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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

Case No. CV 13 2354 PSG

PLAINTIFFS' OPPOSITION TO DEFENDANTS' AMENDED MOTION TO DISMISS PLAINTIFFS ESQUIVEL, GOMEZ, HOBBS, HUNTER, KEY, MILLER, MURPHY, NICHOLS, SARABI, AND YANCEY

Judge: Hon. Paul S. Grewal
Date: August 12, 2014
Time: 10:00 A.M.

Trial Date: None Set

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INTRODUCTION

Monterey County Jail ("the Jail") is a revolving door of misery. A snapshot of its population on any given day shows men and women suffering in overcrowded, dangerous, and unconstitutional conditions, deprived of minimally adequate medical and mental health care, safety, and accommodations for their disabilities. But a movie showing the Jail's population over time reveals additional characteristics that require denial of Defendants' motion to dismiss ten of the named Plaintiffs based on standing and mootness. The Jail's population is transitory, fluid, and constantly changing and evolving. Individual prisoners frequently come and go for stays of days, weeks, and months. The vast majority of the Jail's population are pretrial detainees with completely unpredictable, but generally brief, lengths of stay. The average term in the Jail ranges from 30 to 40 days, far too short for a prisoner to raise claims about the conditions in the Jail and for the Court to issue a decision on class certification.

The claims of the ten named Plaintiffs subject to this motion to dismiss are part of both the snapshot and the movie: Each named Plaintiff was injured by Defendants' policies, procedures, and practices while incarcerated in the Jail. But each named Plaintiff also reflects the Jail's fluid and transitory population—each has been incarcerated multiple times in the recent past for various short terms. The injuries each has suffered are real and their dispute with Defendants remains ripe and justiciable because, whether they are in or out of the Jail on any given day, each continues to face a substantial risk of serious harm due to the dangerous and unconstitutional conditions of the Jail and their status as supervisees, subject to arrest for technical violations.

Defendants' motion is based only on a snapshot in time when these ten named Plaintiffs were not in the Jail, without regard for the ongoing tragedy that each of them and the class and subclass they seek to represent will continue to experience over time unless Defendants are forced to remedy the ongoing Constitutional and statutory violations. But Defendants' snapshot approach to evaluating standing and mootness in class actions for injunctive relief is contrary to the law of this Circuit. Defendants' recently-filed amended

motion proves the point: Plaintiff Guyot who had been released from Jail before April 25, 2014 is now back in the Jail and thus dropped from this motion, while Defendants now move to dismiss two other Plaintiffs who have been recently released from the Jail. Because each of the named Plaintiffs, many of whom are supervised in Monterey County by probation or parole, is likely to be incarcerated in the Jail in the future, their claims remain justiciable. And even if their release from the Jail has mooted their individual claims for relief, because they seek declaratory and injunctive relief on behalf of an inherently transitory class of prisoners suffering in the Jail, they can continue as named Plaintiffs. Accordingly, Defendants' motion to dismiss must be denied.

FACTUAL AND PROCEDURAL BACKGROUND

Five Plaintiffs filed this suit on May 23, 2013, alleging that the conditions in the Jail, which is operated by Defendants, violate the Eighth and Fourteenth Amendments of the United States Constitution, Article I, Sections 7 and 17 of the California Constitution, the Americans with Disabilities Act ("ADA"), the Rehabilitation Act, and California Government Code Cal. Gov't Code § 11135. Compl., Dkt. No. 1. Specifically, Plaintiffs alleged that Defendants knowingly expose Plaintiffs and all prisoners in the Jail to a substantial risk of serious harm by failing to provide adequate medical and mental health care to prisoners and failing to protect prisoners from violence. Plaintiffs also allege that Defendants systematically discriminate against and fail to accommodate prisoners with disabilities.

On October 31, 2013, Plaintiffs filed a First Amended Complaint. First Am. Compl., Dkt. No. 16. The First Amended Complaint included the same causes of action as the initial Complaint, but added eight named Plaintiffs to the case. On April 11, 2014, Plaintiffs filed a Second Amended Complaint. Second Am. Compl., Dkt. No. 41. Again, the Second Amended Complaint included the same causes of action as the initial Complaint and First Amended Complaint, but added nine new plaintiffs while dismissing the claims of one plaintiff. In total, twenty-one Plaintiffs allege claims against Defendants in the Second Amended Complaint. *Id.* ¶¶ 11-31.

The County and Sheriff's Office filed their original Motion to Dismiss on April 25, 2014. The initial motion sought the dismissal of Plaintiffs Gomez, Guyot, Hunter, Key, Miller, Murphy, Nichols, Sarabi, and Yancey, who Defendants contend were not in the Jail on April 25, 2014. *See* Mot. of Defs. County & Sheriff's Office to Dismiss Nine Pls. Pursuant to Fed. R. Civ. P. Rule 12(b)(6) ("County Defs.' Mot."), Dkt. No. 44; Am. Decl. of Commander James H. Bass in Supp. of County Defs.' Mot. to Dismiss ("Am. Bass Decl."), Dkt. 45-1, ¶¶ 5-13 & Exs. 1-9.[1] Defendant California Forensic Medical Group, Incorporated ("CFMG") filed its own motion to dismiss on May 2, 2014, challenging Plaintiffs' claims against CFMG under Title III of the ADA. Def. CFMG Mem. of Points & Auth. in Supp. of Mot. to Dismiss Pls.' 2d Am. Compl. ("CFMG Mem."), Dkt. No. 59. In its Motion to Dismiss, CFMG joined the County and Sheriff's Office's Motion to Dismiss. *Id.* at 2.

Plaintiffs moved for Class Certification on April 29, 2014. *See* Dkt. Nos. 48-56. Plaintiffs seek certification of a Prisoner Class, consisting of all current and future prisoners in the Jail, and a Prisoners with Disabilities Subclass, consisting of all current and future prisoners who have a qualifying disability, as that term is defined in federal and state law. Pls.' Mem. of Points & Authorities in Supp. of Mot. for Class Certification, Dkt. No. 56, at 20-21.

