STATE OF WISCONSIN CIRCUIT COURT BROWN COUNTY

ANTRELL THOMAS, *et al.*, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

ANTHONY S. EVERS, in his official capacity as the Governor of Wisconsin, *et al.*,

Defendants.

Case No. 2022-CV-1027

Hon. Thomas J. Walsh

PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO COMPEL DISCOVERY

INTRODUCTION

The Court should grant Plaintiffs' motion to compel for three reasons. ***First***, the law entitles Plaintiffs to again seek class certification after discovery, so information bearing on the class action prerequisites is relevant. Defendants' arguments to the contrary misrepresent the record and ignore the law. Moreover, the information Plaintiffs seek is relevant to their individual claims. Plaintiffs are requesting details about the nature and extent of the public defense counsel shortage in Wisconsin, which Plaintiffs believe caused the unconstitutional delays they faced in receiving appointed counsel. ***Second***, Plaintiffs' requests are proportional to the needs of this case, which this Court has found is of great public importance. Defendants' complaints that they cannot readily provide information about the extent of the delays only underscores the gravity of the crisis. Plaintiffs are willing to consider reasonable compromises to alleviate Defendants' supposed burden, but Defendants have proposed no solutions. ***Third***, Defendants' other objections lack merit. Their privilege claim is unsupported by the law (which distinguishes between "confidential" and "privileged" information), and their assertion that the information Plaintiffs seek is publicly available is undercut by previous arguments that such publicly available data is "not reliable evidence."

The law allows Plaintiffs to build a factual record to support class certification as well as their individual claims. The Court should not allow Defendants to impede this opportunity on burdensomeness grounds, particularly because the effect would be to prevent a full constitutional review of the deficient system *causing* those purported burdens. For all these reasons, and those discussed below, the Court should grant Plaintiffs' Motion to Compel Discovery in full.

ARGUMENT

I. Plaintiffs are Entitled to File a Renewed Motion for Class Certification.

This discovery dispute turns on whether Plaintiffs may again seek certification of a class. Plaintiffs' position is that they can again seek certification later, and thus can take class discovery to support a renewed request. Defendants' position is that Plaintiffs cannot again seek certification, and thus information about the class is outside of discovery's scope.

In their opening brief, Plaintiffs set forth three arguments in support of their position that they are entitled to class discovery.

First, Plaintiffs explained that the law permits them to seek modification of the Court's denial of class certification after discovery. Plaintiffs noted that Section 803.08—like its federal counterpart—expressly provides that a denial of class certification "may be altered or amended before final judgment." Pls.' Br. (Dkt. 129) at 2–3 (quoting Wis. Stat. § 803.08(3)(c)). Plaintiffs pointed to relevant authority holding that such modification is appropriate if discovery shows that the class should be certified. *Id.* (citing *Gardner v. First Am. Title Ins. Co.*, 218 F.R.D. 216, 217 (D. Minn. 2003) (holding that class certification denials may be modified "if, upon fuller development of the facts, the original determination appears unsound") (quotation omitted); *Dukes v. Wal-Mart Stores, Inc.*, 2012 WL 4329009, at *4 (N.D. Cal. Sept. 21, 2012) (concluding that the courts should "reassess and revise" denials of class certification "in response to events occurring in the ordinary course of litigation") (quotation omitted)). And Plaintiffs observed that the Court's denial of class certification was based

in part on the lack of evidence before it. *See* Order (Dkt. 118) at 4–5 (the Court noting that it could not find the numerosity requirement satisfied "without more evidence").

Second, again citing to relevant authority, Plaintiffs explained that the law allows them to file a new class certification motion based on a new class definition, evidence, legal theories, or all three. *See* Pls.' Br. at 3–4 (citing *Dukes*, 2012 WL 4329009, at *4 ("[I]t is not uncommon for district courts to permit renewed certification motions that set out a narrower class definition or that rely upon different evidence or legal theories.") (citing *The Apple iPod iTunes Antitrust Litig.*, 2011 WL 5864036, at *1–2, *4 (N.D. Cal. Nov. 22, 2011)). Importantly, Plaintiffs pointed out that the Court did not deny Plaintiffs' motion for class certification *with prejudice*, and thus the Court's Order does not preclude Plaintiffs from later seeking certification based on a new class definition or legal theory after discovery. Pls.' Br. at 3; *see, e.g.*, *Hinton v. District of Columbia*, 567 F. Supp. 3d 30, 57 (D.D.C. 2021) (denying motion for class certification "without prejudice so as to permit [the plaintiff] to renew her motion" and authorizing "pre-certification discovery"); *In re Tropicana Orange Juice Mktg. & Sales Practices Litig.*, 2018 WL 6819331, at *1–2 (D.N.J. Dec. 28, 2018) (holding that a motion for "certification of two narrowed subclasses" was "permitted and appropriate" because the "prior opinion denying class certification highlighted specific deficiencies under Rule 23" and the plaintiffs were "ostensibly seeking to cure those deficiencies").

