020) (serving as Former Corrections Officials Amici); *Greenhill v. Clarke*, 944 F.3d 243, 245 (4th Cir. 2019) (serving as Former Corrections Officials Amici); *Mizzoni v. Nevada*, 795 Fed. App'x 521, 521 (9th Cir. 2020) (serving as Former Corrections Officials Amici).

B. Mr. Pacholke's methodology is reliable.

Mr. Pacholke also has used a reliable methodology to proffer his preliminary opinions. Defendants' characterization of his opinion as based on "mere speculation and conjecture" is absurd given the vast body of evidence he reviewed to reach his opinions. ECF 357 at 42. Throughout his declaration, Mr. Pacholke explains how he reached conclusions about FDC's isolation practices based on his specialized knowledge in corrections and the specific evidence he reviewed. *See Tillman v. C.R. Bard, Inc.*, 96 F. Supp. 3d 1307, 1330 (M.D. Fla. 2015) (allowing an expert to draw inferences from facts informed by specialized knowledge). Mr. Pacholke's support

for his conclusions includes his inspections of restrictive housing in six FDC facilities, and review of video footage of other isolation units. ECF 311-13 at ¶12 (inspections); ECF 356-16 at 85:16-19 (video). He also interviewed 172 people in restrictive housing at cell-front, and conducted in-depth one-on-one interviews with 65 of them. ECF 311-13 at ¶12.

Mr. Pacholke further reviewed FDC's policies and procedures, inmate handbooks, emails, meeting minutes, and 30(b)(6) deposition transcripts.[8] ECF 311-13 at ¶11; ECF 356-16 at 16:18-17:2, 140:23-141:22, 229:9-230:20. He considered documents describing restrictive housing updates, proposals, and recommendations, and studied individual prisoner records. ECF 356-16 at 177:21-178:10, 209:12-210:1 (discussing negative notations he saw in individual prisoner files), 98:20 – 99:7 (describing how he looked at files to see the levels of recreation time and showers). In total, Mr. Pacholke reviewed thousands of pages of documents to support his opinion. ECF 311-13 at 67-75; ECF 356-16 at 115:18-24.

[8] Mr. Pacholke did not testify, as Defendants represent, that he only reviewed one 30(b)(6) deposition transcript. ECF No. 357 at 41. During his deposition, Defendants only questioned him about why he did not review the transcript "regarding the classification topics." ECF 356-16 at 84:7-12. In actuality, Mr. Pacholke reviewed and cited to three 30(b)(6) transcripts that included testimony corroborating inmate reports. *See, e.g.*, ECF 311-13 at ¶35 (citing to deposition testimony about covering cell windows), ¶ 49 (citing to two deponents about lack of programs); ECF 356-16 at 172:8-19 (interviewees did not have experience attending programs "on any regular basis.").

This is the same methodology Mr. Pacholke used as a consultant for DOJ in two separate prison system investigations, including one about restrictive housing. ECF 356-16 at 21:6-21:9 (listing two "broad scope investigations"), *id.* at 249:15–250:13 (discussing how he investigated at least six facilities, primarily looking at restrictive housing, in the Massachusetts Department of Corrections). It is also the same methodology recently credited by a Louisiana District Court in another class action about solitary confinement. *Tellis*, 2021 WL 4267513, at *6 (admitting Mr. Pacholke's opinion comparing prison system's isolation unit to the "national norm").

By focusing on Plaintiffs' document selection process, Defendants gloss over that, as part of his methodology, Mr. Pacholke used FDC records to corroborate interviewees' accounts. For example, Mr. Pacholke reviewed records representing nearly *200* incidents corroborating putative class members' reports that FDC regularly forces them to sleep directly on their steel bunks or the floor with nothing but their underwear for 72 hours at a time. ECF 311-13 at ¶¶58, 60. *See Ruiz*, 37 F. Supp. 2d at 891 ("The fact that 30 records show excessive uses of force does not change because the records were selected non-randomly."). Consistent with his interviewees' accounts, 75% of those instances were for minor offenses such as having a messy cell or not being dressed properly. ECF 311-13 at ¶¶32, 58.