The parties stipulated to and the Court approved a briefing and hearing schedule for the three pending motions. Dkt. No. 62. On June 27, 2013, six days before the stipulated

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[1] Defendants rely on non-judicially-noticeable matters outside of the pleadings—declarations by Commander James Bass, that, without foundation or personal knowledge, purport to "prove" that Plaintiffs were not in custody on April 25, 2014 and June 27, 2014. *See* Am. Bass Decl. ¶¶ 5-13; Suppl. Decl. of Commander James Bass in Supp. of Am. County Defs.' Mot. to Dismiss ("Suppl. Bass Decl."), Dkt. No. 75-1, ¶ 8. Bass is misinformed. *See infra*, at 4:19-5:10 & note 3. Moreover, Plaintiffs have introduced substantial evidence in opposition to Defendant's motion, including declarations from Plaintiffs and other documents necessary for the Court's evaluation of standing and mootness. Accordingly, the Court must apply summary judgment standards, consider all evidence submitted by Plaintiffs, and resolve disputed facts in Plaintiffs' favor. Fed. R. Civ. P. 12(d), 56.

deadline for Plaintiffs to file their opposition to the County Defendants' original Motion to Dismiss, the County and Sheriff's Office filed an Amended Motion to Dismiss. Am. Mot. of Defs. County & Sheriff's Office to Dismiss Ten Pls. Pursuant to Fed. R. Civ. P. Rule 12(b)(6) ("Am. County Defs.' Mot."), Dkt. No. 75. In their amended motion, the County and Sheriff's Office dropped their motion to dismiss Plaintiff Guyot, who they concede is now incarcerated in the Jail. *Id.* at 1. Defendants also moved to dismiss two additional Plaintiffs, Esquivel and Hobbs, who Defendants contend were not in the Jail on June 27, 2014. *Id.*

ARGUMENT

I. PLAINTIFFS HAVE STANDING AND THEIR CLAIMS ARE NOT MOOT EVEN UNDER DEFENDANTS' NARROW SNAPSHOT APPROACH

Defendants make only two arguments for dismissal of ten of the 21 named Plaintiffs. First, they argue that a Plaintiff who was not in the Jail on the specific day he joined the suit must be dismissed for lack of standing. In addition, they assert that Plaintiffs who they claim were not in the Jail on the date Defendants filed their amended motion to dismiss (June 27, 2014) must have their claims dismissed as moot, even if they had standing when they filed their claims.

Though Defendants indiscriminately cast both their standing and mootness arguments at all ten Plaintiffs, their motion is, in fact, much narrower. Eight of the ten Plaintiffs—Plaintiffs Esquivel, Gomez, Hobbs, Hunter, Key, Murphy, Nichols, and Sarabi—were in the Jail on the day they filed their claims, and therefore unquestionably have standing, even under Defendants' snapshot rule.[2] Moreover, Plaintiff Gomez, who

[2] **Plaintiff Esquivel**: Second Am. Compl. ¶ 15 (arrested March 3, 2014); Suppl. Bass Decl., Ex. 1 (released May 5, 2014). **Plaintiff Gomez:** Second Am. Compl. ¶ 17 (arrested January 13, 2014); Am. Bass Decl., Ex. 5 (released April 23, 2014). **Plaintiff Hobbs**: Second Am. Compl. ¶ 21 (arrested November 12, 2013); Suppl. Bass Decl., Ex. 2 (released May 31, 2014). **Plaintiff Hunter**: Compl. ¶ 16 (arrested March 16, 2013); Am. Bass Decl., Ex. 4 (released August 9, 2013). **Plaintiff Key**: First Am. Compl. ¶ 17 (arrested March 17, 2013); Am. Bass Decl., Ex. 9 (released March 22, 2014). **Plaintiff Murphy**: Compl. (footnote continued)

Defendants contend was not in the Jail on June 27, 2014, *see* Suppl. Bass Decl. ¶ 8, was actually incarcerated on that date and continues to be detained in the Jail,[3] *see* Decl. of Michael Freedman in Opp'n to Am. County Defs.' Mot. to Dismiss ("Freedman Decl.") ¶ 9 & Ex. E (booked into the Jail on May 1, 2014); Decl. of Martha Gomez in Opp'n to Defs.' Mots. to Dismiss ("Gomez Decl.") ¶ 2 (stating on June 26, 2014, that she had been incarcerated in the Jail since May 1, 2014); Decl. of Van Swearingen in Opp'n to Defs.' Mots. to Dismiss ("Swearingen Decl.") ¶¶ 2-3 (stating that he conducted an attorney-client visit with Plaintiff Gomez at the Jail on June 26, 2014 at 8:45 p.m., and that the Jail automated information line indicated that Plaintiff Gomez was in the Jail on July 2, 2014). As a result, her claims are not moot.

Defendants' motion challenges the standing of one named Plaintiff not in the Jail on the date he filed suit (Yancey[4]) and argues mootness for the nine Plaintiffs not in the Jail as of June 27, 2014 (Plaintiffs Esquivel, Hobbs, Hunter, Key, Miller, Murphy, Nichols, Sarabi, and Yancey). In addition, Defendants do not challenge (and therefore impliedly

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¶ 14 (arrested January 18, 2013); Am. Bass Decl., Ex. 2 (released November 27, 2013). **Plaintiff Nichols**: First Am. Compl. ¶ 20 (arrested June 20, 2013); Am. Bass Decl., Ex. 7 (released March 23, 2014). **Plaintiff Sarabi**: Compl. ¶ 15 (arrested February 2, 2013); Am. Bass Decl., Ex. 8 (released May 23, 2013).

[3] This substantial error in Commander Bass's supplemental declaration—mistakenly declaring that Plaintiff Gomez was *not* in the Jail on June 27, 2014, when, in fact, she was a prisoner and had been for nearly two months—throws into question the reliability of all of his testimony. At a minimum, the Court should not take judicial notice of any of Commander Bass' testimony, as he is not a "source[] whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2).

Plaintiffs also object to all statements in Commander Bass's Amended Declaration and Supplemental Declaration in which he declares that a Plaintiff was not in the Jail on the date Commander Bass signed his declarations. *See* Am. Bass Decl. ¶¶ 5-13; Suppl. Bass Decl. ¶ 8. Federal Rule of Evidence 602, governing non-expert testimony, provides: "A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Defendants have not established a foundation, in Commander Bass's Declarations or elsewhere, to meet this standard. Commander Bass provides absolutely no information regarding how he has personal knowledge that the Plaintiffs were not in the Jail on specific dates.