Third, Plaintiffs argued that class discovery is necessary to determine whether the Court's denial of class certification should be modified or whether a differently articulated class can be certified. *See Bruzek v. Husky Energy, Inc.*, 2019 WL 4855072, at *6 (W.D. Wis. Sept. 30, 2019) ("[T]o properly decide class certification, 'discovery is often appropriate, even necessary.'").

Defendants do not engage with these three arguments in any meaningful way. Instead, they make several incorrect assertions that are simply unsupported by the law or the history of this case.

To begin with, Defendants appear to argue that the Court's denial of class certification means that no class can ever be certified. Resp. (Dkt. 138) at 4–7. But noticeably, Defendants cite no authority for this proposition. And as explained above and in Plaintiffs' opening brief, that argument is contrary to applicable law, which provides for modification of denial and later motions for class certification based on discovery. *See Dukes*, *supra*.

Moreover, to support their argument, Defendants try to twist the Court's denial of class certification—which was without prejudice based on the limited record before it—into a decree that this case now and forever is "limited to Plaintiffs' individual claims." Resp. at 4; *see also id.* (asserting that "the Court found" that this case "is not about" any other criminal defendants besides Plaintiffs and concluding that "[t]his case is therefore about Plaintiffs' individual claims, not class issues"). This is a distortion of the Court's order and history of this case. The Court denied class certification without prejudice—it did not rule that no class could ever be certified.

Next, Defendants argue that the Court's pre-discovery rulings on numerosity and commonality were correct, but these are "straw man" arguments. Although Plaintiffs respectfully disagree with the Court's decisions, Plaintiffs are not challenging those determinations at this time because, as explained above (and not rebutted by Defendants), Plaintiffs are entitled to renew their motion for class certification after discovery. That is why Plaintiffs seek class discovery relevant to those issues: the facts may show that it is appropriate for the Court to revisit its numerosity and commonality findings or to determine that a narrowed class is numerous and cohesive enough to warrant certification.[1] Until then, however, Defendants' arguments are premature.

[1] Indeed, the evidence that Defendants *have* produced thus far suggests reconsideration of the Court's class certification ruling may be warranted. Based on documents produced to date, it appears that Defendants have *no policy* for ensuring that qualified defendants receive public defense counsel within a reasonable amount of time. Defendants' formal produced policies make no mention of their constitutional obligation to timely appoint counsel. *See, e.g.*, Decl. of Sean H. Suber, Ex. 1, DEF00033 (Operations Manual for Case Appointments and Client Representation). And internal emails have

Defendants also fault Plaintiffs for not seeking reconsideration of or appealing the Court's denial of class certification but "demand[ing] a re-do with the Court's imprimatur" based on class discovery. Resp. at 7. But Defendants' pejorative characterization aside, Defendants do not meaningfully dispute that the law permits Plaintiffs to take class discovery and to file a renewed motion for class certification based on what that discovery reveals. Moreover, Defendants' flippant words underscore their lack of concern about the public defense crisis facing Wisconsin. If it takes more than one "bite at the apple"—to borrow Defendants' phrase (Resp. at 5)—to ensure that criminal defendants receive counsel within a reasonable amount of time in Wisconsin, then Plaintiffs will keep biting.

As a parting shot, Defendants argue that because "Plaintiffs conceded early on that no discovery is necessary," Defendants feel that Plaintiffs forever foreclosed taking class discovery. Resp. at 7. Again, however, Defendants cite nothing to support their novel and baseless theory, and it conflicts with the law. To be clear, Plaintiffs maintain that the class could have been certified without discovery. And although Plaintiffs respectfully disagree with the Court's ruling on that issue, that disagreement does not mean they cannot seek class discovery to address the Court's concerns.

