IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

J.W., et al., **Plaintiffs,** **v.** **A.C. ROPER, et al.,** **Defendants.**	CLASS ACTION CASE NO. CV-10-B-3314-S

PLAINTIFFS' MOTION FOR CLASS ACTION CERTIFICATION

This action seeks declaratory and injunctive relief against Defendant A.C. Roper, in his capacity as Chief of the Birmingham Police Department (the "Police") to limit the use of mace[1] against high school students in Birmingham City Schools (the "Schools" or "Birmingham high schools"). This action presents a classic case for Fed. R. Civ. P. 23(b)(2) class certification. Plaintiffs allege that the Police's uniformly applicable policy, practices, and training program related to the use of mace in Birmingham high schools subject thousands of children to the risk of severe harm. The policy, practices, and training programs are promulgated

[1] Mace is the trademarked name for a line of defense products that include pepper spray. Although the original Mace product differs in chemical composition from pepper spray, the two terms are frequently used interchangeably to refer to chemical weapons that contain pepper spray. The term "mace" is used herein to refer to all such chemical weapons.

and overseen by Defendant Roper and condoned and approved by the Schools. Even though mace causes physical, psychological, and emotional injuries, especially in children, most students will not be able to seek any recourse due to difficulties in accessing legal resources. Because all children in Birmingham high schools risk harm from the illegal use of mace by Police officers, class action treatment would provide the most fair and efficient means to resolve this matter for all of the affected children.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs' claims in this case concern the uniform policy and widespread practices of Defendant Roper related to the use of mace against students enrolled in Birmingham high schools. The proposed class in this case consists of current and future Birmingham high school students who are at risk of injury as a result of Defendant Roper's unconstitutional policy and practices that permit School Resource Officers ("SROs") – Police officers that patrol the Schools daily at the invitation of the School Board – to use mace against Birmingham high school students in a manner that endangers their safety.

In 1996, the School Board formally invited the Police into Birmingham high schools to patrol school grounds, conduct arrests on school premises, and engage in school discipline. 3d Am. Compl. ¶ 35. When entering the Schools, Defendant Roper authorized and directed SROs to deploy mace against students in an illegal

and abusive manner, and without regard for student safety. *Id*. ¶¶ 57-65.

The Police's current written policy that governs SROs' use of chemical weapons against students permits officers to use mace "in an arrest situation where the weapon's use offers the possibility of lessening the likelihood of physical injury to the arresting officer, citizens on the scene and/or the suspect." *See id*. ¶ 59; Chemical Spray Subject Restraint: Non-Deadly Use of Force, Birmingham Police Department Procedure No. 113-5. This expansive language permits and encourages SROs to recklessly deploy chemical weapons against students in inappropriate situations and allows SROs to administer abusive and excessive responses to student behavior. 3d Am. Compl. ¶ 61. The Police's written policy on use of mace also instructs SROs to "direct [mace] to the facial area of the assailant, with the bridge of the nose being the best target." *Id*. ¶ 63. This policy directly contradicts applicable deployment standards that provide that chemical spray should be directed at the chest – *not* the face – of the target. *Id*.; *see also* Ex. 1, containing Aff. of Dr. Michael Cohen. This policy on mace does not distinguish between the school setting with adolescents and non-school settings with adults. *See* Ex. 2, Tarrant Dep. 298: 1-8; Ex. 3, Benson Dep. 196: 11-21; *see also* Birmingham Police Department Procedure No. 113-5. One Defendant SRO even stated that the policies and tactics applicable to prisoners held in the Alabama Department of Corrections of facilities should apply to students in

Birmingham high schools. *See* Tarrant Dep. 181: 12-23, 182: 1-23.

Defendant Roper has also adopted and encouraged widespread and persistent unconstitutional practices that permit SROs to use chemical weapons against children in an abusive manner. 3d Am. Compl. ¶ 66. Specifically, SROs use mace against children when they are fully restrained or otherwise pose no risk of injury to any person, as a first resort in responding to student behavior that school officials consider undesirable, as a form of punishment, and to control and intimidate peaceable crowds. *Id*; *see* Benson Dep. 332: 5-23, 333: 1-13 (Officer stating that Police rules and regulations mandates use of mace on students who are engaged in physical altercations); Tarrant Dep. 103: 19-23, 104: 1-9, 105: 7-10 (Officer stating that Police officers are trained to first deploy mace against students rather than engage in less invasive physical restraint techniques). SROs deploy mace in closed spaces with little to no ventilation and without regard for others who may be in close proximity to the intended target. *Id*; *see* Benson Dep. 154: 9-22, 156: 19-23 (Officer stating that she has accidentally affected students and school personnel with mace during the course of spraying a student with the chemical). Further, SROs do not commence any decontamination procedures after causing children to be affected by mace despite applicable standards of care the mandate such action. *Id*. ¶ 78; Benson Dep. 160: 20-23, 161: 2-13 (Officer stating that she did not provide medical assistance or commence decontamination

