FILED
02-05-2025
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
SUPREME COURT

NICOLE MCDANIEL, DAVID SMITH, AND MATTHEW DAVIS,

Plaintiffs-Respondents-Petitioners,

v.

Appeal No. 2022AP001759
Cir. Ct. No. 2020cv004571

WISCONSIN DEPARTMENT OF CORRECTIONS,

Defendant-Appellant.

PETITIONERS' REPLY BRIEF

On Appeal from the Decision of the Wisconsin Court of Appeals, District II,
Reversing Order of the Circuit Court,
The Honorable Mark D. Gundrum, Shelley A. Grogan, and Maria S. Lazar
Presiding Per Curiam

On Appeal from the Circuit Court for Milwaukee County,
The Honorable Glenn H. Yamahiro, Presiding
Case No. 2020-CV-4571

Timothy W. Burns
State Bar No.: 1068086
BURNS BAIR LLP
10 East Doty Street, Suite 600
Madison, Wisconsin 53703
tburns@burnsbair.com

Adam J. Levitt*
Daniel R. Schwartz*
DICELLO LEVITT LLP
Ten North Dearborn Street, Sixth Floor
Chicago, Illinois 60602
Tel.: 312-214-7900
alevitt@dicellolevitt.com
dschwartz@dicellolevitt.com

Gary K. Burger*
BURGER LAW, LLC
500 North Broadway, Suite 1860
St. Louis, Missouri 63102
Tel.: 314-542-2222
gary@burgerlaw.com

Charles J. LaDuca*
CUNEO GILBERT & LADUCA, LLP
4725 Wisconsin Avenue NW, Suite 200
Washington, DC 20016
Tel.: 202-789-3960
charles@cuneolaw.com

Michael J. Flannery*
CUNEO GILBERT & LADUCA, LLP
Two Cityplace Drive, Suite 200
St. Louis, Missouri 63141
Tel.: 314-226-1015
mflannery@cuneolaw.com

Counsel for Plaintiffs-Respondents-Petitioners McDaniel, Smith, and Davis, and the Class

* Admitted *Pro Hac Vice*

TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 3

1. Defendant Misstates The Standard The Circuit Court Applied..... 3
2. Security Screenings Are Essential 4
3. Officers Must Remain Vigilant Walking To/From Posts.....7
4. Plaintiffs Establish Predominance 9
   a. *Plaintiffs' Representative Evidence Is Sound 10*
   b. *The Class Is Manageable 11*
   c. *The "De Minimis" Defense Does Not Defeat Predominance 12*
5. The Class Action Is Superior 14

CONCLUSION 15

TABLE OF AUTHORITIES

Page(s)

Cases

Adegbite v. United States,
156 Fed. Cl. 495 (2021) 5

Aguilar v. Management & Training Corp.,
948 F.3d 1270 (10th Cir. 2020) 5, 6, 7

Amgen Inc. v. Connecticut Retirement Plans & Trust Funds,
568 U.S. 455 (2013).....1, 8

Bartlett v. City of Chicago,
14-cv-07225, Dkt. No. 52 (N.D. Ill. July 9, 2015)..... 8

Bell v. PNC Bank, National Ass'n,
800 F.3d 360 (7th Cir. 2015) 14

Chagoya v. City of Chicago,
992 F.3d 607 (7th Cir. 2021).....7

Fotusky v. ProHealth Care, Inc.,
2023 WI App 19..... 3

Harwood v. Wheaton Franciscan Services,
2019 WI App 53..... 9, 12, 14

Hootselle v. Missouri Dep't of Corrections,
624 S.W.3d 123 (Mo. 2021) 12

Messner v. Northshore University Health Systems,
669 F.3d 802 (7th Cir. 2012) 9

Piper v. Jones Dairy Farm,
2020 WI 28.....13

Steimel v. Wernert,
823 F.3d 902 (7th Cir. 2016) 4

Tyson Foods v. Bouaphakeo,
577 U.S. 442 (2016)..... 11

United Food & Commercial Workers Union, Local 1473 v. Hormel Foods Corp.,
2016 WI 13 ..... 2, 6, 8

In re Wal Mart Employee Litigation,
2006 WI App 36 12

Zivali v. AT&T Mobility LLC,
784 F. Supp. 2d 456 (S.D.N.Y. 2011) 13

Statutes

Wis. Stat. § 16.007 15

Wis. Stat. § 803.08(2)(c) 9

INTRODUCTION

Class certification "requires a showing that *questions* common to the class predominate, not that those questions will be answered, on the merits, in favor of the class." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013). The fundamental common question here can be distilled as follows: Are COs working whenever they are on premises at DAC facilities?