II. Plaintiffs' Requests are Relevant and Proportional to the Needs of the Case.

The information Plaintiffs seek through their discovery requests is also highly relevant to both class certification and the merits of the individual Plaintiffs' claims. And the burden associated with

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revealed that Defendants appointed attorneys for Plaintiffs on an *ad hoc* basis to evade scrutiny from this lawsuit, despite the fact that other qualified defendants had been waiting longer than Plaintiffs. *See* Suber Decl., Ex. 2, DEF000152 (Defendant Thompson explaining that, because of this lawsuit, "staff have to take [Plaintiffs' cases] immediately"). The SPD's lack of a policy for safeguarding criminal defendants' constitutional rights to timely public defense counsel is an issue that is susceptible to common proof for commonality purposes. *See, e.g.*, *Villalpando v. Exel Direct Inc.*, 303 F.R.D. 588, 609 (N.D. Cal. 2014) (explaining that a "lack of a policy . . . itself is an issue susceptible to common proof" and is "conduct suitable for class treatment") (citation omitted).

Defendants' provision of this information is proportional to the needs of this case. Accordingly, the Court should grant Plaintiffs' Motion to Compel Discovery.

A. The requested information is relevant to both class certification and the merits of Plaintiffs' individual claims.

As established in Section I, Plaintiffs may file a renewed motion for class certification. Thus, information relating to the class action prerequisites is unquestionability relevant. *See Murillo v. Kohl's Corp.,* 2016 WL 4705550, at *2 (E.D. Wis. Sept. 8, 2016) (internal citations omitted) (noting that relevancy encompasses "any matter that bears on, or that reasonably could lead to other matter[s] that could bear on, any issue that is or may be in the case"). The information Plaintiffs seek is relevant to numerosity and commonality. This is not in dispute—Defendants admit that Plaintiffs' "discovery requests seek information" that is "relevant to class certification, particularly a second attempt to show numerosity." *See* Resp. at 6.

Even if Plaintiffs were not entitled to class discovery, however (and, to be clear, they are), their requests seek information relevant to Plaintiffs' individual claims. "The parameters of permissible discovery are broad by necessity." *Sands v. Whitnall Sch. Dist.*, 2008 WI 89, 312 Wis.2d 1, 754 N.W.2d 439, ¶ 19 (Wis. 2008). Courts "cannot render meaningful legal decisions without first determining the true facts of each case." *Id.* As such, "[t]he quest for truth . . . demands that [courts] allow litigants to build complete records, investigating and preparing their cases thoroughly before presenting their cases to fact-finders." *Id.* at ¶ 20.

Here, Plaintiffs raise claims that they and the members of the putative classes suffered unreasonable delays in the appointment of public defense counsel on their behalf. Information about the *reasons* for these delays is unquestionably relevant to the Court's reasonableness determination—be it on either an individual or a class basis. And, as Plaintiffs' theory is that these delays stem from the severe shortage of public defense attorneys caused by Defendants' deficient administration of Wisconsin's public defense system, information about the nature and extent of the problem—how

many defendants are waiting for lawyers and how long have they been waiting—is therefore relevant to Plaintiffs' individual claims.

Though Plaintiffs make this argument in their principal brief (*see* Pls' Br. at 5–6), Defendants do not engage with it at all, and instead proceed as if the information Plaintiffs seek is relevant only to issues of class certification. *See, e.g.*, Resp. at 6. Yet Defendants themselves have repeatedly argued that the SPD's internal resources and administrative realities are relevant to any determination of reasonableness. In their Motion to Dismiss, Defendants relied on *State v. Lee*, 2021 WI App 12, 396 Wis. 2d 136, 955 N.W.2d 424 for the proposition that the "reasons are important when determining whether there [is] good cause to extend the time limit for holding [a] preliminary hearing." Mot. to Dismiss Am. Compl. (Dkt. 58) at 15. Defendants then cited the list of circumstances recommended for consideration by the *Lee* court, all of which relate to the SPD's operation and available resources. *Id.* Indeed, a major basis for Defendants' argument in opposition to Plaintiffs' Motion for Class Certification was that the *reasons* for the delays matter. *See* Resp. in Opp. to Class Cert. (Dkt. 99) at 6–10. Defendants opined about limitations on the SPD's ability to appoint counsel to individuals in rural areas or to those charged with serious crimes. *Id.* at 7–8.

