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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

GABRIEL YOUNG, EDDIE WILLIAMS, AND GALE YOUNG,

on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

COUNTY OF CONTRA COSTA,

Defendant.

Case No. 3:20-cv-6848-NC

CLASS ACTION

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION; MEMORANDUM OF POINTS AND AUTHORITIES

DATE: Oct. 21, 2020
TIME: 1:00 pm
JUDGE: Hon. Nathanael Cousins

Complaint Filed: Sept. 30, 2020

NOTICE IS HEREBY GIVEN that on October 21, 2020 at 1:00 pm, or as soon thereafter as the matter may be heard by the above-titled Court, Plaintiffs will and hereby move the Court for entry of an Order:

1. Certifying that this action is maintainable as a class action under Federal Rule of Civil Procedure 23(b)(1) and 23(b)(2);
2. Certifying a Plaintiff Class of all individuals who are now, or in the future will be, detained in a Contra Costa County jail."
3. Certifying Plaintiffs Gabriel Young, Eddie Williams, and Gale Young as representatives of the Plaintiff Class, and their counsel of record as counsel for the Plaintiff Class.

This motion is based on the Complaint (Doc. 1), this Notice of Motion and Motion and the accompanying Memorandum of Points and Authorities, Joint Stipulation of Facts, and the Declaration of Donald Specter filed herewith.

Respectfully submitted,

Dated: October 1, 2020

/s/ Corene T. Kendrick
Corene T. Kendrick
Attorney for Plaintiffs

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Motion for Class Certification is filed by Plaintiffs GABRIEL YOUNG, EDDIE WILLIAMS, and GALE YOUNG ("Named Plaintiffs"), on behalf of themselves and all others similarly situated ("Plaintiffs"), on the grounds that this action should be maintained as a class action under Federal Rule of Civil Procedure Rule 23(a), (b)(1), and (b)(2).

This lawsuit is about the treatment of, and conditions of confinement for, Plaintiffs and all people who are or in the future will be incarcerated in Contra Costa County jails (the "Jail").[1] Plaintiffs' Complaint alleges that the County's policies and practices, including its failure to provide inmates with access to adequate medical, dental, and mental health care, and its failure to provide accommodations and equal access for people with disabilities, violate the Eighth and Fourteenth Amendments of the United States Constitution, the Americans with Disabilities Act ("ADA"), and Section 504 of the Rehabilitation Act. Doc. 1 (Complaint), ¶¶ 1-45.

Plaintiffs now seek class certification pursuant to Rule 23(a), (b)(1), and (b)(2).[2] Plaintiffs move for certification of a Plaintiff Class consisting of: "all individuals who are now, or in the future will be, detained in a Contra Costa County jail." .

Plaintiffs further request that the Court certify the Named Plaintiffs as representatives of the Plaintiff Class, and their counsel of record as counsel for the Plaintiff Class.

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[1] The term "Contra Costa County jails" is defined as the Martinez Detention Facility, the West County Detention Facility, and any new structures designated to house adult inmates under the jurisdiction of the Contra Costa County Sheriff subsequent to the date of the Consent Decree.

[2] Counsel for Defendant has advised Counsel for Plaintiffs that Defendant does not intend to oppose this Motion. Specter Decl. ¶ 1 n.1; Joint Stipulation of Facts ¶ 13.

II. STATEMENT OF FACTS

A. Contra Costa County Jail[3]

Defendant County of Contra Costa operates three jail facilities, the Martinez Detention Facility ("MDF"), the West County Detention Facility ("WCDF") in Richmond, and the Marsh Creek Detention Facility that as of September 24, 2020, incarcerated 785 people. Jt. Stip. of Facts ¶ 1.

By law, the Contra Costa County Sheriff's Office is responsible for the care, treatment, well-being, and safekeeping of people incarcerated in the Jail. The Contra Costa County Sheriff's Office manages and oversees the Jail's operations, including its custody, medical, and mental health services. Standardized and uniform policies and procedures are promulgated by the Sheriff's Office and the Health Services Department and applied throughout the jails. Jt. Stip. of Facts ¶¶ 2-8. Custody staff are subject to a central chain of command and report to the Sheriff's Office leadership. *Id.* ¶ 4.