Plaintiffs offer substantial proof supporting the existence of that question, and that its answer is "Yes." Defendant admits every CO starts the workday with a security screening upon entering the premises—a self-evidently "integral" (*i.e.*, compensable) pre-shift activity. Deposition testimony from DOC's head of security Brian Foster indicates all Plaintiffs must maintain active "vigilance . . . all the time for when you go through the door" at a prison.[1] When plaintiffs are on premises, they are working.

Defendant disagrees, and argues, somewhat incredibly, that security screenings are not, in fact, "integral" to COs' work, and guards, after their shift, have no responsibilities as they walk out. But these are disagreements regarding the answer to the common and predominant question that supports class certification. What the Circuit Court understood—and Defendant and the Court of Appeals ignore—is that a court's role at class

[1] S.App.000040.

certification is not to resolve a factual dispute, but to determine, following examination of the record, whether common questions predominate.

They do, and none of Defendant's arguments show otherwise.

First, Defendant argues the Circuit Court applied the "wrong standard" to its typicality and predominance finding, claiming it found merely "plausible" that plaintiffs met certification pre-requisites. In reality, the Circuit Court found "plaintiff, **by a preponderance of the evidence**, shows that the requirements for certification are met."[2]

Second, Defendant argues "commonality" and "typicality" are wanting because security screenings are not "essential" to COs' work. Defendants are wrong. A CO's job would be impossible without such screening. At minimum, there is as "tight [a] connection" between security screenings and the COs' work of keeping prisons secure and contraband-free as there is between, e.g., factory employees' donning of certain clothes and their work canning contaminant-free food. *See United Food & Commercial Workers Union, Local 1473 v. Hormel Foods Corp.*, 2016 WI 13, ¶ 61.

Third, Defendant argues Plaintiffs waived the claim they should be paid for time traveling within the prisons and urge that walking to posts is not compensable. Defendants ignore (1) arguments actually made here; and (2) that every minute spent by a CO among the prison population, an

[2] S.App.000020 (emphasis added).

environment necessitating constant vigilance, is a minute of work.

Finally, Defendant argues this Court should affirm the Court of Appeals on grounds not discussed there: alleged failures of "predominance" and "superiority." Those arguments fail, since (1) Plaintiffs must be compensated for all time inside the prisons, meaning variations in their pre- and post-shift activities, all inside prisons, do not predominate over common questions; and (2) a class action is "superior" to four thousand individual small-claims trials.

In short, marshaling a robust record, the Circuit Court determined, by a preponderance of the evidence, that predominating common questions exist, which, if answered in Plaintiffs' favor, should provide classwide relief. Its certification ruling should be reinstated.

ARGUMENT

1. Defendant Misstates The Standard The Circuit Court Applied

Defendant argues the Circuit Court found merely "plausible" that Plaintiffs satisfied the class certification prerequisites.[3] In fact, the Circuit Court explicitly ruled "plaintiff, by a preponderance of the evidence, shows that the requirements for certification are met."[4] The preponderance standard is clearly sufficient. *See Fotusky v. ProHealth Care, Inc.*, 2023 WI

[3] Opp. at 22—23.

[4] S.App.000020.

App 19, ¶ 11; *Steimel v. Wernert*, 823 F.3d 902, 917 (7th Cir. 2016).

The Circuit Court went further. Citing *Hormel*, it ruled "Wisconsin case law has shown that activity which is comparable to the pre- and post-shift activities WDC employees must complete is potentially compensable, **even when being evaluated at a higher [summary judgment] standard than what is required for class certification motions**."[5] Far from mere plausibility, the Circuit Court recognized that, likely *as a matter of law*, the pre- and post-shift activities Plaintiffs allege are compensable.

2. Security Screenings Are Essential

Defendant cannot reasonably dispute that, if security screenings are "integral" and, therefore, compensable, Plaintiffs' claims are "common" and "typical": every CO passes through security on arrival, and if that activity is "integral," every CO's workday begins *on entering* the prison.