procedures for students and teacher accidentally affected when she sprayed a student with mace).

SROs' improper use of mace against students directly results from Defendant Roper's failure to adequately train and supervise SROs regarding the appropriate use of chemical weapons against children in school environments, proper deployment techniques, and decontamination procedures. *Id*. If SROs receive any training on use of mace, it is only at the police academy with little to no continuing education for veteran police officers. *See* Tarrant Dep., 334: 15-22 (Officer stating that he has not had training on mace deployment since he completed training at the police academy in 1999); *see also* Benson Dep.71: 15-21 (Officer stating that she cannot recall having undergone any training on the use of mace since completing training at the police academy in 1988). Furthermore, Police policies and training programs do not distinguish between school settings and non-school settings, and officers do not receive any training on using mace against adolescents. *See* Tarrant Dep. 298: 1-8; Benson Dep. 196: 11-21; *see also* Birmingham Police Department Procedure No. 113-5. SROs receive no training on appropriate decontamination procedures for students who are affected by mace and appear to receive little training on the possible life threatening dangers associated with mace exposure. *See* Tarrant Dep. 82: 11-21 (Officer stating that he would spray an asthmatic student with mace regardless of the possible life-

threatening consequences the student may suffer from exposure).

As a result of Defendant Roper's policy, practices, and deficient training program, Birmingham high school students exposed to mace experience severe pain and risk severe adverse effects, including respiratory arrest, apnea, and temporary and permanent injuries to the eye. 3d Am. Compl. ¶ 47-48. School children are at risk even when they are not alleged to have engaged in any wrongful conduct because SROs administer mace in closed spaces with limited ventilation and without regard for innocent bystanders who are in close proximity to intended targets. *Id*. ¶ 84¬90. Further, SROs do not commence any decontamination procedures for children who have been exposed to mace, thereby exacerbating the potential harm to Birmingham high school students. *See id*. ¶¶ 78, 89, 105, 107, 116, 133 & 149. Because Defendant Roper's unconstitutional policy, practices, and training program affect Birmingham high school students similarly, the Plaintiffs have requested declaratory and injunctive relief to protect all current and future Birmingham high school students' Fourth and Fourteenth Amendment rights to be free from excessive force. 3d Am. Compl. ¶¶ 51-54.

ARGUMENT

Courts have broad discretion to decide matters of class certification so long as the court's reasoning falls within the parameters of Federal Rule of Civil Procedure 23. *Cooper v. Southern Co*., 390 F. 3d 695, 711 (11th Cir. 2004).

Parties seeking class certification must satisfy all four requirements of Rule 23(a), and at least one of the standards under Rule 23(b). *Klay v. Humana, Inc.*, 382 F.3d 1241, 1250-51 (11th Cir. 2004). All of the requirements for certification pursuant to Rule 23(a) and (b) (2) have been met in this case.

I. Numerosity

The numerosity requirement of Rule 23(a) is satisfied because the number of students currently attending Birmingham high schools are "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a). Although "[t]here is no bright-line number of plaintiffs to satisfy the numerosity requirement . . . 'generally, less than twenty-one is inadequate, more than forty adequate, with numbers between varying according to other factors.'" *Grimes v. Rave Motion Pictures Birmingham*, 264 F.R.D. 659, 668 (N.D. Ala. 2010); *see also re Healthsouth Corp. Sec. Litig.*, 257 F.R.D. 260, 274 (N.D. Ala. 2009) (finding that courts may also make "commonsense assumptions" to support a finding of numerosity). Furthermore, "'[i]mpracticable' does not mean 'impossible'; plaintiffs need only show that it would be extremely difficult or inconvenient to join all members of the class." *In re Healthsouth Corp*., 257 F.R.D. at 273 (quoting *In re Domestic Air Transp. Antitrust Litig*., 137 F.R.D. 677, 698 (N.D. Ga. 1991)).

