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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

QUINTON GRAY, ANGELA)
PATTERSON, AND STANLEY)
KUJANSKY, ON BEHALF OF)
THEMSELVES AND ALL)
OTHERS SIMILARLY)
SITUATED,)
Plaintiffs,)
v.)
COUNTY OF RIVERSIDE,)
Defendant.)

Case No. EDCV 13-00444-VAP
(OPx)

**ORDER GRANTING PLAINTIFFS'
MOTION FOR CLASS
CERTIFICATION; DENYING
DEFENDANT'S MOTION TO
DISMISS**

**Motions filed on April 14,
2014 and August 4, 2014**

Before the Court is Plaintiffs' Motion for Class Certification ("Mot." or "Motion") (Doc. No. 28) and Defendant's Motion to Dismiss Portions of the Second Amended Complaint (Doc. No. 126). The Motion for Class Certification came before the Court for hearing on July 21, 2014. The Motion to Dismiss is appropriate for resolution without a hearing and the Court VACATES the hearing set for this matter on September 8, 2014, at 2:00 p.m. See Fed. R. Civ. P. 78; L.R. 7-15.

1 After consideration of the papers filed in support of,
2 and in opposition to, the Motions, the Court GRANTS
3 Plaintiffs' Motion for Class Certification and DENIES
4 Defendant's Motion to Dismiss.

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I. BACKGROUND

7 The County of Riverside ("Defendant" or "County")
8 operates five county jails: the Robert Presley Detention
9 Facility ("Presley"), the Smith Correctional Facility
10 ("Smith"), the Indio Jail ("Indio"), the Southwest
11 Detention Center ("Southwest"), and the Blythe Jail
12 ("Blythe") (collectively, "Riverside Jails"). (SAC ¶
13 15.) In total, the Riverside Jails incarcerate
14 approximately 3,500 prisoners. (Id.) Three departments
15 within the County share responsibility for providing
16 medical and mental health care to inmates within the
17 Riverside Jails: the Riverside County Sheriff's
18 Department ("Sheriff's Department"); Riverside County
19 Regional Medical Center - Detention Health Services
20 ("Detention Health Services"); and the Riverside County
21 Regional Medical Center - Detention Mental Health
22 Services ("Detention Mental Health Services"). (Ex. 13
23 to Crockett Decl., Riverside County Interagency Adult
24 Detention Healthcare Memorandum of Agreement ("MOU")
25 (Doc. No. 32).)

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1 Quinton Gray, Angela Patterson, Stanley Kujawsky,
2 John Rosson III, Brandy McClellan, Julie Miller, and
3 Michael Wohlfeil (collectively, "Plaintiffs") are current
4 and former inmates in the Riverside Jails. On March 8,
5 2013, Plaintiffs filed this action on behalf of all
6 current and future inmates who are in the custody of the
7 County. Plaintiffs allege systemic inadequacies in the
8 County's provision of medical and mental health care
9 expose inmates in the Riverside Jails to a substantial
10 risk of serious harm. Plaintiffs allege that the County
11 has acted with deliberate indifference in the provision
12 of medical and mental health care and that the County's
13 failure to provide adequate medical and mental health
14 care to inmates in their custody violates the Eighth and
15 Fourteenth Amendments. Plaintiffs seek declaratory and
16 injunctive relief.

17
18 On April 14, 2014, Plaintiffs filed this Motion to
19 certify the Class and two Subclasses. On June 9, 2014,
20 after the Class Certification Motion was filed,
21 Plaintiffs filed a Motion to file a Second Amended
22 Complaint ("SAC") and on July 18, 2014, the Court granted
23 Plaintiffs' Motion. (See Order Granting Motion to File a
24 Second Amended Complaint (Doc. No. 118).) Accordingly,
25 the Court addresses certification based on the factual
26 allegations and named Plaintiffs in the SAC.

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1 Defendant filed its Opposition to the Motion for
2 Class Certification on June 16, 2014 ("Opp'n.") (Doc. No.
3 52), and Plaintiffs filed their Reply on June 30, 2014
4 ("Reply") (Doc. No. 75). Defendant filed a Response to
5 Plaintiffs' Reply on July 11, 2014 ("Def.'s Response")
6 (Doc. No. 115).

7
8 Plaintiffs seek certification of a Class and two
9 Subclasses. The proposed Class definition is, "all adult
10 men and women who are now, or will be in the future, in
11 the custody of Riverside County and who are now, or will
12 be in the future, subject to an unreasonable risk of harm
13 due to Defendant's policies and practices of denying
14 prisoners minimally adequate medical care and minimally
15 adequate mental health care." (SAC ¶ 157.) The proposed
16 "Medical Subclass" definition is "prisoners who are now,
17 or will in the future be, subjected to the medical care
18 policies and practices of the Riverside jails." (Id. ¶
19 164.) The proposed Medical Subclass representatives are
20 Gray, Patterson, Kujawsky, and Wohlfeil. (Id.) The
21 proposed "Mental Health Subclass" definition is
22 "prisoners who are now, or will in the future be,
23 subjected to the mental health care policies and
24 practices of the Riverside jails." (Id. ¶ 171.) The
25 proposed Mental Health Subclass representatives are Gray,
26 Rosson, McClellan, and Miller. (Id.)

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1 The motion for class certification came before the
2 Court for hearing on July 21, 2014. On August 4, 2014,
3 Defendant filed a Motion to Dismiss Portions of the
4 Second Amended Complaint ("MTD") (Doc. No. 126).
5 Plaintiffs filed an Opposition to the Motion to Dismiss
6 on August 18, 2014 ("MTD Opp'n") (Doc. No. 128) and
7 Defendant filed its Reply on August 22, 2014 ("MTD
8 Reply") (Doc. No. 130).

9

10 **II. FACTUAL ALLEGATIONS**

11 Plaintiffs allege that Defendant maintains and runs a
12 health care system that "lacks basic elements necessary
13 to provide constitutional care" and fails to identify and
14 diagnose serious conditions, provide timely care,
15 administer appropriate medications, employ adequate
16 staff, maintain records, maintain inmate confidentiality,
17 and identify and correct its own failings. (SAC ¶ 16.)
18 Plaintiffs allege that, as a system, the Defendant's
19 policies and prisoners' access to health care are so
20 inadequate they constitute deliberate indifference to
21 serious medical and mental health needs. (Id. ¶ 17.)
22 Plaintiffs identify several inadequate policies and
23 procedures related to delays in access to care and the
24 provision of inadequate care at the Riverside Jails.

25

26 To begin, Plaintiffs allege that Defendant has a
27 policy and practice of severely understaffing health care

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1 positions in the jails. (Id. ¶ 90.) As a result, there
2 are not enough doctors, dentists, nurses, mental health
3 providers, pharmacists, or medical records staff to serve
4 the needs of the population. (Id.) As of September of
5 2013, only 63 percent of medical staff positions in the
6 jails were filled. (Id. ¶ 95.)

7
8 Plaintiffs also allege the intake process and
9 procedures are inadequate and result in delayed or denied
10 medical care. (SAC ¶ 18.) The intake procedures are not
11 sufficiently staffed with nurses who can identify and
12 evaluate medical and mental health conditions. (Id. ¶
13 20.) Furthermore, the intake procedures do not
14 adequately identify medical and mental health conditions
15 because they are performed by custody staff without
16 medical or mental health training. (Id. ¶ 27.) As a
17 result of this policy, inmates may receive delayed or
18 inappropriate treatment of medical and mental health
19 conditions. For example, Plaintiff Gray entered the
20 Riverside Jails with a chronic seizure disorder and high
21 blood pressure. His intake form has "no" marked for
22 every question about health care needs, including those
23 that should be marked "yes." (Id. ¶ 21.)

24
25 Plaintiffs allege that the Defendant maintains a non-
26 functioning sick call system that is incapable of
27 providing daily sick call. (SAC ¶ 32.) The lack of a
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1 functioning sick call system puts prisoners at a risk of
2 serious harm because they must rely on other means to
3 obtain care. Prisoners may either obtain a court order
4 from the criminal court, file repeated health care
5 request forms ("blue slips"), or file grievances in order
6 to receive access to primary and specialty care. (Id. ¶¶
7 32, 37.) In addition, the County maintains a policy that
8 makes it difficult for prisoners to file a grievance
9 about inadequate access to medical care. As a result,
10 the prisoners experience dangerous delays in accessing
11 medical care, creating a serious risk of additional harm
12 and suffering from untreated medical conditions. (Id. ¶
13 38.)

14
15 For example, Plaintiff Gray alleges he has only seen
16 Riverside Jail doctors when required by court order.
17 (Id. ¶ 32.) Other named Plaintiffs also received court
18 orders to see doctors in the Riverside Jails. (Id.)
19 Furthermore, court orders are often not honored. (Id. ¶
20 33.) For example, in November 2011, the Superior Court
21 ordered an inmate to be seen by a medical doctor within
22 48 hours. A few weeks later, despite this directive, the
23 inmate filed a grievance because he still had not
24 received treatment. (Id.)