Defendant's insistence that "[u]ndergoing a security screening is not tied to the work guards are employed to perform"[6] and that "DOC could eliminate the requirement that guards undergo a security screening upon entrance without impairing their ability to complete their work"[7] has no basis in the record or pursuant to basic logic.

[5] S.App.000018—19 (emphasis added).

[6] Opp. at 28.

[7] *Id.* at 27.

The Record. As Defendant admits,[8] DOC Security Director (and designee on this issue) Brian Foster himself stated that security screenings are "absolutely necessary" for every CO.[9] No person has testified security screenings are superfluous or not "tied to" the COs' work securing prisons and keeping them free from contraband. If anything, undisputed record facts indicate security screenings are integral to COs' jobs.[10] At worst, that necessity is a common and predominant fact question.[11]

Logic. Prisons must be kept free of contraband like drugs, weapons, or other licit/illicit materials uniquely dangerous in the prison environment. A single mistake—consider a rogue pocket-knife—could have disastrous consequences for a CO and his/her colleagues.

Tellingly, despite claiming screenings could be eliminated without "impairing [COs'] ability to complete their work,"[12] Defendant cannot point to a single corrections institution—in the world—that does not impose such screenings. Plaintiffs know of none: prisons must be sanitized of dangerous

---

[8] *Id.*

[9] S.App.000039.

[10] *See also Aguilar v. Management & Training Corp.*, 948 F.3d 1270, 1278 n.6 (10th Cir. 2020) ("MTC also urges us to adopt the district court's distinction between 'searching for contraband' and 'being searched for contraband.' But we find this distinction immaterial. Both 'searching for' and 'being searched for' contraband involve keeping contraband out of the prison and maintaining a secure prison environment.").

[11] *Cf Adegbite v. United States*, 156 Fed. Cl. 495, 507 (2021) ("If discovery shows that Plaintiffs could perform their principal duties effectively without the security screenings, the Government may well prevail on summary judgment or at trial. . . But it cannot prevail now.").

[12] Opp. at 27.

material.

Indeed, that logic of "sanitation," common in donning/doffing cases, applies equally here. In *Hormel*, this Court considered employees' need to don/doff certain clothing/equipment in a canning plant to ensure (1) a sanitary work *environment*, and (2) employee safety while working. 2016 WI 13 at ¶ 56. The pre-/post-shift work was compensable, since it was "tied directly to the work the employees were hired to perform—food production—and cannot be eliminated altogether without degrading the sanitation of the food or the safety of the employees." *Id.* ¶ 62. This was so even if it was theoretically possible to do the work without the protective gear. *Id.* ¶ 61.

So too here. As a canning plant must be kept free from outside contaminants, a prison must not be contaminated with contraband. As safety may require employees to doff equipment at a plant, so-too is a security screening needed to keep COs and others in the prison safe. Like the equipment/clothes in *Hormel*, the security screenings are "tied directly to the work the employees were hired to perform—[keeping prisons safe]—and cannot be eliminated altogether without degrading the sanitation of the [prison environment] or the safety of the employees." *Id.* ¶ 62. The test this Court employed in *Hormel* is virtually identical to the one the Tenth Circuit employed in *Aguilar*, the "on all fours" case regarding COs in Colorado

Defendant criticizes[13]: "keeping weapons and other contraband out of the prison is necessarily 'tied to' the officers' work of providing prison security and searching for contraband." 948 F.3d at 1278.

3. Officers Must Remain Vigilant Walking To/From Posts

Plaintiffs also explain—before the Circuit Court, the Court of Appeals, *and here*—that their constant vigilance while on premises, including while walking to and from their posts, is *work*. Defendants' argument of waiver[14] is unsupportable, given, e.g., the following from Plaintiffs' Opening Brief:

> Since Plaintiffs' and other class members' entrance into the prison began with a security check, and since they were expected to remain vigilant to threats at all times they were present in the prisons, all such time in the prisons was compensable work under Wisconsin law. Defendant's representatives made clear in their testimony that the officers must be on duty and on guard during all pre- and post-shift activity. . .There is simply no rest, no time off, no relaxation in that heightened, stressful, dangerous prison environment. Nobody goes to prison to "hang out." Defendant's trained officers go there to do their required work – including mandatory pre- and post-shift activity. . . .[15]

Plaintiffs also explained the Court of Appeals erred when it ignored pre- and post-shift activities, including "procession through sally ports" and "post-shift walk-out through the facility" during which COs had to remain vigilant and working.[16] Hardly waiver.