[4] Plaintiff Yancey is the only individual whom Defendants specifically identify as not being in custody on the day he joined the suit. County Defs.' Mot. at 2 n.2. *See* note 7, *infra*, for discussion of Plaintiff Miller.

concede for the purposes of this motion) that the other eleven prisoners have adequately pled, on behalf of themselves and the putative Prisoner Class and Prisoners with Disabilities Subclass, an entitlement to injunctive relief from the conditions in the Jail. Thus, even if the Court were to grant Defendants' motion to dismiss the ten Plaintiffs, this case would continue toward and beyond class certification.

II. COURTS APPLY A FLEXIBLE AND EXPANSIVE APPROACH TO STANDING AND MOOTNESS FOR CLASS ACTIONS SEEKING INJUNCTIVE AND DECLARATORY RELIEF

Defendants' snapshot rule—Plaintiffs in the Jail on a particular date have standing and their claims are not moot, while Plaintiffs not in the Jail on a particular date lack standing and their claims are moot—defies Ninth Circuit precedent on standing and mootness. Defendants ignore or mischaracterize at least three circumstances present here that make clear that all ten Plaintiffs have standing and should not be dismissed on mootness grounds even if they are no longer in the Jail today. **First**, five of the ten Plaintiffs are on probation, mandatory supervision, Post-Release Community Supervision ("PRCS"), or parole, which the Ninth Circuit has held provides them standing to challenge the unconstitutional conditions in the Jail to which they may be subjected in the future. *See Armstrong v. Davis*, 275 F.3d 849, 866 (9th Cir. 2001). **Second**, because this is a class action for injunctive relief, not an individual lawsuit, standing and mootness are evaluated under different standards. *See id.* at 861, 864. **Third**, the claims of the constantly changing putative class, who remain in the Jail for such short periods of time that no court could rule on class certification prior to the mooting of their individual claims, are "inherently transitory," meaning that the Plaintiffs can remain as class representatives even if their individual claims for relief are moot. *See Wade v. Kirkland*, 118 F.3d 667, 670 (9th Cir. 1997).

Standing generally "requires that (1) the plaintiff have suffered an injury in fact, *i.e.*, one that is sufficiently 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical,' (2) the injury is 'fairly traceable' to the challenged conduct, and (3) the injury is 'likely' to be 'redressed by a favorable decision.'" *Bates v. United*

Parcel Serv., Inc., 511 F.3d 974, 985 (9th Cir. 2007) (en banc) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). "Moreover, where, as here, a plaintiff seeks prospective injunctive relief, he must demonstrate 'that he is realistically threatened by a repetition of [the violation].'" *Armstrong*, 275 F.3d at 860-61 (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983)). Especially in this context, Article III justiciability is "not a legal concept with a fixed content or susceptible of scientific verification," *Poe v. Ullman*, 367 U.S. 497, 508 (1961) (plurality opinion), and is "of uncertain and shifting contours," *Flast v. Cohen*, 392 U.S. 83, 97 (1968).

Standing is measured at the commencement of the action. 13A Charles Alan Wright et al., Fed. Prac. & Proc. § 3531 (3d ed. 1998). Importantly, because the class claims and causes of action have been the same in all three complaints filed by Plaintiffs, the Court must evaluate the ten Plaintiffs' standing as of the date of the filing of the complaint in which they first appeared rather than on the date of the filing of the Second Amended Complaint. *See Monaco v. Stone*, 187 F.R.D. 50, 60 (E.D.N.Y. 1999) (holding, in case challenging procedures for involuntary commitment of individuals found incompetent to stand trial, that the only plaintiff had standing, even though he had been released from custody between the filing of his original complaint and amended complaint).

In contrast, mootness is "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of litigation (standing) must continue throughout its existence (mootness)." *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980). A claim becomes moot "when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Id.* at 396 (internal quotation marks omitted). Mootness is a "flexible" doctrine, *id.* at 400, not least because of the existence and vitality of exceptions to the doctrine, at least two of which apply to this case and are discussed below.

For their standing and mootness arguments, Defendants rely primarily on *Lyons*, 461 U.S. 95, in which the Supreme Court held that an individual plaintiff who had

previously been injured by the Los Angeles Police Department's illegal chokehold practices lacked standing to seek an injunction prohibiting the practice because of the improbability that he would again be arrested and have the chokehold applied to him. *Id.* at 102-03 (citing *O'Shea v. Littleton*, 414 U.S. 488, 497 (1974)) (no standing for injunctive relief where plaintiff can only be "expos[ed] to the challenged course of conduct" by breaking the law). Extrapolating from *Lyons*, Defendants posit that Plaintiffs not in custody must be dismissed. When there is little or no likelihood that a person will again be incarcerated in a correctional facility, individual claims for injunctive relief from unconstitutional or discriminatory conditions or policies can be dismissed for lack of standing or mootness. *See, e.g.*, *Cornett v. Donovan*, 51 F.3d 894, 897 (9th Cir. 1995). Here, because of the three special circumstances present in this case, the named Plaintiffs are proper plaintiffs and Defendants' motion should be denied.

A. Individuals on Supervision, Like Plaintiffs Esquivel, Hunter, Miller, Murphy, and Sarabi, Who Are Not in Custody But Can Be Arrested and Detained in the Jail Without Engaging in Illegal Conduct, Can Challenge Conditions in the Jail

Standing for injunctive relief hinges on whether plaintiffs have "demonstrate[d] a concrete injury and *a realistic likelihood that the injury will be repeated*." *Taylor v. Westly*, 488 F.3d 1197, 1199 (9th Cir. 2007) (emphasis added) (citing *Armstrong*, 275 F.3d at 860-61). Plaintiffs Esquivel,[5] Hunter,[6] Miller,[7] Murphy,[8] and Sarabi[9] are supervised on

[5] Plaintiff Esquivel is on parole, supervised by the Division of Adult Parole Operations of California Department of Corrections and Rehabilitation. Freedman Decl., Exs. C, D.

[6] Plaintiff Hunter is on mandatory supervision, supervised by the Monterey County Probation Department. *See* First Am. Compl. ¶ 16; Second Am. Compl. ¶ 22; Freedman Decl., Exs. I, J.

[7] Plaintiff Miller is on probation, supervised by the Probation Department. *See* Freedman Decl., Exs. M, N. Plaintiff Miller was also supervised on probation and not in the Jail on the date he became a named Plaintiff in this suit. *See id.*, Ex. M.

[8] Plaintiff Murphy is on PRCS, supervised by the Probation Department. *See* Freedman Decl., Exs. P, Q, R.