25
26 Delays in access to care result in serious harm. For
27 example, Plaintiff Patterson arrived at the Riverside
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1 Jails following heart surgery that placed a temporary
2 filter in a major blood vessel supplying her heart. (SAC
3 ¶ 40.) The filter was supposed to have been removed
4 within three months, but this was not reflected in the
5 jail medical records. (Id.) As a result, there was
6 delay and confusion as to whether the filter was
7 temporary or permanent. Nine months later she went in
8 for surgery, but by that time the filter could no longer
9 be removed safely because of the accumulation of scar
10 tissue. (Id.) As a result, Patterson will require life-
11 long anticoagulation therapy, which carries significant
12 risks of fatal blood clotting and requires daily
13 medication and monitoring. (Id. ¶ 41.)

14
15 Plaintiffs allege that Defendant lacks adequate
16 policies and procedures to provide inmates with referrals
17 for specialists. (SAC ¶¶ 53-61.) For example, Plaintiff
18 Wohlfeil spent more than two years waiting for speciality
19 care to diagnose and develop a treatment plan for his
20 chronic diarrhea and dozens of tumors. (Id. ¶ 55.)

21
22 As a result of inadequate access to care, many
23 inmates are completely denied care while in Riverside
24 Jails. For example, an inmate with high blood pressure
25 and a history of coronary artery disease complained of an
26 irregular heartbeat and chest pain. He was not evaluated
27 or given any treatment, and only instructed to let staff
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1 know if he experienced those symptoms again. Five weeks
2 later he was found unresponsive, pale, and sweaty with
3 high blood pressure and a heart flutter. (Id. ¶ 65.)
4

5 Plaintiffs allege that Defendant has a policy and
6 practice of failing to prescribe, provide, and properly
7 manage medication. In addition, Defendant provides
8 incorrect, interrupted, or incomplete dosages, which puts
9 prisoners at a serious risk of harm. (Id. ¶ 67.)
10 Defendant maintains a policy of inadequate staffing to
11 distribute medications. (Id. ¶ 68.) As a result,
12 prisoners are often forced to skip doses of medication;
13 placing them at risk of harm. In addition, as a result
14 of understaffing, the delivery of medication is erratic
15 and the time of delivery fluctuates greatly. (SAC ¶ 71.)
16 A prisoner who requires multiple daily dosages may
17 receive his or her evening dose in the middle of the day.
18 Plaintiffs Gray, Patterson, Kujawsky, and Rosson have
19 each experienced skipped medication dosages and
20 fluctuating medication delivery times. (Id. ¶¶ 68, 71.)
21

22 Defendant's policies require inmates to alert staff
23 when a medication refill is required. (Id. ¶ 72.) As a
24 result of this policy, there are often significant
25 interruptions in treatment because a prescription may not
26 be renewed until the prisoners file multiple health care
27 requests or grievances. (Id.) In addition, the
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1 Defendant maintains a policy of denying prisoners
2 medications when they attend court hearings or are
3 transported to outside appointments. (Id. ¶ 73.) Lapses
4 in the delivery of psychotropic medications are
5 particularly detrimental to the prisoners. (Id. ¶ 83.)
6 For example, Plaintiff Gray has suffered harm from lapsed
7 dosages of his psychotropic medications that treat him
8 for bipolar disorder. (Id. ¶ 84.)

9
10 Defendant also has a practice of failing to monitor
11 the effects of medication to determine whether dosages
12 are correct or whether medications should be changed.
13 (SAC ¶ 74.) Failure to monitor medication dosages
14 exposes prisoners to serious risks to their health and
15 unnecessary pain and suffering. (Id.) For example, a
16 prisoner with a documented allergy to Dilantin was
17 repeatedly prescribed the medication and offered it
18 during pill call, placing him at serious risk of harm.
19 (Id. ¶ 78.)

20
21 Plaintiffs allege that mental health "encounters" are
22 often held in the presence of custody staff and other
23 prisoners. The lack of confidentiality reduces the
24 likelihood that inmates will feel comfortable speaking
25 candidly about their conditions, and thus may inhibit the
26 provision of effective mental health care. (Id. ¶ 100.)
27 Plaintiffs Miller, Rosson, and Gray have all experienced

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1 mental health encounters that were not confidential.
2 (Id.)

3

4 Plaintiffs allege that due to understaffing, the
5 Defendant's medical records system is disorganized and
6 incomplete, thus increasing the serious risk that
7 prisoners will receive inadequate healthcare. (Id. ¶¶
8 102, 104.)

9

10 Finally, when inmates are treated by jail physicians,
11 the inmates often do not receive sufficient follow-up,
12 monitoring, specialty referrals, or proper care. (SAC ¶
13 108.) In regard to mental health, Plaintiffs allege
14 there are no appropriate means to assess and monitor
15 inmates who exhibit or contemplate self-harming behavior.
16 (Id. ¶ 144.) Inmates who require mental health treatment
17 are often put into safety cells, where they are not
18 monitored and do not receive treatment. (Id.) Current
19 practices concerning the use of safety cells and safety
20 "restraint chairs" are ineffective and potentially
21 dangerous. (Id. ¶ 145.) The Riverside Jails' logs
22 reveal improper use and failure to monitor inmates in
23 safety cells and restraint chairs. (Id. ¶ 146.)
24 Plaintiffs Gray and Rosson have experienced placement in
25 safety cells without proper monitoring or treatment.
26 (Id. ¶ 144.)

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1 Plaintiffs allege that Riverside officials lack the
2 ability to identify and correct the systemic problems in
3 their policies and practices. As a result, they do not
4 remedy the deficiencies. (SAC ¶ 105.)

5
6 Plaintiffs allege that inadequacies in Defendant's
7 health policies are well-documented, including multiple
8 Grand Jury reports, a report by the Corrections Standards
9 Authority, and a report by Inmate Medical Quality. These
10 reports all document systemic deficiencies in staffing,
11 screening, sick call, quality management, medical
12 records, medication management, and the use of restraint
13 chairs and safety cells. (Id. ¶¶ 148-154.) In 2011, the
14 Sheriff accepted the findings of these reports as
15 requiring immediate and drastic action, but has failed to
16 take reasonable steps to mitigate the risk of serious
17 harm to inmates.

18 19 **III. LEGAL STANDARD**

20 **A. Motion to Dismiss**

21 Federal Rule of Civil Procedure 12(b)(6) allows a
22 party to bring a motion to dismiss for failure to state a
23 claim upon which relief can be granted. Rule 12(b)(6) is
24 read along with Rule 8(a), which requires a short, plain
25 statement upon which a pleading shows entitlement to
26 relief. Fed. R. Civ. P. 8(a)(2); Conley v. Gibson, 355
27 U.S. 41, 47 (1957) (holding that the Federal Rules

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1 require a plaintiff to provide "'a short and plain
2 statement of the claim' that will give the defendant fair
3 notice of what the plaintiff's claim is and the grounds
4 upon which it rests." (quoting Fed. R. Civ. P. 8(a)(2));
5 Bell Atl. Corp. v Twombly, 550 U.S. 544, 555 (2007).
6 When evaluating a Rule 12(b)(6) motion, a court must
7 accept all material allegations in the complaint – as
8 well as any reasonable inferences to be drawn from them –
9 as true and construe them in the light most favorable to
10 the non-moving party. See Doe v. United States, 419 F.3d
11 1058, 1062 (9th Cir. 2005); ARC Ecology v. U.S. Dep't of
12 Air Force, 411 F.3d 1092, 1096 (9th Cir. 2005); Moyo v.
13 Gomez, 32 F.3d 1382, 1384 (9th Cir. 1994).

14

15 "While a complaint attacked by a Rule 12(b)(6) motion
16 to dismiss does not need detailed factual allegations, a
17 plaintiff's obligation to provide the 'grounds' of his
18 'entitlement to relief' requires more than labels and
19 conclusions, and a formulaic recitation of the elements
20 of a cause of action will not do." Twombly, 550 U.S. at
21 555 (citations omitted). Rather, the allegations in the
22 complaint "must be enough to raise a right to relief
23 above the speculative level." Id.

24

25 To survive a motion to dismiss, a plaintiff must
26 allege "enough facts to state a claim to relief that is
27 plausible on its face." Twombly, 550 U.S. at 570;

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1 Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949
2 (2009). "The plausibility standard is not akin to a
3 'probability requirement,' but it asks for more than a
4 sheer possibility that a defendant has acted unlawfully.
5 Where a complaint pleads facts that are 'merely
6 consistent with' a defendant's liability, it stops short
7 of the line between possibility and plausibility of
8 'entitlement to relief.'" Iqbal, 129 S. Ct. at 1949
9 (quoting Twombly, 550 U.S. at 556).

10

11 The Ninth Circuit has clarified that (1) a complaint
12 must "contain sufficient allegations of underlying facts
13 to give fair notice and to enable the opposing party to
14 defend itself effectively" and (2) "the factual
15 allegations that are taken as true must plausibly suggest
16 an entitlement to relief, such that it is not unfair to
17 require the opposing party to be subjected to the expense
18 of discovery and continued litigation." Starr v. Baca,
19 652 F. 3d 1202, 1216 (9th Cir. 2011).

