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17
18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

21 JESSE HERNANDEZ et al., on behalf of
themselves and all others similarly situated,

22 Plaintiffs,

23 v.

24 COUNTY OF MONTEREY; MONTEREY
25 COUNTY SHERIFF'S OFFICE;
CALIFORNIA FORENSIC MEDICAL
26 GROUP, INCORPORATED, a California
corporation; and DOES 1 to 20, inclusive,

27 Defendants.
28

Case No. CV 13 2354 PSG

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
CLASS CERTIFICATION**

Judge: Hon. Paul S. Grewal
Date: June 3, 2014
Time: 10:00 A.M.
Crtrm.: 5, 4th Floor

Trial Date: None Set

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1 Prisoners are needlessly dying and suffering in the Monterey County Jail in Salinas,
2 California (the “Jail”). As confirmed by six experts (including four neutral experts agreed
3 to by the parties) who have evaluated the conditions in the Jail, the Defendants in this
4 action—the County of Monterey (the “County”), the Monterey County Sheriff’s Office
5 (the “Sheriff’s Office”), and California Forensic Medical Group, Inc. (“CFMG,”
6 collectively “Defendants”)—fail to keep prisoners safe from violence, to deliver adequate
7 medical and mental health care, or to provide required assistance to prisoners with
8 disabilities. To remedy the abysmal and life-threatening conditions in the Jail, Plaintiffs
9 filed this action and now seek a class certification order pursuant to Federal Rule of Civil
10 Procedure 23(a) and (b)(2).

11 In the overcrowded, poorly designed, understaffed Jail, prisoners are attacked and
12 injured by other prisoners on a regular basis. Defendants fail to protect prisoners from
13 these attacks and often are unaware that an attack has occurred until the injured prisoners
14 seek out medical or custodial attention. Prisoners in need of medical care, including those
15 with chronic illnesses and those recently discharged from the hospital, deteriorate, suffer,
16 and sometimes die as a result of Defendants’ failure to maintain an adequately functioning
17 and properly staffed system for delivering medical care. In the last six months alone, three
18 prisoners have died from medical complications. Prisoners in need of mental health care
19 similarly suffer. Defendants fail to ensure that prisoners who receive mental health care
20 treatment in the community continue to receive care in the Jail; intentionally house
21 seriously mentally ill prisoners in administrative segregation where they receive a single
22 hour outside of their cell per day and one hour of mental health therapy every other week,
23 conditions that exacerbate their illnesses; and lock suicidal prisoners in disgusting,
24 windowless, inadequately-monitored “rubber rooms,” where they are left naked to sleep,
25 sit, and eat on the same floor in which a grate serves as their only toilet. Over the past four
26 years, three prisoners have committed suicide, resulting in a suicide rate nearly twice the
27 national average for jail populations. Finally, Defendants fail to provide prisoners with
28 disabilities with the assistance they need to access Jail programs, services, and activities.

1 Defendants house prisoners who cannot walk up stairs in units where the exercise yard and
 2 other programs are only accessible up a long flight of stairs; Defendants leave other
 3 prisoners who require help with communication, including deaf prisoners who
 4 communicate using sign language and prisoners with serious mental illness, to fend for
 5 themselves during the intake and classification processes, and at medical appointments and
 6 disciplinary hearings.

7 Defendants' failures to protect prisoners from violence and to provide adequate
 8 medical and mental health care to prisoners violate the Eighth and Fourteenth
 9 Amendments to the United States Constitution and Article I, Sections 7 and 17 of the
 10 California Constitution. With respect to these claims, the putative class representatives¹
 11 seek to certify a Prisoner Class of all prisoners who are now or will be in the future in the
 12 Jail. Defendants' failures to accommodate and refrain from discriminating against
 13 prisoners with disabilities violate the Americans with Disabilities Act ("ADA"), Section
 14 504 of the Rehabilitation Act, and California Government Code § 11135. With respect to
 15 these claims, the putative class representatives seek to represent a Prisoners with
 16 Disabilities Subclass consisting of all individuals who are now or will be in the future in
 17 the Jail and who have a disability, as defined by federal and California law.

18 Because the putative class representatives, the Prisoner Class and Prisoners with
 19 Disabilities Subclass, and Plaintiffs' counsel satisfy all requirements of Federal Rule of
 20 Civil Procedure 23(a), (b)(2), and (g)(1) and (4), class certification should be granted.

21 **FACTS SUPPORTING CLASS CERTIFICATION**

22 **I. DEFENDANTS FAIL TO PROTECT PRISONERS FROM BEING** 23 **ATTACKED AND INJURED BY OTHER PRISONERS**

24 Violence between prisoners at the Jail is constant and pervasive. According to the

25 _____
 26 ¹ The putative class and subclass representatives are Cain Aguilar, Ha Cobb, Susan Dille,
 27 Connie Dobbs, Sean Esquivel, Ramona Gist, Martha Gomez, George Greim, Dennis
 28 Guyot, Jesse Hernandez, Jason Hobbs, Glenda Hunter, Albert Key, Brandon Mefford,
 Wesley Miller, Richard Murphy, Jeff Nichols, Angel Perez, Sarab Sarabi, Clyde Whitfield,
 and Robert Yancey.

1 Sheriff's Office's incident reports from January 2011 through early-September 2012, there
 2 were more than 150 separate incidents of violence between prisoners. Decl. of Gay C.
 3 Grunfeld in Supp. of Pls.' Mot. for Class Certification ("Grunfeld Decl."), filed herewith,
 4 ¶¶ 45-47. In more than 100 of these incidents, at least one prisoner required medical
 5 treatment. *Id.* ¶ 47. Violent incidents were reported in 26 out of 29 housing units. *Id.*

6 The systemic causes of the violence—understaffing, overcrowding, lack of training,
 7 antiquated and poorly designed Jail facilities, and an inadequate prisoner classification
 8 system—are well-known to and tolerated by Defendants. All prisoners are subject to these
 9 systemic causes, as well as to the same Jail policies and procedures. *See* Grunfeld Decl.,
 10 Ex. E. In 2007, 2011, and 2013, outside experts produced reports confirming the
 11 inadequacy of the Jail's safety and security policies and practices. TRG Consulting, a
 12 private consulting firm, drafted the 2007 and 2011 reports at the County's request. *See*
 13 Pls.' Second Am. Compl. ("Second Am. Compl.") (Dkt. No. 41), Ex. A; Grunfeld Decl.,
 14 ¶¶ 39-40; Second Am. Compl., Ex. B; Grunfeld Decl., ¶ 41. The 2007 and 2011 Jail
 15 Needs Assessments both concluded that, "[t]he current combination of insufficient beds,
 16 an inadequate detention facility and understaffing has resulted in an almost
 17 untenable situation [at the Jail]." Second Am. Compl., Ex. A, at EX.1-2 (emphasis
 18 added); *id.*, Ex. B, at EX.2 (emphasis added). In 2013, the parties jointly retained Michael
 19 Hackett as a neutral expert to evaluate "whether Defendants adequately protect prisoners
 20 from injury and violence in the Jail." Grunfeld Decl., Ex. A, at 10. Like TRG Consulting,
 21 Mr. Hackett found that Defendants operate the Jail in a dangerous manner that places all
 22 prisoners at risk of serious harm. *Id.*, Ex. I.

23 Custodial staffing at the Jail is grossly inadequate for a correctional facility of its
 24 size and population. According to Mr. Hackett, the Jail's minimum staffing plan has "no
 25 historical record," is many years old, had to be "reduced in response to forced staff
 26 reductions," and includes no Shift Relief Factor. *Id.* ¶¶ 3.4-3.5. Thus, even when the Jail
 27 is "fully" staffed, there are not sufficient officers to perform all necessary duties. *Id.*
 28 ¶¶ 3.1-3.14. Because the Jail is staffed at such an inadequate level, "[a]ny [officer]

1 absence, regardless of reason, causes the jail to fall below minimum staffing for a portion
2 of time.” *Id.* ¶ 3.2. Whenever there is an unplanned absence, Defendants rely on staff to
3 work 16-hour shifts, which results in fatigued officers, overtime, and four-hour periods
4 during the middle of the ordinary 12-hour shifts in which the Jail is below minimum
5 staffing levels. *Id.* TRG Consulting reached identical and equally damning conclusions
6 regarding inadequate staffing. *See* Second Am. Compl., Ex. B, at EX.3-4, 6-7, G.2.

7 As Mr. Hackett concluded, “[b]y any definition, the jail population ... is
8 overcrowded” in ways that compromise the safety of prisoners and staff. Grunfeld Decl.,
9 Ex. I, ¶ 1.4. The Monterey County Jail has a rated capacity for 825 prisoners. *Id.* ¶ 1.1.
10 From June 2010 through September 2013, the average monthly population was always
11 greater than 1000 (21 percent above capacity) and reached a height of 1144 in May 2013
12 (39 percent above capacity). *Id.*, Ex. AA. More recently, the Jail census has decreased
13 slightly, but is still above the rated capacity for the institution. *Id.*, Ex. BB. The County’s
14 own website admits that “[t]he Monterey County Jail has been significantly overcrowded
15 for many years...[, which] puts officers, staff, inmates and the public at risk.” *Id.*, Ex. Y.