[9] Plaintiff Sarabi is on probation, supervised by the Probation Department. *See* Freedman (footnote continued)

probation, mandatory supervision, PRCS, or parole. Under well-established Ninth Circuit law, where individuals supervised by law enforcement can be, but are not presently being, subjected to unlawful conditions without engaging in illegal activity, they have standing to challenge those unlawful conditions and their claims are not moot. *See Armstrong*, 275 F.3d at 860-61.

In *Armstrong*, the Ninth Circuit held that California parolees with disabilities had standing to challenge policies and practices in state parole revocation proceedings that violated the Americans with Disabilities Act and Rehabilitation Act. *Id.* at 860-67. The court reached this conclusion even though the parolees could not be subjected to the discriminatory parole revocation proceedings unless they were arrested and charged with violating the terms and conditions of their parole. The parolees could be arrested without a warrant and for violating terms of parole that prohibited otherwise legal conduct. *See id.* at 866. As a result, unlike the plaintiff in *Lyons*, who could only be subjected to the challenged chokehold practices if he engaged in illegal conduct resulting in his arrest, the plaintiffs in *Armstrong* did not need to "engage in unlawful conduct to become subject to the unlawful practices they s[ought] to enjoin." *Id.*. In addition, "unlike [in] *Lyons* there was 'no string of contingencies necessary to produce an injury.'" *Id.* (quoting *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1041-42 (9th Cir. 1999)). Arrest for violating the terms and conditions of parole "led inexorably to the injury" of being subjected to the unlawful parole revocation procedures. *Id.* at 866 n.25.

Courts within this Circuit have repeatedly held that supervisees who are not in custody have standing to challenge conditions of confinement to which they would be subjected if arrested for violating the terms and conditions of their supervision, especially where there is evidence that they have actually been subjected to the conditions in the past and that supervisees in general are regularly subjected to the conditions. *See R.G. v.*

Decl., Ex. V.

Koller, 415 F. Supp. 2d 1129, 1136-37 (D. Haw. 2006) (relying on *Armstrong* to hold that out-of-custody juvenile parolees had standing to challenge conditions in juvenile correction facility because, while on parole, they had been returned to the facility multiple times, and because statistics demonstrated that 32.2% of juvenile parolees were detained in the challenged facility over a three year period); *Von Colln v. County of Ventura*, 189 F.R.D. 583, 589 (C.D. Cal. 1999) (holding, on motion to dismiss, that plaintiffs not in custody in jail had standing to challenge use of restraint chair in jail as cruel and unusual punishment because plaintiffs were on probation).

Plaintiffs Esquivel, Hunter, Miller, Murphy, and Sarabi are in a legally indistinguishable position from the supervisees in *Armstrong*, *R.G.*, and *Colln*. Many of the terms and conditions imposed on these supervised Plaintiffs, such as prohibitions on consuming alcohol, missing a meeting, or associating with certain people, forbid conduct that is completely legal for non-supervisees. *See* Freedman Decl., Exs. C, D (Esquivel); *id.*, Exs. I, J (Hunter); *id.*, Exs. M, N (Miller); *id.*, Exs. P, Q, R (Murphy); *id.*, Ex. V (Sarabi). Plaintiffs Esquivel, Hunter, Murphy, and Sarabi are subject to search by any peace officer at any time without a warrant, and face arrest, with or without a warrant, and detention in the Jail if law enforcement determines that they have violated any of the terms and conditions of their supervision. Cal. Penal Code §§ 1203.2, 3000.08. Once arrested for a violation of supervision, supervisees are not entitled to a formal probable cause determination, meaning they may spend significant periods of time in the Jail before having any opportunity to contest the charges against them. *See People v. Vickers*, 8 Cal. 3d 451, 458-59 (1972). Moreover, individuals on PRCS, like Plaintiff Murphy, can be and are frequently flash incarcerated for up to ten days in the Jail for allegedly violating the terms and conditions of their supervision without a warrant, *any* determination of probable cause, or *any* hearing whatsoever. Cal. Penal Code §§ 3453(q), 3454(b)-(c), 3455(a)(1).

The likelihood of being returned to the Jail is significant because Plaintiffs and the class and subclass they seek to represent constantly cycle in and out of the Jail. In the 69 days since Defendants filed their initial motion to dismiss, Plaintiffs Gomez, Guyot, and

Miller, who all were not in custody on April 25, 2014, have been arrested and subjected to the unconstitutional and discriminatory conditions in the Jail. Decl. of Wesley Miller in Opp'n to Defs.' Mots. to Dismiss ("Miller Decl.") ¶ 2; Freedman Decl., Ex. E (showing Plaintiff Gomez was arrested on May 1, 2014); Suppl. Bass Decl. ¶ 3 (stating that Plaintiff Guyot was in the Jail as of June 27, 2014). Plaintiffs Gomez and Guyot remain in the Jail. Freedman Decl., Ex. E; Supp. Bass Decl., ¶ 3. **Nine of the ten Plaintiffs have been detained in the Jail multiple times over the past six years; collectively, the ten Plaintiffs have been prisoners in the Jail 43 times over those six years**.[10]