20

21 **B. Class Certification**

22 Federal Rule of Civil Procedure 23 governs class
23 actions. Fed. R. Civ. P. 23. Under Rule 23(a), a party
24 seeking class certification must demonstrate the
25 following prerequisites: (1) numerosity of plaintiffs;
26 (2) common questions of law or fact; (3) typicality of
27 named plaintiff's claims; and (4) ability of the named
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1 plaintiff to protect the interests of the class
2 adequately. See Ellis v. Costco Wholesale Corp., 657
3 F.3d 970, 980 (9th Cir. 2011) (citing Fed. R. Civ. P.
4 23(a)). The party seeking certification bears the burden
5 of demonstrating it has met each of the four requirements
6 of Rule 23(a). Id. Although not mentioned in Rule
7 23(a), the moving party must also demonstrate that the
8 class is ascertainable. Keegan v. Am. Honda Motor Co.,
9 Inc., 284 F.R.D. 504, 521 (C.D. Cal. 2012); Rodmakers,
10 Inc. v. Newport Adhesives & Composites, Inc., 209 F.R.D.
11 159, 163 (C.D. Cal. 2002) ("Prior to class certification,
12 plaintiffs must first define an ascertainable and
13 identifiable class.").

14
15 After satisfying the five prerequisites of
16 numerosity, commonality, typicality, adequacy, and
17 ascertainability, a party must also demonstrate that it
18 meets at least one of the prerequisites in Rule 23(b).
19 Under 23(b), class certification is appropriate if (1)
20 there is a risk that separate actions would create
21 incompatible standards of conduct for the defendant or
22 prejudice individual class members not parties to the
23 action; or (2) the defendant has treated the members of
24 the class as a class, making appropriate injunctive or
25 declaratory relief with respect to the class as a whole;
26 or (3) common questions of law or fact predominate over
27 questions affecting individual members and that a class
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1 action is a superior method for fairly and efficiently
2 adjudicating the action. Fed. R. Civ. P. 23(b)(1-3).

3
4 The decision to grant or deny a motion for class
5 certification is committed to the trial court's broad
6 discretion. Bateman v. American Multi-Cinema, Inc., 623
7 F.3d 708, 712 (9th Cir. 2010). A party seeking class
8 certification must affirmatively demonstrate compliance
9 with Rule 23 – that is, the party must be prepared to
10 prove that there are in fact sufficiently numerous
11 parties and common questions of law or fact. Wal-Mart
12 Stores, Inc. v. Dukes, — U.S. —, 131 S. Ct. 2541, 2550,
13 2551 (2011). This requires a district court to conduct a
14 "rigorous analysis" that frequently "will entail some
15 overlap with the merits of the plaintiff's underlying
16 claim." Id.

17
18 **C. Denial of Adequate Medical and Mental Health Care**

19 Plaintiffs claim the policies and practices of the
20 Riverside Jails subject inmates to an unreasonable risk
21 of harm and injury from inadequate medical and mental
22 health care. Plaintiffs bring their claims under the
23 Eighth and Fourteenth Amendments because the Riverside
24 Jails house both pre-conviction and post-conviction
25 inmates. The Fourteenth Amendment applies before
26 conviction and the Eighth Amendment applies after
27 conviction, but the standards are equivalent in regard to
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1 medical care. See City of Revere v. Massachusetts Gen.
2 Hosp., 463 U.S. 239, 244 (1983) (In regard to medical
3 care "the due process rights of a person [before trial]
4 are at least as great as the Eighth Amendment protections
5 available to a convicted prisoner."). Under the Eighth
6 Amendment, prison officials must provide for inmates'
7 basic human needs while in custody, including "food,
8 clothing, shelter, medical care, and reasonable safety."
9 Helling v. McKinney, 509 U.S. 25, 32 (1993). Medical
10 care includes both mental and physical health. See
11 Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982).

12
13 To prevail on their claims under the Eighth and
14 Fourteenth Amendments, Plaintiffs must show Defendant
15 acted with "deliberate indifference to serious medical
16 needs." Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir.
17 2006) (citing Estelle v. Gamble, 429 U.S. 97, 104
18 (1976)). There are two prongs to the deliberate
19 indifference analysis. Id. First, under an objective
20 analysis, the prisoner must show a "serious medical need
21 by demonstrating that failure to treat a prisoner's
22 condition could result in further significant injury or
23 the unnecessary and wanton infliction of pain." Id.
24 (internal quotations and citations omitted).

25
26 Second, under a subjective analysis, the prisoner
27 must show that the defendant's response to that need was
28

1 deliberately indifferent. Id. The state of mind
2 required for deliberate indifference is "subjective
3 recklessness." Snow v. McDaniel, 681 F.3d 978, 985-86
4 (9th Cir. 2012) overruled on other grounds by Peralta v.
5 Dillard, 744 F.3d 1076 (9th Cir. 2014). The deliberate
6 indifference standard is "less stringent in cases
7 involving a prisoner's medical needs . . . because 'the
8 State's responsibility to provide inmates with medical
9 care ordinarily does not conflict with competing
10 administrative concerns.'" McGuckin v. Smith, 974 F.2d
11 1050, 1060 (9th Cir. 1992) overruled on other grounds by
12 WMX Technologies, Inc. v. Miller, 104 F.3d 1133 (9th Cir.
13 1997).

14
15 The deliberate indifference prong is met if (1) there
16 is a purposeful act or failure to respond; and (2) the
17 plaintiff demonstrates there was harm caused by the
18 indifference. Id. A prisoner may meet the harm
19 requirement by demonstrating that the defendant's actions
20 expose the prisoner to a "substantial risk for serious
21 harm." Parsons v. Ryan, 754 F.3d 657, 677 (9th Cir.
22 2014) ("Parsons II"). It is not necessary for a prisoner
23 to "await a tragic event" before seeking a remedy.
24 Farmer, 511 U.S. at 828. Deliberate indifference to
25 serious medical needs may be established by showing that
26 there are "systemic and gross deficiencies in staffing,
27 facilities, equipment, or procedures that the inmate
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1 population is effectively denied access to adequate
2 medical care." Madrid v. Gomez, 889 F. Supp. 1146, 1256
3 (N.D. Cal. 1995) (citing Wellman v. Faulkner, 715 F.2d
4 269, 272 (7th Cir. 1983); see also Wilson v. Seiter, 501
5 U.S. 294, 304 (1991) (Approving Wellman and recognizing
6 that "[s]ome conditions of confinement may establish an
7 Eighth Amendment violation "in combination" when each
8 would not do so alone, but only when they have a mutually
9 enforcing effect that produces the deprivation of a
10 single, identifiable human need such as food, warmth, or
11 exercise—for example, a low cell temperature at night
12 combined with a failure to issue blankets.").

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IV. MOTION TO DISMISS

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Defendant moves to dismiss portions of Plaintiffs' SAC related to intake procedures, privacy procedures, and the use of safety cells and restraint chairs as a disciplinary measures on the basis that allegations related to these policies fail to state a claim upon which relief may be granted.

In Opposition, Plaintiffs argue that each of these alleged policies expose inmates in the Riverside Jails to a substantial risk of serious harm in violation of the Eighth and Fourteenth Amendments. In addition, Plaintiffs correctly assert that they have not alleged a separate claim arising out of each specific policy;

1 rather, the factual allegations of the SAC support
2 Plaintiffs' six claims that the health care system in the
3 Riverside Jails subjects Plaintiffs in the Medical and
4 Mental Health subclasses to an unreasonable risk of harm
5 and injury from inadequate health care. See Wilson, 501
6 U.S. at 304; Madrid, 889 F. Supp. at 1256 (N.D. Cal.
7 1995).

8

9 **A. Intake Procedures**

10 Defendant moves to dismiss all allegations related to
11 intake procedures in the SAC. (SAC ¶¶ 19-25, 27; Prayer
12 at 54:15-16.) As explained above, Plaintiffs allege that
13 the intake procedures in the Riverside Jails are
14 inadequate because they are conducted by untrained
15 custody staff, and there are insufficient numbers of
16 nursing staff available to evaluate medical and mental
17 health conditions on intake. As a result, the "inmates
18 are rarely assessed for communicable diseases when they
19 arrive at the jails and medically high-risk prisoners do
20 not have histories taken, physical assessments, or
21 treatment plans." (SAC ¶ 20.) Plaintiffs have
22 sufficiently alleged the intake procedures fail to screen
23 inmates adequately for medical and mental health
24 procedures. For example, Plaintiff Gray's intake form
25 has "no" marked for every question about health care
26 needs, including those that should be marked "yes." (Id.
27 ¶ 21.) The SAC also includes allegations of similar

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1 deficiencies in the intake screening process for unnamed
2 plaintiffs.

3

4 Defendant moves to dismiss these allegations on the
5 basis that the intake policy alleged in the SAC is not
6 constitutionally inadequate. In addition, Defendant
7 claims that the specific allegations related to Gray's
8 intake do not rise to the level of deliberate
9 indifference. (MTD at 4-5.)