Approximately 8,000 students attended high school in Birmingham during

the 2009-10 school year. *See* 3d Am. Compl. ¶ 31. SROs are deployed at all Birmingham high schools. 3d Am. Compl. ¶ 37. Not only is the Eleventh Circuit's numerical guideline for numerosity satisfied, but the sheer number of potential plaintiffs in this action would make joinder extremely difficult and inconvenient. Because almost all of the class members in this case are youths, counsel must coordinate not only with individual youths but their parents or legal guardians as well. This reality dramatically increases the logistical barriers to representing thousands of children absent class certification.

Certification is also favored because the class in this case is clearly defined and easily identifiable. *Wright v. Circuit City Stores, Inc*., 201 F.R.D. 526, 537 (N.D. Ala. 2001) (ease in identifying and locating class members as factors weigh in favor of class certification). All potential class members attend one of eight high schools in the School system and all are listed on the schools' registration rolls. Thus, class members may easily be located and identified.

II. Commonality and Typicality

As the Eleventh Circuit has explained, the "commonality" and "typicality" inquiries required by Rule 23(a) substantially overlap. *Prado-Steiman v. Bush*, 221 F.3d 1266, 1278 (11th Cir. 2000). Commonality focuses on "the group characteristics of the class as a whole," whereas "typicality" focuses on "the individual characteristics of the named plaintiff in relation to the class." *Id*.

Together, these elements "serve as guideposts for determining whether . . . maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the *class members will be fairly and adequately protected in their absence." Id. (quoting Gen'l Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157 n.13 (1982)). The factual and legal bases for Plaintiffs' claims, as well as Defendants' defenses, are common and typical to the class Plaintiffs seek to represent.

A. Commonality

The Plaintiffs satisfy the commonality element of Rule 23(a) because this action raises questions of law and fact that are common to the class and arise from a Police policy that is generally applicable to Birmingham City high school students. *See Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2553 (2011) (finding that commonality exists when the members of a proposed class are all subject to a common policy). To meet the commonality requirement, "a class action must involve issues that are susceptible to class-wide proof." *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001). This is a minimal standard that "merely requires an identity of some factual or legal matter among members of the class." *In re Healthsouth Corp*., 257 F.R.D. at 274 ("All questions of law or fact . . . need not be common to the class."); *see also Piazza v. Ebsco Indus*., 273 F.3d 1341, 1351 (11th Cir. 2001) ("[T]ypicality and commonality 'may be satisfied

even if some factual differences exist between the claims of the named representatives and the claims of the class at large . . . [although] we do require that the named representatives' claims share the same essential characteristics as the claims of the class at large.'" (quoting *Prado-Steiman*, 221 F.3d at 1279)).

In this case, common questions of law or fact predominate. Such common questions include:

- Whether Defendant Roper's policy governing the use of mace on children attending Birmingham high schools permits and encourages SROs to use the chemical against students in inappropriate situations and in an unconstitutional manner in violation of the Fourth and Fourteenth Amendments.

- Whether the practices and customs related to use of mace employed by SROs, and authorized by Defendant Roper, against Birmingham high school students are impermissible under the Fourth and Fourteenth Amendments.

- Whether Defendant Roper's uniform training and supervision of SROs in the use of mace provides insufficient guidance on application of the chemical in school settings and against children. There is also the question of whether the uniform training and supervision program fails to provide Police officers with guidance on the appropriate deployment techniques, including the proper distance to stand from a target before administering mace and the appropriate bodily areas at which to aim the stream of mace.

- Whether Defendant Roper's decontamination procedures for students who have been exposed to mace are inadequate to reduce the risk of prolonged pain, injury, or other serious harm to exposed students.

- Whether SROs' use of mace on students constitutes an unreasonable seizure in violation of the Fourth Amendment.

- Whether Defendant Roper is liable under 42 U.S.C. § 1983 for failing to adequately train and supervise SROs who are authorized to use mace on

children.