16 Because of the overcrowding, Mr. Hackett found, “[i]nmates are housed and living
17 in areas not designed for inmate housing, inmates who should by most standards be housed
18 in medium or maximum security housing are housed in less secure housing, and there are
19 insufficient types of housing available to meet classification needs.” *Id.*, Ex. I, ¶ 1.4.
20 “Most troublesome is the fact that there are insufficient one and two-person cells available
21 to house the appropriate classification level of inmates. Inmates who should be, and
22 normally would be housed in more secure housing are currently housed in open dormitory
23 settings.” *Id.* ¶ 1.7. Prisoners are improperly housed in the Rotunda of the Jail, which is
24 “the center of the Men’s Jail and designed as an assembly area, with classrooms and other
25 administrative offices around the perimeter” because “[t]here simply was no other place to
26 house these inmates.” *Id.* ¶ 1.5C. TRG Consulting reached similar conclusions. *See*
27 Second Am. Compl., Ex. B, at EX.2, 9.

28 The Jail has been so overcrowded that, for at least the past six years, Defendants

1 have applied on a near-monthly basis to the Superior Court for the County of Monterey for
2 an order to release prisoners on an accelerated basis pursuant to California Penal Code
3 § 4024.1. Grunfeld Decl., Ex. Z. To support these applications, Jail administrators
4 repeatedly swore that unless the court authorized prisoner releases, the overcrowding in the
5 Jail would make it impossible for staff to “adequately supervise inmates and to properly
6 house them in accordance with the approved classification plan.” *Id.* In these
7 applications, Dr. Taylor Fithian (Director of Defendant CFMG) repeatedly “advised that
8 the excessive number of inmates housed in the Jail compromises the health of the inmates
9 and the staff working at the facility.” *Id.* Jail administrators, including current Sheriff
10 Scott Miller, have frequently acknowledged in other public forums that the overcrowded
11 Jail is an unsafe place for prisoners. *See* Grunfeld Decl., Ex. I, ¶¶ 25-33 & Exs. Q-Y.

12 The aging, decrepit, poorly designed Jail physical plant also poses a danger to
13 prisoner safety. As Mr. Hackett found, multiple areas of the Jail have blind spots and other
14 structural issues that impede officers’ ability to monitor prisoner activity. *Id.*, Ex. I, ¶ 2.2
15 (“In the housing areas of the dorm there are two partial walls of concrete block
16 construction The officer in the control center simply can’t see what is taking place
17 behind those walls.”); *id.* ¶ 2.3 (noting that in the K-Pod, “the housing units have two large
18 concrete pillars ... that block the view of both the control center and any floor officer not
19 actually inside the housing unit. Most importantly, the rear-most pillar blocks the view of
20 at least four beds and immediate area.”); *id.* ¶ 2.5 (“I visited the Rehab Facility during
21 daylight hours and even with both electric and natural light, it was difficult to see what is
22 taking place inside the dorms, more so the greater distance from the control center.”). The
23 old facility presents constant maintenance and health problems. Decl. of James Egar in
24 Supp. of Pls.’ Mot. for Class Certification (“Egar Decl.”), filed herewith, ¶ 41; Grunfeld
25 Decl., Ex. Q. TRG Consulting also found that the Jail’s structure imperiled prisoners and
26 staff. Second Am. Compl., Ex. B, at EX.2, 8.

27 Largely because of the understaffed, overcrowded, and inadequate facilities,
28 Defendants do not properly classify and house prisoners. *See* Second Am. Compl., Ex. B,

1 at 2 (“Adequate ... classification of inmates cannot occur because of the severe
 2 overcrowding and lack of a sufficient number of single and double cells.... This creates an
 3 environment that is unsafe for officers, inmates and visitors.”); *id.* at 4-5 (“Overcrowding
 4 reduces the ability to classify.... Proper separation and segregation of inmates ... is very
 5 difficult because of insufficient staff, an inadequate physical plant layout and ... severe
 6 overcrowding”); *see also* Grunfeld Decl., Ex. I, ¶¶ 1.4, 1.5B, 1.7, 3.10A-C.

7 The system-wide, well-documented problems at the Jail create a substantial risk that
 8 all prisoners will experience serious harm from violence from other prisoners. During his
 9 tour of the facility, Mr. Hackett observed the potentially fatal consequences of the Jail’s
 10 deficiencies when “an inmate ... was attacked by fellow inmates [in a gang unit] ... and
 11 suffered a number of stab wounds.” *Id.*, Ex. I, ¶ 1.5B. Defendants’ own incident reports
 12 demonstrate that the security issues at the Jail cause inmate violence up to this day. *See id.*
 13 ¶¶ 45-48 & Ex. JJ. Putative named plaintiffs have been the victims of violence. Aguilar
 14 Decl., ¶¶ 3-5; Gomez Decl., ¶ 11 Greim Decl., ¶ 24; Hobbs Decl., ¶¶ 4-6, 22. Nearly all of
 15 the putative class representatives have witnessed violence and/or felt endangered by the
 16 conditions in the Jail. *See, e.g.*, Dilley Decl., ¶ 26; Dobbs Decl., ¶ 19; Gist Decl., ¶ 26;
 17 Hernandez Decl., ¶ 51; Mefford Decl., ¶ 43; Perez Decl., ¶ 22; Whitfield Decl., ¶ 30;
 18 Yancey Decl., ¶ 34; *see also* Egar Decl., ¶¶ 6-8, 17, 40.

19 **II. DEFENDANTS’ INADEQUATE MEDICAL SYSTEM EXPOSES ALL**
 20 **PRISONERS TO UNACCEPTABLY HIGH RISKS OF INJURY,**
 21 **UNNECESSARY SUFFERING, AND DEATH**

22 Defendants exercise absolute control over the medical care prisoners receive in the
 23 Jail. Monterey County has the ultimate responsibility for providing medical care to
 24 prisoners at the Jail. *See* Cal. Code Regs. tit. 15, § 1200. Pursuant to contract Monterey
 25 County and the Sheriff’s Office have designated CFMG, a private, for-profit corporation,
 26 to provide medical care at the Jail. *See* Grunfeld Decl., Ex. HH; *see also id.*, Ex. E,
 27 § 1114.01. CFMG has been the medical provider at the Jail since 1984. *Id.*, Ex. GG. All
 28 prisoners receive medical care in the Jail pursuant to the same medical services policies
 and procedures promulgated by the Sheriff’s Office and CFMG. *Id.*, Ex. F at 8-10; *id.*,

1 Exs. E & G.

2 The medical care that Defendants provide is deficient in nearly every respect. Over
3 the past few years, there have been numerous deaths of prisoners from medical complica-
4 tions, including at least three in the last six months. *See id.* ¶ 37 & Ex. CC; Egar Decl., ¶¶
5 32-37. In 2013, the parties jointly retained Dr. Michael Puisis, D.O., as a neutral expert to
6 evaluate “whether Defendants’ system for providing medical care at the jail is
7 adequate” Grunfeld Decl., ¶ 8 & Ex. B. Dr. Puisis found that Defendants’ system-
8 wide policies and practices for providing medical care place prisoners at great risk of
9 serious harm. *Id.*, Ex. J.

10 Dr. Puisis found the Jail’s medical staffing insufficient. CFMG’s staffing plan,
11 approved by the County, provides for an insufficient number of staff at all levels—from
12 the Medical Director to registered nurses—“to accomplish the assigned duties.” *Id.* at 6.
13 Moreover, the staffing plan does not take into account a relief factor, which “means that
14 even given the current staffing plan, **the staffing is 40% to 70% less than necessary.**”
15 *Id.* (emphasis added). Lack of sufficient staff results in numerous duties that “were not
16 performed consistently or were performed poorly, includ[ing] evaluation of health
17 requests, chronic illness care, evaluations in sobering and isolation cells, management of
18 patients in the O[utpatient Housing Unit] (OHU), and intake assessments. Segregation
19 rounds and infection control surveillance are [simply] not performed.” *Id.* Dr. Puisis’
20 reviews of charts revealed failures by CFMG staff “to perform evaluations according to
21 policy, failure[s] to perform vital signs, and abrupt evaluations of poor quality.” *Id.* at 7.
22 Dr. Puisis also determined that senior staff at the Jail—including the Program Director,
23 Medical Director, and Director of Nursing—work only part-time, and therefore are not
24 able to adequately supervise the performance of mid- and lower-level providers. *Id.* at 8.

25 The spaces in which Defendants deliver medical care to prisoners are also
26 “inadequate.” *Id.* “[N]one of the clinical space was originally constructed for its intended
27 purpose,” resulting in extraordinarily small exam rooms without exam tables and other
28 necessary elements, thereby “discourag[ing] proper examinations.” *Id.* The examination

1 room for new prisoners in the intake area is so small that nurses forgo using it and instead
2 utilize a custody staff office or a bench in a nearby hallway. *Id.* at 9. “All clinic
3 examination areas were not hygienic ..., had clutter” and lacked “standardiz[ed] ...
4 equipment, furnishings, and supplies.... One nurse carried supplies in her personal
5 handbag.” *Id.* at 10.