Defendants' attempt to undermine Mr. Pacholke's methodology by pointing to Named Plaintiffs' testimony that purportedly contradicts his opinion while

ignoring Named Plaintiffs' testimony that supports his opinions fails. ECF 357 at 41. For example, Mr. Pacholke discusses limited access to phone calls in restrictive housing, and explains that daily records from the housing units tend to show calls "are happening less frequently than permitted [by FDC policy]." ECF 311-13 at ¶42. Plaintiffs Kendrick, Harvard, Burgess, and Johnny Hill are examples of people who received their calls consistent with FDC policy, while Plaintiffs Jeremiah Hill, Espinosa, and Dean are examples of people who received fewer phone calls than required. ECF 356-10 at 200:25-201:6 (Kendrick); ECF 356-12 at 52:11-19 (Harvard); ECF 356-11 at 182:14-184:13; 224:23-224:7 (Burgess); ECF 356-13 at 18:13-23, 27:21-28:5 (Johnny Hill), ECF 356-9 at 209:12-22 (Jeremiah Hill); ECF 356-14 at 93:3-96:17 (Espinosa); ECF 356-15 at 102:5-7 (Dean). Defendants want only the former and not the latter to be credited. Regardless, that some of the Plaintiffs received phone calls in conformity with policy and others did not *is* consistent with Mr. Pacholke's opinion.

Finally, Defendants falsely assert that Mr. Pacholke is opining about FDC's "state of mind." ECF 357 at 45. Mr. Pacholke, instead, opines that FDC officials' failure to hold staff accountable for their actions is evidence they condone staff abuse of people in restrictive housing. ECF 311-13 at ¶78. He is not speculating about their motives for such failures. *See Kaufman v. Pfizer Pharms., Inc.*, No. 1:02-CV-22692, 2011 WL 7659333, at *9 n.8 (S.D. Fla. Aug. 4, 2011) (striking expert's

opinions that speculated about the motives for defendants' conduct). Rather, he supports this conclusion with his review of the documents. For example, he relies on a report in which the acting warden praises officers for putting people on property restriction merely because they had not made their bed or put on their proper uniform, a violation of ACA standards.[9] ECF 311-13 at ¶59 ("the acting warden approves this punishment and notes, 'Good job Lt.'"). *See also id.* at ¶53 (meeting minutes showing warden condoned officers' abusive cell searches by instructing them to "go in and wreak havoc."). Ultimately, Defendants disagree with Mr. Pacholke's conclusion, which is not a reason to strike it. *U.S. ex rel. Armfield v. Gills*, No. 8:07-CV-2374-T-27TBM, 2012 WL 12918275, at *3 (M.D. Fla. July 6, 2012) (challenges to an expert's "conclusions … are more appropriately raised during trial on cross-examination.").

C. Mr. Pacholke's Opinions are Relevant to Class Certification.

Mr. Pacholke's opinions provide evidence of the classwide conditions, policies, and practices that all people in the putative class(es) are subject to, making it clearly relevant to the issue of class certification. For example, Mr. Pacholke provides evidence of common deprivations experienced classwide through FDC's policies and practices of isolation, no matter what administrative label is used. *See*

[9] Property restriction ("strip") is Defendants' practice of stripping people of their clothing, linen, mattress, personal property, and nearly everything else in their cells for 72 hours.

e.g., ECF 311-13 at ¶25 ("FDC's Central Office promulgates policies that are generally implemented uniformly statewide. Any differences between institutions and types of isolation are insignificant"), ¶35 ("In practice, communications and observations by staff in all types of restrictive housing in FDC are severely limited"); ¶36 ("The lack of dayroom is an example of how the conditions in AC, DC, and CM are practically the same"); ¶52 ("FDC's policies require similar escort procedures and cell searches in all types of restrictive housing."); ¶54 ("FDC has a policy and practice of using 'property restriction,' or 'strip status,' in all types of restrictive housing and only in restrictive housing"). *See also* ECF 356-16 at 95:6-95:21 (Mr. Pacholke explaining how a person can be at a less restrictive level of CM but experience similar out of cell time as someone in a more restrictive level).