[10] **Plaintiff Esquivel** has been detained in the Jail at least **six** times since January 1, 2011. *See* Suppl. Bass Decl., Ex. 1 (in the Jail from March 3, 2014 to May 5, 2014); Freedman Decl. ¶ 6 & Ex. B (in the Jail from January 29, 2014 to February 6, 2014, October 16, 2013 to December 4, 2013, June 6, 2012 to September 17, 2012, November 17, 2011 to January 12, 2012, and May 9, 2011 to May 19, 2011). **Plaintiff Gomez**, who is currently in the Jail, has been detained in the Jail on at least **five** other occasions since January 1, 2012. *See* Am. Bass Decl., Ex. 5 (in the Jail from January 13, 2014 to April 23, 2014); Freedman Decl. ¶ 11 & Ex. G (in the Jail from July 16, 2013 to October 11, 2013, January 28, 2013 to February 11, 2013, December 22, 2012 (released same day), and April 9, 2012 to April 13, 2012). **Plaintiff Hobbs** has been detained in the Jail at least **four** times since January 1, 2011. *See* Suppl. Bass Decl., Ex. 2 (in the Jail from November 12, 2013 to May 31, 2014); Freedman Decl. ¶ 12 & Ex. H (in the Jail from July 12, 2013 to July 29, 2013, August 9, 2011 to December 14, 2011, and May 5, 2011 to June 17, 2011). **Plaintiff Hunter** has been detained in the Jail at least **three** times since January 1, 2011. *See* Am. Bass Decl., Ex. 4 (in the Jail from March 16, 2013 to August 9, 2013); Freedman Decl. ¶ 15 & Ex. K (in the Jail from April 19, 2012 (released same day), July 10, 2011 to July 11, 2011). **Plaintiff Key** has been detained in the Jail on at least **five** occasions since January 1, 2009. *See* Am. Bass. Decl., Ex. 9 (in the Jail from March 17, 2013 to March 22, 2014); Freedman Decl. ¶ 16 & Ex. L (in the Jail from December 10, 2012 to December 21, 2012, May 8, 2012 to October 4, 2012, February 24, 2012 to March 5, 2012, October 18, 2011 to December 7, 2011, and December 6, 2009 to February 26, 2010). **Plaintiff Miller** has been detained in the Jail on at least **six** occasions since January 1, 2011. *See* Miller Decl. ¶ 2 (in the Jail from April 2014 to May 2014); Am. Bass Decl., Ex. 6 (in the Jail from January 8, 2013 to October 18, 2013); Freedman Decl. ¶ 19 & Ex. O (booked in the Jail on July 28, 2012, February 9, 2012, February 2, 2012, and May 29, 2011). **Plaintiff Murphy** has been detained in the Jail on at least **two** occasions since January 1, 2012. *See* Am. Bass Decl., Ex. 2 (in the Jail from January 18, 2013 to November 27, 2013); Freedman Decl. ¶¶ 22-23 & Exs. R, S (flash incarcerated from June 7, 2012 to June 16, 2012). **Plaintiff Nichols** has been detained in the Jail on at least **two** occasions since March 2009. *See* Am. Bass Decl., Ex. 7 (in the Jail from March 21, 2014 to March 23, 2014); Freedman Decl. ¶ 25 & Ex. U (in the Jail from March 27, 2009 to March 31, 2009). **Plaintiff Yancey** has been detained in the Jail on at least **nine** occasions since January 1, 2010. Am. Bass Decl., Ex. 1 (in the Jail from December 2, 2012 to May 16, 2013); Freedman Decl. ¶ 27 & Ex. W (in the Jail from August 29, 2012 to September 11, 2012, July 15, 2011 to July 28, 2011, May 19, 2011 to June 20, 2011, January 13, 2011 to (footnote continued)

Moreover, in general, individuals on supervision in Monterey County are extraordinarily likely to be arrested and detained in the Jail. In 2012, the Monterey County Probation Department ("Probation Department") supervised 5,318 individuals on probation. Freedman Decl., Ex. X. During that same year, 2,370 (45%) of the individuals on probation had their probation either terminated or revoked, resulting in a return to custody in the Jail. *Id.* Similarly, from April 2013 to March 2014, the Probation Department supervised 297 individuals on PRCS on average per month. During that same time period, there were 937 arrests of individuals on PRCS. *Id.* ¶ 33 & Exs. Y-BB. The Probation Department also flash incarcerated individuals on PRCS 92 times during the same period, resulting in 694 days spent in Jail by those individuals without any due process. *Id.* ¶ 34 & Exs. Y-BB. *See also id.*, Ex. CC, at 82 (showing, in 2012 report, that 70.9% of parolees supervised in Monterey County were returned to custody within three years of release from prison; parolees serve revocation time in Jail); Cal. Penal Code § 3056 (mandating that parolees with pending revocation proceedings and serving revocation terms must be detained in county jail).

Finally, arrest for violating the terms and conditions of supervision "inexorably" leads to detention in unconstitutional and discriminatory conditions in the Jail. *See Armstrong*, 275 F.3d at 866 n.25. Defendants erroneously assert that "[i]t is ... highly unlikely and, in fact, conjectural that, once reincarcerated, a plaintiff will be subjected to the same deprivations faced in his individualized claim." County Defs.' Mot. at 4. This statement betrays Defendants' confusion regarding Plaintiffs' case. Plaintiffs do not allege that, by being incarcerated in the Jail, they will suffer the same, specific injuries they suffered in the Jail in the past. Instead, Plaintiffs contend that simply by being incarcerated in the Jail and subjected to Defendants' inadequate medical, mental health, security, and disability accommodation policies and practices, Defendants expose

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January 20, 2011, October 6, 2010 to October 28, 2010, May 25, 2010 to June 3, 2010, April 15, 2010 to April 22, 2010, and March 9, 2010 to March 18, 2010).

Plaintiffs to a substantial risk of serious harm, thereby violating their federal and California constitutional and statutory rights to be free from cruel and unusual punishment and discrimination on the basis of disability. As the Ninth Circuit recently held,

> What all members of the putative class and subclass have in common is their alleged exposure, as a result of specified statewide … policies and practices that govern the overall conditions of health care services and confinement, to a substantial risk of serious future harm to which the defendants are allegedly deliberately indifferent. As the district court recognized, although a presently existing risk may ultimately result in different future harm for different inmates—ranging from no harm at all to death—every inmate suffers exactly the same constitutional injury when he is exposed to a single [system] wide … policy or practice that creates a substantial risk of serious harm.

See Parsons v. Ryan, No. 13-16396, ___ F.3d ____, 2014 WL 2523682, at *13 (9th Cir. June 5, 2014). Defendants, by failing to move to dismiss any of the claims of the incarcerated Plaintiffs, impliedly concede for purposes of this motion that Plaintiffs have adequately alleged that the conditions in the Jail place all prisoners at risk of harm. Thus, for the purposes of this motion, it is certain, rather than conjectural, that if any of the ten Plaintiffs are again detained in the Jail, they will suffer constitutional and statutory injuries.