6 According to Dr. Puisis, almost every important policy governing medical care
7 suffers from serious infirmities. *Id.* at 11-16. Problems begin with the intake health
8 screening policy, which “does not provide for accurate or appropriate medical intake
9 screening and therefore does not protect incoming detainees from harm.” *Id.* at 15. The
10 policy for how prisoners request medical care provides no direction for how nurses should
11 triage requests and does not require any tracking of requests. *Id.* at 11. The emergency
12 services policy “does not address when a nurse is required to consult a physician.” *Id.*
13 The policy for continuing medications begun prior to incarceration fails to ensure that
14 prisoners receive all necessary medications, including those for chronic conditions. *Id.* at
15 13. The procedure for scheduling care for prisoners with chronic illness does not ensure
16 that such patients are “seen as frequently as indicated based on the status and degree of
17 control of their illness.” *Id.* at 14. The guidelines for determining which prisoners are
18 placed in segregated housing do not ensure that prisoners with mental illness or other
19 significant medical problems are safe from unnecessary harm. *Id.* at 16. Dr. Puisis found
20 other areas—for prisoners who are developmentally disabled, patients on dialysis, elderly
21 patients, patients with dementia, patients requiring wheelchairs or who have physical
22 disabilities, and housing for pregnant women, persons with communicable diseases, the
23 mentally ill, and the terminally ill—lack policies entirely. *Id.* at 13.

24 According to Dr. Puisis, the deficiencies in these policies cause real harm to
25 prisoners. Custody officers, who are not trained health professionals, conduct initial health
26 screening for all prisoners entering the Jail and substantially under-identify prisoners with
27 medical issues, especially those with chronic illness. *Id.* at 17. Only half as many
28 prisoners are being treated for hypertension, asthma, and diabetes as should be. *Id.*

1 Overall, 13% of individuals in the Jail receive medication for a chronic illness; Dr. Puisis
2 indicated that “more than 20% of a correctional population will typically have a chronic
3 illness.” *Id.* Defendants’ failure to diagnose prisoners with chronic illness results in
4 prisoners “not being treated for their conditions with medication.” *Id.*

5 Dr. Puisis found that Defendants’ infection control activities are inadequate and
6 violate Centers for Disease Control standards. *Id.* at 18. Defendants fail to screen the
7 majority of prisoners for or track tuberculosis or methicillin resistant staphylococcus
8 aureus (MRSA). *Id.* at 18, 23. Defendants are thus “unaware of whether [they have] a
9 problem in these areas or whether their existing programs are successful in managing these
10 conditions in the jail.” *Id.* at 23-24. These deficiencies are symptomatic of Defendants’
11 inadequate policies for infection control. *Id.* at 18-19, 23.

12 According to Dr. Puisis, Defendants’ drug and alcohol withdrawal policy and
13 practice also endanger prisoners. Untrained custody officers make decisions regarding
14 which prisoners are experiencing withdrawal and whether to place prisoners in isolation or
15 sobering cells; these decisions should only be made by medical staff. *Id.* at 19-20. Nurses
16 then do not even use the protocol set forth in policy, and fail to consult with a physician
17 when prisoners present abnormal symptoms. *Id.* at 20. “Risk factors and treatment
18 protocols in the CFMG procedure are not consistent with contemporary standards for
19 outpatient alcohol detoxification.” *Id.* (footnote omitted).

20 Dr. Puisis also concluded that prisoners lack an effective mechanism for requesting
21 care. Defendants utilize an ineffective process whereby prisoners submit “sick call slips”
22 to medical staff or in designated boxes. *Id.* at 21; *id.*, Ex. E, § 1114.01(E); *id.*, Ex. F, at 9.
23 Many boxes for submitting slips are located outside of housing units in areas not readily
24 accessible to prisoners; the sick call slips are not confidential because officers, not medical
25 staff, collect sick call slips from the boxes; and, commonly, there are shortages of sick call
26 slips. *Id.*, Ex. J, at 21. Moreover, there is no policy regarding how the approximately 200
27 prisoners housed in administrative segregation have access to the health request process.
28 *Id.* at 22. Requests for care should be, but are not, triaged within 24 hours. *Id.* at 21. And

1 because Defendants do not track requests for medical care, “the medical program has no
2 information on how many people place requests, how many are seen, or whether their care
3 was timely.” *Id.* at 22.

4 Dr. Puisis found that the Jail’s chronic disease management policies place the
5 sickest prisoners at great risk. Rather than schedule chronic illness patients for follow up
6 treatment every 90 days or sooner, CFMG provides follow-up care only on an as-needed
7 basis. Most prisoners with chronic illness are treated by a Physician’s Assistant, who,
8 based on chart reviews, “committed many lapses of care and clinical errors.” *Id.* at 7.
9 Dr. Puisis found that that the Physician’s Assistant was not adequately supervised by a
10 physician and “should not be managing complex patients.” *Id.* at 65, 23. “Based on chart
11 reviews, **it appears that MCJ is systematically denying necessary medication to**
12 **patients with chronic disease.**” *Id.* at 23 (emphasis added).

13 Dr. Puisis concluded that Defendants’ programs for administering medication and
14 maintaining medical records also endanger patients. “Medication administration records
15 are not used to record administration of medication at the time medication is
16 administered”; instead, nurses only record the reason for unsuccessful medication
17 administrations from memory once they return to the office. *Id.* at 24-25. Some
18 medications, including inhalers, detoxification medications, and insulin, are not recorded
19 on the medication administration record, which creates a “patient safety issue.” *Id.* at 25.
20 Medical records are stored in a small, unsecured area in the Jail. *Id.* at 25-26. Medical
21 staff sometimes evaluate prisoners’ health requests without access to the prisoners’
22 medical records. *Id.* at 26. Prisoners’ medical records frequently lacked records from
23 outside providers, including for hospital visits. *Id.* at 29.

24 According to Dr. Puisis, the Jail’s emergency response policies and practices further
25 endanger prisoners in need of immediate care. Nurses, who respond to most onsite
26 emergencies, place prisoners at risk by sometimes deciding not to send a prisoner to the
27 hospital without consulting a mid- or upper-level provider. *Id.* at 26-27. And when
28 prisoners return from the hospital, “there is no established procedure for what is to

1 occur” *Id.* at 27. In practice, Defendants should, but do not, schedule a follow up
2 appointment with a physician for such prisoners. *Id.*

3 The systemic problems discussed above not only create a risk of harm, they result in
4 actual harm to prisoners. Dr. Puisis reviewed the medical charts for 29 prisoners, many of
5 whom suffered or deteriorated because of Defendants’ failures to provide adequate
6 medical care. *See, e.g., id.* at 32-72 (Patients # 1, 2, 3, 4, 6, 7, 8, 12, 16, 18, 20, 23, & 24).
7 Similarly, the putative class representatives suffered unnecessary pain or worsening of a
8 condition because Defendants failed to provide them with appropriate and timely medical
9 care. *See, e.g.,* Aguilar Decl., ¶¶ 6, 14-16, 19; Cobb Decl., ¶¶ 6-19; Dilley Decl., ¶¶ 5-7,
10 17-20; Dobbs Decl., ¶¶ 3, 6-16, 18; Esquivel Decl., ¶¶ 13, 15, 17-24, 26; Gist Decl., ¶¶ 17-
11 19; Gomez Decl., ¶¶ 3, 5-6; Greim Decl., ¶¶ 20-22; Hernandez Decl., ¶¶ 6-15, 18-25, 28-
12 43; Hobbs Decl., ¶¶ 14-16, 18; Mefford Decl., ¶¶ 39-40; Perez Decl., ¶¶ 5-21; Whitfield
13 Decl., ¶¶ 8-10, 13-15, 18-23, 25-27; Yancey Decl., ¶¶ 23, 25-33, 35-36.

14 **III. THE MENTAL HEALTH CARE SYSTEM AT THE JAIL FAILS TO**
15 **IDENTIFY AND PROVIDE ADEQUATE AND TIMELY TREATMENT TO**
16 **PRISONERS WITH SERIOUS MENTAL ILLNESS**

17 Though the Sheriff’s Office and the County are ultimately responsible for the
18 mental health care provided to prisoners, CFMG, pursuant to its contract with the County,
19 delivers all mental health care to prisoners in the Jail. Grunfeld Decl., Ex. HH; Cal. Code
20 Regs. tit. 15, § 1200. CFMG and the Sheriff’s Office (which assists with certain mental
21 health care tasks) have standardized policies that govern how they provide mental health
22 care. Grunfeld Decl., Ex. G; *id.*, Ex. E.

23 Prisoners are dying and suffering because of Defendants’ failures to provide
24 adequate mental health care. *See generally* Decl. of Pablo Stewart in Supp. of Pls.’ Mot.
25 for Class Certification (“Stewart Decl.”), filed herewith. Since 2010, there have been three
26 completed and dozens of attempted suicides at the Jail. The suicide rate in the Jail is
27 nearly double the national average for jail populations. *Id.* ¶ 72; Grunfeld Decl., Exs. DD,
28 EE, JJ; Egar Decl., ¶¶ 13-15, 33.