B. Named Plaintiffs

Plaintiff Gabriel Young is a 36-year-old pre-trial detainee with serious mental health needs who has been housed at both MDF and WCDF. Doc. 1 ¶ 13. Mr. Young has schizophrenia and bipolar disorder. *Id.* He reports that on numerous occasions, he has sought urgent medical or mental health care by pressing the "emergency medical" button inside his cell, but correctional staff at the jail refused to allow him to be seen by medical personnel. *Id.* On several occasions when he experienced mental health symptoms, he pressed the emergency medical button in his cell so that he could urgently meet with a clinician. *Id.* Instead, deputies told him to stop pressing the button, and they refused to escort him to receive mental health care. *Id.* Similarly, Mr. Young has experienced nausea, vomiting, and diarrhea while at the jail. *Id.* When he was symptomatic, he pressed the emergency medical button for medical attention, and deputies once again told him that he

[3] The majority of facts set forth in this Section are the subject of a Joint Stipulation of Facts re: Class Certification that Defendants have signed and that are filed concurrently.

should not press the button and a doctor will not see him. *Id*. Mr. Young reports that he is not able to receive medical or mental health care when he urgently requires it. *Id*. Defendant has failed to provide him with adequate medical and mental health care. *Id*. Plaintiff Young is a person with a disability as defined in 42 U.S.C. § 12102 and 29 U.S.C. § 705(9)(B). *Id*.

Plaintiff Eddie Williams is a 73-year-old pretrial detainee housed at MDF. Doc. 1 ¶ 14. He has serious medical needs and physical disabilities. *Id*. Mr. Williams has insulin-dependent diabetes, must take insulin three times a day prior to meals, and he uses a wheelchair due to an above-the-knee amputation of much of his right leg and an ulcer on the heel of his left foot. *Id*. He also is diagnosed with Chronic Obstructive Pulmonary Disease (COPD), congestive heart failure, venous thrombosis, Crohn's disease, and has a pacemaker and is on blood thinners due to a history of heart attacks. *Id*. Mr. Williams suffers from incontinence, but reports that he does not always have an adequate supply of toileting supplies, including pull-up continence briefs. *Id*. He has to repeatedly ask correctional officers and nursing staff to provide him with pull-ups. Before coming to the jail, Mr. Williams was a patient at the Veterans' Administration hospital, but the jail has not permitted him to have the VA send him a prosthetic leg that the VA fit him for prior to incarceration. *Id*. When Mr. Williams first arrived at MDF, he was incarcerated in M module, where people with mental illness and physical disabilities normally are housed together. *Id*. In October 2019, he was moved to F module because the M module was under construction and renovation, and while living in the F module he had more out-of-cell time and opportunities for group activities. On January 11, 2020, he was moved back to M module. *Id*. Mr. Williams reports that he does not receive equivalent out of cell time he would otherwise receive in F module, and is housed in M module for no other reason but his physical disabilities and his insulin-dependent diabetes diagnosis. *Id*.

Plaintiff Gale Young is a 38-year-old pretrial detainee housed at MDF. Doc. 1 ¶ 15. He uses a cane to assist in walking, because of an injury he suffered several years ago that destroyed his Achilles tendon, and required surgical reconstruction of his Achilles tendon.

Id. He has serious medical needs. He experiences a great deal of pain and difficulty in walking without assistance, and in going up and down stairs. *Id.* Before his incarceration, Mr. Young used an orthopedic boot, knee scooter, and cane to assist him in getting around, and was undergoing physical therapy. *Id.* However, he was not permitted to bring these mobility devices into the jail. *Id.* Mr. Young alleges that it took him almost three months before he was to be issued a cane. *Id.* Mr. Young also was not provided a cell assignment on a ground floor, or a lower bunk, for three months. *Id.* He also submitted multiple requests for referral to a physical therapist, but was not seen until September 20, 2019. *Id.* The physical therapist ordered eight weekly sessions at a minimum, but he has only gone to physical therapy one additional time. *Id.*

C. Class Counsel

Proposed class counsel have significant experience with complex and large class action litigation, including regarding conditions in criminal detention facilities and criminal justice issues, and will fairly and adequately protect the interests of the Class.