Tellingly, *Chagoya v. City of Chicago*, 992 F.3d 607 (7th Cir. 2021), the case Defendant cites for the proposition that a "state of readiness" is not

---

[13] Opp. at 33.

[14] Opp. at 30.

[15] Br. at 16.

[16] Br. at 24—25.

compensable—Defendant's purported answer to Plaintiffs' preserved and oft-repeated point regarding the need for vigilance [17] —was decided on summary judgment, *not* class certification, and followed the factual revelation that the SWAT officers in question could do their jobs without securing their weapons at home, the uncompensated time at issue there. Of vital importance *here*, the trial court in *Chagoya* ***granted*** the plaintiffs' class certification motion. *Bartlett v. City of Chicago*, 14-cv-07225, Dkt. No. 52 (N.D. Ill. July 9, 2015).

The issue—repeated throughout Defendant's briefing [18] and encapsulated by Defendant's citation to the *Chagoya/Bartlett* summary judgment decision—is that Defendant, and the Court of Appeals, misunderstand a court's role at class certification. The court must determine whether there do, in fact, exist predominating common questions which, *if answered in Plaintiffs' favor*, would provide relief. *See Amgen,* 568 U.S. at 459 (class certification "requires a showing that *questions* common to the class predominate, not that those questions will be answered, on the merits, in favor of the class.") The ultimate outcome of a factual dispute is not yet for the court to decide.

The determination of whether pre- and post-shift activities are "integral" is, as this Court has explained, "fact dependent [,]" *Hormel*, 2016

[17] Opp. at 30—31.

[18] *See*, *e.g.*, Opp. at 24—25, 28—29, 34, 36—37.

WI at ¶ 70, and Plaintiffs have elicited substantial evidence supporting an ultimate finding in their favor, including, e.g., the admission from DOC's head of security Brian Foster indicating Plaintiffs must all maintain active "vigilance. . . all the time for when you go through the door" at a prison, including walking to and from shift locations.[19] Defendant somehow disagrees, and contends that guards, after their shift, have no responsibilities while walking out, and need not respond to any issues that may arise.[20] But that is a common factual dispute, likely to be resolved at trial. At class certification, it is enough that Plaintiffs have proffered evidence supporting the existence of predominating common questions.

4. Plaintiffs Establish Predominance

Plaintiffs show "questions of law or fact common to class members predominate over any questions affecting only individual members," Wis. Stat. § 803.08(2)(c), since the proposed class's claims arise from a common nucleus of operative facts and legal issues. *Harwood v. Wheaton Franciscan Svcs.*, 2019 WI App 53, ¶¶ 24–26. Predominance does not require absence of individual questions, merely that common questions are more prevalent than individual ones. *Messner v. Northshore Univ. Health Sys.*, 669 F.3d 802, 814 (7th Cir. 2012).

[19] S.App.000040.

[20] Opp. at 31.

They are: all plaintiffs start their shift with a security screening, and all plaintiffs must remain vigilant and "working" while in prison, both before and after their official shifts. Plaintiffs accordingly allege all plaintiffs should be compensated for the time they spend inside the prisons: individual questions—how long they walk to post, how time-consuming individual security screenings—are irrelevant since they are unrelated to how long plaintiffs are in the prisons (and therefore working). Plaintiffs' expert, Dr. William Rodgers, has proffered a methodology that allows him to calculate the amount of underpayment through a representative sample. Dr. Rogers can use video evidence to determine the time Plaintiffs are inside the prisons, and compare that evidence with shift schedules, thus determining how much extra time Plaintiffs spend in the prisons before/after their scheduled shifts.[21]

a. Plaintiffs' Representative Evidence Is Sound

Defendant argues Plaintiffs fail to establish predominance because of allegedly flawed representative evidence, taking issue with video sampling. But the United States Supreme Court has expressly approved the use of representative, statistically significant sampling *through video evidence* just like Dr. Rogers's to establish class-wide liability in wage and hour cases,

[21] S.App.000014—15.

particularly where, as here, employers fail to maintain accurate time records. *Tyson Foods v. Bouaphakeo*, 577 U.S. 442, 456–57 (2016).

