UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

J.B., by and through his Next Friend LINDA WINDLEY, D.P. by and through his Next Friend STACEY BLEVINS, B.W. by and through his Next Friend JEANNA WALTERS, and J.J. by and through his legal guardian DENISE VICK, on behalf of themselves and those similarly situated, and DISABILITY RIGHTS NORTH CAROLINA,	)	
Plaintiffs,	)	
v.	)	Case No. 1:24-cv-335
THE NORTH CAROLINA DEPARTMENT OF HEALTH AND AND HUMAN SERVICES and DEVDUTTA SANGVAI, in his official capacity as Secretary of the North Carolina Department of Health and Human Services,	)	
Defendants.	)	

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

I. INTRODUCTION

Plaintiff DRNC and Individual Plaintiffs J.B., by and through his next friend Linda Windley, D.P. by and through his next friend Stacey Blevins, B.W. by and through his next friend Jeanna Walters, and J.J. by and through his legal guardian Denise Vick ("Proposed Class Representatives"), on behalf of themselves and those similarly situated, move pursuant to Fed. R. Civ. P. 23(b)(2) to certify a class of individuals who are being or will be harmed by Defendants' failure to provide timely capacity evaluations and restoration services to pretrial detainees who are suspected of being, or have been adjudicated to be, incapable to proceed to trial (collectively, "ITP detainees"). This failure causes North Carolinians with serious mental health disabilities and other cognitive disabilities to languish in jails for months (and, in some cases, years) without receiving required capacity evaluations or restoration services.

The resulting prolonged detention extends well beyond a reasonable period of time necessary to determine whether it is substantially probable that the ITP detainee will attain capacity in the foreseeable future, violating the Fourteenth Amendment's Due Process Clause. And because this prolonged detention has the effect of discriminating against people based on their disabilities, Defendants' actions also violate the Americans with Disabilities Act ("ADA"), and the Rehabilitation Act ("RA"). Members of the proposed class

are, or will be, harmed by the Defendants' actions, as described below, and collectively meet all requirements for class certification.

Each of the requirements of Rule 23 is met. Rule 23(a)(1)'s numerosity requirement is met because the proposed class includes an expanding group of over one hundred individuals, which is so numerous as to make joinder impracticable. Additionally, proposed class members are individuals who are detained in jail and currently living with severe cognitive and mental health disabilities, making it very difficult for them to proceed on an individual basis.

Rule 23(a)(2)'s commonality requirement is met because all class members' claims derive from the prolonged wait times for capacity evaluations and/or restoration services, which violate the Fourteenth Amendment, the ADA, and the RA. The North Carolina Department of Health and Human Services ("NCDHHS") is the sole entity responsible under North Carolina law for providing capacity evaluations and restoration services, and the ITP process is established by state statute. Common issues center around (1) the nature and extent of Defendants' statutory duties to provide capacity evaluation and restoration services to the Plaintiff Class; (2) whether Defendants have failed to provide timely access to capacity evaluation and restoration services in violation of the Fourteenth Amendment's substantive due process guarantees, as interpreted in *Jackson v. Indiana*, 406 US 715 (1972); (3) whether Defendants have failed to provide timely access to capacity

evaluation and restoration services in violation of the Fourteenth Amendment's procedural due process guarantees; (4) whether Defendants' delays in providing capacity evaluations and restoration services violate the integration mandates of the ADA and the RA; (5) whether Defendants' methods of administering the system of capacity evaluations and restoration services have the purpose or effect of excluding Plaintiff class members from access to services, or defeat or substantially impair accomplishment of the objectives of the state program to which Plaintiff class members are subjected, as prohibited by the ADA and the RA; and (6) whether Defendants have failed to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability in violation of the ADA and the RA.

Rule 23(a)(3)'s typicality requirement is met because each member of the proposed class, including the Proposed Class Representatives, would bring the same claim and seek the same relief as the rest of the proposed class. They are all subject to the same systemwide process implemented by a single agency, NCDHHS, and Proposed Class Representatives seek to establish maximum permissible wait times that would benefit all class members. If any named plaintiff succeeds in challenging his or her prolonged wait time, it would advance the interests of all similarly situated class members.