All of the Plaintiffs' claims stem from Defendant Roper's written policy and practices that permit and govern the use of mace on high school students. *See Wal-Mart Stores, Inc*., 131 S.Ct. at 2553. The policy and practice allow SROs to bring mace onto school grounds and to use it on schoolchildren. *See* 3d Am. Compl. ¶ 35, 57-59. The policy is deficient in numerous ways, including a complete lack of guidance on how mace should be used in a school setting and on children, and its failure to provide sufficient instruction to SROs regarding the treatment of mace-related injuries. *See* 3d Am. Compl. ¶ 78. Further, Police practice regarding the use of mace in Birmingham Schools permits SROs to administer the chemical against children in an abusive or punitive way, including when children are restrained, as a first resort, when they have engaged in no wrongful conduct, and when they do not present a threat of harm. Defendant Roper also failed to properly train and supervise SROs regarding proper mace deployment. Specifically, SROs receive no training on the appropriate distance to stand from a target when deploying the chemical, use of the chemical in closed spaces with limited ventilation, and the standard of care for decontamination and treatment procedures. *Id*. Despite knowing that SROs recklessly deploy mace, Defendant Roper has failed to take any measures to curb the SROs' dangerous and reckless use of mace against children.

Consequently, Birmingham high school students are similarly affected and commonly at risk of harm. *See, e.g*., Ex. 4, containing Decs. of N.M., D.J., J.W., G.S., P.S., T.L.P., B.D., & K.B. SROs are stationed at every Birmingham high school. *See* 3rd Compl. ¶ 37. There are approximately 131 *known* students who were directly sprayed with mace since 2004 in eight of the nine Birmingham high schools. *See* Ex. 5, containing Affidavit of Ebony Howard.

In addition, there are many students who are indirectly or inadvertently affected by SROs use of mace and not subject to arrest. *See* Dec. of J.W. and P.S. Such students generally are not accused of any wrong-doing; they were in the wrong place at the wrong time. Regardless of any student's own conduct, they are always at risk of being indirectly or inadvertently sprayed with mace.

Furthermore, SROs' use of mace is becoming more prevalent. Arrests involving the use mace have risen from six during the 2005-2006 school year to 30 during the 2008-09 school year and 34 during the 2009-10 school year, indicating that SROs are subjecting students to Chief Roper's inadequate policy more often. *See* Aff. Of Ebony Howard; *see also* Ex. 6, Gates Dep. 223: 18-23, 224: 15-18 (Assistant Principal at Jackson-Olin High School stating that it is unusual for a month and a half to pass without an SRO macing a student in school). Again, these numbers do not calculate the number of students who are

indirectly affected by mace.

As Police employees, SROs are trained in the use of mace and decontamination procedures for students who have been exposed to mace pursuant to a common, deficient policy which Plaintiffs challenge in this action. Because all of the SROs stationed at the high school are governed by the same deficient policy, and Defendant Roper has failed to properly train and supervise all SROs, every student attending a Birmingham high school faces the same risk of injury from exposure to mace. Furthermore, due to the deficient policy regarding decontamination, children who are exposed to mace have received and similarly risk receiving inadequate treatment for mace exposure in the future. *See* 3d Am. Compl. ¶¶ 78, 89, 105, 107, 116, 133 & 149. Mace is diffuse in nature and will spread throughout the air when sprayed. Accordingly, students who are not accused of engaging in misconduct are at risk for exposure to the chemical because SROs often deploy mace in poorly ventilated spaces and without regard to innocent bystanders who are in close proximity to the intended target. *See* 3d Am. Compl. ¶¶ 84-90, 99, 109-118, & 28; *see also* Decs. of N.M., J.W., P.S., T.L.P., & B.D; Benson Dep. 154: 9-22, 156: 19-23. Indeed, even a member of the School Board has publicly admitted that students accused of no wrong doing have been affected by mace just because they were too close to where an SRO sprayed mace

on a student. *See* 3d Am. Compl. ¶ 39.

B. Typicality

Similarly, the named Plaintiffs easily satisfy the third element of Rule 23(a) because their claims and defenses are typical of the claims and defenses of the class. To establish typicality, the named Plaintiffs must show that there is "a nexus between the class representative's claims or defenses and the common questions of fact or law which unite the class." *Kornberg v. Carnival Cruise Lines, Inc*., 741 F.2d 1332, 1337 (11th Cir. 1984). "A sufficient nexus is established if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." *Id*.; *see also Prado-Steiman*, 221 F.3d at 1279 n.14 ("[A] strong similarity of legal theories will satisfy the typicality requirement despite substantial factual differences.").