The Prison Law Office engages in class action and other impact litigation to improve the conditions of prisons and jails for adults and children, represents individual prisoners, educates the public about prison conditions, and provides technical assistance to attorneys throughout the country. The Prison Law Office has litigated cases at each level of the state and federal court systems, including the California Supreme Court and the United States Supreme Court. The Prison Law Office has litigated and obtained similar settlements in six other county jail federal class action cases: Fresno, Riverside, Sacramento, San Bernardino, Santa Barbara, and Santa Clara Counties. Specter Dec. ¶ 2.

D. Procedural Background

In 2016, the Plaintiffs' counsel began a detailed investigation into the conditions in Contra Costa County jails. In August 2016, the Plaintiffs' counsel sent the Contra County Sheriff's Office and County Counsel a demand letter outlining the deficiencies that had been identified in the delivery of health care, accommodations for people with disabilities, and

the overuse of and conditions of segregation. In March 2017, the parties entered into an agreement through which the County retained mutually agreed-upon and independent Subject Matter Experts to assess medical care, mental health care, and the classification system within the County's Jail's system, and to "identify deficiencies, if any, that they believe pose a substantial risk of serious harm to inmates confined with the detention facilities," and, where applicable, "make recommendations for improvement." Specter Decl. ¶¶ 3-4, Ex. A at 2.

The Subject Matter Experts' findings and recommendations relate to system-wide policies, practices, and procedures at the Jail that affect Plaintiffs and the members of the putative Class. Doc. 1 ¶¶ 4-8; Specter Dec. ¶ 6. The Subject Matter Experts, and the subject matters of their respective assessments of the Jail, were as follows:

- Esmaeil Porsa, M.D.: Medical Care
- Roberta Stellman, M.D.: Mental Health Care
- Lindsay M. Hayes: Correctional Suicide Prevention Practices
- James Austin, Ph.D.: Jail Classification Practices

See Doc. 1 ¶¶ 4-8; Specter Decl. ¶ 5.

After more than three years of negotiations, the parties have reached an agreement on a Consent Decree incorporating Remedial Plans for medical care and mental health care and a policy limiting the use of solitary confinement.[4] The proposed Consent Decree will provide relief to all people confined in the Jail, and with this Motion, the parties are concurrently filing a Joint Motion for Preliminary Approval of the Consent Decree. Plaintiffs request that the Court certify the class, and appoint the Prison Law Office as class counsel.

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[4] The parties agreed to have future direct discussions regarding whether to include additional provisions in the Remedial Plans relating to the County's obligations under the ADA.

III. THE PROPOSED CLASS SATISFIES THE REQUIREMENTS FOR CLASS CERTIFICATION UNDER RULE 23

Class certification is proper where 1) each of the prerequisites of Rule 23(a) have been met, and 2) the proposed class satisfies at least one of the requirements listed in Rule 23(b). *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011). The moving party "must affirmatively prove" compliance with Rule 23(a) and Rule 23(b). *Parsons v. Ryan*, 754 F.3d 657, 674 (9th Cir. 2014).

Here, the proposed Plaintiff Class satisfies each Rule 23(a) requirement: "(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." The proposed Plaintiff Class also meets the requirements enumerated in both Rule 23(b)(1) and (b)(2). Certification is proper under Rule 23(b)(1) because prosecuting separate actions by individual class members "would create a risk of [] inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for [the County]." Certification is also appropriate under Rule 23(b)(2) because the County has "acted or refused to act on grounds that apply generally to the class, so that final injunctive or corresponding declaratory relief is appropriate respecting the class as a whole."

A. Plaintiffs Meet the Four Requirements of Rule 23(a)

1. The Class Is So Numerous That Joinder Is Impracticable.

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). It is sufficient to demonstrate that class members will "suffer a strong litigation hardship or inconvenience if joinder were required." *Rannis v. Recchia*, 380 Fed.App'x. 646, 650 (9th Cir. 2010) (citations omitted). There is a presumption of impracticality where the number of prospective class members includes at least forty people. *See Hernandez v. Cnty. of Monterey*, 305 F.R.D. 132, 153 (N.D. Cal. 2015) ("A class or subclass with more than 40 members raises a presumption of

impracticability based on numbers alone. This is especially true where, as here, the class and subclass include future, unknowable class members."); *Jordan v. Cnty. of Los Angeles*, 669 F.2d 1311, 1319 (9th Cir. 1983), *vacated on other grounds by Cnty. of Los Angeles v. Jordan*, 459 U.S. 810 (1982). The Class also includes people who will be incarcerated in the Jail in the future. This militates in favor of a finding that joinder is impracticable. When plaintiffs seek injunctive or declaratory relief – as they do here – and the class includes persons who might be injured in the future, joinder is inherently impracticable. *Jordan,* 669 F.2d at 1320; *Hernandez*, 305 F.R.D. at 153.