10

11 An adequate intake screening assessment is a
12 recognized component of a constitutionally adequate
13 health care delivery system. See Madrid, 889 F. Supp. at
14 1258 (deficient intake screening method part of
15 constitutionally inadequate health care system which
16 failed to provide access to medical and mental health
17 care); Carty v. Farrelly, 957 F. Supp. 727, 738 (D.V.I.
18 1997) (Inadequate intake health evaluations also
19 contribute to constitutionally inadequate medical and
20 mental health care); see also Lareau v. Manson, 651 F.2d
21 96, 109 (2d Cir. 1981) (inadequate screening of
22 communicable diseases at intake is inadequate medical
23 practice that violates Eighth Amendment). Defendant
24 argues the alleged intake policy is not constitutionally
25 deficient because inmates are not entitled to better
26 health care than members of the public, and that members
27 of the public are only treated for medical conditions

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1 that they disclose and seek treatment for. In addition,
2 Defendant also argues that there is no requirement under
3 federal law that medical or mental health staff, rather
4 than officers, conduct intake screening and that there is
5 no "federal Constitutional right to have information
6 recorded on forms." (MTD at 5.) Plaintiffs do not
7 allege that intake conducted by officers is per se
8 constitutionally inadequate; rather, they claim that in
9 Riverside Jails, intake is conducted by untrained custody
10 staff who do not have specialized training to conduct
11 mental health screenings and fail to identify health
12 concerns or accurately record medical issues on booking
13 forms. Plaintiffs allege that this policy exposes
14 inmates to a substantial risk of serious harm because
15 medical and mental health conditions may not be
16 recognized at intake. The intake policy is one policy in
17 an alleged system of delivering health care that is
18 constitutionally deficient under the Eighth and
19 Fourteenth Amendments.

20

21 Next, the Court turns to Defendant's claim that the
22 allegations related to Gray's intake experience are
23 insufficient to state a claim for a constitutional
24 violation. Defendant would likely succeed on its Motion
25 if Gray had filed a Complaint as an individual inmate,
26 alleging that his individual intake experience amounted
27 to constitutional violation. See Boncher ex rel. Boncher

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1 v. Brown Cnty., 272 F.3d 484, 487 (7th Cir. 2001)
2 (inadequacy of intake checklist form and training of the
3 intake officer insufficient to constitute constitutional
4 violation where intake officer believed suicidal inmate
5 was joking about committing suicide); McCaster v.
6 Clausen, 684 F.3d 740, 747 (8th Cir. 2012) (nurse who
7 conducted intake exam was not deliberately indifferent
8 when serious medical need was not obvious). The SAC,
9 however, only includes Gray's experience as evidence of
10 the existence of an allegedly deficient intake policy
11 that exposes inmates to a substantial risk of serious
12 harm. Moreover, Plaintiffs allege that the intake policy
13 combines with other policies to create a health care
14 system that is constitutionally inadequate and subjects
15 inmates to a substantial risk of serious harm. Thus,
16 there is no "claim" that may be dismissed based on the
17 constitutional adequacy of Gray's individual intake
18 experience. See Brown v. Plata, — U.S. —, 131 S.Ct.
19 1910, 1925 n.3 (2011)("Because plaintiffs do not base
20 their case on deficiencies in care provided on any one
21 occasion, this Court has no occasion to consider whether
22 these instances of delay - or any other particular
23 deficiency in medical care complained of by the
24 plaintiffs - would violate the Constitution"); Parsons
25 II, 754 F.3d at 678 ("Although a presently existing risk
26 may ultimately result in different future harm for
27 different inmates - ranging from no harm at all to death

28

1 - every inmate suffers exactly the same constitutional
2 injury when he is exposed to a single statewide ADC
3 policy or practice that creates a substantial risk of
4 serious harm."). Whether Gray's individual exposure to
5 the policy amounts to a constitutional violation does not
6 alter the alleged injury suffered by the class, which is
7 a substantial risk of serious harm. Thus, Plaintiffs'
8 allegations regarding the Riverside Jails' intake
9 policies are sufficient to survive a motion to dismiss

10

11 **B. Privacy Allegations**

12 Defendant seeks to dismiss all allegations in the SAC
13 related to inmate privacy. (See SAC ¶¶ 98-100.)
14 Plaintiffs allege that until recently the Riverside Jails
15 did not have a confidential self-referral system by which
16 inmates could request mental health care without
17 revealing the nature of their request to correctional
18 officers. (SAC ¶ 98.) Under the old policy inmates
19 would give blue slips requesting health care directly to
20 custody staff, who would then determine whether the
21 requests should be passed to medical staff. (Id.) This
22 policy was in violation of HIPAA and California state
23 law. (Id.) Currently, inmates give any blue slips
24 directly to medical staff. The SAC alleges that, even
25 under the current policies, if an inmate would like a
26 grievance form in order to complain about delays or
27 inadequacies in receiving medical treatment that inmate

28

1 must persuade custody staff that their concerns are
2 significant. In addition, the SAC alleges that many
3 mental health encounters are held in the presence of
4 other custody staff and prisoners, which does not allow
5 for effective treatment because the patients are not
6 comfortable disclosing their mental health issues or
7 needs in a non-confidential setting. (SAC ¶ 100.)
8 Plaintiffs Miller, Rosson, and Gray have all experienced
9 non-confidential mental health encounters. (Id. ¶ 100.)

10
11 Defendant moves to dismiss these allegations on the
12 basis that inmates do not have a right to privacy or
13 confidentiality of their medical records. (Mot. at 13-
14 16.) Defendant is correct that an inmate does not have
15 an absolute constitutional right to confidential medical
16 records. See Seaton v. Mayberg, 610 F.3d 530, 534 (9th
17 Cir. 2010) (recognizing general principle that whatever
18 right to privacy an inmate has may be "overridden for
19 legitimate penological reasons"). Furthermore,
20 violations of HIPPA or California state law regarding
21 medical records do not necessarily rise to the level of a
22 constitutional violation. But, the factual allegations
23 in the SAC regarding privacy are not alleged in support
24 of a claim that the County violated inmates' right to
25 privacy. Rather, Plaintiffs allege that Defendant's
26 practice of conducting mental health interviews in non-
27 confidential environments and involving custody staff in
28 the process of obtaining medical care exposes inmates to

1 a substantial risk of serious harm because the inmates
2 are less likely to disclose mental health issues in a
3 non-confidential setting. These practices are one of
4 several deficient practices that Plaintiffs allege form a
5 healthcare system that fails to provide adequate access
6 to medical and mental health care. Thus, Defendant's
7 arguments regarding the lack of a right to privacy are
8 unavailing as that is not the right Plaintiffs allege is
9 being violated. Plaintiffs' allegations regarding
10 privacy are sufficient to survive a motion to dismiss.

11
12 **C. Use of Safety Cells and Restraint Chairs for**
13 **Discipline**

14 Lastly, Defendant moves to dismiss allegations
15 related to the use of safety cells and restraint chairs
16 for disciplinary purposes. (See SAC ¶ 145.) The SAC
17 alleges that the County routinely places inmates in
18 safety cells as a punitive measure for actions such as
19 "destroying jail property" or "being combative with jail
20 staff." (Id.) Plaintiffs allege that using the safety
21 cells as a punitive measure exceeds the proper use of the
22 placements, and exposes patients to a substantial risk of
23 serious harm because it makes it less likely that
24 patients will report serious emotional distress or
25 suicidal ideation. (Id.)

26
27 The County moves to dismiss these allegations on the
28 basis that it is constitutional to use safety cells and

1 restraint chairs as a disciplinary measure. Defendant is
2 correct that the use of safety cells and restraint chairs
3 "to control violent or self-destructive inmates" is not a
4 per se constitutional violation. Anderson v. Cnty. of
5 Kern, 45 F.3d 1310, 1315 opinion amended on denial of
6 reh'g, 75 F.3d 448 (9th Cir. 1995) (policy of using
7 safety cells for suicidal and mentally disturbed inmates
8 was not unconstitutional). The use of safety cells for
9 purely punitive purposes, however, may rise to the level
10 of a constitutional violation. Id.

11
12 Plaintiffs do not allege that any use of safety cells
13 and restraint chairs to restrain suicidal or violent
14 inmates is unconstitutional. Rather, Plaintiffs allege
15 that Riverside Jails' deficient practice of using safety
16 cells for disciplinary and punitive purposes exposes
17 inmates to a substantial risk of serious harm because the
18 inmates are less likely to report serious emotional
19 distress out of fear they will be placed in a safety
20 cell. Plaintiffs allege this practice is one of many
21 allegedly deficient policies that creates a healthcare
22 system that provides inadequate medical and mental health
23 care. Thus, Plaintiffs' allegations regarding the use of
24 safety cells for disciplinary purposes survive
25 Defendant's Motion.

V. STANDING

1 Defendant challenges Plaintiffs' standing in its
2 Motion to Dismiss and its opposition to the Motion for
3 Class Certification. In the opposition to the Motion for
4 Class Certification, Defendant argues that the named
5 Plaintiffs do not have Article III standing to bring
6 claims related to any injury they themselves did not
7 suffer. (Opp'n. at 10-13.) Specifically, Defendant
8 contends that no named Plaintiff suffered any injury as a
9 result of inadequate intake procedures, inadequate dental
10 or vision care¹, or inadequate suicide prevention
11 policies², and thus claims related to these alleged
12 policies may not proceed. In addition, Defendant argues
13 that the majority of people in the proposed Subclasses do
14 not have standing. In the Motion to Dismiss, Defendant
15

16
17 ¹It is unclear from the Motion and the Second Amended
18 Complaint whether Plaintiffs claim Defendant's policies
19 related to dental or vision care are inadequate. The
20 allegations concerning dental care largely relate to the
21 timeliness of such care, but Plaintiffs do not identify a
22 specific policy or practice for which they seek
23 certification. Accordingly, the Court does not address
24 the policies regarding the provision of dental or vision
25 care in any detail.