Rule 23(a)(4)'s adequacy requirement is met because no named plaintiff would have antagonistic interests to the unnamed members of the class. The named plaintiffs have been adjudicated ITP or are suspected of being ITP and are awaiting capacity evaluations or restoration services, seeking relief through a next friend or legal guardian, and have demonstrated their commitment to vigorously prosecuting the action.

Finally, Rule 23(b)(2) is met because the Defendants have "acted or refused to act on grounds that apply generally to the class" through their failure to establish a system that timely moves ITP detainees through the capacity evaluation and restoration service processes. Plaintiffs seek uniform relief among the class members — injunctive and declaratory relief that would set a maximum permissible waiting period and would resolve all class members' claims.

Accordingly, Plaintiffs respectfully request that the Court certify the proposed class.

II. FACTUAL BACKGROUND

This action arises from the systemic failure of NDCHHS to provide timely capacity evaluations and restoration services to pretrial detainees who are suspected of, or adjudicated to be, incapable to proceed to trial.

ITP detainees in North Carolina routinely wait months — and in some cases years — in county jails for court-ordered capacity evaluations and

restoration services. From 2022 to 2024, ITP detainees have waited an average of 68 days for a capacity evaluation report, and an average of 145 to 148 days for admission to a state psychiatric hospital for restoration services. *See* Doc. No. 15-1 (Pl's Br. in Supp. of Prelim. Inj., Ex. 1) (spreadsheet compiling average wait times for capacity evaluations) at 1; Doc. No. 15-2 (declaration explaining compilation of data). From July to September 2025, the average wait for capacity evaluation is 68 days[1] while the wait for admission to a state psychiatric hospital for restoration services was 148 days.[2] As of January 22, 2026, there were 122 ITP individuals waiting for admission to a state psychiatric hospital for restoration services.[3] County jails are ill-equipped to provide appropriate mental health care, and prolonged detention in these

[1] Rachel Crumpler, *Is Charlotte train stabbing suspect mentally fit for trial? Court-ordered evaluation process may take months*., NC Health News (Oct. 2, 2025), https://www.northcarolinahealthnews.org/2025/10/02/charlotte-train-stabbing-suspect-capacity-to-proceed-mental-evaluation/#:~:text=More%20criminal%20defendants%20are%20being,NC%20Health%20News%20on%20Sept ((attached as Ex. N to Ex. G., Declaration of John A. Freedman ("Freedman Decl.")).

[2] Rachel Crumpler & Taylor Knopf, *Who gets a bed in NC's state psychiatric hospitals — and who waits?,* NC Health News (Feb. 12, 2026), https://www.northcarolinahealthnews.org/2026/02/12/who-gets-bed-in-nc-state-psychiatric-hospitals-and-who-waits/#:~:text=This%20bottleneck%20has%20caused%20the,NewsEmbed%20Created%20with%20Datawrapper (attached as Freedman Decl. Ex. J).

[3] *Id*.

facilities frequently worsens the very conditions that render individuals incapable of proceeding. *See* Doc. No. 15-10 (Dr. Murrie Decl.), ¶ 4(c).

The problem has been compounded by a significant decline in available psychiatric bed capacity — from 892 to 453 state psychiatric hospital beds between 2016 and 2023 — as well as chronic staffing shortages that have left a substantial portion of existing beds unstaffed or out of service.[4] As of February 2026, approximately 300 of the state's 901 psychiatric hospital beds remain empty due to staff shortages.[5] Approximately 21 to 35 percent of currently staffed beds are occupied by individuals who are clinically ready for discharge but cannot leave due to a lack of appropriate community-based services, further limiting access for ITP detainees waiting in county jails.[6] The recently enacted House Bill 307, Session Law 2025-93, is expected to impose

[4] *See* Shanti Silver & Elizabeth Sinclair Hancq, *Prevention Over Punishment: Finding the Right Balance of Civil and Forensic State Psychiatric Hospital Beds*, Treatment Advocacy Center at 5 (Jan. 2024), https://www.treatmentadvocacycenter.org/wp-content/uploads/2024/01/Prevention-Over-Punishment-Full-Report.pdf (attached as Freedman Decl. Ex. H).