In 2013, the parties jointly retained Dr. Richard Hayward, Ph.D., as a neutral expert

1 to evaluate “whether Defendants’ system for providing mental health care in the jail is
2 adequate” Grunfeld Decl., ¶ 9 & Ex. C. Dr. Hayward produced a draft report finding
3 that Defendants’ system-wide policies and practices for providing mental health care place
4 prisoners at risk of serious harm. *Id.*, Ex. M. Dr. Pablo Stewart, M.D., a psychiatrist with
5 decades of experience evaluating correctional mental health care systems, reviewed
6 Dr. Hayward’s draft report, the reports of the other joint experts in this case, the relevant
7 policies and procedures, and other materials. Dr. Stewart concluded that, in nearly every
8 respect, Defendants’ policies and practices for delivering mental health care to prisoners in
9 the Jail place all prisoners, especially those with serious mental illness, at a substantial risk
10 of serious harm. Stewart Decl., ¶ 6-7.

11 Defendants fail to provide sufficient mental health, medical, and custody staff to
12 deliver timely and appropriate mental health care to prisoners with serious mental illness.
13 *Id.* ¶¶ 8-21. There are no mental health clinicians on-site at the Jail on weekends or
14 holidays; this staffing shortage places prisoners with mental illness newly booked into the
15 Jail or who experience a mental health crisis on the weekend at enormous risk of harm,
16 including needless suffering and suicidality. *Id.* ¶ 12. The current staffing level is only
17 sufficient to offer group mental health therapy to prisoners with serious mental illness once
18 every other week for one hour, which falls far below the standard of care for prisoners in
19 need of this treatment. *Id.* ¶ 56. Medical staff—who conduct initial screenings of
20 prisoners with mental illness, distribute psychiatric medications, verify medications
21 prisoners were prescribed prior to incarceration, and process sick call slips—and custody
22 staff—who escort prisoners to and from mental health care treatment and monitor
23 prisoners with mental illness in administrative segregation and safety cells—are both
24 critical to the Jail’s mental health care system. *Id.* ¶¶ 16-19. However, the acute shortages
25 in medical and custody staff identified by Dr. Puisis and Mr. Hackett compromise staff’s
26 ability to fill their roles and thus place prisoners with mental illness at risk. *Id.*
27 Consequently, “[a]s a result of the lack of sufficient mental health, medical, and custody
28 staff at the Jail, all prisoners with, or who may develop, mental illness, are placed at

1 serious risk of substantial harm.” *Id.* ¶ 21.

2 Defendants’ intake policies and practices for identifying newly booked prisoners
3 with mental illness and ensuring they receive appropriate treatment and housing are
4 “broken” and place prisoners at substantial risk of serious harm. *Id.* ¶¶ 22-44.
5 Inadequately trained custody staff members conduct the initial health screening, instead of
6 medical or mental health care staff. *Id.* ¶ 27. Moreover, custody staff use a form during
7 this intake interview that does not capture critical information regarding mental illness and
8 suicidality. *Id.* ¶ 26. Based on this inadequate initial interview, custody staff, not medical
9 or mental health care staff, make the critical decision whether a prisoner should be placed
10 in a safety or sobering cell. *Id.* ¶¶ 28-29. There is no policy to guide custody staff in
11 making this decision, or in making the ultimate classification decision that will determine
12 the housing for each prisoner with mental illness. *Id.* ¶ 30. At the second step in the
13 intake process, medical staff likely under-identify prisoners with mental illness. *Id.* ¶ 31.
14 And at the third step, mental health care staff do not always conduct timely assessments,
15 *id.* ¶ 32, and do not timely request outside psychiatric pharmacy records to ensure
16 psychotropic medications are continued, *id.* ¶ 34-37.

17 Defendants also utilize a punitive and medically contraindicated detoxification
18 process whereby they deny psychotropic medications for up to 90 days to certain prisoners
19 with histories of substance abuse. *Id.* ¶¶ 39-40. Defendants’ policies do not require
20 mental health staff to examine a new prisoner, or to consider continuing psychiatric
21 medications and treatments the prisoner was receiving in the community, for up to **seven**
22 **days** after booking. *Id.* ¶ 37. Such an interruption in treatment can have serious
23 consequences. Prisoners who are new to the Jail environment are at the highest risk of
24 suicide and self-harm. *Id.* ¶ 34. For prisoners who were on psychotropic medications in
25 the community, an interruption in medication worsens symptoms and increases suicidality,
26 and can make it more difficult to treat their mental illness in the future. *Id.*

27 Defendants’ inadequate intake process significantly contributed to the suicide of
28 Daniel Lariviere, who had been discharged from a state psychiatric hospital four days prior

1 to his booking in the Jail and was taking various psychotropic medications in the
2 community. *Id.* ¶ 42. Mr. Lariviere never saw any mental health care staff in the Jail, nor
3 did Defendants provide him with his prescribed psychotropic medications. *Id.* He
4 committed suicide three days after his arrest in 2011. An adequate intake process would
5 have prevented Mr. Lariviere’s suicide. *Id.*

6 Defendants’ inadequate sick call process, discussed in Section I.B, *supra*, also
7 places prisoners with serious mental illness at great risk of harm. *Id.* ¶¶ 48, 51.

8 Defendants’ policies and practices for administering psychotropic medications,
9 providing group and individual therapy, and transferring prisoners in mental health crisis
10 to facilities capable of providing higher levels of care also place prisoners at risk of harm.
11 *Id.* ¶¶ 53-61. For example, it appears that prisoners with the most serious mental illness
12 are sometimes denied access to group therapy because custody staff determines they are
13 not suitable for group therapy. *Id.* ¶ 58. Rather than transfer prisoners in mental health
14 crisis to Natividad Medical Center, a licensed psychiatric hospital less than 0.5 miles from
15 the Jail, Defendants often house such prisoners in punitive safety cells over entire
16 weekends until Jail mental health care staff arrive on Monday. *Id.* ¶ 61.

17 Pursuant to policy and practice, Defendant house prisoners with serious mental
18 illness in administrative segregation units, which places them at risk of decompensation
19 and suicide. *Id.* ¶¶ 62- 67. Instead of trying to avoid placing prisoners with serious mental
20 illness in administrative segregation, as current professional opinion dictates, Defendants’
21 policy is to place prisoners with serious mental illness in administrative segregation
22 **because of** their mental illness. *Id.* ¶ 67. Defendants designate four administrative
23 segregation housing units, A and B Pods for men and R and S Pods for women,
24 specifically for prisoners with “unstable” mental illness. *Id.* ¶ 62. When in these pods,
25 prisoners receive only one hour outside of their cell per day, which is the only opportunity
26 the prisoners have to exercise, shower, and use the telephone. This out of cell time falls far
27 below the standard of care. *Id.* Defendants fail to conduct adequate health and safety
28 checks of prisoners in administrative segregation and to reevaluate prisoners for transfer to

1 less restrictive housing units. *Id.* ¶ 68; *see also* Egar Decl., ¶ 13-15. Given this, it is
2 unsurprising that all three suicides committed in the Jail since 2010 took place in
3 administrative segregation housing units. Stewart Decl., ¶ 69.

4 Defendants' suicide prevention policies and practices magnify the risk of harm to
5 which Defendants expose the prisoners with the most serious mental illness. Defendants'
6 deficient intake process, discussed *supra*, and failure to utilize any suicide risk assessment
7 tool results in an under-identification of prisoners at risk of suicide. *Id.* ¶¶ 74-75.

8 Prisoners at risk of suicide are frequently placed in areas of the Jail in which they have
9 ready access to suicide hazards, such as vents or hooks, that pose serious risks. *Id.* ¶ 91.

10 When Jail staff members do identify prisoners at risk of suicide, they place them in
11 punitive safety cells, commonly referred to as "rubber rooms." The rubber rooms have no
12 features except for a tray slot in the door and a grate in the floor through which prisoners
13 must urinate and defecate. The safety cells have no beds, sinks, toilets (other than the
14 grate in the floor), chairs, tables, or windows for natural light. Prisoners must sit, sleep,
15 and eat on the same floor on which they go to the bathroom. *Id.* ¶ 76; *see also* Grunfeld
16 Decl., Ex. K, at 148-50 (photographs). Jail staff fails to adequately clean the rubber rooms
17 between occupants; the rooms thus frequently smell of feces. Stewart Decl., ¶ 76.

18 Prisoners placed in the safety cells are denied nearly all privileges, such as showers, out-
19 of-cell time, exercise, property, human contact, and, often, food and water. *Id.* ¶ 77.

20 Defendants typically strip prisoners naked when they place them in the rubber rooms and
21 deny them any replacement garments or bedding. *Id.* ¶ 78. These punitive conditions
22 increase prisoners' suicidality and increase the risk that prisoners will not report suicidality
23 in order to avoid being subjected to the rubber room. *Id.* ¶¶ 79-80.