The scope of discovery extends to "any nonprivileged matter that is relevant to any party's claim or defense[.]" Wis. Stat. § 804.01(2)(a). This scope is liberally construed. *See Sands*, 312 Wis.2d at ¶ 19. Plaintiffs have put the overall functioning and administration of the SPD directly at issue by alleging that Wisconsin's deficient "statutory and regulatory scheme for the establishment, funding, and operation of a statewide public defense system" led them to experience unconstitutional delays in receiving appointed counsel. Amended Compl. (Dkt. 48) at ¶¶ 5, 73. Accordingly, the information sought—like the circumstances of other indigent defendants experiencing unreasonable delays in being appointed counsel—is relevant to understanding the operation of Wisconsin's public defense system, what circumstances have led to Plaintiffs' delays and why, and whether those delays are

reasonable in light of the system as a whole. *Cf. U.S. v. Hills*, 618 F.3d 619, 629–30 (7th Cir. 2010) (in the context of a Sixth Amendment claim for a speedy trial violation, courts explore the reasons for delay to understand where blame lies, as "different weights should be given to different reasons for delay").

For the avoidance of doubt—Defendants have *also* put the functioning and administration of the SPD at issue by arguing that specific, practical limitations prevent the timely appointment of counsel. Because Defendants assert that individual reasons (like the seriousness of charges) render their delays in appointing counsel legally justifiable, Plaintiffs are entitled to discovery into those reasons—including if, and how, these asserted reasons actually impact timely appointment of counsel for indigent defendants, and the role played by these reasons in administration of the system as a whole. *Cf. Murdock v. City of Chicago*, 565 F. Supp. 3d 1037, 1040–42 (N.D. Ill. 2021) (finding discovery of files underlying creation of a written policy relevant to plaintiffs' claims where the files could contain evidence (1) informing defendant's motivations for adopting the policy, or (2) contradicting defendant's proffered justifications for the policy). An understanding of these circumstances is relevant to a determination of whether the delays Plaintiffs faced are reasonable.

Because the information Plaintiffs seek is relevant to the claims and defenses—whether the case continues on a class-wide or an individual basis—the Court should grant Plaintiffs' Motion to Compel Discovery.

B. The burden of producing the information and documents Plaintiffs seek is proportional to the needs of the case.

The information and documents Plaintiffs seek is highly relevant to elements of class certification and Plaintiffs' individual claims—which this Court has already concluded concern an issue of great public importance. Order (Dkt. 119) at 13. The burdens described by Defendants underscore the importance of this case. According to Defendants, the SPD does not have a system in place to track how long indigent defendants have been awaiting counsel (Resp. at 8–16), and thus lacks

the tools to even evaluate the scope of the public defense crisis. It is unclear how the SPD can comply with its constitutional obligation to appoint counsel within a "reasonable" amount of time when Defendants admit there is zero attention paid to how long an individual has been waiting in making appointment decisions. *Id.* at 11–13. Thus, the needs of this case are great.

Furthermore, Plaintiffs believe that Defendants' concerns about burden are overblown. Although Defendants claim that there is *no* method by which they can identify qualified defendants who have waited for counsel for 14 days or more, this is belied by a chart produced in discovery. Suber Decl., Ex. 3, DEF00074 – RFP # 3 – Averages of Days Waiting; Resp. at 16–17; Decl. of Adam Plotkin (Dkt. 136), at ¶¶ 6–11. This chart details the total percentage of indigent defendants who were appointed counsel within the first 10 days of a case from 2019–2022. Suber Decl., Ex. 3. If the SPD could generate this spreadsheet in preparation for then-State Public Defender Kelli Thompson's interview, it is unclear why Defendants are now unable to run similar search queries to determine the percentage of indigent defendants who have awaited appointment of counsel for 14 days or more.

Lastly, Defendants cannot hide behind the limitations of their deficient system to prevent adequate discovery about the nature and scope of that deficiency. *See Batchelor v. City of Chi.*, 2020 WL 13647794, at *9 (N.D. Ill. Nov. 17, 2020) (rejecting undue burden claim where the burden was due to the city's own deficient record-keeping system). To conclude otherwise would effectively prevent judicial review of the system's constitutionality, thereby permitting widespread constitutional violations to continue.