[5] Ex. J.

[6] *See* NCDHHS, LMEMCO/TP Dashboard, https://www.ncdhhs.gov/lmemcotp-dashboardjan/open (last visited Mar. 14, 2024) (attached as Freedman Decl. Ex. I); *see also* Ex. J.

additional demands on this already overburdened system without providing corresponding resources or capacity.[7]

The Proposed Class Representatives are Individual Plaintiffs J.B., D.P., B.W., and J.J., each of whom has experienced prolonged incarceration while awaiting evaluation or restoration services. *See* Ex. A, Decl. of Linda Windley ("Windley Decl."), ¶ 14; Ex. B, Decl. of Stacey Blevins ("Blevins Decl."), ¶ 46; Ex. C, Decl. of Jeanna Walters ("Walters Decl."), ¶ 30; Ex. D, Decl. of Denise Vick ("Vick Decl."), ¶ 24. Plaintiffs J.B., D.P., B.W., and J.J. seek declaratory and injunctive relief on behalf of a proposed statewide class of individuals detained in North Carolina jails while awaiting court-ordered capacity evaluations or restoration services that NCDHHS is statutorily obligated to provide.

III. THE PROPOSED CLASS

The proposed class is defined as:

> All individuals with serious mental health[8] and other cognitive disabilities charged with crimes who are or will be detained in North Carolina jails to await capacity evaluations or restoration services that the

[7] Luciana Perez Uribe Guinassi, *'Iryna's Law' to increase demand on strained NC mental health system, officials say*, The News & Observer (Dec. 17, 2025), https://www.newsobserver.com/news/politics-government/article313786643.html (attached as Freedman Decl. Ex. K).

[8] "Mental health disabilities," often referred to as mental illnesses, includes psychiatric conditions including, but not limited to, schizophrenia, schizoaffective disorder, and bipolar disorder.

North Carolina Department of Health and Human Services ("NCDHHS") is statutorily required to provide.

IV. ARGUMENT

In order to certify a class under Rule 23, Plaintiffs must satisfy the requirements of Rule 23(a) and fit into one of the categories enumerated in Rule 23(b). *See* Fed. R. Civ. P. 23; *see also EQT Prod. Co. v. Adair*, 764 F.3d 347, 357 (4th Cir. 2014).

Rule 23(a) requires the proposed class to satisfy four criteria:

(1) the class is so numerous that joinder of all members is impracticable;
(2) there are questions of law or fact common to the class;
(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
(4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

The party seeking certification "must also satisfy through evidentiary proof at least one of the provisions of Rule 23(b)." *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013); *see also EQT Prod. Co.*, 764 F.3d at 357; *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 423 (4th Cir. 2003). Congress created Rule 23 "to facilitate civil rights class actions." *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 330 n.24 (4th Cir. 2006); *see also Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 614 (1997) ("Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples."). Rule 23 is

"almost automatically satisfied" for injunctive relief claims. *Baby Neal for and by Kanter v. Casey*, 43 F.3d 48, 58 (3d Cir. 1994). *See also Gunnells*, 348 F.3d at 424 ("[F]ederal courts should give Rule 23 a liberal rather than a restrictive construction, adopting a standard of flexibility in application which will in the particular case best serve the ends of justice for the affected parties and ... promote judicial efficiency."); *Scott v. Clarke*, 61 F. Supp. 3d 569, 583 (W.D. Va. 2014) ("courts routinely certify class actions involving prisoners, including cases challenging prison health care, mental health care, and dental care") (citation omitted) (collecting cases).

Here, Plaintiffs seek certification of a class for injunctive and declaratory relief under Rule 23(b)(2), in that Defendants "ha[ve] 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).

As demonstrated below, Plaintiffs satisfy each of the requirements for class certification under Rule 23(a), as well as the Rule 23(b)(2) requirements.

A. The Proposed Class Satisfies Rule 23(a) Requirements

1. The Proposed Class Meets the Numerosity Requirement

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Though no specified

number is needed to maintain a class action, "as a general guideline, … a class that encompasses fewer than 20 members will likely not be certified … while a class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone[.]" *In re Zetia (Ezetimibe) Antitrust Litig.*, 7 F.4th 227, 234 (4th Cir. 2021) (*quoting* 1 Newberg on Class Actions § 3:12 (5th ed. 2021)).