24 Defendants further endanger suicidal prisoners in rubber rooms by failing to
25 adequately monitor, observe, and treat them. The Sheriff's Office policy for observing
26 prisoners in rubber rooms is inadequate because it (1) has no provision for constant
27 monitoring of acutely suicidal prisoners, and (2) does not require that safety checks be
28 conducted at unpredictable and non-repeating times to prevent self-harm. *Id.* ¶¶ 82-83.

1 CFMG's policy for evaluating prisoners in safety cells places prisoners at risk by (1)
 2 permitting suicidal prisoners to be maintained in a rubber room for up to 24 hours without
 3 any evaluation by mental health care staff (rather than having mental health care staff
 4 evaluate a prisoner **prior** to placement in a rubber room), and (2) does not require that
 5 placement and removal of a prisoner from a rubber room be approved by a psychiatrist
 6 after a face-to-face evaluation. *Id.* ¶¶ 84-85.

7 Defendants fail to follow even these minimal and flawed safety cell policies. Safety
 8 cell logs indicate that sometimes more than an hour will pass between custody safety
 9 checks on prisoners in rubber rooms, even for prisoners placed in restraint chairs (who are
 10 at a significantly increased risk of injury). *Id.* ¶¶ 86-87, 89-90. And prisoners are
 11 sometimes held in safety cells over entire weekends without being evaluated by mental
 12 health care staff. *Id.* ¶ 88.

13 Defendants' deficient policies and practices for quality improvement do not ensure
 14 that Defendants review the performance of their mental health program, identify problems,
 15 and devise, implement, and evaluate solutions. *Id.* ¶¶ 98-104. The overcrowded
 16 conditions in the Jail further limit Defendants' ability to deliver adequate mental health
 17 care. *Id.* ¶¶ 105-111.

18 Defendants' inadequate mental health care system has had tragic consequences,
 19 contributing to each of the completed suicides and many of the attempted suicides in the
 20 Jail since at least 2010. *Id.* ¶¶ 93-97. The putative class representatives with serious
 21 mental illness have also suffered needlessly because Defendants failed to provide them
 22 with the timely and appropriate care they required. *See, e.g.,* Aguilar Decl., ¶ 23; Esquivel
 23 Decl., ¶ 27; Gist Decl., ¶¶ 3-15; Gomez Decl., ¶¶ 7-10; Greim Decl., ¶¶ 4-12; 14-17;
 24 Hobbs Decl., ¶ 23; Mefford Decl., ¶¶ 7-15, 17-20, 22-25, 28-37; Whitfield Decl., ¶ 28.

25 **IV. DEFENDANTS ROUTINELY DISCRIMINATE AGAINST AND FAIL TO**
 26 **ACCOMMODATE PRISONERS WITH DISABILITIES**

27 Defendants systematically fail to provide prisoners with disabilities with access to
 28 Jail services, programs, and activities. Defendants house prisoners in wheelchairs in units

1 without accessible toilets, beds, and showers. Prisoners who cannot climb stairs spend
2 months without going outside because the exercise yard can only be accessed up a flight of
3 stairs. Prisoners who use sign language to communicate are not provided interpreters for
4 the intake process, doctor's appointments, and disciplinary hearings. Rather than provide
5 accommodations to ensure prisoners with disabilities can function in the Jail, Defendants
6 leave prisoners with disabilities to fend for themselves.

7 In 2013, the parties jointly retained SZS Consulting as a neutral expert to evaluate
8 Defendants' compliance with the ADA and other disability rights laws. Grunfeld Decl.,
9 ¶ 10 & Ex. D. SZS Consulting's detailed report found that Defendants operate the Jail in
10 violation of the rights and needs of prisoners with disabilities. *See id.*, Ex. K.

11 Defendants lack adequate policies and procedures, and thus fail, to identify
12 prisoners with disabilities and the accommodations they require. *Id.* at 11, 12, 14, 16.
13 Defendants also do not maintain any central list, electronic or otherwise, of prisoners with
14 disabilities and the accommodations they require. *See id.* at 28, 34.

15 Defendants lack policies and procedures to ensure that prisoners with disabilities
16 receive and retain needed assistive devices, including, but not limited to, wheelchairs,
17 walkers, crutches, canes, braces, tapping canes, hearing aids, and other amplification
18 devices, as accommodations. *See generally id.* at 1-34 (no identification of any policy
19 regarding assistive devices); *see also id.*, Ex. E (no Sheriff's Office policy regarding
20 assistive devices); *id.*, Ex. G (no CFMG policy regarding assistive devices). Defendants
21 also lack policies for ensuring that prisoners who require accessible housing, including
22 accessible beds, toilets, and showers, receive and retain such housing assignments (to the
23 extent they even exist in the Jail). *See generally id.*, Ex. K, at 1-34 (no identification of
24 any policy regarding housing for prisoners with disabilities); *see also id.*, Ex. E (no
25 Sheriff's Office policy regarding housing for prisoners with disabilities); *id.*, Ex. G (no
26 CFMG policy regarding housing for prisoners with disabilities).

27 The Jail's physical plant is blatantly non-compliant with relevant federal and state
28 disability-related architectural requirements. After conducting a comprehensive evaluation

1 of the Jail's structure, **SZS identified 119 architectural elements that did not comply**
2 **with the relevant guidelines.** *Id.* at 98-691. Some of these barriers violated the
3 requirements of federal and state law in multiple ways. *Id.* The problems identified by
4 SZS include the following: The Jail has far fewer housing areas and cells available to
5 prisoners in wheelchairs than required by the relevant state and federal laws. *Id.* at 7-10.
6 None of the areas in which prisoners are housed, either temporarily (e.g., holding cells,
7 isolation cells, and safety cells) or more permanently (housing units), are fully accessible
8 to prisoners in wheelchairs. *Id.* at 8, 9; *see* Egar Decl., ¶¶ 18-19 & Ex. D. Many areas of
9 the Jail in which Defendants offer programs, including housing, health care, and exercise,
10 are partially or completely inaccessible to prisoners with mobility impairments, including
11 those in wheelchairs. Not one medical exam room has adequate clearances for prisoners in
12 wheelchairs. *Id.* at 9. Moreover, the exercise facilities for all prisoners housed in Pods A-
13 J, K-Pod, the Women's Section, the Rotunda, and the Infirmary, are located **on the roof of**
14 **the Jail, up a long flight of stairs;** "[t]he result is that no accessible exercise areas are
15 provided in the facility for female inmates and male inmates have access to exercise areas
16 only if they are housed in dorms A, B, C, or D." *Id.* at 9.

17 The extent to which Defendants lack policies and procedures to ensure effective
18 communication with prisoners who have disabilities that affect communication—including
19 hearing, vision, speech, learning, and development disabilities, and mental illness—is
20 nearly unfathomable. As perhaps the most obvious example of this failure, Defendants
21 **never** provide sign language interpreters to any prisoners under any circumstances. *Id.* at
22 4, 7. More generally, Defendants deny prisoners with disabilities that affect
23 communication access to programs and services, including the intake and classification
24 process, disciplinary hearings, criminal or other investigations, classification reviews,
25 grievance processes, religious services, and educational classes. *Id.* at 6-7, 30. Such
26 prisoners may also be unable to communicate with health care professionals, to describe
27 physical and psychological symptoms at intake and other regular health care appointments,
28 to request health care, and to provide informed consent to medications and procedures. *Id.*

1 at 6-7, 14-27, 30. Defendants have one TTY telephone at the Jail, but staff members in the
2 area where the phone is located do not know how to operate it. *Id.* at 7. The standard
3 telephones throughout the facility lack amplification required to accommodate hearing
4 impaired prisoners and are located in physically inaccessible places. *Id.* at 7-10.
5 Defendants fail to provide hearing aids to deaf prisoners. Egar Decl., ¶ 9.

6 Defendants routinely place prisoners with disabilities in danger of injury and
7 exploitation. Because Defendants completely lack policies and practices for evacuating
8 and communicating with prisoners with disabilities in case of emergencies, including
9 natural disasters and security incidents, prisoners with disabilities are at increased risk of
10 injury in such circumstances. *Id.* at 8, 12, 16, 28.

11 Defendants lack an effective grievance procedure for prisoners to request disability
12 accommodations. *See, e.g.*, Dilley Decl., ¶¶ 9-10, 14, 17, 24-25; Dobbs Decl., ¶ 9;
13 Esquivel Decl., ¶¶ 6, 28; Hernandez Decl., ¶¶ 41, 44-45; Hobbs Decl., ¶¶ 6, 11-13;
14 Mefford Decl., ¶ 37; Whitfield Decl., ¶¶ 14-17; Yancey Decl., ¶¶ 14-16, 31. Finally,
15 because Defendants have essentially no disability-related policies on which to train their
16 staff (*supra* at 17-19), Defendants fail to provide adequate training on disability
17 accommodations.