In this case, the expense and burden, to the parties and the court, of litigating each claim separately for the large numbers of Class members would be so great that it renders joinder impractical. The putative Class includes the approximately 785 people currently incarcerated in the Jail. Jt. Stip. of Facts ¶ 1.

Therefore, the proposed Class satisfies Rule 23(a)(1)'s numerosity requirement.

2. The Challenged Policies Present Common Questions of Fact and Law.

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Class claims must "depend upon a common contention . . . that [] is capable of classwide resolution … mean[ing] 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." *Dukes,* 564 U.S. at 350. "Put another way, the key inquiry is not whether the plaintiffs have raised common questions, 'even in droves,' but rather, whether class treatment will 'generate common answers apt to drive the resolution of the litigation.'" *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) (quoting *Dukes*, 564 U.S. at 350). Notably, "for purposes of Rule 23(a)(2) [e]ven a single [common] question will do." *Dukes*, 564 U.S. at 359 (citation and internal quotation marks omitted). Policies and practices of "systemic application" are precisely the "kind of claim . . . firmly established in our constitutional law" that meet the commonality requirement. *Parsons*, 754 F.3d at 676.

The Class satisfies the commonality requirement, because it shares common contentions as to the County's policies and practices that will generate common answers to resolve this case. *See generally* Jt. Stip. of Facts; *see also Parsons*, 754 F.3d at 678 ("These policies and procedures are the 'glue' that holds together the putative class and the putative subclass; either each of the policies and practices is unlawful as to every inmate or it is not.").

A critical question of law common to the entire Class is whether the denial of medical care is a violation of the Eighth and Fourteenth Amendments. *See Farmer v. Brennan*, 511 U.S. 825, 828 (1994) ("A prison official's 'deliberate indifference' to a substantial risk of serious harm to an inmate violates the Eighth Amendment."). The protections afforded by the Fourteenth Amendment to pretrial detainees are stronger than those applicable to persons convicted of crimes: while the Eighth Amendment allows punishment so long as it is not "cruel and unusual," the Fourteenth Amendment does not permit punishment at all. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) ("Due process requires that a pretrial detainee not be punished"). Accordingly, deprivations of medical care that violate the rights of persons convicted of crimes *a fortiori* violate the rights of pretrial detainees. A detainee can demonstrate that a particular condition constitutes prohibited punishment with evidence that the condition is expressly intended to punish the detainee, or, in the absence of such direct evidence, with evidence that the condition is not reasonably related to a legitimate governmental objective or is excessive in relation to the legitimate governmental objective. *Bell*, 441 U.S. at 561; *Sharp v. Weston*, 233 F.3d 1166, 1172 (9th Cir. 2000).

These common questions of law are at the core of the injury suffered by named Plaintiffs and by the putative Class, and constitute the sort of questions that courts have found sufficient to meet the commonality requirement. For example, in *Parsons*, the Ninth Circuit affirmed certification of a class of "all prisoners who are now, or will in the future be, subjected to the medical, mental health, and dental care policies and practices of the [Arizona Department of Corrections]," because any one of them "could easily fall ill, be injured, need to fill a prescription, require emergency or specialist care, crack a tooth, or

require mental health treatment." 754 F.3d at 677-78 (citing *Helling v. McKinney*, 509 U.S. 25, 33 (1993)); *Hernandez*, 305 F.R.D. at 139 (certifying "a class of inmates challenging jail safety and health care policies and practices, and a subclass of inmates challenging jail disability policies and practices"); *see also Brown v. Plata*, 563 U.S. 493, 531 (2011) ("Even prisoners with no present physical or mental illness may become afflicted, and all prisoners in California are at risk so long as the State continues to provide inadequate care.")