"[C]lasses including future claimants generally meet the numerosity requirement due to the 'impracticality of counting such class members, much less joining them.'" *J.D. v. Azar*, 925 F.3d 1291, 1322 (D.C. Cir. 2019) (*quoting* 1 William B. Rubenstein, Newberg on Class Actions § 3:15 (5th Ed. 2018)). When "a class's membership changes continually over time, that factor weighs in favor of concluding that joinder of all members is impracticable." *A. B. v. Hawaii State Dep't of Educ.,* 30 F.4th 828, 838 (9th Cir. 2022). "This is especially true when [a] plaintiff seeks injunctive relief." *N.S. v. Hughes,* 335 F.R.D. 337, 352 (D.D.C. 2020).

Further, "[t]he fluid composition of a prison [or jail] population is particularly well-suited for class status, because, although the identity of the individuals involved may change, the nature of the wrong and the basic parameters of the group affected remain constant." *Dean v. Coughlin*, 107 F.R.D. 331, 332–33 (S.D.N.Y. 1985). *See Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975) (discussing the inherently transitory doctrine and relation-back

principles appropriate for class certification); *Scott*, 61 F. Supp. 3d at 584 (certifying class challenging medical care in Virginia women's prisons, *in accord* with *Dean*).

Here, the proposed class easily meets the numerosity requirement. Even without considering future class members, there currently are far more than a hundred (100) individuals awaiting capacity evaluations, and more than a hundred (100) individuals assessed to be ITP awaiting restorative services. Information in the record indicates 1,228 and 191 in each of these categories, respectively. *See* Doc. No. 15-1 (Pl's Br. in Supp. of Prelim. Inj., Ex. 1) at 1 (showing that according to NCDHHS data produced in 2024, 1,228 ITP detainees have waited for two months or more for completion of their initial assessment reports in 2022-2024); Doc. No. 15-4 at 20 (showing that according to NCDHHS website, 191 ITP detainees were waiting to be admitted at a state psychiatric hospital for restoration services as of December 2022). The current members of the class are ascertainable, as NCDHHS has the ability to identify all current members of the class, and will have the ability to identify future class members as courts order individuals to undergo ITP evaluations or restoration services. Based on the numbers of individuals detained in jail awaiting capacity evaluations or restoration services, the proposed class consists of over one hundred individuals, as well as similarly situated individuals in the future. While the numbers are not exact, the proposed class

certainly amounts to well over forty individuals, satisfying Rule 23(a)(1). *In re Zetia*, 7 F.4th at 234; *see also Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass'n*, 375 F.2d 648, 653 (4th Cir. 1967) ("We further are of the opinion that eighteen is a sufficiently large number to constitute a class in the existing circumstances."); *McLaurin v. Prestage Foods, Inc.*, 271 F.R.D. 465, 475 (E.D.N.C. 2010) ("the Fourth Circuit has held that a class of eighteen people alone is sufficient to satisfy the numerosity requirement").

In addition to the impracticality of identifying future class members, class members are scattered through jails across North Carolina's 100 counties, such that it would be impracticable for all class members to file suit individually and have their cases joined before a single court. And finally, class members have limited resources to advocate on their own behalf, both because they may be ITP and because they are detained and likely indigent. *See, e.g.,* Gene Nichol, *Forcing Judges To Criminalize Poverty in North Carolina*, 4 UCLA Crim. Just. L. Rev. 227, 228-29 (2020).

2. The Proposed Class Satisfies the Commonality Requirement

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This means that classwide "claims must depend upon a common contention" that is "capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that

is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). "[E]ven a single common question will do," *id.* at 359, so long as it generates a common answer "apt to drive the resolution of the litigation," *id.* at 351.