18 The putative class representatives with disabilities all experienced serious problems
19 accessing programs offered by Defendants. For example, Plaintiff Dilley, who suffers
20 from multiple sclerosis, cannot walk up the stairs to access the exercise yard without
21 experiencing excruciating pain. Dilley Decl., ¶ 4. Since she was booked into the Jail in
22 June 2013, she has only been outside to go to court or medical appointments at outside
23 facilities—she has not been outside at all since mid-December 2013. *Id.* ¶ 12-13. Plaintiff
24 Yancey is deaf and uses sign language as his primary method of communication. Among
25 the many ways the Jail violated his rights, Defendants never provided him with a sign
26 language interpreter, even for the intake process, for medical appointments, for
27 disciplinary hearings, or for church services. Yancey Decl., ¶¶ 4, 6-8, 11-13, 23. Other
28 putative class representatives with disabilities were similarly discriminated against or

1 denied needed accommodations in the Jail. *See, e.g.*, Dobbs Decl., ¶ 10; Esquivel Decl.,
 2 ¶¶ 6-16, 24; Gist Decl., ¶¶ 22-25; Gomez Decl., ¶ 4; Hobbs Decl., ¶¶ 6-13, 17, 21; Mefford
 3 Decl., ¶¶ 14-16; Perez Decl., ¶ 6; Whitfield Decl., ¶¶ 8-10, 13-15, 18-23.

4 **ARGUMENT**

5 The putative class representatives, the Prisoner Class, and the Prisoners with
 6 Disabilities Subclass, satisfy all requirements for class certification. They “meet the four
 7 threshold requirements of Federal Rule of Civil Procedure 23(a): Numerosity, commonal-
 8 ity, typicality, and adequacy of representation.” *Levy v. Meline Indus., Inc.*, 716 F.3d
 9 510, 512 (9th Cir. 2013). In addition, they satisfy Rule 23(b)(2). *Hanlon v. Chrysler*
 10 *Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998).

11 **I. PLAINTIFFS, THE PROPOSED CLASS AND SUBCLASS, AND CLASS 12 COUNSEL SATISFY THE REQUIREMENTS OF RULE 23(a) AND (g)**

13 **A. The Prisoner Class and Prisoners with Disabilities Subclass Satisfy the 14 Numerosity Requirement, as They Consist of Hundreds of Members**

15 The proposed Prisoner Class and Prisoners with Disabilities Subclass easily meet
 16 the numerosity requirement of Rule 23(a)(1). Generally, a class or subclass with more
 17 than 40 members “raises a presumption of impracticability based on numbers alone.”
 18 1 William Rubenstein, *Newberg on Class Actions* § 3:12, at 198 (5th ed. 2011); *see also*
 19 *Rannis v. Recchia*, 380 F. App’x 646, 651 (9th Cir. 2010). This is especially true where, as
 20 here, the Class and Subclass include future, unknowable class members. *See Nat’l Ass’n*
of Radiation Survivors v. Walters, 111 F.R.D. 595, 599 (N.D. Cal. 1986).

21 The Prisoner Class consists of “of all adult men and women who are now, or will be
 22 in the future, incarcerated in Monterey County Jail.” Second Am. Compl., ¶ 359. The
 23 class includes all current and future prisoners since every prisoner is subject to
 24 Defendants’ unconstitutional policies and practices related to Jail violence and the
 25 provision of medical and mental health care. Over the past year, the population of adult
 26 men and women incarcerated in the Jail has often exceeded 1100 and currently is greater
 27 than 900. Grunfeld Decl., Exs. AA & BB.

28 The Prisoners with Disabilities Subclass consists of “all qualified individuals with a

1 disability, as that term is defined in 42 U.S.C. § 12102, 29 U.S.C. § 705(9)(B), and
 2 California Government Code § 12926(j) and (m), and who are now, or will be in the
 3 future, incarcerated in Monterey County Jail.” Second Am. Compl., ¶ 368. Because
 4 Defendants do not maintain any centralized record of prisoners with disabilities in the Jail,
 5 *see generally* Grunfeld Decl., Ex. K, it is impossible to know with certainty the number of
 6 prisoners in the Prisoners with Disabilities Subclass. Assuming, however, that the
 7 incidence of disabilities in the Jail approximates the incidence of disabilities in the general
 8 population of individuals older than 15 in the United States, approximately 200 prisoners
 9 suffer from disabilities recognized under federal and state disability-rights laws at any
 10 given time. *See* Grunfeld Decl., Ex. II, at Table A-1. Numerosity is met.

11 **B. The Prisoner Class and Prisoners with Disabilities Subclass Share**
 12 **Numerous Common Issues of Fact and Law Central to Resolution of**
 13 **This Case**

13 Plaintiffs can also show that “there are questions of law and fact common to the
 14 class,” Fed. R. Civ. P. 23(a)(2), and that “class members ‘have suffered the same injury,’”
 15 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. ___, 131 S. Ct. 2541, 2551 (2011) (quoting *Gen.*
 16 *Tel. Co. of Sw. v. Fallon*, 457 U.S. 147, 157 (1982). Here, “the class members’ claims
 17 ‘depend upon a common contention’ such that ‘determination of its truth or falsity will
 18 resolve an issue that is central to the validity of each claim in one stroke.’” *Mazza v. Am.*
 19 *Honda Motor Co.*, 666 F.3d 581, 588 (9th Cir. 2012) (quoting *Wal-Mart*, 131 S. Ct. at
 20 2551) (internal alteration omitted). “Put another way, the key inquiry is not whether the
 21 plaintiffs have raised common questions, ‘even in droves,’ but rather whether class
 22 treatment will ‘generate common *answers* apt to drive the resolution of the litigation.’”
 23 *Abdullah v. U.S. Sec. Ass., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) (quoting *Wal-Mart*, 131
 24 S. Ct. at 2551 (emphasis in original)).

25 In civil rights cases, “commonality is satisfied where the lawsuit challenges a
 26 system-wide practice or policy that affects all of the putative class members.” *Armstrong*
 27 *v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001). Where such a policy exists, “individual
 28 factual differences among the individual litigants or groups of litigants will not preclude a

1 finding of commonality.” *Id.* The Supreme Court’s *Wal-Mart* decision reaffirmed that
2 where a system-wide policy or practice is the cause of class members’ injuries, plaintiffs
3 satisfy the commonality requirement. *See Wal-Mart*, 131 S. Ct. at 2553; *see Stockwell v.*
4 *City & County of San Francisco*, 2014 WL 1623736, at *3-4 (9th Cir. Apr. 24, 2014).

5 Here, common questions suffuse the entire lawsuit. A central question is whether
6 Defendants are deliberately indifferent to Plaintiffs’ medical care, mental health care, and
7 safety needs. *See Farmer v. Brennan*, 511 U.S. 825, 833 (1994) (deliberate indifference to
8 prisoners’ safety from “violence at the hands of other prisoners” (internal quotation marks
9 omitted)); *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (deliberate indifference to
10 prisoners’ serious medical needs); *Doty v. County of Lassen*, 37 F.3d 540, 546 (9th Cir.
11 1994) (deliberate indifference to prisoners’ serious mental health care needs); *Coleman v.*
12 *Brown*, 938 F. Supp. 2d 955, 970 n.24 (E.D. Cal. 2013) (elements of a constitutional
13 correctional mental health system). The Court’s answer to that question is “apt to drive the
14 resolution of the litigation” because it will be the basis for determining whether Plaintiffs’
15 constitutional rights have been violated and whether an injunction directing Defendants to
16 remedy the constitutional violations is appropriate. *Wal-Mart*, 131 S. Ct. at 2551.

17 The deliberate indifference standard focuses on the risk of future illness or injury to
18 which defendants expose prisoners. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993)
19 (Prison officials may not “ignore a condition of confinement that is sure or very likely to
20 cause serious illness and needless suffering the next week or month or year.”). A plaintiff
21 establishes deliberate indifference by showing that a public entity “(1) had a policy that
22 posed a substantial risk of serious harm ...; and (2) kn[ew] that its policy posed this risk.”
23 *Gibson v. County of Washoe*, 290 F.3d 1175, 1188 (9th Cir. 2002) (citing *Farmer*, 511
24 U.S. at 837). In class actions challenging a jail facility’s healthcare systems or safety
25 practices, liability may also be premised on a showing of “systematic or gross deficiencies
26 in staffing, facilities, equipment or procedures.” *Ramos v. Lamm*, 639 F.2d 559, 575 (10th
27 Cir. 1980); *see also Brown v. Plata*, 563 U.S. ___, 131 S. Ct. 1910, 1925 n.3 (2011)
28 (upholding, in case against California prison system, sweeping injunctive relief to remedy

1 “systemwide deficiencies in the provision of medical and mental health care that, taken as
 2 a whole, subject sick and mentally ill prisoners in California to [a] substantial risk of
 3 serious harm” (internal quotation marks omitted)); *Madrid v. Gomez*, 889 F. Supp. 1146,
 4 1256 (N.D. Cal. 1995) (“In class actions challenging the entire system of mental or
 5 medical health care, courts have traditionally held that deliberate indifference can be
 6 shown by proving either a pattern of negligent acts or serious systemic deficiencies in the
 7 prison’s health care program.”).