Defendants' assertion that Mr. Pacholke does not offer any solutions to remedy restrictive housing is false; in fact, he offers several solutions. *See e.g.*, ECF 311-13 at ¶¶26-27 (identifying systemic issues with FDC's implementation of isolation and suggesting adoption of a concrete, identifiable framework for a pathway out of isolation); ¶¶29-30 (identifying ACA standards for considering a person's treatment and programming for isolation reviews); ¶41 (identifying punitive environmental deprivations and suggesting penologically consistent tools for combating idle time). *See also*, ECF 356-16 at 74:15 – 76:9 (identifying ways to reduce FDC's use of isolation without compromising safety and security).

Accordingly, Mr. Pacholke's opinion demonstrates Plaintiffs' claims can be addressed through classwide injunctive relief.

Defendants' remaining arguments regarding the relevance of Mr. Pacholke's opinions also fail. Plaintiffs do not, as Defendants' assert, seek to "abolish entirely" FDC's use of restrictive housing. ECF 357 at 43. Instead, Plaintiffs seek to remedy the unconstitutional conditions in FDC's restrictive housing, including that Defendants' failure to cap isolation terms exposes every person to a risk they will spend substantial periods of time in devastating isolation conditions. Mr. Pacholke's acknowledgment that a person could be prohibited from engaging in congregate activities for a certain period of time does not undermine Plaintiffs' claims nor relief sought. Also, Plaintiffs challenge FDC's policies *and* practices in restrictive housing, and thus his well-supported opinions about the totality of the conditions in restrictive housing are relevant to Plaintiffs' claims.

VII. DR. HOMER VENTERS'S OPINION IS ADMISSIBLE.

A. Dr. Venters's methodology is reliable.

Dr. Venters is an experienced physician and epidemiologist and former Chief Medical Officer of the Correctional Health Services of New York City, a role that included direct oversight and patient care in solitary confinement units. He has published peer-reviewed research about solitary confinement, and has served both as a testifying expert and an independent court monitor regarding prison conditions

and systemic health issues. Dr. Venters relied on his training and experience to assess the conditions in FDC's restrictive housing and proffer his preliminary opinions. ECF 311-11 at ¶¶3-10.

To identify the risk to physical health in FDC's use of isolation, Dr. Venters reviewed the many documents listed in Appendix B of his declaration, including population data; Defendants' responses to relevant interrogatories; over 1,000 putative class member healthcare grievances; various healthcare policies and procedures; daily operations and nursing logs; internal FDC documents and trainings; and the deposition transcript of FDC's Chief Director of Nursing, among other documents. ECF 311-11 at ¶11; *id*. at 54-58; ECF 356-17 at 22:20-23:1. In addition to reviewing all this FDC-specific material, he reviewed "the prevailing literature regarding the health impacts of solitary confinement." ECF 311-11 at ¶11.

Dr. Venters also inspected restrictive housing units and corresponding healthcare service areas at five FDC facilities. *Id.* at ¶¶12-14. During those inspections, he interviewed 157 people at cell-front, and then interviewed 51 of those individuals more extensively and reviewed their medical records. *Id*. at ¶¶15-17, 56-58. He also interviewed four Named Plaintiffs and reviewed their medical records. *Id*. at ¶55.

Federal courts have frequently given weight to Dr. Venters's expert testimony based on the same methodology. *See, e.g.*, *United States v. Asuncion*, No. CR 13-

00749 SON, 2020 WL 6205680, at *6 (D. Haw. Oct. 22, 2020) (crediting Dr. Venters's inspections and interviews); *Woodward v. Lopinto,* No. CV 18-4236, 2021 WL 1969446, at *6-7 (E.D. La. May 17, 2021) (crediting Dr. Venters's review of corporate representative testimony); *U.S. v. Ceballos-Castillo,* No. 6:18-CR-00614-AA, 2021 WL 1818483, at *3 (D. Or. May 6, 2021) (crediting Dr. Venters's inspections); *Belcher v. Lopinto,* No. CV 18-7368, 2021 WL 1605120, at *2 (E.D. La. Mar. 1, 2021) (crediting Dr. Venters's comparison of treatment provided to national standards); *Fraihat v. United States. Immigr. & Customs Enf't*, No. EDCV191546JGBSHKX, 2020 WL 6541994, at *2, FN 1 (C.D. Cal. Oct. 7, 2020) (crediting Dr. Venters's inspections).