In the prison context, courts have found this requirement satisfied when incarcerated plaintiffs seek declaratory and injunctive relief from a generally applicable policy. *See, e.g.*, *Scott*, 61 F. Supp. 3d 569 (surveying cases and certifying class of all prisoners at a prison who would need medical care); *Buffkin v. Hooks*, 2019 WL 1282785, at *12 (M.D.N.C. 2019) (Osteen, J.) (certifying statewide class challenging prison policy on hepatitis C treatment); *Bumgarner v. NCDOC*, 276 F.R.D. 452, 454 (E.D.N.C. 2011) (certifying statewide class of all prisoners "denied the benefits of the DOC's sentence reduction credit programs by reason of their disabilities"); *Parsons v. Ryan*, 754 F.3d 657, 678 (9th Cir. 2014) (explaining that "every inmate suffers exactly the same constitutional injury when he is exposed to a single statewide . . . policy or practice that creates a substantial risk of serious harm."); *Thorpe v. District of Columbia*, 303 F.R.D. 120, 145 (D.D.C. 2014) (certifying class where plaintiffs challenged a "uniform policy or practice that affects all class members"). The same is true in the pretrial detention context; *see also Gerstein*, 420 U.S. 103 (concerning class of pre-trial detainees challenging probable cause determinations); *Swisher v. Brady*, 438 U.S. 204 (1978) (discussing class

of pretrial juvenile detainees challenging juvenile court procedures).

This proposed class satisfies Rule 23(a)(2)'s commonality requirements because fundamental questions of fact and law are common to all class members. Most importantly, all class members' claims arise from the common contention that Defendants have failed to provide timely access to capacity evaluations and restoration services in violation of the Fourteenth Amendment, the ADA, and the RA, causing direct harm to class members, current and future ITP detainees alike. To prevail, Plaintiffs will have to show that prolonged wait times violate their due process rights under *Jackson v. Indiana*, as well as their rights to procedural due process, and the protections of the ADA and RA. NCDHHS is the sole entity responsible for providing capacity evaluations and restoration services. The ITP process is the same for all detainees. Accordingly, the relief proposed to address and prevent each class member's harm is identical: administer and modify the ITP system so that capacity evaluations are conducted and restoration services are provided within maximum waiting times set by the Court.

The claims of the proposed class are all based on the same nucleus of facts as described, and their claims would be fully and finally resolved by this Court's orders. The individual Plaintiffs J.B., D.P., B.W., and J.J., like the class members they seek to represent, are individuals who are or have been in county jails awaiting capacity evaluations or restoration services. Windley

Decl. ¶ 14; Blevins Decl. ¶ 46; Walters Decl. ¶ 30; Vick Decl. ¶ 24. The prolonged wait times the individual Plaintiffs have faced or will face due to Defendants actions is common to all class members. *See* Ex. L, Decl. of Lucy Campbell ("Campbell Decl."), ¶¶ 3-7 (public defender declaration explaining common wait times related to the ITP process); Ex. M, Decl. of Jay Garcia ("Garcia Decl."), ¶¶ 3–10 (defense attorney declaration explaining the same).

Because all members of the class face a common problem and their harm would be abated through common relief, the commonality requirement under Rule 23(a)(2) is satisfied.

3. The Proposed Class Meets the Typicality Requirement

Rule 23(a)(3) requires that "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Rule 23's typicality requirement is captured by the idea that "as goes the claim of the named plaintiff, so go the claims of the class." *Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331, 340 (4th Cir. 1998). The typicality analysis is a two-step process. First, courts conduct "a review of the elements of the plaintiff's *prima facie* case and the facts on which the plaintiff would necessarily rely to prove it." *Deiter v. Microsoft Corp.*, 436 F.3d 461, 467 (4th Cir. 2006). Then, courts "determine the extent to which those facts would also prove the claims of the absent class members." *Id.*

"The representative party's interest in prosecuting his own case must simultaneously tend to advance the interests of the absent class members." *Id*. But typicality does not require "that the plaintiff's claim and the claims of class members be perfectly identical or perfectly aligned." *Id*. at 467. "[F]actual differences among [the class] members' cases will not preclude certification if the class members share the same legal theory," *J.O.P. v. United States Dep't of Homeland Sec.*, 338 F.R.D. 33, 55 (D. Md. 2020). "Rule 23 does not require precise, mirror-image identity respecting the injuries caused by a single practice or policy." *Int's Woodworkers of Am. AFL-CIO, CLC v. Chesapeake Bay Plywood Corp.*, 659 F.2d 1259, 1270 (4th Cir. 1981).