Differences among Class members with regard to specific experiences or the permutations of the adverse impact of their inadequate health care or disabilities do not undermine a finding of commonality. "In a civil rights lawsuit such as this one . . . commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members. Under such circumstances, individual factual differences among class members pose no obstacle to commonality." *Parsons*, 754 F.3d at 682 (quotation omitted).

Here, the named Plaintiffs and all members of the putative Class share the alleged exposure to a conditions of confinement that violate the Constitution, based on the County's policies and procedures that govern overall conditions of confinement.

Resolution of these common questions will yield a common answer regarding the legal claims, thereby addressing the challenged conditions of confinement in the Jail in one instance. Thus, class certification is appropriate under Rule 23(a)(2).

3. The Named Plaintiffs' Claims are Typical of Those of the Putative Class.

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). The test is "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Parsons*, 754 F.3d at 685 (citations omitted). Injuries do not have to be identical, just similar and due to Defendants' conduct. *Id*. at 685-86; *Rodriguez v.*

Hayes, 591 F.3d 1105, 1124 (9th Cir. 2010) (same).[5] Typicality and commonality are closely related concepts; a finding of one normally compels a finding of the other. *Parsons*, 754 F.3d at 685 (quoting *Dukes*, 564 U.S. at 349 n.5 ("Both serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.")).

Where the cause of the injuries is the same, such as a system-wide policy or practice, named plaintiffs' injuries need not be identical with those of the other class members; typicality is met where the unnamed class members "have injuries similar to those of the named plaintiffs and [] the injuries result from the same, injurious course of conduct." *Armstrong v. Davis*, 275 F.3d 849, 868–69 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499 (2005). In *Armstrong*, the court certified a class of persons with physical disabilities in the custody of the California Department of Corrections, even though the disabilities included people with mobility impairments, vision impairments, and people who were deaf or hard of hearing. *Id.* In *Parsons*, typicality existed where the named plaintiffs were prisoners in custody of the state prison system and they claimed to be exposed, like all other members of the putative class, to a substantial risk of harm by the challenged policies and practices in the delivery of medical, mental health, and dental care. 754 F.3d at 685. The Ninth Circuit found that the named plaintiffs "thus allege[d] 'the same or [a] similar injury' as the rest of the putative class; . . . and they allege[d] that the injury follow[ed] from the course of conduct at the center of the class claims." *Id.* (second alteration in original) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)). Similarly, in *Hernandez*, the court found that typicality was satisfied based on "the same or [a] similar injury" where each named plaintiff claimed exposure to a substantial risk

[5] As noted above, in an injunctive case the actionable "injury" need not be a tangible physical injury, but rather it is the *risk* of harm. *Plata*, 563 U.S. at 531; *Helling v. McKinney*, 509 U.S. 25, 33 (1993); *Parsons*, 754 F.3d at 678.

of serious harm created by the challenged policies and practices with respect to medical, mental health, and dental care, as well as disability-related accommodations. 305 F.R.D. at 159-60 (alteration in original).

Plaintiffs, like the named plaintiffs in *Hernandez*, *Parsons*, and *Armstrong*, are in the custody of Defendant and, along with all other people incarcerated in Contra Costa County jails, are exposed to Defendant's policies and practices with respect to conditions medical and mental health care. Jt. Stip. of Facts ¶¶ 6-8; Doc. 1 ¶¶ 13-15. Plaintiffs claim the same deliberate indifference and risk of harm, that impact all other members of the Class. Defendant's conduct in implementing its policies and practices is not unique to the named Plaintiffs; the correctional policies are developed by Defendant, and must be followed by all Jail staff members and/or contracted providers. Jt. Stip. of Facts ¶¶2-6. Plaintiffs are all equally exposed to the ongoing risk of injury based on Defendant's system-wide policies and practices. For these reasons, the injuries suffered by Plaintiffs are typical of the members of the putative Class, satisfying Rule 23(a)(3).

4. The Named Plaintiffs and Class Counsel Will Fairly and Adequately Represent the Class's Interests.

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The court examines "the qualifications of counsel for the representatives, an absence of antagonism, a sharing of interests between representatives and absentees, and the unlikelihood that the suit is collusive." *Walters v. Reno*, 145 F. 3d 1032, 1046 (9th Cir. 1998) (citation omitted).