Dr. Venters also has used a similar methodology when acting as a court-appointed monitor in cases involving systemic health risks to incarcerated patients. *See, e.g., Scott et. al., v. Clarke, et. al.*, 3:12-cv-00036-NKM-JCH, ECF 831 (W.D. VA May 28, 2021) (Dr. Venters's expert report based, in large part, on review of the prison's internal documents, speaking with incarcerated people, and inspecting the facility); *Torres et al. v. Milusnic et al.*, 2:20-cv-04450-CBM-(PVCx), ECF 74 (C.D. Cal. Aug. 18, 2020) (allowing Dr. Venters access to inspect a prison's facilities and interview prisoners).

Nevertheless, Defendants attempt to attack Dr. Venters's reliability by misusing *Rivera Martinez v. GEO Grp.*, a case involving excessive force and

inadequate medical care in an immigrant detention center. No. ED CV 18-1125-SP, 2020 WL 2496064, *1 (C.D. Cal. Jan. 23, 2020); ECF 357 at 30. The district court in that case did not, in fact, exclude any of Dr. Venters's testimony; it only reserved questions about his opinions related to the use of force for a future *Daubert* hearing. *Rivera Martinez*, 2020 WL 2496064 at *13. The court had no such questions related to his opinions about patient care:

> [C]ertainly [Dr. Venters] has medical expertise, particularly in caring for incarcerated patients, and may testify to plaintiffs' injuries, what caused them, the care they should have received after exposure to pepper spray, and the typicality of failure to seek medical care upon release from custody.

Id. This case provides no support for the proposition that Dr. Venters's testimony about the physical health risks of solitary confinement has ever been excluded or should be excluded in this case.

Defendants' arguments regarding Dr. Venters's assessment of four Named Plaintiffs also do no support exclusion because Dr. Venters does not rely only on his interviewees' self-reporting. For example, his concern regarding the interruptions in Plaintiff Johnny Hill's medications is not based solely on self-reports, as Defendants' claim. ECF 357 at 33. Instead, it is based on his experience identifying systems risks as a correctional administrator overseeing healthcare in solitary confinement; his review of 30(b)(6) deposition testimony, inmate grievances, and healthcare records; and the rate and consistency across interviewees reporting the

same problem, which all corroborate Plaintiff Johnny Hill's report. ECF 311-11 at ¶37 (citing 30(b)(6) testimony); ECF 356-17 at 51:13-23, 209:11-211:1(citing healthcare records, interviews, and grievances). Indeed, Plaintiff Johnny Hill's multiple grievances and requests regarding FDC's failures to give him his medications are illustrative of the issue. Ex. 8.

Similarly, Dr. Venters's observations during inspections, putative class member interviews, and review of 30(b)(6) testimony and Plaintiff Espinosa's records informed his concern that Plaintiff Espinosa suffered from an untreated broken foot while on property restriction. ECF 356-17 at 229:15-230:16 (observing "numerous people" on strip who had "no mattress or had no clothes"), 157:7-158:6 (interviewees reporting "being put on strip and being forced to sleep on extremely filth-ridden floors"); ECF 311-11 at ¶41 (citing to 30(b)(6) testimony to support his concern about the lack of attention by nursing staff to people placed on strip), ¶61 (citing to medical and correctional records showing Mr. Espinosa was on strip while he suffered from a three-day delay in treatment).