Typicality is established in this case because the claims of all class members, like those of the named Plaintiffs, arise from the inadequate policy and practices governing the use of mace on students, and Defendant Roper's failure to properly train and supervise the police officers subject to that policy. All of the named Plaintiffs were Birmingham high school students who were affected by mace as the result of written policy and practices of the Police. Both J.W. and P.S. were affected by mace – despite not having been accused of engaging in any

misconduct – when they were not the SROs' intended target. This occurred because Police policy and practices permit SROs to deploy mace in closed spaces and without any regard for innocent children in close proximity to the intended target. 3d Am. Compl. ¶¶ 86-89, 99. Several of the Plaintiffs, G.S., T.L.P., B.D., and K.B., were sprayed in the face with mace pursuant to Police policy that permits unreasonable and inappropriate use of chemical restraints against students. *Id*. at ¶¶ 95-98, 114, 127, 146. These students were also subject to widespread Police practices that permit SROs to spray children in the face with chemical weapons for allegedly engaging in adolescent misbehavior, even when the children pose no serious threat of harm to any person. *Id*. ¶¶ 95-98, 114, 127, 146. This practice is also in contradiction with industry standards that require chemical spray deployment towards a target's chest, rather than the face. *See also Id*. ¶ 63. SROs and school officials failed to commence decontamination procedures for any of the named Plaintiffs. *See id*. ¶¶ 89, 105, 116, 133, 149.

The injuries suffered by these Plaintiffs are representative of the injuries all Birmingham high school students risk sustaining – regardless of whether they are accused of engaging in any misconduct. *See* Decs. of J.W., G.S., P.S., T.L.P, B.D. & K.B. Because the policy and practices are inadequate and Defendant Roper has failed to provide proper training and supervision, class members, like the

Plaintiffs, similarly have experienced or face the risk of significant physical and psychological injury as a result of the actions of ill-trained and unsupervised SROs stationed at high schools.

Although there may be slight factual differences among the plaintiffs' experiences, all of their claims are premised on the same legal theories. To succeed in this action, the named Plaintiffs must show that the policy and practices governing the use of mace on students are inadequate, that Defendant Roper failed to properly supervise and train the SROs, and that these deficiencies resulted in violations of students' Fourth and Fourteenth Amendment rights. Likewise, unnamed class members would also have to establish these deficiencies when bringing an action because SROs stationed at the high schools are all subject to the same policy, training, and supervision. Thus, any student who pursues an individual action would rely on the same legal theories as those of the named Plaintiffs. Similarly, Defendants would likely assert the same averments and defenses they have presented in this case. *Access Now, Inc. v. AHM CGH, Inc*., 98-3004 CIV-GOLD/SIMONTON, 2000 U.S. Dist. LEXIS 14788, at *15 (S.D. Fla. July 12, 2000) (Fed. R. C. Pro. 23(a) (3) "requires that 'the claims or defenses of the representative parties are typical of the claims or defense of the class.'").

III. Adequacy of Representation

The named Plaintiffs will also "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). To determine adequacy, the courts look to whether there are any "substantial conflicts of interest" between the named Plaintiffs and the class, and whether the named representatives will "adequately prosecute the action." *In re Healthsouth*, 257 F.R.D. at 275. In other words, the class representatives must show that their interests are not antagonistic to those of the class, and that their counsel is "qualified, experienced, and generally able to conduct the litigation." *Id*.

The named Plaintiffs have no interests antagonistic to those of the class. All class members have a common interest in the relief sought in this case – to protect themselves and other children who are attending Birmingham high schools from the dangerous and unconstitutional policy and practices of macing students. *See* Decs. of J.W., G.S., P.S., T.L.P., B.D. & K.P. If the lead Plaintiffs succeed in proving their claims and securing injunctive and declaratory relief to limit the use of mace in the Schools, all Birmingham high school students will be safer. Accordingly, the relief sought by the named Plaintiffs does not substantially conflict with the interests of the class.

Class counsel is also fully qualified and prepared to pursue this action on

behalf of the class. The attorneys representing the named Plaintiffs are experienced in handling class actions and civil rights litigation, and have expertise in juvenile justice issues. *See* Ex. 7, Aff. of Mary Bauer. In addition, class counsel has sufficient financial and human resources to litigate this matter. *Id*.