C. Plaintiffs are Open to Negotiating a Compromise Position with Defendants Regarding Plaintiffs' Requests.

Plaintiffs are open to a resolution that accommodates Defendants' burden-related concerns. Indeed, Plaintiffs have consistently informed Defendants that they are willing to try to alleviate the burden on Defendants. Even so, it is only for the first time in this brief that Defendants outline in detail the burdens of the Plaintiffs' requests. Resp. at 8–17. Absent specific knowledge about the

information systems and internal processes used for appointing public defense counsel, Plaintiffs could not tailor their requests to alleviate burdens on the SPD. As has been the case, Plaintiffs are open to negotiating a compromise position within reason.

III. Defendants' Remaining Objections are Improper.

A. Wisconsin Statute § 977.09 Does Not Render the Requested Documents Privileged.

Defendants are correct that "Wisconsin Stat. § 977.09 is plain on its face," yet Defendants try to twist and manipulate the words of that statute to deny Plaintiffs the discovery to which they are entitled. Contrary to Defendants' arguments, Section 977.09 does not grant Defendants free rein to refuse any discovery into "files maintained by the office of the state public defender which relate to the handling of any case." Rather, Section 977.09 provides only that these files "shall be considered confidential and shall not be open to inspection by any person unless authorized by law, court order, the board or the state public defender."

First, as explained in the Motion to Compel, discovery is authorized by law. Pls.' Br. at 6-7. Defendants ignore this, hiding behind the argument that Section 977.09 prohibits discovery because there is no "court order" and the SPD's Board or the State Public Defender have not authorized inspection. Resp. at 18. This argument ignores Wisconsin Statute Section 804.01(2)(a), which provides that "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering" various factors. The express language of this statute provides that parties "shall have access to relevant information, … so long as that information is not 'privileged.'" *Sands*, 312 Wis.2d at ¶ 17. As explained in Plaintiffs' Motion to Compel, and below, the documents Plaintiffs seek are not privileged, and Plaintiffs are entitled to discovery under the factors in Section 804.01(2)(a), including "the importance of the issues at stake." Thus, discovery is "authorized by law."

Second, Section 977.09 states that the SPD files are confidential—"a different question from whether those documents are privileged." Pls' Br. at 6-7. Indeed, the statute does not say a privilege applies to these documents. Defendants' cursory dismissal of the distinction between confidentiality and privilege as "incorrect" ignores established Wisconsin law. Resp. at 17-18.

Wisconsin law is clear that "just because data is to be kept confidential, it does not necessarily follow that [a party] has a legal privilege not to produce it. The concepts of 'confidential' and 'legal privilege' are very different." *In re Doe*, 2004 WI 65, 272 Wis.2d 208, 680 N.W.2d 792, ¶ 14; *see also Sands*, 312 Wis.2d at ¶ 32 ("Even where a statute contains confidentiality requirements, an evidentiary privilege is not necessarily created as a result"). As the Wisconsin Supreme Court explained in *In re Doe*, confidential data is "that which is 'meant to be kept secret,'" rather than the "broader concept" of privilege, which can justify refusing to produce certain data. *In re Doe*, 272 Wis.2d at ¶ 15. As the court explained, "not all confidential data is that over which the custodian or owner may assert a privilege." *Id.* Defendants have provided no explanation why this Court should read the admittedly plain language of Section 977.09 to support finding that the state public defender's files are privileged—even though the statute refers to these files only as "confidential." This Court should find that the confidentiality of these files does not provide Defendants with a privilege to avoid producing them under circumstances that safeguard their confidentiality.

This is all the more true because, in Wisconsin, "privileges are the exception and not the rule; therefore, they are narrowly construed." *In re Doe*, 272 Wis.2d at ¶ 16; *see also Sands*, 312 Wis.2d at ¶ 21 (evidentiary privileges "interfere with the trial's search for the truth, and must be strictly construed, consistent with the fundamental tenet that the law has the right to every person's evidence"). Courts must "tread carefully in the face of potential threats to a litigant's pursuit of truth and justice" including "in the form of overly broad claims of evidentiary privilege." *Sands*, 312 Wis.2d at ¶ 21. This approach best supports the "well-accepted legal principle [and] fundamental tenant of our modern legal system,

. . . that the public has a right to every person's evidence except for those persons protected by a constitutional, common-law, or statutory privilege." *In re Doe*, 272 Wis.2d at ¶ 17 (quotation and citation omitted); *see also Sands*, 312 Wis.2d at ¶ 18 ("The right to discovery is an essential element of our adversary system. In order for our adversary system to effectively ensure the ability of litigants to uncover the truth, and to seek and be accorded justice, it is our responsibility to render decisions that do no harm to the fundamental and important right of litigants to access our courts"). Applying the necessary "scrutiny with caution" here, Defendants' blanket assertion of an undefined privilege falls apart. *Sands*, 312 Wis.2d at ¶ 33.