Regarding Plaintiff Kendrick, Defendants (and Dr. Paulson) miss the point of Dr. Venters's concern about his weight loss. Dr. Venters's opinion is that the conditions in restrictive housing create barriers to patients receiving adequate attention from their chronic care providers. ECF 311-11 at ¶20-21. Thus, the absence of any notice or exploration by FDC's doctors for *why* Plaintiff Kendrick, a

diabetic, was suddenly losing weight when he transferred into isolation is the issue in and of itself. ECF 311-11 at ¶58; ECF 356-17 at 262:12-263:21 ("[W]hat alarmed me in his records is that it didn't seem like anybody was paying attention to [the weight loss] and … "[t]hat's exactly at the heart of kind of what can happen in segregation is nobody is looking.").

Defendants are similarly focused on the wrong issues with Plaintiff Burgess. This is a man who Dr. Paulson reports suffered from a stroke causing a disability requiring the use of wheelchair; FDC prescribes seizure medications for, if not an actual seizure disorder, then for "mental health for mood stabilization or for chronic pain for pain control;" experiences "pseudo-seizures" that Dr. Paulson characterizes "as when a person stiffens and shakes … often related to anxiety and panic;" and FDC fails to ensure always has the proper catheters needed to urinate, causing FDC to hospitalize him for "urologic procedures," including to "remove a broken catheter tip from his urethra." ECF No. 356-6 at 29-33; Ex. 5, Paulson Dep. at 219:9-22, 224:17-225:5-225:4. It is certainly reasonable for Dr. Venters to conclude—based on everything he knows about restrictive housing generally and in FDC specifically—that isolating Mr. Burgess alone in a cell for 22-24 hours a day "poses a serious risk to his physical health."[10] ECF 311-11 at ¶ 57; *see Braggs*, 317 F.R.D.

[10] Dr. Venters also reviewed Plaintiff Burgess's healthcare records. ECF 311-11 at ¶56. While Dr. Paulson faults Dr. Venters for missing certain information within the thousands of pages of

at 649 (finding an expert's methodology reliable even when she did not review "the entirety of the medical records" because "she may well have been able to reach reliable conclusions . . . without reviewing medical records.").

In sum, Dr. Venters's methodology based on his experience overseeing and researching solitary confinement, thousands of pages of FDC documents, and inspections and interviews across five FDC facilities is the embodiment of reliable.

B. Dr. Venters's opinions are relevant to class certification.

Dr. Venters's opinions provide evidence of the classwide risk of harm to physical health the putative class members face when subjected to FDC's restrictive housing policies and practices, making it clearly relevant to the issue of class certification. Defendants misunderstand Dr. Venters's opinion to be about the adequacy of healthcare in restrictive housing; it is not. ECF 311-11 at ¶1 (Dr. Venters opines on "the risk of harm to the physical health of people in restrictive housing in [FDC]."). His opinion is that there are several factors inherent to the conditions in restrictive housing that create physical health risks, including that isolation "intrinsically makes it more difficult for patients to access healthcare providers and for healthcare providers to monitor and treat their patients." ECF 311-11 at ¶¶19, 21. His declaration provides, *inter alia*, evidence demonstrating that people in

Mr. Burgess's records, Dr. Paulson also missed grievances from Mr. Burgess describing problems receiving catheter supplies. Ex. 5, Paulson Dep. at 223:7-227:12.

FDC's restrictive housing do suffer from such barriers.[11] *See, e.g., id.* at ¶¶45-46, 48-49, 59-61.

Based on his experience overseeing, researching, and inspecting restrictive housing systems, Dr. Venters opines that while there are tools to mitigate the risk of harm to physical health in restrictive housing, it is not possible to eliminate the risk. ECF 311-11 at ¶¶24-28; ECF 356-17 at 137:1-139:17, 143:2-144:3. Accordingly, Dr. Venters explains that correctional healthcare organizations, such as the National Commission on Correctional Health Care (NCCHC), recommend severe limits on the use of restrictive housing and, in the rare circumstances it must be used, urge implementation of the healthcare measures he describes. 311-11 at ¶22. His declaration shows that FDC, at least on paper, has adopted the NCCHC recommendations for healthcare measures in restrictive housing, an acknowledgment of the risk of harm to physical health because these measures otherwise would be unnecessary. *Id.* at ¶¶20-54. Thus, Dr. Venters evidences the common question of whether Defendants are deliberately indifferent because they