The authority cited by Defendants in support of their standing and mootness arguments fails to account for *Armstrong* and related cases. And, unlike in the instant case, the plaintiffs in the cases cited by Defendants failed to present material evidence of the likelihood that they would be again exposed to the conditions they were challenging. *Cf. Preiser v. Newkirk*, 422 U.S. 395, 402 (1975) (individual suit for injunctive relief dismissed for lack of evidence that "the wrong will be repeated" (internal quotation marks omitted)); *Wiggins v. Rushen*, 760 F.2d 1009, 1011 (9th Cir. 1985) (no findings by district court regarding released pro se prisoner's likelihood of being returned to facility at which he was denied access to the law library); *Weaver v. Wilcox*, 650 F.2d 22, 27 (3d Cir. 1981) (holding, in individual suit for injunctive relief brought by prisoner released from correctional facility, that complaint inadequately alleged likelihood of future harm, but permitting plaintiff to amend complaint to allege basis for standing); *Holland v. Purdy*,

457 F.2d 802, 802-03 (5th Cir. 1972) (individual pro se suit for injunctive relief brought by prisoner transferred from facility who presented no evidence that he would be returned to facility in future); *Clarke v. Lane*, 267 F.R.D. 180, 189-92 (E.D. Pa. 2010) (no evidence presented in putative class action that plaintiffs no longer housed at halfway house would again be detained at facility); *Ferreira v. Dubois*, 963 F. Supp. 1244, 1263 (D. Mass. 1996) (no evidence that, in individual case for injunctive relief, the individual, who had been released from prison while his claims were pending, would ever be returned to the facility and subjected to the challenged disciplinary proceedings); *see also LaDuke v. Nelson*, 762 F.2d 1318, 1324 (9th Cir. 1985) (distinguishing the circumstances from *Lyons* because "[t]he district court in *Lyons* made no finding of likely recurrence, while the district in this case made a specific finding of likely recurrence" (citation omitted)).[11]

B. Because This Is a Class Action for Injunctive Relief, the Claims of the Putative Class and Subclass Members Must Be Considered When Evaluating Standing and Mootness

This lawsuit is a putative class action for injunctive relief, as opposed to an individual action like *Lyons*. "Where a named plaintiff is a member of a plaintiff class, and 'members of the class have repeatedly suffered personal injuries in the past that can fairly be traced to the [defendants'] standard ... practices,' the defendant's treatment of the class as a whole must be considered to determine whether the individual plaintiff 'ha[s] been and will continue to be aggrieved by the defendants' [illegal] pattern of conduct.'" *Armstrong*, 275 F.3d at 864 (quoting *LaDuke*, 762 F.2d at 1326) (alteration in original). "When a named plaintiff asserts injuries that have been inflicted upon a class of plaintiffs,

[11] Defendants also assert that "Plaintiffs cannot demonstrate that equitable relief will redress their injuries to establish standing as they are no longer incarcerated at the Monterey County jail and subject to the conditions they wish to abate." County Defs.' Mot. at 5. As put forward by Defendants, however, their redressability argument rises or falls on their argument regarding the ten Plaintiffs' releases from the Jail. If, as Plaintiffs assert, the ten Plaintiffs' releases do not destroy standing or moot their claims, then a favorable decision—the granting of an injunction to remedy the unconstitutional and discriminatory conditions in the Jail—would redress Plaintiffs' injuries. Put differently, if the Court orders Defendants to fix the conditions in the Jail, the ten Plaintiffs would not be injured by the conditions in the likely event they are returned to Jail.

we may consider those injuries in the context of the harm asserted by the class as a whole, to determine whether a credible threat that the named plaintiff's injury will recur has been established." *Id.* at 861. Since Plaintiffs have adequately pled "harm asserted by the class as a whole," the Court must take that into account when evaluating the likelihood that the named Plaintiffs will experience similar injury from the conditions at the Jail in the future. This is particularly true where, as here, class membership is fluid, but the existence of and injury to the class is certain.[12]

C. All Ten Plaintiffs Qualify for the "Inherently Transitory" Exception to the Mootness Doctrine

Pursuant to the "inherently transitory" exception to mootness, the ten Plaintiffs can continue as named Plaintiffs even if their release from the Jail has mooted their individual claims for injunctive relief. The inherently transitory exception to the mootness doctrine applies in class actions "where it is 'certain that other persons similarly situated' will continue to be subject to the challenged conduct and the claims raised are 'so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires.'" *See Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct. 1523, 1530 (2013) (quoting *County of Riverside v. McLaughlin*, 500 U.S. 44, 51-52 (1991) (internal quotation marks omitted)). In determining whether claims of prisoners are inherently transitory, the district court must focus on "the average length of detention in the county jail" and "must look at the claims of the class as a whole, as opposed to" the Plaintiffs' "individual claims for relief." *Wade*, 118 F.3d at 670. If the inherently transitory exception applies, the mootness determination relates back to the filing of the complaint. *Symczyk*, 133 S. Ct. at 1531. In a case like this, involving class claims on behalf of "short-term inmates in a county jail," the Court must

[12] Notably, only one of the cases cited by Defendants, *Clarke*, 267 F.R.D. at 189-92, involved a class action for injunctive relief. And because *Clarke* is an out of circuit case, the district court did not consider the Ninth Circuit cases holding that standing must be evaluated differently in a class action for injunctive relief.

determine whether the class's claims are inherently transitory before dismissing any Plaintiffs' claims as moot. *Wade*, 118 F.3d at 670 (holding that such a case "present[s] a classic example of a transitory claim that cries out for a ruling on certification as rapidly as possible").[13]

Plaintiffs' class action claims are inherently transitory. The vast majority of prisoners in the Jail are pretrial detainees. Decl. of Gay C. Grunfeld in Supp. of Pls.' Mot. for Class Certification ("Grunfeld Decl."), Dkt. No. 49-13, Ex. BB (daily Jail population statistics showing that for the period between January 1, 2014 and March 10, 2014, unsentenced prisoners made up a minimum of 67 percent and a maximum of 79 percent of the Jail population). For such prisoners in the Jail, "the length of detention cannot be ascertained at the outset and may be ended before class certification by various circumstances." *Lyon v. U.S. Immigration & Customs Enforcement*, No. C-13-5878 EMC, ___ F.R.D. ____, 2014 WL 1493846, at *9 (N.D. Cal. Apr. 16, 2014); *see Olson v. Brown*, 594 F.3d 577, 582 (7th Cir. 2010) ("[T]he length of incarceration in a county jail generally cannot be determined at the outset and is subject to a number of unpredictable factors."). Not only is the length of incarceration in the Jail uncertain, it is extremely short—only approximately 34 days on average[14]—far too short a period for the Court to resolve a

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[13] Defendants' amended motion to dismiss provides a prime example of the wisdom of this rule. Defendants filed their amended motion because, after the filing of their initial motion, Plaintiff Guyot was incarcerated in the Jail while Plaintiffs Esquivel and Hobbs were released. *See* Suppl. Bass Decl. ¶ 3. *Wade* requires that rather than address mootness-based motions to dismiss on a rolling, piecemeal basis as Plaintiffs go into and out of the Jail, the Court must determine whether the inherently transitory exception applies. If, as here, it does, mootness is not a basis for dismissal.