Adequacy of the class representatives is met here. The named Plaintiffs do not have interests antagonistic to those of unnamed class members and they are committed to the vigorous prosecution of this suit. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998) (holding that named plaintiffs are adequate if they do not have "any conflicts of interest with other class members" and if they will "prosecute the action vigorously on behalf of the class."), *overruled on other ground by Dukes*, 564 U.S. 338. In addition, "[c]lass

representatives have less risk of conflict with unnamed class members when they seek only declaratory and injunctive relief." *Hernandez*, 305 F.R.D. at 160. The three named Plaintiffs are willing and able to serve as effective class representatives in this case. There is no suggestion of any conflict of interest that would prevent Plaintiffs from serving effectively as representatives of the Class. Finally, there is no suggestion of collusion between the named Plaintiffs and the Defendant.

Rule 23(a)(4) also requires that class counsel be adequate. Class counsel is found to be adequate if they will "prosecute the action vigorously on behalf of the class." *Hanlon*, 150 F.3d at 1020. Furthermore, "[a]bsent a basis for questioning the competence of counsel, the named plaintiffs' choice of counsel will not be disturbed . . . ." *Mateo v. M/S Kiso*, 805 F. Supp. 761, 771 (N.D. Cal. 1991); *see also Wehner v. Syntex Corp.*, 117 F.R.D. 641, 644 (N.D. Cal. 1987) ("It is presumed plaintiffs' counsel is competent to litigate this case and will fairly and adequately represent the interests of the class members.")

Adequacy of class counsel is met here because the undersigned attorneys' experience ensures that they will fairly and adequately protect the interests of the class. Proposed class counsel have significant experience with complex and large class action litigation, including regarding conditions in correctional facilities and criminal justice issues, and will fairly and adequately protect the interests of the Class. *See* Specter Decl. ¶¶ 2, 8-9. Proposed class counsel have committed and will continue to commit considerable resources to the representation of the class. *Id*. ¶¶ 8-9. For all these reasons, counsel is adequate under Rule 23(a)(4), and should be appointed class counsel pursuant to Rule 23(g)(1) and (4).

B. Certification is Appropriate Under Rule 23(b)(1) and (b)(2)

In addition to meeting the requirements under Rule 23(a), Plaintiffs must establish at least one of the grounds for maintaining a class action under Rule 23(b) before a class is certified. While Plaintiffs need only satisfy one of the grounds, the Court can certify the Class in this case based on both Rule 23(b)(1) and Rule 23(b)(2).

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1. Separate Lawsuits Would Create a Risk of Incompatible Standards of Conduct for the County.

A class action is proper under Rule 23(b)(1)(A) where separate lawsuits by each class member would create a risk of imposing incompatible standards of conduct on the opposing party through inconsistent adjudications. Fed. R. Civ. P. 23(b)(1)(A). Here, there are approximately 785 people incarcerated in Contra Costa County at any given time who are affected by the challenged policies, and each one could file suit for injuries arising from these same policies. These individual suits would present a significant risk of inconsistent or conflicting rulings with which it would be impossible for the County to simultaneously comply. This court and others have granted class certification under Rule 23(b)(1)(A) for this very reason. *See Ashker v. Gov. of State of Calif.*, No. C 09–5796 CW, 2014 WL 2465191, at *7 (N.D. Cal. June 2, 2014) ("If each of the hundreds of proposed members of [the prisoner classes] were forced to adjudicate his claims individually, there would be a significant risk of inconsistent judgments"); *see also Gray v. County of Riverside*, No. EDCV-13-0044-VAP (OPx), 2014 WL 5304915, at *38 (C.D. Cal. Sept. 2, 2014) (holding that Rule 23(b)(1) "in particular has been applied in actions by prisoners challenging the conditions of their confinement"); *Coleman v. Wilson*, 912 F. Supp. 1282, 1293 (E.D. Cal. 1995) (certification of class of prisoners with mental illness challenging California Department of Correction's mental health care). The risk of imposing incompatible standards of conduct on Defendant is particularly high here, given the Class seeks injunctive and declaratory relief. *See Wamboldt v. Safety-Kleen Sys., Inc*., No. C 07-0884 PJH, 2007 WL 2409200, at *12 (N.D. Cal. Aug. 21, 2007). Class certification therefore is appropriate under Rule 23(b)(1).