Regardless of the disability or crime alleged, each proposed class representative has the same claims as each member of the class. Defendants are the sole entity statutorily required to provide capacity evaluations and restoration services; therefore, the Proposed class representatives and class members rely on Defendants to provide the same kinds of services. Like the members of the proposed class, each Proposed Class Representative is a current detainee in a North Carolina jail who is believed to be, or has been found to be, mentally incapable to participate in his or her own criminal defense and is subject to prolonged wait times for capacity evaluations and restoration services provided by Defendants. The Proposed Class

Representatives have the same liberty interest in the prompt capacity evaluations and receipt of restoration services as each class member.

Here, for example,

- Plaintiff J.B. a 42-year-old man who suffered a traumatic brain injury and has been diagnosed with cognitive impairment, has been detained in Pitt County Detention Center since January 29, 2026. *See* Ex. A, Windley Decl., ¶¶ 9-10. On February 24, 2026, the court ordered a capacity evaluation. *See id*. at ¶ 13. J.B. has now waited **over 20** days in jail for that evaluation.
- Plaintiff D.P., a 30-year-old man diagnosed with an unspecified psychotic disorder, has been detained in the Randolph County Jail since May 14, 2025. *See* Ex. B, Blevins Decl., ¶ 4. This is his second cycle in the ITP system. *See id*. at ¶ 7. On December 10, 2025, the court found D.P. ITP and ordered restoration services. *See id*. at ¶ 39. D.P. has now waited **over 90** days in jail for those services.
- Plaintiff B.W., a 20-year-old man diagnosed with paranoid schizophrenia, has been detained in the Gaston County Jail since November 15, 2024. *See* Ex. C, Walters Decl., at ¶¶ 39-41. On January 7, 2026, the court found B.W. ITP and ordered restoration services. *See id*. at ¶ 30. B.W. has now waited **over 65** days in jail for those services.

- Plaintiff J.J., a 35-year-old man diagnosed with paranoid schizophrenia, has repeatedly cycled through the ITP system in multiple counties since 2023, including Cumberland, Bertie, and Wake Counties. *See* Ex. D, Vick Decl., at ¶¶ 18-30. During one cycle, J.J. waited **73** days in jail for a capacity evaluation and then an additional year for restoration services that he never received because the charges were dismissed. *See id*. at ¶¶ 21, 22-24. During another cycle, J.J. waited approximately two months for a capacity evaluation. *See id*. at ¶¶ 38-40. Following his most recent arrest on February 23, 2026, just four days after his last ITP cycle, J.J. now faces a fourth cycle in the ITP process. *See id*. at ¶¶ 45-48.

The individual Plaintiffs J.B., D.P., B.W., and J.J. are typical of cases of individuals who are suspected of being, or have been assessed, incapable to proceed. *See* Ex. F, Grafstein Decl., ¶ 8. *See also* Campbell Decl. ¶¶ 3-7 (explaining that it's typical for ITP detainees to wait for more than 60 days to receive capacity evaluations and more than 120 days for restoration services); Garcia Decl. ¶¶ 3–10 (explaining typical wait times).

In cases challenging the circumstances of pre-trial detention, the answer to whether the long wait times caused by Defendants' policies and practices violate the Constitution or federal anti-discrimination laws "will resolve in one stroke all class members' claims." *Buffin v. San Francisco,* 2018 WL 1070892,

at *4 (N.D. Cal. 2018) (internal citation omitted). Indeed, courts in the Fourth Circuit have certified class actions challenging pre-trial detention, despite varying factual circumstances of class members. *See, e.g., Johnson v. Jessup*, 381 F. Supp. 3d 619, 637 (M.D.N.C. 2019); *Jones v. Murphy*, 256 F.R.D. 519, 523 (D. Md. 2009); *Epps v. Levine*, 457 F. Supp. 561, 563 (D. Md. 1978); *see also Armstrong v. Davis*, 275 F.3d 849, 868-69 (9th Cir. 2001) (certifying class of prisoners and parolees with varying disabilities arguing policies and practices for parole and parole revocation proceedings violate the ADA despite differences in disability and circumstances of detention because legal question of injury was the same for all class members).