[11] While Dr. Paulson may offer contradictory testimony, this is not grounds for excluding Dr. Venters opinion. Competing expert testimony is an issue for the trial to determine the weight of each. *Rink*, 400 F.3d at 1293 n.7 ("[A] district court's exercise of its gatekeeper function under *Daubert* is not intended to supplant the adversary system or the role of the jury. Accordingly, a district court may not exclude an expert because it believes one expert is more persuasive than another expert") (internal citations and quotations omitted).

know their use of restrictive housing creates a substantial risk of serious harm to physical health.

Dr. Venters also demonstrates a common question of whether FDC has a system to effectively ensure reasonable accommodations for people with disabilities in restrictive housing conditions. *See, e.g., id.* at ¶47 (sleeping on the floor because the extension cord for a sleep apnea machine was not long enough to reach a bed through the food slot in a cell door), ¶49 (not receiving colostomy supplies while in CM), ¶56 (unable to access recreation area in a wheelchair and not receiving catheter supplies), ¶59 (difficulty obtaining insulin injections through food slot in the cell door).

Despite Defendants' assertion otherwise, Dr. Venters considers that people can exercise in their cells when he opines that sedentariness contributes to the risk of harm to physical health in FDC's restrictive housing. ECF 357 at 34; ECF 311-11 at ¶19. He opines it is impractical and unrealistic to assume that every person in restrictive housing will do in-cell exercises, especially people who cannot due to medical conditions or disabilities. ECF 356-17 at 186:22-188:1. He further opines that moving someone from a cell to a cage for recreation a few times a week, if that even happens, does not provide sufficient physical activity to eliminate the harm of being locked in a cell 22-24 hours a day. *Id.* This is directly relevant to the common

question of a risk of harm to physical health, fitting the allegations in this matter and questions before this Court for class certification.

VIII. DR. LOUIS KRAUS'S OPINION IS ADMISSIBLE.

A. Dr. Kraus's methodology is reliable and relevant.

Dr. Kraus used a reliable methodology to proffer his preliminary opinions. To identify the risk of harm to youth in FDC's use of restrictive housing, Dr. Kraus relied on his experience as a child and adolescent psychiatrist working with juveniles in correctional settings for over thirty years, as well as his review of the many documents listed in Appendix B of his declaration, including general isolation, mental health, and education policies and procedures; youth offender policies and procedures; and FDC's interrogatory responses; ECF 311-12 at ¶¶2-10 (credentials), ¶12 (documents reviewed); *id*. at 47-48 (Appendix B).

Dr. Kraus also inspected restrictive housing units at the two facilities where FDC isolated the male youthful offenders in the putative subclass of approximately 160 people under age 21. ECF 311-12 at ¶13 (inspections); ECF 311-21 at 140 (168 under 21). He interviewed 46 youths and adults at cell-front at these facilities, and later conducted nine in-depth interviews with people who had been or were currently isolated in FDC custody while under the age of 21. ECF 311-12 at ¶13. He reviewed the medical and mental health records of his interviewees. ECF 311-12 at ¶14. Dr. Kraus also interviewed Plaintiff Jeremiah Hill and reviewed his records. ECF 311-

12 at ¶15. Finally, Dr. Kraus reviewed "the extensive body of literature regarding the psychiatric effects of solitary confinement, cognitive and behavioral development in adolescents, juveniles, and youth in correctional settings" to form his opinions in this matter.[12] ECF 311-12 at ¶16.

Courts have frequently admitted and relied on Dr. Kraus's opinions grounded in the same methodology. *See, e.g.*, *Paykina on behalf of E.L. v. Lewin*, 387 F. Supp. 3d 225, 241 (N.D.N.Y. 2019) (crediting Dr. Kraus's opinion based on his review of the national standards, facility policies and procedures, inspections, and healthcare records to find that "[m]entally ill juveniles are particularly vulnerable to the effects of solitary confinement"); *V.W. by & through Williams v. Conway*, 236 F. Supp. 3d 554, 568, 570-71 (N.D.N.Y. 2017) (admitting Dr. Kraus's testimony where he reviewed the facility's isolation policies and other relevant documents; conducted an inspection; and interviewed and reviewed records of ten youth who had been placed in solitary confinement). *See also U.S. v. Arkansas*, 794 F. Supp. 2d 935 (E.D. Ark. 2011); *In re Matthew K.*, 823 N.E.2d 252, 254, 255 (Ill. App. Ct. 2005).