Defendant complains the video evidence does not show the COs' various pre- and post-shift activities.[22] But it doesn't need to: it shows how long Plaintiffs are inside the prisons. As discussed above, Plaintiffs argue they must be compensated for all such time.

Further, using Dr. Rogers's methodology, any class member could be identified, and their time in the prison—*i.e.*, the time for which they should be paid—can be calculated. As the Circuit Court explained:

> Rogers notes that he "can and will perform separate analysis" if significant differences are revealed between each facility, so it is entirely plausible that the same could be done for each posting. . . Rogers has indicated that he intends to get a team together to perform work on this task, and it is conceivable that a team could accurately calculate a range. Similarly. . . the methodology employed by Rogers is capable of calculating damages for any member of the class: if given the proper security footage one could easily calculate the deprived wages if any WDC employee, which is the exact standard Bouaphakeo requires. . . . [23]

Just so.

b. The Class Is Manageable

Defendant argues the class is unmanageable because (1) "Plaintiffs need to rely on self-reported data" and (2) citing, *In re Wal Mart Employee Litigation*, 2006 WI App 36, ¶ 5, Defendant should be entitled to mini-trials on damages for each Plaintiff.[24]

---

[22] Opp. at 41.

[23] S.App.000015.

[24] Opp. at 43.

Neither statement is true. Plaintiffs' data is not "self-reported"—it is objective evidence showing when Plaintiffs are, in fact, in the prisons. By the same token, the alleged right to mini-trials has no basis in law, and would eviscerate *any* class action with individualized assessments of damage based on objective criteria. Defendant's cite to *In re Walmart* is inapposite. There, a case in which some employees at some stores had not been paid for working through lunch breaks, Defendant elicited evidence indicating employees routinely lied on timesheets, and many members of the purported class did not actually work through lunch, necessitating individual examination. *Id.* ¶¶ 3—6. By contrast, here, objective video evidence shows when Plaintiffs were inside the prisons and when their shifts were scheduled, and if plaintiffs are in prisons beyond their shifts, they must be paid—an individualized determination of activities inside the prisons is unnecessary.[25]

c. The "*De Minimis*" Defense Does Not Defeat Predominance

Defendant's argument that class certification would improperly preclude it from raising the *de minimis* defense fails.[26]

First, Defendant does not actually proffer an argument regarding the

[25] *See also Hootselle v. Missouri Dep't of Corr.*, 624 S.W.3d 123, 134 (Mo. 2021) (accepting Dr. Rogers' methodology). Notably, Defendant's paltry records necessitate representative evidence. Defendant should not be rewarded for being disorganized.

[26] Opp. at 44.

de minimis defense here. Defendant argues that, because a given guard may not have long to walk to post, that guard's damages are necessarily *de minimis*. Not so: how long a guard walks is not necessarily relevant to how long the guard was in prison, working—again, all time in prison is time "work."

Second, this Court has indicated even 4.33 minutes of daily uncompensated time may be more than *de minimis*. *Piper v. Jones Dairy Farm*, 2020 WI 28, ¶ 37. Evidence proffered indicates officers spend far more than that on required pre- and post-shift activities. [27]

Defendants cite *Zivali v. AT&T Mobility LLC*, 784 F. Supp. 2d 456 (S.D.N.Y. 2011), for the proposition that a case can be decertified because the *de minimis* exception might apply to some employees.[28] Of course, a case must first be certified, which *Zivali* was, before being decertified, but, in any event, that is not what *Zivali* holds. There, record evidence indicated "extremely wide variety of factual and employment settings" incapable of reasonable sampling and necessitating thousands of mini-trials. *Id.* at 459. Here, there is only one "factual and employment setting": Plaintiffs all work in prisons and contend they should all be compensated for all time spent inside those prisons. Record evidence exists from which statistical extrapolations can be made. The possibility of some small variability will not

[27] R. 151:14 (up to 30 and 15–25 minutes respectively).

[28] Opp. at 44.

prevent certification. *Bell v. PNC Bank, Nat. Ass'n*, 800 F.3d 360, 379 (7th Cir. 2015) ("It makes no difference to the class claim as a whole how many hours of off-the-clock work each employee worked[.]").