Accordingly, each Proposed Class Representative seeks the same relief as the rest of the proposed class: the court's declaration that failure to provide timely access to capacity evaluations and restoration services is a violation of the Fourteenth Amendment, the ADA, and the RA, and ordering that the Defendants act to ensure timely capacity evaluations and restoration services.

4. The Proposed Class is Adequately Represented

Rule 23(a)(4)'s adequacy requirement is met where the "representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This inquiry "serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Prods.*, 521 U.S. at 625. The "final three requirements of Rule 23(a) tend to merge, with

commonality and typicality serving as guideposts for determining whether maintenance of the class members will be fairly and adequately protected in their absence." *Gunnells*, 348 F.3d at 459.

Generally, in the Fourth Circuit, the question of adequacy focuses on potential conflicts of interest between class members, but the adequacy analysis also considers the capacity of class representatives to prosecute the interests of the class. Consistent with Rules 17(c)(2) and 23, the Fourth Circuit and other courts have allowed class actions on behalf of minors or persons deemed legally incompetent to proceed when the named class representatives are represented by an appropriate next friend or guardian. *See, e.g., Baby Neal*, 43 F.3d 48 (class action brought by appropriate representatives of minor class representatives, some of whom have cognitive disabilities, challenging Pennsylvania's foster care system); *Mental Health Association of Minnesota v. Heckler*, 720 F.2d 965 (8th Cir. 1983) (class action brought by mental health advocacy organization and named class representatives on behalf of severely mentally ill individuals suffering psychotic disorders challenging Minnesota's DHHS disability standard).

Here, Plaintiff J.B., by and through his next friend and mother Linda Windley, Plaintiff D.P. by and through his next friend Stacey Blevins, B.W. by and through his next friend Jeanna Walters, and J.J. by and through his legal guardian and mother, Denise Vick are represented by the undersigned counsel.

The Proposed Class Representatives have the same claims as those of the proposed class and accordingly seek the same remedies, namely, an ITP system that does not subject them to unreasonable waiting times. Plaintiffs are not aware of any conflicts of interest within the proposed class. The undersigned counsel also are not aware of any conflicts of interest between members of the proposed class. The next friends and guardians of the Proposed Class Representatives have demonstrated their commitment to vigorously prosecuting the action, including by providing declarations that illustrate the factual bases for the present action and their willingness to provide testimony in support of Plaintiffs' claims, thus representing the interests of the class. *See* Ex. A, Windley Decl., ¶ 19; Ex. B, Blevins Decl., ¶ 49; Ex. C, Walters Decl., ¶ 36; Ex. D, Vick Decl, ¶ 50.

Proposed class counsel (*i.e.*, the undersigned counsel) also satisfy Rule 23(a) and (g) requirements. *See* Fed. R. Civ. P 23(g) (reciting the standards for appointing class counsel); *see also Cent. Wesleyan Coll. v. W.R. Grace & Co.*, 6 F.3d 177, 183 (4th Cir. 1993) (describing the district court's Rule 23(a)(4) finding as "clear" because the proposed representative had pursued the case vigorously and because of "the competency of its counsel").

Under Rule 23(g), a court that certifies a class must also appoint class counsel and consider:

i. the work counsel has done in identifying or investigating potential claims in the action;
ii. counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
iii. counsel's knowledge of the applicable law; and
iv. the resources that counsel will commit to representing the class[.]

First, as set forth in the attached declarations of Kristi Graunke (Ex. E, "Graunke Decl."), Lisa Grafstein (Ex. F, "Grafstein Decl."), and John Freedman (Ex. G, "Freedman Decl."), the undersigned counsel have decades of experience prosecuting complex civil litigations and federal class actions, including actions brought pursuant to Rule 23(b)(2), and including several cases in North Carolina federal courts. *See* Ex. E, Graunke Decl., ¶¶ 5-7; Ex. F, Grafstein Decl., ¶ 5; Ex. G, Freedman Decl., ¶ 5. Second, the undersigned counsel include attorneys who are experienced legal advocates for prisoners' rights, and who have deep knowledge of the relevant laws and regulations concerning prisoners' rights under the ADA and the RA. *See* Ex. E, Graunke Decl., ¶¶ 3, 5-8; Ex. F, Grafstein Decl., ¶¶ 3, 5-6; Ex. G, Freedman Decl., ¶¶ 5-6. Third, the undersigned counsel have performed significant work both identifying and investigating potential claims in the action, including the submission of individualized declarations from the Proposed Class Representatives by and though their next friends and/or legal guardians that describe the factual bases for their claims. *See* Ex. A, Windley Decl.; Ex. B, Blevins Decl.; Ex. C, Walters Decl.; Ex. D, Vick Decl. Fourth, the undersigned