8 The major questions related to liability for the Prisoner Class’ deliberate
 9 indifference claims are common to all class members. All prisoners in Monterey County
 10 Jail are exposed to the same institution-wide risks of harm, because they all receive
 11 medical and mental health care from the same chronically deficient system operated by
 12 Defendants. *See* Grunfeld Decl., Exs. E, F, G, H, J, L; Stewart Decl., ¶¶ 6-7. Similarly,
 13 Defendants’ policies and practices subject all prisoners to the same dangerous conditions
 14 and thus the same substantial risk that violence between prisoners will occur. *See*
 15 Grunfeld Decl., Exs. E, F, I. Questions common to the Prisoner Class include:

- 16 • Do Defendants, through their security policies and practices or lack thereof
 17 (including, but not limited to, staffing, facilities, population management,
 18 classification, and training), expose all prisoners in the Jail to a substantial risk of
 19 being attacked by other prisoners?
- 20 • Do Defendants, through their medical policies and practices or lack thereof
 21 (including, but not limited to, intake and screening, staffing, medical facilities,
 22 chronic care, requests for health care treatment, medication administration, record
 23 keeping, outside referrals, emergency response, post-operative treatment, quality
 24 management, and training), expose all prisoners in the Jail to a substantial risk of
 25 suffering, deterioration of medical condition, and death?
- 26 • Do Defendants, through their mental health care policies and practices or lack
 27 thereof (including, but not limited to, intake and screening, staffing, suicide
 28 prevention, therapy, use of “rubber rooms” and segregation, housing, mental health
 care facilities, requests for mental health care treatment, medication administration
 and monitoring, provision of inpatient care, quality management, and training),
 expose all prisoners in the Jail to a substantial risk of suffering, deterioration of
 mental health condition, and death?

26 The members of the Prisoners with Disabilities Subclass also share common
 27 questions of law and fact. Pursuant to Title II of the ADA, a “qualified individual with a
 28 disability” cannot, “by reason of such disability, be excluded from participation in or be

1 denied the benefits of the services, programs, or activities of a public entity, or be
2 subjected to discrimination by any such entity.” 42 U.S.C. § 12132. The United States
3 Justice Department has promulgated regulations to enforce this general mandate. *See, e.g.*,
4 28 C.F.R. § 35.150(a) (requiring that public services, programs, and activities be “readily
5 accessible to and usable by individuals with disabilities.”); *id.* § 35.149 (mandating that
6 public facilities be accessible to people with disabilities). The Title II regulations also
7 include specific requirements for correctional facilities, like Monterey County Jail. *See id.*
8 § 35.152. Among other requirements, jails must “ensure that qualified inmates or
9 detainees with disabilities shall not, because a facility is inaccessible to or unusable by
10 individuals with disabilities, be excluded from participation in, or be denied the benefits of,
11 the services, programs, or activities of a public entity, or be subjected to discrimination by
12 any public entity.” *Id.* § 35.152(b)(1). Jails must also “ensure that each inmate with a
13 disability is housed in a cell with the accessible elements necessary to afford the inmate
14 access to safe, appropriate housing.” *Id.* § 35.152(b)(3); *see also id.* § 35.152(b)(2)(i)-(iv)
15 (prohibiting public entities from, because of a prisoner’s disability, placing him or her in
16 inappropriate security classifications, in medical areas, in facilities that do not offer the
17 same programs, and in facilities where visitation with family is difficult). Correctional
18 facilities must also implement “some form of [disability] tracking system ... in order to
19 enable [them] to comply with the [ADA].” *Armstrong*, 275 F.3d at 876. Public entities
20 must make changes necessary to provide programmatic access, including structural
21 modifications and reasonable accommodations. *See* 28 C.F.R. § 35.150(a) & (b).

22 Because of the unique nature of correctional facilities, in which jail staff control
23 nearly all aspects of prisoners’ daily lives, most everything provided to prisoners is a
24 public service, program, or activity, including sleeping, eating, showering, toileting,
25 communicating with those outside the Jail by mail and telephone, exercising,
26 entertainment, safety and security, the Jail’s administrative, disciplinary, and classification
27 proceedings, medical, mental health, and dental services, the library, educational,
28 vocational, substance abuse, and anger management classes, and discharge services. *See*

1 28 C.F.R., Pt. 35, App. A (Department of Justice Guidance, explaining that “correctional
 2 facilities are unique facilities under title II” because prisoners “cannot leave the facilities
 3 and must have their needs met by the corrections system,” and explaining that the ADA-
 4 related needs of prisoners, “include, but are not limited to, proper medication and medical
 5 treatment, accessible toilet and shower facilities, devices such as a bed transfer or a shower
 6 chair, and assistance with hygiene methods for prisoners with physical disabilities”); *see*
 7 *Pa. Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998) (“Modern prisons provide inmates
 8 with many recreational ‘activities,’ medical ‘services,’ and educational and vocational
 9 ‘programs,’ all of which at least theoretically ‘benefit’ the prisoners.”); *Armstrong v.*
 10 *Schwarzenegger*, 622 F.3d 1058, 1068 (9th Cir. 2010) (jails provide prisoners “with
 11 various positive opportunities, from educational and treatment programs, to opportunities
 12 to contest their incarceration, to the fundamentals of life, such as sustenance, the use of
 13 toilet and bathing facilities, and elementary mobility and communication”); *see also Pierce*
 14 *v. County of Orange*, 526 F.3d 1190, 1214-17 (9th Cir. 2008).

15 There are questions common to the Prisoners with Disabilities Subclass, including:

- 16 • Do Defendants, through their disability-related policies and practices or lack thereof
 17 (including, but not limited to, tracking and identifying, housing, providing assistive
 18 and auxiliary devices to, providing access to exercise, religious services, and other
 19 programs to, ensuring effective communication with, and providing a grievance
 process to prisoners with disabilities) deny qualified prisoners with disabilities
 access to programs, services, and activities at the Jail and/or discriminate against
 qualified prisoners with disabilities?

20 These questions are all susceptible to resolution on a class-wide basis, and their answers
 21 will “drive the resolution of the litigation.” *Abdullah*, 731 F.3d at 957 (quoting *Wal-*
 22 *Mart*, 131 S. Ct. at 2551).

23 Post-*Wal-Mart*, courts continue to find the commonality requirement satisfied in
 24 cases challenging correctional conditions similar to those at issue here. *See Parsons v.*
 25 *Ryan*, 289 F.R.D. 513, 516-23 (D. Ariz. 2013) (commonality in case challenging medical
 26 and mental healthcare provided to 33,000 prisoners in Arizona); *Jones v. Gusman*, 296
 27 F.R.D. 416, 465-66 (E.D. La. 2013) (commonality for claims by pre- and post-trial
 28 detainees regarding failures to protect prisoners from violence and inadequacies in medical

1 and mental health care at jails in New Orleans Parish); *Butler v. Suffolk County*, 289
 2 F.R.D. 80, 97-98 (E.D.N.Y. 2013) (commonality for claims that unsanitary conditions in
 3 jail constituted cruel and unusual punishment); *Henderson v. Thomas*, 289 F.R.D. 506, 511
 4 (M.D. Ala. 2012) (commonality for ADA claims challenging Alabama prison policy of
 5 segregating HIV positive prisoners from general prison population); *Olson v. Brown*, 284
 6 F.R.D. 398, 410-12 (N.D. Ind. 2012) (commonality for class claims regarding, *inter alia*,
 7 constitutionality of jail mail policy); *Hughes v. Judd*, 8:12-CV-568, 2013 WL 1821077, at
 8 *23-24 (M.D. Fla. Mar. 27, 2013) (commonality for claims regarding constitutionality of
 9 jail’s policies for protecting juvenile prisoners from violence) *report and recommendation*
 10 *adopted as modified*, 8:12-CV-568, 2013 WL 1810806 (M.D. Fla. Apr. 30, 2013).

11 As in those cases, the Prisoner Class and Prisoners with Disabilities Subclass
 12 contend that the policies and practices of Defendants violate their constitutional and
 13 statutory rights. All of the claims of the Prisoner Class and Prisoners with Disabilities
 14 Subclass “challenge[] ... system-wide practice[s] or polic[ies] that affect[] all of the
 15 putative class members.” *Armstrong*, 275 F.3d at 868. The “determination of [the
 16 common questions’] truth or falsity will resolve ... issue[s] that [are] central to the validity
 17 of each one of the claims in one stroke.” *Wal-Mart*, 131 S. Ct. at 2551; *see Abdullah*, 731
 18 F.3d at 957. Plaintiffs satisfy the commonality requirement.