5. The Class Action Is Superior

Finally, Defendant argues thousands of individual actions would be "superior" to a class action.[29] Nonsense. Requiring thousands of individual actions would waste judicial resources by repeatedly litigating the same questions about DOC's uniform policies, while the relative size of individual claims would effectively preclude most from pursuing relief at all. *Harwood,* 2019 WI App at ¶ 58 ("[P]ublic policy favors class actions, especially where the amount in controversy is so small that the wronged party is unlikely ever to obtain judicial review of the alleged violation without a class action."). Defendant argues Plaintiff McDaniel would be under-compensated, because she spends a lot of extra time walking to her post, and Plaintiff Davis would receive a windfall, because he walks quickly. But the relevant inquiry is not how long plaintiffs walk to post, it is how long they spend on pre- and post-shift activities, time calculated by studying when they enter and leave prisons. In any event, given the amounts at issue, no plaintiff would pursue an action on their own.

Defendant's suggestion Plaintiffs would be better served by an administrative procedure from the Department of Workforce Development

[29] Opp. at 45—46.

(DWD),[30] is wrong. The claims board meets four times a year, is comprised of five members, and could never hear 4,000+ COs' claims. *See* Wis. Stat. § 16.007; www.claimsboard.wi.gov. Appealing to them would be effort-intensive, inefficient, and likely undertaken by perilously few. No court has found the mere existence of an optional administrative process incapable of managing the entire class "superior" to a class action.

CONCLUSION

Plaintiffs-Respondents-Petitioner respectfully request this Court REVERSE the Court of Appeals, conclude Plaintiffs' claims are viable on a classwide basis, and REMAND the case for continued proceedings in the Circuit Court.

[30] Opp. at 46.

Dated: February 5, 2025

Electronically signed by:

/s/ Timothy W. Burns
Timothy W. Burns
State Bar No.: 1068086
BURNS BAIR LLP
10 East Doty Street, Suite 600
Madison, Wisconsin 53703
tburns@burnsbair.com

Adam J. Levitt*
Daniel R. Schwartz*
DICELLO LEVITT LLP
Ten North Dearborn Street, Sixth Floor
Chicago, Illinois 60602
Tel.: 312-214-7900
alevitt@dicellolevitt.com
dschwartz@dicellolevitt.com

Gary K. Burger*
BURGER LAW, LLC
500 North Broadway, Suite 1860
St. Louis, Missouri 63102
Tel.: 314-542-2222
gary@burgerlaw.com

Charles J. LaDuca*
CUNEO GILBERT & LADUCA, LLP
4725 Wisconsin Avenue NW, Suite 200
Washington, DC 20016
Tel.: 202-789-3960
charles@cuneolaw.com

Michael J. Flannery*
CUNEO GILBERT & LADUCA, LLP
Two Cityplace Drive, Suite 200
St. Louis, Missouri 63141
Tel.: 314-226-1015
mflannery@cuneolaw.com

Counsel for Plaintiffs-Respondents-Petitioners McDaniel, Smith, and Davis, and the Class

* Admitted *Pro Hac Vice*

CERTIFICATION BY ATTORNEY

I hereby certify that this Reply Brief conforms with the rules contained in § 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 15 pages and 2995 words in a proportional serif font.

I further certify that previously filed with the opening brief is a supplemental appendix that complies with § 809.62(2)(f) and that contains, at a minimum: (1) a table of contents; (2) the decision and opinion of the court of appeals; (3) the findings or opinion of the circuit court and administrative agencies; (4) a copy of any unpublished opinion cited under § 809.23(3)(a) or (b); and (5) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues. I certify that if this appeal is taken from a circuit court order, the appendix contains that order.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Date: February 5, 2025 Electronically signed by:

/s/ Timothy W. Burns
Timothy W. Burns

E-FILING CERTIFICATE

I hereby certify that: I have submitted an electronic copy of this Reply Brief, which complies with the requirements of the Rule Governing Electronic Filing in the Supreme Court, Wis. Stat. § 809.801. I further certify that a copy of this certificate has been served with this Reply Brief and appendix and served on all parties by electronic filing.

Date: February 5, 2025 Electronically signed by:

/s/ Timothy W. Burns
Timothy W. Burns