26 ²At the hearing Defendant argued that no named
27 Plaintiff has suffered any injury as a result of
28 inadequate suicide prevention policies because no named
29 Plaintiff has committed suicide. The Court rejects
30 Defendant's suggestion that only an inmate who
31 successfully commits suicide has standing to challenge
32 inadequate suicide prevention policies. See Helling v.
33 McKinney, 509 U.S. 25, 33 (1993) (It would be odd to deny
34 an injunction to inmates who plainly proved an unsafe,
35 life-threatening condition in their prison on the ground
36 that nothing yet had happened to them.").

1 also submits that Plaintiffs lack standing to assert
2 claims related to the use of safety cells as a
3 disciplinary measure.

4
5 Defendant asserts lack of standing on three bases.
6 First, many inmates are only in the Riverside Jails for a
7 short period of time - a few hours or a few days - and
8 thus never need any medical or mental health care.
9 Second, inmates who receive medical or mental health care
10 that meets community standards; e.g., the "large portion
11 of the inmates [that] receive better care in jail than
12 outside of jail," do not have standing. (Opp'n. at 10.)
13 Third, inmates who are satisfied with the medical and
14 mental health care they receive have no standing.

15
16 Article III standing requires a plaintiff to
17 demonstrate "an "invasion of a legally protected interest
18 which is (a) concrete and particularized, and (b) actual
19 or imminent, not conjectural or hypothetical." D'Lil v.
20 Best W. Encina Lodge & Suites, 538 F.3d 1031, 1036 (9th
21 Cir. 2008) (citing Lujan v. Defenders of Wildlife, 504
22 U.S. 555, 560-61 (1992)). In the context of claims
23 arising from prison conditions, an inmate who is claiming
24 that the defendant fails to prevent harm must show that
25 he is incarcerated under conditions "posing a substantial
26 risk of serious harm." Brown, 131 S.Ct. at 1926 n. 3 (no
27 consideration of whether specific instances of care
28 violate the Constitution, because Plaintiffs rely on

1 systemwide deficiencies that, taken as a whole, subject
2 sick and mentally ill prisoners to a substantial risk of
3 serious harm.) (citing Farmer v. Brennan, 511 U.S. 825,
4 834 (1994)). When seeking only injunctive relief, a
5 plaintiff need not wait until he suffers an actual injury
6 because the constitutional injury is the exposure to the
7 risk of harm. Parsons II, 754 F.3d at 678; Parsons v.
8 Ryan, 289 F.R.D. 513, 521 (D. Ariz. 2013) ("Parsons I");
9 see also Chief Goes Out v. Missoula Cnty., 2013 WL
10 139938, at *5 (D. Mont. Jan. 10, 2013) (injury suffered
11 is the "deprivation itself, not just the negative effects
12 resulting from the deprivation."); Rosas v. Baca, 2012 WL
13 2061694, at *3 (C.D. Cal. June 7, 2012) (class
14 certification appropriate where all inmates were at
15 significant risk of excessive violence at the hands of
16 deputies, even if they had not been personally subject to
17 excessive force). Indeed, the United States Supreme
18 Court has commented that "it would be odd to deny an
19 injunction to inmates who plainly proved an unsafe, life-
20 threatening condition in their prison on the ground that
21 nothing yet had happened to them." Helling v. McKinney,
22 509 U.S. 25, 33 (1993).

23
24 Defendant argues that the named Plaintiffs lack
25 standing to raise allegations related to the intake
26 procedures. The gravamen of the County's argument is
27 that because Gray's individual intake experience does not
28 amount to a constitutional violation, Plaintiffs may not

1 allege any facts related to the intake policies. As
2 discussed above, whether an individual Plaintiff's
3 exposure to the policy amounts to a constitutional
4 violation does not affect whether the class as a whole,
5 or that specific individual, is subject to a substantial
6 risk of serious harm. Gray has alleged direct exposure
7 to the intake procedures, one of the policies that forms
8 the basis for Plaintiffs' claim of unconstitutional
9 healthcare. His exposure is sufficient to support
10 Plaintiffs standing to bring their claim that they suffer
11 a substantial risk of serious harm as a result of the
12 deficient intake policy.

13
14 The County also asserts that Plaintiffs lack standing
15 to challenge the Riverside Jails' alleged practice of
16 improperly using safety cells and restraint chairs for
17 disciplinary purposes because no named Plaintiff was
18 exposed to this policy or asserts any specific injury.
19 The Court addresses this issue in relation to its
20 commonality analysis, and finds that Plaintiffs have
21 failed to submit sufficient evidence to support the
22 existence of an unofficial policy of using safety cells
23 for purely punitive or disciplinary purposes.
24 Accordingly, the Court does not reach the question of
25 Plaintiffs' standing as to this specific policy.
26
27
28

1 Thus, in regard to Defendant's argument regarding the
2 named Plaintiffs,³ the Court finds that the Plaintiffs
3 have sufficiently alleged that a named Plaintiff has
4 suffered a "serious risk of substantial harm" as a result
5 of each of the alleged inadequate healthcare policies
6 that are appropriate for certification. Although support
7 for these allegations is not necessarily provided in each
8 named Plaintiff's declaration, other evidence submitted
9 in support of certification describes inadequacies in the
10 named Plaintiffs' intake forms and Mr. Rosson's treatment
11 for self-harming behavior and suicidal ideation.

12
13 The unnamed members of the proposed Subclasses are
14 "highly likely to require medical [or] mental health . .
15 . care" and thus face a "substantial risk of serious harm
16 resulting from exposure to the defendant's policies and
17 practices governing healthcare." See Parsons II, 754
18 F.3d at 686. An inmate may require medical or mental
19 health care regardless of the length of time he or she is
20 in the Riverside Jails, indeed; the first 24 hours of
21
22

23
24 ³Both Gray and Patterson are no longer inmates in the
25 Riverside Jails. The Court determines standing based on
26 "whether the elements of Article III standing . . . were
27 satisfied at the time the complaint was filed." Haro v.
28 Sebelius, 747 F.3d 1099, 1108 (9th Cir. 2014) (citing
Cnty. of Riverside v. McLaughlin, 500 U.S. 44, 51
(1991)). Gray and Patterson were inmates at the time
Plaintiffs' initial complaint was filed. Accordingly,
they maintain standing to bring this suit.

1 confinement may be the most dangerous.⁴ (Stewart Decl.
2 (Doc. No. 29) ¶ 19.) That an inmate is satisfied with
3 his care, or may have received even worse care outside of
4 jail, does not eliminate his exposure to a substantial
5 risk of serious harm. It is the exposure to a risk of
6 serious harm, and not the actual medical or mental health
7 care received, that constitutes the injury suffered by
8 the inmates in this action. Each member of the proposed
9 Subclasses is alleged to be subject to a "substantial
10 risk of serious harm" as a result of each of the alleged
11 policies in the SAC. These allegations are sufficient to
12 confer Article III standing on the unnamed class members.

13 VI. CLASS CERTIFICATION

14 A. Rule 23(a)

15 1. Ascertainability

16 Defendant contends that the proposed Class definition
17 of "all adult men and women who are now, or will be in
18

19
20 ⁴At the hearing, Defendant argued that Riverside
21 Jails are distinguishable from Parsons because this
22 action involves jails where as Parsons involved prisons,
23 where inmates were likely to stay for much longer periods
24 of time while serving their sentence. The Court is not
25 persuaded by this distinction. Although the average stay
26 within a Riverside County Jail may be shorter than in a
27 prison, every inmate who enters a Riverside County Jail
28 is allegedly exposed to a risk of serious harm as a
result of inadequate healthcare policies. This is true
even if that risk does not materialize into physical harm
due to the short period of detention. See Parsons II,
754 F.3d at 678 ("any one of them [prisoners] could
easily fall ill, be injured, need to fill a prescription,
require emergency or specialist care, crack a tooth, or
require mental health treatment").

1 the future, in the custody of Riverside County and who
2 are now, or will be in the future, subject to an
3 unreasonable risk of harm due to Defendant's policies and
4 practices of denying prisoners minimally adequate medical
5 care and minimally adequate mental health care" is a
6 "fail safe" class that is not ascertainable. A proposed
7 class is ascertainable if it is "administratively
8 feasible for the court to determine whether a particular
9 individual is a member." Keegan, 284 F.R.D. at 521
10 (quoting O'Connor v. Boeing N. Am., Inc., 184 F.R.D. 311,
11 319 (C.D. Cal. 1998).) Defendant argues it is not
12 administratively feasible to determine the members of the
13 proposed Class because it would require a specific
14 factual inquiry into whether each inmate was "subject to
15 an unreasonable risk of harm" or received "adequate"
16 medical care. (Opp'n. at 4.) A class is "fail safe" if
17 the definition of the class shields the class members
18 from adverse judgment. Randleman v. Fid. Nat. Title Ins.
19 Co., 646 F.3d 347, 352 (6th Cir. 2011) ("the class itself
20 is defined in a way that precludes membership unless the
21 liability of the defendant is established."). Either
22 "the class members win or, by virtue of losing, they are
23 not in the class and, therefore, not bound by the
24 judgment." Id.; Kamar v. RadioShack Corp., 375 F. App'x
25 734, 736 (9th Cir. 2010) ("the class itself is defined in
26 a way that precludes membership unless the liability of
27 the defendant is established.").

