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D. PLAINTIFFS ADEQUATELY ALLEGE THAT DEFENDANTS UNLAWFULLY SUBJECT THEM TO PUNITIVE CONDITIONS14

1. PUNITIVE CONDITIONS

1 *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742 (9th Cir. 2018) 24, 25, 27

2 *El Rescate Legal Servs., Inc. v. Exec. Office*

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1 *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268 (2d Cir. 2009).....27

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1 **I. INTRODUCTION**

2 Plaintiffs’ class action complaint paints a detailed picture of the unlawful
3 conditions at prison-like facilities tL.

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1 toward entertaining the broadest possible scope of action consistent with fairness to
2 the parties; joinder of claims, parties and remedies is strongly encouraged”);
3 *Almont Ambulatory Surgery Ctr., LLC v. United Health Group, Inc.*, 99 F. Supp.
4 3d 1110, 1187-8 (C.D. Cal. 2015) (Rule 20 read as broadly as possible to promote
5 judicial economy). Plaintiffs here satisfy both the same transaction and the
6 common question requirements for proper joinder under Rule 20.

7 **a. Claims Arise From the Same Occurrence.**

8 Claims arising from the “same systematic pattern of events” on the part of
9 defendants meet the “same transaction or occurrence” requirement. *Coughlin*, 130
10 F.3d at 1350; *Almont Ambulatory Surgery Ctr., LLC*, 99 F. Supp. 3d at 1188
11 (rejecting defendants’ argument that plaintiffs’ claims stemmed from “thousands of
12 independent and unique out-of-network benefit claims” and holding that “eh ne clae

1 such class relief to compel Defendants to fulfill their constitutional and statutory
2 obligations by correcting systemic deficiencies that affect not only Plaintiffs but
3 also current and future putative class members. *See* ¶¶ 600-623.

4 Class actions can drive such systemic change in part because they promote
5 judicial economy. *See, e.g.,* _____, 634 F.3d 524, 536
6 (9th Cir. 2011) (“Rule 23 encourages judicial economy by eliminating the need for

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1 working in detention facilities warning that understaffing was adversely impacting
2 healthcare;⁹ and descriptions of the harm suffered by the Plaintiffs from
3 substandard healthcare.¹⁰

4 Second, numerous allegations establish that Defendants’ response to the
5 risks posed by the Challenged Practices has been objectively unreasonable,
6 including Defendants’ decision to continue to use the same monitoring and
7 inspection system despite the fact that Defendants’ own departments, as well as
8 other governmental and nongovernmental entities, have repeatedly found that the
9 system is fatally flawed (and has been for a long time);¹¹ Defendants’ own
10 employees’ warning that ICE’s primary inspection system has “no credibility
11 because of the volume of problems it has failed to uncover at multiple facilities
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1 are punitive. Defendants cursorily assert that these claims fail simply because
2 Plaintiffs did not allege that they were segregated “for punitive purposes,” ignoring
3 contrary Ninth Circuit precedent. ECF No. 54
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1 by referencing assertions in the [Complaint] or by reference to judicially noticeable
2 material showing the detainees are treated better than prisoners.” *Id.* at *119

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1 these conditions violate the Eighth Amendment, by definition they violate the Fifth
2 Amendment rights of civil people in civil detention. *See Bell*, 441 U.S. at 545. The
3 Complaint cites multiple reports establishing that the conditions in segregation
4 violated the rights of people in civil detention, that disciplinary and non-
5 disciplinary segregation are indistinguishable, and that conditions are “overly
6 restrictive.” ¶¶

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1 of punitiveness by properly alleging that there are less harsh alternatives to
2 segregation. Crucially, since the Plaintiffs and class and subclass members are in
3 civil immigration detention, Defendants have the authority to release the majority
4 of them pending their hearings. *See* ¶¶ 156-57 (citing 8 C.F.R. § 212.5 and §
5 1236.1). Plaintiffs further allege that equally effective and significantly less harsh
6 alternatives to detention are available. ¶ 158. Finally, Plaintiffs allege that
7 Defendants’ own standards require “a host of protections that are not implemented
8 in practice.” ¶ 455.²² And even though it is a defense on which Defendants have
9 the burden of proof, Plaintiffs also allege facts showing that the restrictions are
10 excessive in relation to the ostensible interests served.²³

11 In sum, Plaintiffs have pleaded individual and systemic facts 3ae714.0B g0 G0t8 0.06 Tc[

1 *See Aramark Facility Servs. v. SEIU Local 1877*, 530 F.3d 817, 8924 n.2 (9th Cir.
2 2008) (failure to adequately brief an argument waives the argument.).