IV. Class-Wide Declaratory and Injunctive Relief is Appropriate

The Plaintiffs satisfy Rule 23(b)(2) because the Defendants have "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b) (2). To maintain a class action under Rule 23(b)(2) "(1) the party opposing the class must have acted or refused to act or failed to perform a legal duty on grounds generally applicable to all class members; and (2) the class must seek final injunctive or declaratory relief with respect to the class as a whole." *AHM*, 2000 U.S. Dist. LEXIS 14788, at *15.

Defendant Roper adopted and implemented a broadly applicable, constitutionally deficient policy governing the use of mace on children in Birmingham high schools and has permitted unconstitutional practices with regard to use of mace against students. Furthermore, he failed to train and supervise officers who are actively and regularly using mace on children, resulting in the excessive, regular, and dangerous use of this chemical weapon against Plaintiffs

and class members.

These deficiencies affect every class member, *i.e.*, all students who attend and will attend high school in Birmingham. Even students who are not the target of SRO mace use risk bystander injury despite not having engaged in any wrongful conduct. *See* Decs. of N.M., J.W., & P.S. Regardless of a student's personal conduct, every student is at risk of injury because Defendant Roper's policy governing the use of mace applies uniformly to all police officers stationed in a Birmingham high school, and he has failed to properly train and supervise all SROs on the use of mace on children and in a school setting. As a result, all Birmingham high school students are affected just by virtue of being physically present in a Birmingham high school, regardless of which high school they attend. *See* Decs. of N.M & P.S. (students were sprayed with mace when they were not the SROs' intended target while attending Huffman and Woodlawn High Schools, respectively); Decs. of D.J., G.S., T.L.P., B.D., & K.B. (students were directly sprayed with mace while attending their respective high schools); Aff. of J.W. (student was sprayed with mace while standing in a peaceable crowd at Woodlawn High School); 3d Am. Compl. ¶ 39 (statements by School Board Member Edward Maddox that during his teaching career at Huffman High school students not engaged in any wrong doing were affected by mace sprayed by SROs).

Thus, the Defendants have "acted or refused to act on grounds that apply generally to the class." Injunctive and declaratory relief is therefore appropriate because it would reform and eliminate practices that have similarly injured Plaintiffs and class members and that pose a continuing threat to the safety and well-being of Birmingham high school students.

Further, the named Plaintiffs solely seek declaratory and injunctive relief on behalf of the class. *See* 3d Am. Compl. at ¶¶ 185-98. The requirements of Rule 23(b)(2) are "almost automatically satisfied in actions primarily seeking injunctive relief." *Baby Neal for and by Kanter v. Casey*, 43 F.3d 48, 58 (3d Cir. 1994); *see also Ass'n for Disabled Americans, Inc. v. Amoco Oil Co*., 211 F.R.D. 457, 465 (S.D. Fla. 2002) (finding that class certification under Rule(b)(2) was appropriate when "the Class Plaintiffs sought exclusively injunctive relief based on their allegations"). Because declaratory and injunctive relief is the exclusive relief sought by the class, certification pursuant to Rule 23(b)(2) is appropriate. *See AHM*, 2000 U.S. Dist. LEXIS 14788, at *15.

CONCLUSION

For the reasons explained above, the Plaintiffs request that the Court grant this motion for class certification.

Respectfully submitted,

/s/ Ebony Glenn Howard

Ebony Glenn Howard (ASB-7247-O76H)

Mary C. Bauer (ASB-1181-R76B)

SOUTHERN POVERTY LAW CENTER

400 Washington Avenue

Montgomery, Alabama 36104

334-956-8200

334-956-8481 (fax)

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October, 2011, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following:

Mark S. Boardman

Clay Carr

Boardman, Carr, Hutcheson & Bennett, P.C.

400 Boardman Drive

Chelsea, Alabama 35043-8211

Office (205) 678-8000

mboardman@boardmancarr.com

ccarr@boardmancarr.com

Counsel for Birmingham City Schools and

Superintendent Craig Witherspoon

Thomas Bentley, III

Frederick Fullerton II

Nicole King

City of Birmingham - Law Department

710 North 20th Street

Birmingham, Alabama 35203

Office (205) 254-2369

Thomas.Bentley@ci.birmingham.al.us

Frederick.Fullerton@ci.birmingham.al.us

Counsel for Birmingham Police Department