28

1 In Reply, Plaintiffs propose a new Class definition:
2 "all prisoners who are now, or will be in the future,
3 subjected to the healthcare policies and practices of
4 Riverside County." (Reply at 21.) This Class definition
5 is almost identical to the definition approved in
6 Parsons, and is similar to the definitions of the
7 Subclasses, which Defendant concedes are ascertainable.
8 (Opp'n. at 8.); see Parsons I, 289 F.R.D. at 525
9 (certifying class of "all prisoners who are now, or will
10 in the future be, subjected to the medical, mental
11 health, and dental care policies and practices of the
12 ADC"). In addition, this modification resolves
13 Defendant's contention that the original Class definition
14 is "fail safe." Accordingly, the Court will proceed to
15 analyze the Rule 23(a) factors using the Plaintiffs'
16 revised Class definition, modified to use the term
17 "medical and mental health" rather than "healthcare"
18 policies. See Wolph v. Acer Am. Corp., 272 F.R.D. 477,
19 483 (N.D. Cal. 2011) (the Court has broad discretion to
20 modify a class definition); Chief Goes Out, 2013 WL
21 139938, at *3 (modifying class definition in class
22 certification order); Morrow v. Washington, 277 F.R.D.
23 172, 189 (E.D. Tex. 2011) (modifying class definition in
24 certification order to ensure ascertainable class).

25 **2. Numerosity**

26 Rule 23(a)(1) requires the class be so numerous that
27 joinder of individual class members is impracticable.
28

1 See Fed. R. Civ. P. 23(a)(1). There is no "precise
2 threshold," but Courts have routinely found the
3 numerosity requirement is met when a proposed class
4 comprises "40 or more members." Berry v. Baca, 226
5 F.R.D. 398, 403 (C.D. Cal. 2005). Here, the Riverside
6 Jails have custody over approximately 3,500 inmates, and
7 approximately 50,000 inmates pass through the jails each
8 year. (See Ex. 153 to Crockett Decl., U.S. Dept. of
9 Justice, Office of Justice Program, Bureau of Justice
10 Statistics, "Jail Prisoners at Midyear 2010 - Statistical
11 Tables (June 28, 2011), at 2170; Ex. 154 to Crockett
12 Decl., Defendant's October 10, 2013 Response to
13 Plaintiffs' Request for Production.) Accordingly, the
14 proposed Class and Subclasses meet the numerosity
15 requirement.

16 17 **3. Commonality**

18 Commonality requires Plaintiffs to demonstrate there
19 are "questions of law or fact common to the class." Fed.
20 R. Civ. P. 23(a)(2). Plaintiffs must demonstrate
21 "significant proof"⁵ that members of the class have

22 ⁵In Parsons II the Ninth Circuit noted that courts
23 have taken different views as to whether the "significant
24 proof" standard articulated in Wal-Mart applies to claims
25 outside of the employment discrimination context. See
26 754 F.3d at 684 n.29. It then declined to decide the
27 issue because it found that Plaintiffs had met their
28 burden under either a significant proof or lesser
standard. This Court assumes without deciding that the
higher, "significant proof" standard applies in this
action. This approach is consistent with other district
courts in the Ninth Circuit that have applied the

(continued...)

1 suffered the same injury, and not merely that they have
2 suffered violations of the same provision of law."
3 Wal-Mart, 131 S. Ct. at 2551. Plaintiffs' claims must
4 depend on a "common contention" and "[t]hat common
5 contention . . . must be of such a nature that it is
6 capable of classwide resolution – which means that
7 determination of its truth or falsity will resolve an
8 issue that is central to the validity of each one of the
9 claims in one stroke." Id. "Plaintiffs need not show
10 that every question in the case, or even a preponderance
11 of questions, is capable of classwide resolution. So
12 long as there is 'even a single common question' a
13 would-be class can satisfy the commonality requirement of
14 Rule 23(a)(2)." Wang v. Chinese Daily News, Inc., 737
15 F.3d 538, 544 (9th Cir. 2013) (quoting Wal-Mart, 131 S.
16 Ct. at 2556.) Thus, commonality exists even "[w]here the
17 circumstances of each particular class member vary but
18 retain a common core of factual or legal issues with the
19 rest of the class." Evon v. Law Offices of Sidney
20 Mickell, 688 F.3d 1015, 1029 (9th Cir. 2012) (quoting
21 Parra v. Bashas', Inc., 536 F.3d 975, 978–79 (9th Cir.
22 2008).) In a civil rights class action, "commonality is
23 satisfied where the lawsuit challenges a system-wide
24 practice or policy that affects all of the putative class

25
26 ⁵(...continued)
27 "significant proof" standard to classes of prisoners
28 seeking injunctive relief. See Parsons I, 289 F.R.D. at
522; Amador v. Baca, 2014 WL 1679013, at *3 (C.D. Cal.
Mar. 12, 2014).

1 members." Armstrong v. Davis, 275 F.3d 849, 868 (9th
2 Cir. 2001).

3
4 In this action, the crucial question is whether the
5 Plaintiffs have submitted "sufficient evidence of
6 systemic and centralized policies or practices in a
7 prison system that allegedly expose all inmates in that
8 system to a substantial risk of serious future harm."
9 Parsons II, 754 F.3d at 684. Plaintiffs must provide
10 more than conclusory or "threadbare" allegations that
11 systemic policies and practices exist. Id. at 48.
12 Rather, proof that there are "in fact . . . common
13 questions of law or fact" is required. Wal-Mart, 131 S.
14 Ct. at 2551. In this analysis, "a district court must
15 consider the merits if they overlap with the Rule 23(a)
16 requirements." Ellis, 657 F.3d at 981. Thus, it may be
17 necessary for the Court to "probe behind the pleadings"
18 in evaluating proof of systemic policies and practices.
19 Comcast Corp. v. Behrend, 133 S. Ct. 1426, 1432 (2013).
20 The Court, however, may examine the underlying claims of
21 the Plaintiff only for the purposes of determining
22 whether common questions exist; it may not conduct a
23 "mini-trial on the merits" prior to certification.
24 Ellis, 657 F.3d at 983 (citing Wal-Mart, 131 S. Ct. at
25 2552 n. 6); see also Amgen Inc. v. Connecticut Ret. Plans
26 & Trust Funds, — U.S. —, 133 S. Ct. 1184, 1194-95
27 (2013) ("Rule 23 grants courts no license to engage in
28 free-ranging merits inquiries at the certification stage.

1 Merits questions may be considered to the extent - but
2 only to the extent - that they are relevant to
3 determining whether the Rule 23 prerequisites for class
4 certification are satisfied."); Messner v. Northshore
5 Univ. HealthSystem, 669 F.3d 802, 811 (7th Cir. 2012)
6 ("the court should not turn the class certification
7 proceedings into a dress rehearsal for the trial on the
8 merits.").

9
10 **i. Evidence Submitted in Support of and in**
11 **Opposition to the Existence of Commonality**

12 In support of their Motion, Plaintiffs submitted
13 extensive evidence, including: (1) declarations of the
14 named Plaintiffs; (2) expert opinions of Dr. Wilcox and
15 Dr. Stewart; (3) Riverside County jail records, such as
16 autopsy reports of inmates who have died, safety cell
17 logs, and inmate grievances; (4) official County
18 documents related to mental health staffing at the jails,
19 standards and policies for medical and mental health care
20 at the jails, and depositions of county employees; and
21 (5) the 2010-2011 and 2011-2012 Grand Jury Reports and
22 related documents.⁶ In their Reply, Plaintiffs submitted
23 the County's records of court orders issued from
24 Riverside County Superior Courts to Riverside Jails from

25
26 ⁶Both parties filed all documents related to the
27 medical and jail records of all inmates who are not named
28 Plaintiffs in this action under seal pursuant to the
protective order issued in this action. (See Doc. No.
19.) To the extent possible, the parties filed redacted
versions of the evidence submitted to the Court.

1 2011-2014 ("court orders"), statistical analysis of those
2 court orders, and the supplemental declarations of Dr.
3 Wilcox and Dr. Stewart.⁷

4
5 ⁷Defendant objects to the court orders, Lynch's
6 analysis of the court orders, and the supplemental
7 declarations of Dr. Wilcox and Dr. Stewart on the basis
8 that it is improper to submit new factual or legal
9 arguments for the first time in reply. (See Def.'s
10 Response.) Generally, "reply briefs are limited in scope
11 to matters either raised by the opposition or unforeseen
12 at the time of the original motion." Burnham v. City of
13 Rohnert Park, 1992 WL 672965, at *1 n. 2 (N.D. Cal. May
14 18, 1992) (citing Lujan v. National Wildlife Federation,
15 497 U.S. 871 (1990).) "New evidence submitted as part of
16 a reply is improper" because it does not allow the
17 Defendant an adequate opportunity to respond. Morris v.
18 Guetta, 2013 WL 440127, *8 (C.D. Cal. Feb. 4, 2013). For
19 this reason, the district court may decline to consider
20 new evidence or arguments raised in reply, and generally
21 "should not consider the new evidence without giving the
22 non-movant an opportunity to respond." Provenz v.
23 Miller, 102 F.3d 1478, 1483 (9th Cir. 1996); Deirmenjian
24 v. Deutsche Bank, A.G., 2006 WL 4749756, at *6 n.52 (C.D.
25 Cal. Sept. 25, 2006). The opportunity for rebuttal,
26 however, need not be in writing; an opportunity for oral
27 rebuttal may be sufficient. See Smith v. Microsoft
28 Corp., 2013 WL 6497073, at *2 (S.D. Cal. Dec. 10, 2013)
(considering new evidence in a reply for a motion for
class certification); Jones v. ConAgra Foods, Inc., 2014
WL 2702726, at *22 (N.D. Cal. June 13, 2014) (considering
new evidence in reply brief in support of class
certification). Here, the court orders were referred to
in Plaintiffs' Motion and the actual records of the court
orders were supplied by the Defendant to Plaintiffs in
discovery. (See Mot. at 8.) Thus, it is debatable
whether this evidence raises "new matters." See Gambra
v. Int'l Lease Fin. Corp., 377 F. Supp. 2d 810, 827 (C.D.
Cal. 2005) ("The Court finds that defendants' reply brief
and supporting materials do not raise new matters and
should not be stricken."). Assuming the court orders and
the accompanying analysis are new evidence, the Defendant
has submitted substantial written objections to all of
the "new" material. (See Def.'s Objs. to Pls.'s Ex. A-E
(Doc. No. 116); Wilcox Reply Evid. Objs. (Doc. No. 113);
Stewart Reply Evid. Objs. (Doc. No. 114).) Thus, the
Court will consider the evidence Plaintiffs' submitted in
Reply, as well as Defendant's written objections and any
oral arguments at the hearing. See Provenz, 102 F.3d at
1483 (suggesting the district court erred in considering
the moving party's new evidence submitted in reply and

(continued...)