2. The County Has Acted on Grounds Generally Applicable to the Class, Making Injunctive Relief Appropriate For the Class as a Whole.

Class certification is warranted under Rule 23(b)(2) if "the party opposing the class has 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). Rule 23(b)(2) is "almost automatically satisfied in actions primarily seeking injunctive relief." *Gray v. Golden Gate Nat'l Recreational Area*, 279 F.R.D. 501, 520 (N.D. Cal. 2011) (citation omitted); *see also Dukes*, 564 U.S. at 361 (holding that "civil rights cases against parties charged with unlawful [conduct] are prime examples of what (b)(2) is meant to capture") (first alteration in original) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997)). "These requirements are unquestionably satisfied when members of a putative class seek uniform injunctive or declaratory relief from policies or practices that are generally applicable to the class as a whole." *Parsons*, 754 F.3d at 688 (citing *Rodriguez*, 591 F.3d at 1125). The court in *Parsons* found class certification appropriate under Rule 23(b)(2) because uniform changes to systemic healthcare and correctional policies and practices would alleviate the risk of harm faced by every class member. *Id.* at 688-89.

This lawsuit falls squarely within the category of cases contemplated by Rule 23(b)(2). All members of the Class are allegedly exposed to a substantial risk of serious harm by a specified set of the County's policies and practices of uniform and universal application. *See Dukes*, 564 U.S. at 360 ("The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted – the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them") (quotation marks and citations omitted). Accordingly, the requirements of Rule 23(b)(2) are satisfied here.

C. Ascertainability Inquiries Are Not Applicable to Rule 23(b)(2) Classes, But the Class Is Ascertainable

Finally, "[i]n addition to the explicit requirements of Rule 23, an implied prerequisite to class certification is that the class must be sufficiently definite; the party seeking certification must demonstrate that an identifiable and ascertainable class exists." *Xavier v. Phillip Morris USA Inc.*, 787 F. Supp. 2d 1075, 1089 (N.D. Cal. 2011). A class is "ascertainable if it is 'administratively feasible for the court to determine whether a

particular individual is a member'" using objective criteria. *Keegan v. Am. Honda Motor Co., Inc.*, 284 F.R.D. 504, 521-22 (C.D. Cal. 2012) (citation omitted).

"The Ninth Circuit has not expressly addressed the issue of whether the judicially implied ascertainability requirement applies when a plaintiff moves to certify a class only under Rule 23(b)(2). However, every other circuit to address the issue has concluded that the ascertainability requirement does not apply to Rule 23(b)(2) classes." *In Re Yahoo Mail Litig.*, 308 F.R.D. 577, 597 (N.D. Cal. 2015); *see also P.P. v. Compton Unified Sch. Dist.*, Case No. CV 15-3726-MWF, 2015 WL 5752770, at *23 (C.D. Cal. Sept. 29, 2015) (noting that the Third Circuit has held that "ascertainability is an inappropriate requirement for class certification in a Rule 23(b)(2) action seeking injunctive relief," and collecting cases in the Ninth Circuit adopting the same reasoning).

In any event, even if the ascertainability requirement were to apply here, the Class satisfies it. Membership in the Class is based upon objective criteria –they are people incarcerated within the Contra Costa County Jails. Membership in the Class can be ascertained using the daily housing rosters within Defendant's control.

IV. CONCLUSION

Plaintiffs respectfully request that this Court enter an order certifying this action as a class action and certifying a class of "all individuals who are now, or in the future will be, detained in a Contra Costa County jail." Plaintiffs Gabriel Young, Eddie Williams, and Gale Young also request that they be certified as the representatives of the Plaintiff Class, and that their counsel of record be appointed as Class Counsel.

Plaintiffs further request that the Court order the parties, pursuant to Rule 23(c)(2)(A) to provide notice to the Plaintiff Class within 30 days of the Order certifying the class.

A proposed Order is attached.

Dated: October 1, 2020

Respectfully submitted,

/s/ Corene T. Kendrick
Corene T. Kendrick

Attorney for Plaintiffs