Defendants' arguments regarding randomness and statistical proof related to Dr. Kraus are off-base and addressed in Section III(B), *supra*. In addition, Dr. Kraus

[12] To address Defendants' dispute with the applicability of the studies regarding the isolation of youths under 18 to the entire subclass of youths under 21, Dr. Kraus cites to published studies to explain that "[t]here is no research to show that the negative impact of the developing brain is any different in 17 year olds as compared to 18, 19, or 20 year olds. Rather, research supports that the brain continues to develop until the age of 25." ECF 311-12 at ¶19.

directly responds to Defendants' causation argument with his testimony that even though many youths enter restrictive housing with a trauma history, the research shows that history likely makes them more vulnerable to isolation and worsens their symptoms in a way that would not necessarily occur in the general prison population. ECF 357 at 37; ECF 311-12 at ¶24; ECF 356-20 at 59:12-60:5, 64:1-65:4.

Defendants' claim that Dr. Kraus was speculating about his interviewees minimizing their symptoms is groundless. ECF 357 at 38. Dr. Kraus's opinion was based on consistent reporting across the group, his knowledge of relevant and well-established research, and his decades of evaluating hundreds of youths in similar settings. ECF 356-20 at 66:5–67:1; ECF 311-12 at ¶48.

Finally, Defendants challenge Dr. Kraus's opinion about Plaintiff Jeremiah Hill based on minor inconsistencies between his deposition and what he told Dr. Kraus. ECF 357 at 38. But the fact that a 20-year-old with a "suspected intellectual disability" who has been in and out of isolation since he was 14 years old was not 100% consistent under several hours' of deposition questioning provided no reason for Dr. Kraus to alter his opinions. ECF 356 at 43 ("suspected intellectual disability"); ECF 356-20 at 128:6-128:17 (Dr. Kraus testifying: "I thought he was trying to answer the questions fairly frankly and openly . . . [and] at times his somewhat simplistic answers might have given a wrong impression of issues at hand, which he didn't even realize while he was doing it."). This is especially true when

the foundation for his opinion includes his specialized knowledge of child and adolescent psychiatry and his review of Plaintiff Hill's healthcare records. ECF 356-20 at 126:2-10.

Dr. Kraus reliably concluded, based on all the sources he considered, that FDC's isolation policies and practices subject Youth Subclass members to a risk of harm, fitting the allegations in this matter and questions before this Court for class certification. ECF 311-12 at ¶¶39, 48, 50-52.

IX. CONCLUSION

All five of Plaintiffs' experts' opinions in support of class certification meet *Daubert*'s standards. First, each has expert qualifications to proffer their opinions in this matter, as they have done in numerous similar cases involving prison conditions. Second, Plaintiffs' experts each have used a methodology that is reliable in their fields and accepted by courts in similar cases. Third, each opinion is relevant to and supports Plaintiffs' overall claims in this matter and motion for class certification. Most of Defendants' arguments misconstrue Plaintiffs' experts' testimony and the remaining few are, at best, more appropriate for considering the weight of the opinions, not their admissibility. *Rosenfeld*, 654 F.3d at 1193. While Defendants and their experts may disagree with Plaintiffs' experts conclusions, they are free to make those argument at trial—especially a bench trial—but Defendants

have not presented any reasons why their opinions should be stricken altogether. As such, Plaintiffs respectfully request Defendants' motion to strike be denied.

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Respectfully Submitted,

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Certificate of Word Limit

The undersigned counsel certifies compliance with the word limit in Order Granting Motion to Increase Word Limit, ECF 367. This reply contains 12,733 words.

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