1 In opposition to the Motion, Defendant submitted the
2 declarations of 14 County employees; the declaration of
3 the Chief Executive Officer for Inland Empire Health
4 Plan; the expert opinions of four physicians; and
5 hundreds of pages of Riverside County jail records,
6 inmate mental health and medical records, and transcripts
7 of deposition testimony. In addition, the Defendant
8 submitted over 1,000 evidentiary objections to
9 Plaintiffs' evidence. As the Court details below, the
10 majority of these objections are challenges to the
11 credibility of the named Plaintiffs and proposed class
12 members, catalogued disagreements with the opinions of
13 Plaintiffs' experts, disputes over the interpretation of
14 facts and evidence, and repetitive objections that are
15 often obviously inapplicable. Defendant's misguided
16 objections are largely inappropriate at the class
17 certification stage as the Court is limited in its
18 ability to resolve factual disputes and may not hold a
19 mini-trial on the merits.

20
21 **ii. Commonality Evidentiary Standard**

22 "At the class certification stage, the Court makes no
23 findings of fact, nor any ultimate conclusions on
24 Plaintiffs' claims." Velazquez v. Costco Wholesale
25 Corp., 2011 WL 4891027, at *2 (C.D. Cal. Oct. 11, 2011).

26 _____
27 ⁷(...continued)
28 not considering the non-moving party's supplemental
declaration in response).

1 Accordingly, "evidentiary rules unrelated to expert
2 testimony are not applied with rigor in deciding motions
3 for class certification." Cholakyan v. Mercedes-Benz,
4 USA, LLC, 281 F.R.D. 534, 550 (C.D. Cal. 2012);
5 Velazquez, 2011 WL 4891027, at *2 ("[T]o the extent the
6 Court relies on evidence to which the parties object, the
7 Court overrules the objections. This is because at the
8 class certification stage, the Court makes no findings of
9 fact, nor any ultimate conclusions on Plaintiffs' claims,
10 and the Court may consider inadmissible evidence.");
11 Keilholtz v. Lennox Hearth Prods., 268 F.R.D. 330, 337 n.
12 3 (N.D. Cal. 2010) ("On a motion for class certification
13 . . . the Federal Rules of Evidence take on a
14 substantially reduced significance, as compared to a
15 typical evidentiary hearing or trial"); Parkinson v.
16 Hyundai Motor Am., 258 F.R.D. 580, 599 (C.D. Cal. 2008)
17 ("[A] motion for class certification . . . need not be
18 supported by admissible evidence.").

19
20 The Court applies a more rigorous evidentiary
21 standard in regard to expert testimony, even at the class
22 certification stage. See Wal-Mart, 131 S.Ct. at 2554
23 (expressing "doubt" that expert testimony is admissible
24 in evaluating a class action without a Daubert analysis);
25 Ellis, 657 F.3d at 982 (in a class certification motion
26 "the district court correctly applied the evidentiary
27 standard set forth in Daubert"); Cholakyan, 281 F.R.D. at
28 541-42 (applying Daubert analysis to expert testimony in

1 class certification motion). Rule 702 of the Federal
2 Rules of Evidence permits admission of "scientific,
3 technical or other specialized knowledge" by a qualified
4 expert if it will "assist the trier of fact to understand
5 the evidence or to determine a fact in issue." Fed. R.
6 Evid. 702. A trial judge has a "gatekeeping" obligation
7 with respect to opinion testimony of experts. Daubert v.
8 Merrell Dow Pharmaceuticals, 509 U.S. 579, 589 (1993).
9 "[T]he trial judge must "ensure that any and all
10 scientific testimony or evidence admitted is not only
11 relevant, but reliable." Id. All forms of expert
12 testimony, not just scientific testimony, are subject to
13 the trial court's gatekeeping role. Kumho Tire Co. v.
14 Carmichael, 526 U.S. 137, 147-149 (1999); White v. Ford
15 Motor Co., 312 F.3d 990, 1007 (9th Cir. 2002) (finding
16 that the trial judge is required to "apply his
17 gatekeeping role . . . to all forms of expert testimony,
18 not just scientific testimony."). Under Daubert, the
19 court must make "a preliminary assessment of whether the
20 reasoning or methodology underlying the testimony is
21 scientifically valid and of whether that reasoning or
22 methodology properly can be applied to the facts in
23 issue." Daubert, 509 U.S. at 543.

24
25 The Court has reviewed all of evidence submitted in
26 support, and in opposition to, the existence of
27 commonality for the Class and the Subclasses, and
28 summarizes the evidence presented below.

iii. Declarations

1 In support of their Motion, Plaintiffs filed
2 declarations from nearly all named Plaintiffs.⁸ (See Ex.
3 1 to Crockett Decl. (Doc. No. 32) ("Gray Decl."); Ex. 2 to
4 Crockett Decl. ("McClellan Decl."); Ex. 3 to Crockett
5 Decl. ("Miller Decl."); Ex. 4 to Crockett Decl. ("Rosson
6 Decl."); Ex. 155 to Crockett Decl. ("Wohlfeil Decl.");
7 Ex. 157 to Crockett Decl. ("Patterson Decl."))
8 Defendant filed evidentiary objections to all of the
9 named Plaintiffs' Declarations. ("Evid. Objs. to Pls.'
10 Decl. (Doc. No. 85).) Plaintiffs responded to all of
11 Defendant's objections. (See Doc. Nos. 95, 98, 106, 107,
12 108, 109.)
13

14 Defendant submitted lengthy evidentiary objections to
15 all named Plaintiffs' declarations. Most commonly,
16 Defendant objects that a statement in the Plaintiff's
17 declaration "misstates the evidence." These objections
18 are supported by citations to jail medical records, which
19 Defendant argues contradict Plaintiffs' statement either
20 because there is no evidence in the jail medical record
21 supporting the statement, or, the record appears to
22 contradict the statement.⁹ All of the Plaintiffs'
23

24 ⁸Although many of the experts in this case reviewed
25 the medical records of Plaintiff Kujawsky, the Plaintiffs
26 only filed an excerpt from Kujawsky's deposition. (See
27 Ex. 7 to Crockett Decl. ("Kujawsky Dep."))

28 ⁹See, e.g., Ex. A to Evid. Objs. to Pls.' Decl. Obj.
11 (Gray declares he slept on the floor because he was

(continued...)

1 declarations are based on personal knowledge and signed
2 under penalty of perjury. The existence of discrepancies
3 between Plaintiffs' versions and what is documented in
4 the jail records does not render the Plaintiffs'
5 declarations inadmissible, or even unreliable. This is
6 especially so given the Plaintiffs' contention that the
7 County maintains grossly inadequate inmate records that
8 are incomplete and unreliable.

9
10 Defendant raises numerous other evidentiary
11 objections to the declarations such as: (1) unqualified
12 expert opinion and improper opinion;¹⁰ (2) lacks

13
14 ⁹(...continued)
15 afraid of falling out of bed; Defendant objects that
16 misstates the evidence because medical records indicate
17 Gray was approved for a low tier, low bunk cell
18 assignment); Obj. 17 (Gray declares that some of his
19 medications cause episodes of tardive dyskinesia;
20 Defendant objects because the jail medical records do not
21 indicate he suffered from that condition); Ex. F to Evid.
22 Objs. to Pls.' Decl. Obj. 12 (Wolfheil states that he
23 waited a year for his lumps to be biopsied; Defendant
24 argues this misstates the evidence because the records
25 state that Wohlfeil repeatedly refused treatment); Ex. C
26 to Evid. Objs. to Pls.' Decl. Obj. ¶ 14 (Miller declares
27 she submitted numerous blue slips requesting blood work;
28 Defendant objects this assumes facts contrary to evidence
because the records only show one blue slip); Ex. B to
Evid. Objs. to Pls.' Decl. Obj. 3 (McClellan states he
took the medication Trazodone and Visatril; Defendant
objects that this assumes facts not in evidence).