[14] In his neutral expert report, Dr. Michael Puisis indicated that the Jail booked approximately 11,500 people into the Jail in the year prior to the issuance of his report on November 29, 2013. *See* Grunfeld Decl., Ex. J, at 16. During that time period (December 2012 to November 2013), the Jail housed an average of 1079 prisoners each day. *See id.*, Ex. AA (average of monthly average population for time period). Multiplying 1079 by 365 (the number of days in the year) then dividing by 11,500 (the number of people housed in the Jail that year) provides the approximate average length of incarceration. The named Plaintiffs' experience reflects this average. *See* note 10, *supra*; *see also* Freedman Decl., Ex. EE, at 2 (2012 average length of stay for County Jail prisoners in California was 21 days).

motion for class certification. Finally, because all prisoners in the Jail are placed at a substantial risk of serious harm simply by being detained in the Jail, it is "certain that other persons similarly situated will continue to be subject to the challenged conduct." *Symczyk*, 133 S. Ct. at 1531 (internal quotation marks omitted).

Courts in this Circuit and elsewhere have consistently found that class claims like Plaintiffs', challenging conditions in jails and other short-term detention facilities, are inherently transitory such that the plaintiffs can remain as class representatives even if their release from the facility would otherwise moot their individual claims for relief. *See Amador v. Andrews*, 655 F.3d 89, 100-01 (2d Cir. 2011) (claims of women prisoners regarding failure to protect from sexual assault); *Olson v. Brown*, 594 F.3d 577, 580-84 (7th Cir. 2010) (claims of jail detainees regarding, among other things, First Amendment violations related to the processing of legal mail); *Butler v. Suffolk County*, 289 F.R.D. 80, 91-92 (E.D.N.Y. 2013) (claims by prisoners in jail regarding unconstitutional conditions); *Hughes v. Judd*, No. 8:12-CV-568-T-23MAP, 2013 WL 1821077, at *21 (M.D. Fla. Mar. 27, 2013), *report and recommendation adopted as modified*, 2013 WL 1810806 (M.D. Fla. Apr. 30, 2013) (claims by juvenile detainees regarding facility's failure to protect detainees from violence); *Chief Goes Out v. Missoula County*, No. CV 12-155-M-DWM, 2013 WL 139938, at *6-7 (D. Mont. Jan. 10, 2013) (claims by prisoners in jail regarding unconstitutional denial of fresh air and exercise); *see also Or. Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1116-18 (9th Cir. 2003) (claims by non-profit and individual regarding delays in transferring mentally incapacitated criminal defendants to state mental hospital); *Preap v. Johnson*, No. 13-cv-5754 YGR, ___ F.R.D. ____, 2014 WL 1995064, at *2 & n.2 (N.D. Cal. May 15, 2014) (claims by ICE detainees regarding ICE bond hearing procedures); *Lyon*, 2014 WL 1493846, at *9 (claims by ICE detainees regarding ICE phone policies).

Defendants, relying only upon out-of-Circuit precedent, erroneously assert that the inherently transitory exception does not apply where, as here, some of the Plaintiffs' individual claims may have become moot prior to filing of the motion for class certification. *See* County Defs.' Mot. at 7-8 (citing *Clarke*, 267 F.R.D. at 192-93; *Lusardi v. Xerox*

Corp., 975 F.2d 964, 974-75 (3d Cir. 1992)). The law of the Ninth Circuit is that inherently transitory claims "relate to [class representatives'] standing at the outset of the case in order to preserve the merits of the case for judicial resolution." *Wade*, 118 F.3d at 670 (internal quotation marks omitted). Accordingly, a party need not file a motion for class certification prior to the mooting of a plaintiff's claim for injunctive relief in order to qualify for the inherently transitory exception.

For example, in *Haro v. Sebelius*, 747 F.3d 1099, 1105 (9th Cir. 2014) (amended opinion), after the filing of the complaint, but prior to the filing of the plaintiffs' motion for class certification, one of the plaintiff's claims for relief became moot. *Id.* at 1110 (explaining that plaintiff's individual claims became moot "approximately one month after she filed this lawsuit"); *see* Freedman Decl., Ex. DD (docket in *Haro v. Sebelius*, 4:09-cv-00134-DCB (D. Ariz), showing complaint filed on March 10, 2009 (docket number 1), and motion for class certification filed on May 26, 2010 (docket number 54)). Even though the plaintiff's individual claims were mooted prior to the filing of the motion for class certification, the court held that the claims of the class were inherently transitory, meaning that the class's "claim for injunctive relief is not moot, and that Article III's justiciability requirements are satisfied." *Haro*, 747 F.3d at 1110. *See also Gomez v. Campbell-Ewald Co.*, 805 F. Supp. 2d 923, 928-30 (C.D. Cal. 2011) (specifically holding that the mooting of a class representative's claims prior to the filing of a motion for class certification did not moot the class's claims); *Mental Disability Law Clinic v. Hogan*, CV066320, 2008 WL 4104460, at *10 (E.D.N.Y. Aug. 28, 2008) ("[I]n class actions the relation back doctrine refers to the filing of the complaint not the time of filing of the certification motion."). Thus, whether a class representative's individual claims become moot prior to or after the filing of a motion for class certification is not relevant to whether the class's claims qualify for the inherently transitory exception to the mootness doctrine.

Accordingly, because the ten Plaintiffs' class action claims are inherently transitory, their claims relate back to the date of the filing of the complaint and they can all remain as class representatives, even if their individual claims for relief have been mooted by their

release from the Jail.[15]

III. EACH OF THE TEN PLAINTIFFS HAD STANDING ON THE DATE THEY JOINED THIS SUIT AND THEIR CLAIMS HAVE NOT BECOME MOOT

Within the context of the principles governing justiciability described above, the facts related to each of the ten Plaintiffs demonstrate that they had standing on the day they filed their claims and that their claims should not be dismissed as moot.

