

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 force against high school students in Birmingham City Schools (the "Schools" or "Birmingham high schools"). This action presents

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 RIOS to use chemical weapons against children in an abusive manner. 3d Am. Comp

procedures for students and teacher accidentally 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 advise SROs regarding the appropriate use of chemical weapons against children in school environments,

threatening consequences the student may suffer (exposure).

As a result of Defendant Roper's policy, practices, and deficient training program, Birmingham high school students exposed to the experience severe pain and risk severe adverse effects, including respiratory arrest, apnea, and temporary and permanent injuries to the eye. 3d Cir. 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 small 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 Cir. Am. Compl. ¶¶ 51-54.

ARGUMENT

Courts have broad discretion to decide matters of law 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 requirements of Rule 23(a), and at least one of the standards under Rule 23(b). *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. 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, and forty adequate, with numbers between varying according to other factors.’” *Crimes v. Rave Motion Pictures Birmingham*, 264 F.R.D. 659, 668 (N.D. Ala. 2010). See also *re Healthsouth Corp. Sec. Litig.*

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 individuals but their parents or legal guardians as well. This reality dramatically increases the logistical barriers to representing thousands of children absent certification.

Certification is also favored because

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 practices allow SROs to bring mace onto school grounds and to use it on children. 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 allows SROs to administer the chemical against children in an abusive punitive way, including when children are restrained, as a first resort, even 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, or the chemical in closed spaces with limited ventilation, and the standard for decontamination and treatment procedures. 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 commonly 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 statione

indirectly affected by mace.

As Police employees, SROs are trained in the use of 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.

misconduct – when they were not the SROs' intended target. This occurred because Police policy and practices permit SROs to use 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 pursua

Plaintiffs, similarly have experienced or face the risk of significant physical and psychological injury as a result of the actions of untrained 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

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

behalf of the class. The attorneys representing named Plaintiffs are experienced in handling class actions and civil 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.

IV. Class-Wide Declaratory and Injunctive Relief is Appropriate

The Plaintiffs satisfy Rule 23(b)(2) because the Defendants have “acted or

and class members.

These deficiencies affect every class member, 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 engaged in any wrongful conduct. See

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 cases primarily seeking injunctive relief.” *Baby Neal for and by Kanter v. Case*, 43 F.3d 48, 58 (3d Cir. 1994). See also *Ass'n for Disabled Americans, Inc. v. Amoco Co.*, 211 F.R.D. 457, 465 (S.D. Fla. 2002) (finding that class certification under Rule 23(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

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October 2012, 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

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