19 **C. The Putative Class Representatives Have Claims Sufficiently Typical of**
 20 **the Class and Subclass They Seek to Represent**

21 The putative class representatives are typical, as they all have suffered the same
 22 injuries as the absent class members they seek to represent, and those injuries have been
 23 caused by the same policies and practices of Defendants that harm the Class and Subclass
 24 as wholes. *See* Fed. R. Civ. P. 23(a)(3). The 21 Plaintiffs are 15 men and 6 women. They
 25 have been housed in most, if not all, of the housing units in the Jail. Collectively, they
 26 have been injured by nearly every single systemic deficiency in safety, medical care,
 27 mental health care, and assistance for prisoners with disabilities identified by the experts
 28 and discussed above. They have been attacked and injured by other prisoners. They have

1 suffered, and in some cases, nearly died because of Defendants’ failures to provide
2 adequate and timely medical care. They have had their mental health deteriorate, become
3 suicidal, and engaged in instances of self-harm when provided with inadequate mental
4 health care and when placed in segregation and rubber rooms. And, because of their
5 disabilities, they have been denied access to accessible housing, bathrooms, and showers,
6 to sign language interpreters, and to exercise, religious services, and educational programs.

7 In a case such as this, “the typicality inquiry involves comparing the injury asserted
8 in the claims raised by the named plaintiffs with those of the rest of the class.” *Armstrong*,
9 275 F.3d at 869. “Under the rule’s permissive standards, representative claims are
10 ‘typical’ if they are reasonably co-extensive with those of absent class members.” *Hanlon*,
11 150 F.3d at 1020; *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)
12 (typicality analysis “refers to the nature of the claim or defense of the class representative,
13 and not to the specific facts from which it arose or the relief sought” (internal quotation
14 marks omitted)). It is not necessary “that the named plaintiffs’ injuries be identical to
15 those of other class members, only that the unnamed class members have injuries similar
16 to those of the named plaintiffs and that the injuries result from the same, injurious course
17 of conduct.” *Armstrong*, 275 F.3d at 869.

18 Each of the putative class representatives is typical of the Class and Subclass they
19 seek to represent. Defendants’ deficient, system-wide policies and practices regarding
20 safety, medical care, and mental health care apply equally to all prisoners. The problems
21 in these systems—for example, inadequate staffing—currently expose all prisoners,
22 including the putative class representatives and the absent class members, to a substantial
23 risk of serious harm that violates the Eighth and Fourteenth Amendment. *See Plata*, 131 S.
24 Ct. at 1925 n.3 (“Because plaintiffs do not base their case on deficiencies in care provided
25 on any one occasion, this Court has no occasion to consider whether ... any ... particular
26 deficiency in medical care complained of by the plaintiffs ... would violate the
27 Constitution.”). The risk to which the current conditions expose the putative class
28 representatives, not the particular injuries sustained by putative class representatives in the

1 past, is the constitutional injury this lawsuit seeks to remedy with injunctive and
2 declaratory relief. Thus, the putative class representatives satisfy the typicality
3 requirement simply by being detained in the Jail, subjected to the dangerous conditions for
4 which Defendants are responsible, and suffering injuries that are typical of the kind that
5 would result from Defendants' systemic failures. The serious, life-threatening injuries the
6 putative class representatives have suffered while in the Jail, discussed in detail in their
7 declarations, are illustrative of what can happen to any person placed in the Jail and what
8 will continue to happen unless Defendants dramatically improve the conditions.

9 Similarly, the denials of access to services, programs, and activities suffered by the
10 putative subclass representatives of the Prisoners with Disabilities Subclass are caused by
11 Defendants' universally applied policies and practices. Defendants essentially ignore the
12 disabilities of prisoners in the Jail; they do not track who has a disability and what
13 accommodations are required, and they operate a building with hundreds of accessibility
14 obstacles. The discrimination and lack of accommodation the putative subclass
15 representatives have experienced while in the Jail, described in detail in their declarations,
16 demonstrate what can happen to any person with a disability placed in the Jail and what
17 will continue to happen until Defendants comply with federal and California disability
18 requirements. Because system-wide problems with Defendants' Jail cause the violations
19 of the putative subclass representatives' statutory rights, and all prisoners with disabilities
20 are subject to the same broken system, the putative subclass representatives are typical of
21 the Prisoners with Disabilities Subclass members. *See Armstrong*, 275 F.3d at 869.

22 **D. The Proposed Class Representatives and Class Counsel Will Adequately**
23 **Represent the Class and Subclass**

24 The putative class representatives and counsel all satisfy the adequacy requirement.
25 *See Fed. R. Civ. P. 23(a)(4)*. Class representatives and their counsel are adequate if they
26 do not have "any conflicts of interest with other class members" and if they will "prosecute
27 the action vigorously on behalf of the class." *Hanlon*, 150 F.3d at 1020.

28 As this case seeks only declaratory and injunctive relief, no putative class

1 representatives have any conflicts with the unnamed class members. *See* Second Am.
 2 Compl., ¶¶ 410-17. Moreover, the class representatives have knowledge of the case and of
 3 their duties as class representatives, and have affirmed their willingness to carry out their
 4 duties as class representatives. *See, e.g.*, Aguilar Decl., ¶ 25; Cobb Decl., ¶ 22; Dilley
 5 Decl., ¶ 27; Dobbs Decl., ¶ 20; Esquivel Decl., ¶ 30; Gist Decl., ¶ 27; Gomez Decl., ¶ 12;
 6 Greim Decl., ¶ 25; Hobbs Decl., ¶ 24; Hernandez Decl., ¶ 52; Mefford Decl., ¶ 44; Perez
 7 Decl., ¶ 27; Whitfield Decl., ¶ 31; Yancey Decl., ¶ 37.

8 Class counsel also satisfy the requirements of Rule 23(g)(1) and (4). Fed. R. Civ. P.
 9 23(g)(1) & (4). Class counsel have significant experience with class action lawsuits
 10 generally, with large class action lawsuits regarding conditions in correctional facilities,
 11 specifically, and with criminal justice issues. *See* Grunfeld Decl., ¶¶ 49-58; Egar Decl.,
 12 ¶¶ 2-3, 28. Finally, class counsel have already committed and will continue to commit
 13 considerable resources to prosecution of this case. *See* Grunfeld Decl., ¶¶ 2-4, 53; Egar
 14 Decl., ¶¶ 28.

15 **II. THE PRISONER CLASS AND THE PRISONERS WITH DISABILITIES** 16 **SUBCLASS MEET THE REQUIREMENTS OF RULE 23(b)(2)**

17 The civil rights claims of the Prisoner Class and the Prisoners with Disabilities
 18 Subclass “are precisely the sorts of claims that Rule 23(b)(2) was designed to facilitate.”
 19 *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998). Defendants “ha[ve] acted or
 20 refused to act on grounds that apply generally to the class, so that final injunctive relief or
 21 corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R.
 22 Civ. P. 23(b)(2). Rule 23(b)(2) is “almost automatically satisfied in actions primarily
 23 seeking injunctive relief.” *Gray v. Golden Gate Nat’l Recreational Area*, 279 F.R.D. 501,
 24 520 (N.D. Cal. 2011) (quoting *Baby Neal for and by Kanter v. Casey*, 43 F.3d 48, 58 (3rd
 25 Cir. 1994)); *see Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010); *Californians for*
 26 *Disability Rights, Inc. v. Cal. Dep’t of Transp.*, 249 F.R.D. 334, 345 (N.D. Cal. 2008)
 27 (“Cases challenging an entity’s policies and practices regarding access for the disabled
 28 represent the mine run of disability rights class actions certified under Rule 23(b)(2).”

1 (citing cases)). Plaintiffs satisfy Rule 23(b)(2) here because “class members seek uniform
2 relief from a practice applicable to all of them.” *Rodriguez*, 591 F.3d at 1125.

3 Plaintiffs have produced significant evidence demonstrating that Defendants operate
4 a fundamentally broken Jail. Pursuant to Defendants’ policies and practices, the Prisoner
5 Class is subjected to a health care system that places them at risk of unnecessary illness
6 and death and to a correctional environment that places them at risk of injury at the hands
7 of other prisoners. Pursuant to Defendants’ policies and practices, members of the
8 Prisoners with Disabilities Subclass are denied the benefits of a wide variety of essential
9 Jail services, programs, and activities. To remedy the constitutional and statutory
10 violations, Plaintiffs, on behalf of the Class and Subclass, seek only declaratory and
11 injunctive relief from Defendants’ injurious policies and practices. Second Am. Compl.,
12 ¶¶ 410-17. Plaintiffs’ prayer for relief would provide an appropriate remedy for the Class
13 and Subclass. *See* Fed. R. Civ. P. 23(b)(2). Accordingly, Plaintiffs satisfy Rule 23(b)(2).

14 CONCLUSION

15 For the foregoing reasons, Plaintiffs respectfully request that this Court enter the
16 Proposed Order Granting Plaintiffs’ Motion for Class Certification.

17 DATED: April 29, 2014

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/ Gay Crosthwait Grunfeld

Gay Crosthwait Grunfeld

20 DATED: April 29, 2014

OFFICE OF THE PUBLIC DEFENDER

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James Egar

23 DATED: April 29, 2014

AMERICAN CIVIL LIBERTIES UNION

FOUNDATION OF NORTHERN CALIFORNIA

By: /s/ Alan Schlosser

Alan Schlosser

26 DATED: April 29, 2014

ACLU NATIONAL PRISON PROJECT

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