A. Standing (Plaintiff Yancey)

As is discussed above, Plaintiff Yancey is the only Plaintiff who Defendants contend was not in custody when he filed claims against Defendants. Nonetheless, Plaintiff Yancey has standing. According to Defendants' evidence, Plaintiff Yancey was transferred to the custody of the California Department of Corrections and Rehabilitation ("CDCR") on May 16, 2013, seven days before the filing of the Complaint. *See* Compl. ¶ 13 (arrested December 2, 2012); Am. Bass Decl., Ex. 1 (transferred on May 16, 2013). Plaintiff Yancey has standing to pursue injunctive relief because "[e]ven now, [Plaintiff Yancey] may wish to pursue state habeas claims or seek other post-conviction relief that would bring him once more before the [Monterey] courts." *Hawkins v. Comparet-Cassani*, 251 F.3d 1230, 1237 (9th Cir. 2001). He may also be returned to the Jail for

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[15] Plaintiffs' claims also fall within the similar "capable of repetition yet evading review" exception to mootness. The exception applies where "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Protectmarriage.com-Yes on 8 v. Bowen*, No. 11-17884, 2014 WL 2085305, at *5 (9th Cir. May 20, 2014); *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 398 (1980) (applying the capable of repetition exception to class actions); *see also United States v. Howard*, 480 F.3d 1005, 1009-11 (9th Cir. 2007). The exception is similar to the inherently transitory exception, though it focuses on the likelihood of recurrence of harm to the named plaintiffs, as opposed to the class as a whole. As is discussed above, "the challenged action is in its duration too short to be fully litigated prior to cessation or expiration," *Protectmarriage.com*, 2014 WL 2085305, at *5; prisoners in the Jail, including the ten Plaintiffs, are in the Jail for periods of time too short to permit a court to evaluate and rule on the conditions. Moreover, there is a "reasonable expectation" that most of the ten Plaintiffs will, in the future, be subjected to the unconstitutional and discriminatory conditions in the Jail. Accordingly, the ten Plaintiffs claims from this suit because their claims are "capable of repetition yet evading review."

purposes of testifying in this very proceeding. Were that to occur, Plaintiff Yancey would be detained in the Jail during the pendency of his proceedings and subjected to the discriminatory conditions in the Jail.

In addition, Defendants fail to articulate why his release from the Jail seven days prior to his joining the suit results in a lack of standing. Plaintiff Yancey is deaf and uses American Sign Language as his primary method of communication. Compl. ¶ 13. It is undisputed that Plaintiff Yancey was in the Jail until seven days before the filing of the Complaint. He alleges that his constitutional and statutory rights were violated in a variety of egregious ways, including through Defendants' failure to provide him with a sign language interpreter at any time during his term in the Jail. Compl. ¶¶ 166, 168, 172, 174, 177. Defendants have not implemented policies and practices to ensure that his and other similarly situated prisoners' constitutional and statutory rights are not violated. Upon the completion of his prison sentence, he will necessarily be supervised in Monterey County by the CDCR's Division of Adult Parole Operations ("DAPO") on parole. Cal. Penal Code §§ 3000.08(a) & (b), Cal. Penal Code § 3003(a) (requiring individuals released from prison to be supervised in the county of their "last legal residence ... prior to his or her incarceration," which for Plaintiff Yancey is Monterey County). He has "a personal stake in the outcome of the controversy" and the parties are adverse to each other. As such, he satisfies Article III and has standing. *See Armstrong*, 275 F.3d at 866. (For the same reasons, his claims are not moot.)

B. Mootness

As is discussed above, because the ten Plaintiffs qualify for the "inherently transitory" exception to mootness, the Court need not evaluate whether any of the ten Plaintiffs' individual claims for injunctive relief have been mooted; pursuant to the exception, the ten Plaintiffs may continue as class representatives even if their release from the Jail mooted their individual claims for relief.

That said, the remaining ten Plaintiffs' individual claims have not been mooted by their release.

1. Plaintiff Gomez Is Currently in the Jail

Because Plaintiff Gomez is currently in the Jail, her claims are not moot. Freedman Decl., Ex. F; Gomez Decl. ¶ 2; Swearingen Decl. ¶¶ 2-3.

2. Plaintiffs Esquivel, Hunter, Miller, Murphy, and Sarabi's Claims Are Not Moot Because They Are Supervised by Law Enforcement

As is discussed above in Section II.A, *supra*, Plaintiffs Esquivel, Hunter, Miller,[16] Murphy, and Sarabi are supervised on probation, mandatory supervision, Post-Release Community Supervision, or parole. Accordingly, their claims are not moot because they can be arrested and subjected to the conditions in the Jail without engaging in any illegal conduct. *See Armstrong*, 275 F.3d at 866.

3. Plaintiffs Hobbs, Key, and Nichols's Claims Are Not Moot

Plaintiffs Hobbs, Key, and Nichols's claims are not moot because they face a sufficient likelihood of being subjected to the conditions in the Jail in the future. For purposes of this motion, there is no dispute that all three Plaintiffs have recently been detained in the Jail and suffered from the unconstitutional and discriminatory conditions. There is also no dispute that Plaintiffs Hobbs, Key, and Nichols are frequently incarcerated in the Jail; collectively, they have served at least 11 terms in the Jail over the last six years. *See* note 10, *supra*. Though past injury generally cannot serve as the only evidence of the likelihood of future harm, *Lyons*, 461 U.S. at 109, here their history of incarceration establishes that future detention in the Jail is extremely likely. Because the "threatened injury is sufficiently likely to occur," *Armstrong*, 275 F.3d at 861, Plaintiffs Hobbs, Key, and Nichols's claims are not moot.[17]

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[16] Even though Plaintiff Miller was not in the Jail on the date he joined this suit, he has standing because he was on supervision on the date that he filed claims. *See* note 7, *supra*.

[17] Were the Court to conclude that any of the ten Plaintiffs should be dismissed for lack of standing or mootness, Plaintiffs request leave to amend the pleadings to allege facts sufficient to establish standing. Moreover, Plaintiffs request leave to amend the complaint to add claims for damages for such Plaintiffs. Defendants concede that "even if Plaintiffs' claims are dismissed for lack of standing or based on mootness, they may still pursue a (footnote continued)

CONCLUSION

Plaintiffs respectfully request that the Court deny Defendants' Amended Motion to Dismiss Plaintiffs Esquivel, Gomez, Hobbs, Hunter, Key, Miller, Murphy, Nichols, Sarabi, and Yancey in its entirety. All ten Plaintiffs had standing on the date they joined this suit, none of their individual claims for relief have been mooted by their release from the Jail, and, even if they had, these Plaintiffs can continue as class representatives because the class's claims are inherently transitory.

DATED: July 3, 2014

Respectfully submitted,

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claim for damages." County Defs.' Mot. at 6. *See also Lyons*, 461 U.S. at 109 (holding that plaintiff who lacked standing to seek injunctive relief had standing to seek damages).