counsel have committed and will continue to commit significant resources to representing the proposed class and are prepared to continue representing Plaintiffs and all proposed class members zealously through trial. *See* Ex. E, Graunke Decl., ¶ 9, Ex. F, Grafstein Decl., ¶ 7; Ex. G, Freedman Decl., ¶ 7.

B. The Proposed Class Satisfies Rule 23(b)(2) Requirements

Because the proposed class satisfies the requirements of Rule 23(a), the Court should certify the proposed class if one or more of the requirements for maintaining a class action under Rule 23(b) are satisfied.

Rule 23(b)(2) requires Plaintiffs to show that Defendants "ha[ve] 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."

As noted above, Congress created Rule 23 "to facilitate civil rights class actions," *Thorn,* 445 F.3d at 330 n.24, and the Rule 23(b)(2) requirement is "almost automatically satisfied" for injunctive relief claims. *Baby Neal*, 43 F.3d at 58. Courts regularly certify (b)(2) classes of incarcerated plaintiffs seeking injunctive relief from systemwide policies. *See Scott*, 61 F. Supp. 3d at 591 (certifying class and collecting cases); *Buffkin*, 2019 WL 1282785, at *12 (certifying statewide prisoner class challenging prison system policy on hepatitis C treatment); *Postawko v. Missouri Dep't of Corr.*, 2017 WL 3185155,

at *14 (W.D. Mo. 2017), *aff'd*, 910 F.3d 1030 (8th Cir. 2018) (certifying prisoner class challenging constitutionality of prison policy).

Here, certification is most appropriate under Rule 23(b)(2) because Defendants, by failing to ensure timely capacity evaluations and restoration services for over one hundred ITP class members, have "refuse[d'] to act on grounds that apply generally to the [whole] 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).

Plaintiffs seek injunctive and declaratory relief to address Defendants' failure to provide timely capacity evaluations and restoration services. NCDHHS has failed to provide essential mental health services on a timely basis and failed to hold its contractors accountable for the lack of available qualified providers to conduct local capacity evaluations These failures exacerbate existing mental health problems, deny class members their rights to participate in their own defense, and inflict needless and punitive suffering on ITP detainees who wait for prolonged times for the services NCDHHS is statutorily obligated to provide.

Injunctive relief that addresses Defendants' conduct at issue would address all of Plaintiffs' claims as well as those of the proposed class, by establishing maximum waiting times to stop widespread violations of class members' constitutional rights. Defendants' failure harms the entire class,

and the appropriate remedy to these failures is uniform among all class members: reduce wait times for capacity evaluations and capacity restoration services to within constitutional limits. Because all class members are at risk from Defendants' failure to ensure timely capacity evaluations and restoration services and all class members would benefit from the same injunctive and declaratory relief, Rule 23(b)(2)'s requirements are met.

V. CONCLUSION

For the reasons set forth above, the Court should permit this matter to proceed as a class action under Federal Rule of Civil Procedure 23(b)(2). Plaintiffs respectfully request that the Court certify the proposed class and appoint the Proposed Class Representatives and Plaintiffs' counsel to represent the certified class.

Dated: March 16, 2026

Respectfully submitted,

/s/ Michele Delgado

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CERTIFICATE UNDER LOCAL RULE 7.3(d)(1)

I, Michele Delgado, hereby certify that this document is within the word limit and does not exceed 6,250 words.

Dated: March 16, 2026

/s/ Michele Delgado
Michele Delgado

CERTIFICATE OF SERVICE

I, Michele Delgado, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: March 16, 2026

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