3 On the merits, Defendants’ treatment of people with disabilities in ICE
4 custody is also impermissibly punitive. The Complaint provides examples of
5 people with disabilities who received needed accommodations in jails or prisons,
6 but were not provided them in immigration detention. ¶¶ 597-99. This is precisely
7 the kind of comparison with criminal facilities that this Court recently found
8 sufficient to create a presumption of punitiveness for people in immigration
9 detention. *Torres*, 2019 WL 5883685 at *19. Plaintiffs also allege that people with
10 disabilities are placed in segregation in lieu of providing services or
11 accommodations and without the monitoring required by their disabilities. ¶¶ 463,
12 465, 491-92, 542, 544.

13 Ultimately, as this Court recently held as to these same Defendants, their
14 “policies and procedures are so needlessly restrictive as to be punitive.” *Torres*,
15 2019 WL 5883685, at *2. As in *Torres*, Plaintiffs here allege that Defendants have
16 failed to afford them “more considerate treatment than that typically afforded non-
17 immigration detainees;” these allegations “are sufficient to create a presumption of
18 punitiveness.” *Id.* at *19. Plaintiffs have properly alleged that the Disability
19 Plaintiffs and Disability Subclass could be detained under less harsh conditions, for
20 example, by being paroled. These allegations suffice to establish two of the
21 *Jones/King/Torres* presumptions—either one of which is sufficient—and to shift
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1 these requests (¶¶ 557-558); that Defendants continue to deny Plaintiff Sudney
2 access to a wedge and special shoes for his physical disabilities, despite the fact
3 that he received those same accommodations while in prison (¶ 567 (noting
4 detention facility official’s comment that ICE has a “different standard”)); that
5 Plaintiff Mencias Soto remains without access to crutches and physical therapy for
6 his mobility disabilities, despite multiple requests (¶¶ 76-77, 266-67); that
7 Defendants continue to deny Plaintiff Hernandez, who has mobility disabilities, a
8 special chair he requested after experiencing increased pain with prolonged sitting
9 or standing and handrails to assist him in using the toilet (¶¶ 568-70); that despite
10 the fact that ICE designated Mr. Hernandez’s cell as “accessible,” its lack of
11 handrails for the toilet further demonstrates the breakdown in ICE’s system for
12 accommodating disability-related needs (*id.*); that Defendants continue to deny
13 Plaintiff Sanchez Martinez a back brace, twice daily insulin checks, and an
14 appropriate diet for his diabetes, despite being on notice of those needs (¶¶ 260-64,
15 290); that Defendants still fail to provide Plaintiff Baca Hernandez
16 accommodations for his vision disability, thus requiring him to have others read his
17 immigration documents to him (¶ 16); that Defendants still fail to provide Plaintiff
18 Munoz an appropriate diet for his diabetes, despite his extensive history of
19 complications from diabetes, including an insulin overdose while in ICE custody
20 (¶¶ 313-15); that Defendants still fail to provide Plaintiff Rodriguez Delgadillo
21 appropriate therapy for his mental health disabilities, despite being on notice of
22 that need (¶¶ 72-73, 361, 521); and that Defendants continue to place Plaintiff
23 Murillo Hernandez in 24-hour segregation rather than providing him
24 accommodations for his severe allergies in a more integrated setting (¶¶ 47, 520,
25 547).

26 Further, in light of the affirmative nature of Defendants’ Rehabilitation Act
27 obligations, disability subclass plaintiffs and putative subclass members remain
28 subject to Defendants’ ongoing policy failures, including the failure to identify,

1 track and accommodate the needs of persons with disab-ru8 666.1D

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1 Dated: January 20, 2020

Respectfully Submitted,

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