As this Court has recognized, this case presents issues of great public importance, Order (Dkt. 119) at 13, 14, the scope of which Defendants are apparently unable to fully evaluate. Plaintiffs have established a great need for the discovery sought to pursue their claims, which seek to protect the right to counsel in criminal proceedings—"a fundamental constitutional right and a cornerstone of our justice system." *In re Petition to Amend SCR 81.02*, S. Ct. Order 17-06, 2018 WI 83, at 4 (June 27, 2018). Thus, the circumstances of this case support rejecting the unnamed privilege Defendants seek and upholding Plaintiffs' right to the requested discovery.

Finally, to the extent this Court has concerns related to the confidentiality of these documents, Plaintiffs have made clear their willingness to enter a protective order. Pls' Br. at 7. Defendants argue that this offer does not moot their objections "because the issue of whether Plaintiffs are entitled to the objected-to class-specific discovery is on the table." Resp. at 18. Yet Defendants have not contested the availability of a protective order or the adequacy of a protective order to protect the confidentiality of the discovery Plaintiffs seek. Further, "as a general rule, ***and even in the case of confidential information***, the scope of allowable discovery is necessarily broad, being central to the core purpose and principles of our adversary system." *Sands*, 312 Wis.2d at ¶ 33 (emphasis added). As a result, this Court should grant Plaintiffs' Motion to Compel and allow the

parties to negotiate a protective order that will safeguard confidential information while allowing discovery and thus "preserving the principles of our adversary system." *Id.*

B. The Information Plaintiffs Seek is Not Publicly Available.

Defendants also argue that discovery is unnecessary because Plaintiffs filed publicly available data from CCAP with their initial amended complaints. Resp. at 19. This argument directly contradicts Defendants' previous argument asserting that Plaintiffs' exhibit consisting of a data set extracted from CCAP was "hearsay" and "not reliable evidence." Resp. in Opp. to Class Cert. (Dkt. 99) at 17-18. Defendants cannot have it both ways. Because Defendants have represented to this Court that CCAP is not reliable, they should not now be allowed to do an about-face and argue that the availability of CCAP data relieves them of discovery obligations.

Additionally, arguments made throughout Defendants' opposition bely their assertion that the sought information is publicly available. Defendants' arguments make clear that the scope of the information requested by Plaintiffs is not entirely available on CCAP. For example, in response to interrogatories nos. 1 and 2, Defendants claim that certain requested data "is kept as part of individual client files" or "received as part of the intake process from courts, prosecutor's offices, and the Wisconsin Department of Corrections." Resp. at 12-13. Defendants also claim that responding to requests nos. 1 and 2 would require searching "all e-mails or messages within SPD's archive system." *Id.* at 14. These sources of information that Defendants identify as potentially containing responsive information are not publicly available. It is therefore inaccurate for Defendants to claim that *all* the information Plaintiffs seek is available through CCAP.

Finally, Defendants state that "[i]t is possible" they would stipulate that CCAP data provided by Plaintiffs is authentic and reliable. But as discussed above, Defendants are on record saying that CCAP data was not reliable evidence and hearsay. It is therefore also entirely possible that Defendants will not agree to such a stipulation. This Court should not allow Defendants to shirk their discovery

obligations by pointing to data available through CCAP without even committing to agree that such data is reliable. Further, while Plaintiffs are pleased to learn that a stipulation may be forthcoming, such a stipulation would not resolve the dispute at issue. As explained above, the scope of the information sought by Plaintiffs is not entirely available on CCAP, and thus Defendants should be compelled to produce the requested discovery even if a stipulation is entered.

CONCLUSION

For all these reasons, Plaintiffs request that the Court grant their Motion to Compel Discovery.

Dated: December 13, 2023

By: */s/ Sean H. Suber*

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CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed Plaintiffs' Reply in Support of Motion to Compel Discovery with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated: December 13, 2023

Electronically signed by:

/s/ Sean H. Suber
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