24 ¹⁰See, e.g., Ex. E to Evid. Objs. to Pls.' Decl. ¶ 2
25 (Rosson states that he wants to make a difference for
26 others by improving medical and mental health care for
27 all prisoners in Riverside County jail; Defendant objects
28 that this is improper opinion by a lay witness because
the evidence actually shows that inmates receive adequate
medical and mental healthcare); Ex. C to Evid. Objs. to
Pls.' Decl. ¶ 6 (Miller states that she had trouble

(continued...)

1 foundation;¹¹ (3) vague;¹² and (4) irrelevant.¹³ At the
2 class certification stage, the Court makes no findings of
3 fact, or any ultimate conclusions on Plaintiffs' claims.
4 Thus, it is not necessary to resolve every evidentiary
5 issue raised by the Defendant, especially when the
6 majority lack merit and are raised on objectionable
7 grounds. See Cholakyan, 281 F.R.D. at 550; Jimenez v.
8 Domino's Pizza, Inc., 238 F.R.D. 241, 246 (C.D. Cal.
9 2006) ("a strategy of blunderbuss, repetitive, blanket
10 objections" is "an unhelpful diversion."). Accordingly,
11 to the extent the Court considers any statement in the
12 Declarations to which Defendant objects, the Court
13 overrules the objection.

14
15
16 ¹⁰(...continued)
17 adjusting and felt depressed when her medications were
18 changed; Defendant objects this is improper expert
19 opinion because she is not qualified to opine on whether
20 other medications would have been more effective).

21 ¹¹See, e.g., Ex. E to Evid. Objs. to Pls.' Decl. ¶ 10
22 (Rosson states that he did not get his night time pills
23 at regular times at Presley; Defendant objects "lacks
24 foundation").

25 ¹²See, e.g., Ex. A to Evid. Objs. to Pls.' Decl. Obj.
26 16 ("Gray states it "got so bad I had to be put in the
27 hospital"; Defendant objects that "got so bad" is vague).

28 ¹³Ex. F to Evid. Objs. to Pls.' Decl. Obj. 31
(Wolfeil states that dental care is very bad; Defendant
objects that is irrelevant because no Plaintiff has
standing to raise dental issues); Ex. D to Evid. Objs. to
Pls.' Decl. ¶ 17 (relevance objection to Patterson's
statement because treatment cited occurred before January
1, 2013); Ex. C to Evid. Objs. to Pls.' Decl. ¶ 5
(relevance objection to Miller's statement because events
occurred before 2013).

a. Quinton Gray

1
2 Plaintiff Gray is a former prisoner of the Riverside
3 Jails. (Gray Decl. ¶ 2.) He suffers from multiple
4 chronic medical and mental health conditions, including
5 seizures, high blood pressure, severe arthritis, and
6 visual and auditory hallucinations and depression. (Id.
7 ¶ 2.) While he was in the Riverside Jails, Gray only
8 received his medications after he "went to Court." (Id.
9 ¶ 6.) He has encountered difficulties getting his
10 medications at the appropriate times: pill call was often
11 cancelled, his medicine was not timed to be taken with
12 meals, and he did not receive medication when he went to
13 court. (Id. ¶ 14.) In addition, it was very difficult
14 for Gray to renew his medications; he had to file
15 multiple blue slips and grievance forms before it was
16 renewed, resulting in gaps in administration of the
17 pills. (Id. ¶¶ 15, 16.) Gray was placed in a safety
18 cell five times during his imprisonment.¹⁴ (Id. ¶ 28.)
19 The conditions in the safety cells were filthy, and there
20 were feces on the walls. (Id. ¶ 29.) While he was in
21 the cells he did not receive any treatment and was given

22
23 ¹⁴At the hearing, Defendant argued that Gray's
24 Declaration was not credible because Riverside Jail
25 records indicated that he was only placed in a safety
26 cells once. The Court does not find this discrepancy
27 sufficient to disregard Gray's Declaration, and it would
28 be inappropriate to make a credibility determination as
to the number of times that Gray was placed in a safety
cell at the class certification stage. Moreover, finding
that Gray had only been placed in a safety cell once
would not defeat commonality as to alleged deficiencies
in Defendant's safety cell policies; the issue only goes
to credibility of Gray's Declaration.

1 very little food and water. (Id.) Gray was once held in
2 a restraint chair and while restrained he soiled himself
3 and was provided no food or water. (Id. ¶ 31.) In order
4 to avoid the safety cell, Gray would not tell custody
5 staff if he was feeling very depressed or hearing voices.
6 (Id. ¶ 32.) Gray felt uncomfortable speaking about his
7 mental health problems with nursing staff because the
8 custody officers were present and could hear what he was
9 saying. In addition, he knew the custody staff reviewed
10 all medical grievances. (Id. ¶¶ 34-35.) Finally, Gray
11 suffered repeated seizures while he was in prison.
12 Despite his seizure condition, he was not assigned to a
13 lower tier, and thus was forced to take the stairs
14 despite the danger he might be injured. (Id. ¶ 3.) He
15 fell once and hit his teeth on the stairs. (Id.)

16
17 **b. Brandy McClellan**

18 McClellan has been in the custody of the Riverside
19 Jails since early November 2013. (McClellan Decl. ¶ 1.)
20 When McClellan arrived at Presley the custody staff asked
21 her whether she was on "psych meds," if she had been
22 suicidal in the past, and whether she felt like hurting
23 herself or others, and she answered "no" to all of these
24 questions. (Id. ¶ 3.) After requesting to see a
25 psychiatrist, she was prescribed Trazodone and Vistaril
26 to treat her anxiety and mood swings. (Id. ¶ 5.) After
27 taking the medication for a short time, she had to be
28 transported to the emergency room because she began

1 feeling dizzy, foaming at the mouth, and slurring her
2 speech. (Id. ¶¶ 8-9.) When McClellan returned to the
3 hospital, the nurse continued to provide her with the
4 same combination of medication, but she refused to take
5 it. (Id. ¶ 9.) After refusing the medication, McClellan
6 filed a blue slip requesting a change in medication, but
7 did not see a psychiatrist again until several weeks
8 later. (Id. ¶ 9.) McClellan's medication was changed
9 and she is now supposed to take some of her medicine in
10 the morning and some at night; however, the evening pill
11 call often happens between 3:00 and 4:00 p.m. (Id. ¶
12 10.)

13
14 **c. Julie Miller**

15 Miller has been in the custody of Riverside Jails
16 since May 2011. (Miller Decl. ¶ 1.) When Miller first
17 arrived she submitted numerous blue slips requesting
18 blood work and to see the infectious disease clinic, but
19 her requests were ignored until five months later when a
20 judge issued a court order regarding the requested
21 treatment. (Id. ¶ 14.) Miller did not receive
22 medication to manage her manic depression and attention-
23 deficit hyperactivity disorder until several months after
24 she entered the jail. (Id. ¶ 5.) Her medications have
25 been changed several different times while in jail, and
26 each time she has not been informed of the side effects
27 of the medicine or monitored to see if the medications
28 are working. (Id. ¶ 6.) She gained 60 pounds as a side

1 effect of one medication she was prescribed.¹⁵ She does
2 not receive her sleeping medication at the appropriate
3 time because the medication delivery happens anytime
4 between 3:00 p.m. and 8:00 p.m. (Id. ¶ 9.) When her
5 prescription runs out, she must file a blue slip to get
6 it renewed, which sometimes takes a long time and results
7 in time without any medication. (Id. ¶ 10.) When Miller
8 meets with mental health staff it is in the attorney
9 visiting non-contact booth, and there is darkened glass
10 between her and the staff. (Id. ¶ 12.) Her meetings
11 with mental health staff are often overheard by custody
12 staff. (Id. ¶ 13.)

13
14 **d. John Rosson III**

15 Rosson has been in the custody of Riverside Jails
16 since September 2008. (Rosson Decl. ¶ 1.) Rosson
17 suffers from a history of hyperlipidemia, non-insulin
18 dependent diabetes, hypertension, deep vein thrombosis,
19 recurrent cellulitis, anxiety, paranoia, depression, and
20 is bipolar and has a personality disorder. Rosson was
21 given multiple medications, including psychotropic
22

23 ¹⁵At the hearing Defendant argued that jail records
24 indicate that Miller actually lost weight during her time
25 in custody, and thus her declaration lacks credibility
26 and should not be considered. Plaintiffs argued that
27 Defendant's conclusion is drawn from an interpretation of
28 jail records from the wrong period of time. This is
another example of a factual dispute that is not resolved
appropriately at the class certification stage.
Furthermore, the existence of a factual dispute is not
sufficient to disregard the Miller's Declaration as
lacking credibility.

1 medications, to treat these conditions, but staff did not
2 monitor whether medication for one condition would have a
3 negative effect on a different condition. (Id. ¶ 6.) In
4 addition, he did not get his nighttime pills at a regular
5 time, and would sometimes receive them as early as 2:00
6 or 3:00 p.m. (Id. ¶ 10.) There were many times when
7 Rosson's medications were not renewed on time, and
8 without his medications he suffered anxiety, depression,
9 paranoia, began to hear voices, and sometimes tried to
10 harm himself. (Id. ¶ 6.) The times Rosson was placed in
11 the safety cells the cells were dirty, sometimes with wet
12 blood and feces stains on the floor. (Id. ¶ 7.) When
13 Rosson's condition did not stabilize in the safety cell
14 he was sent to Riverside County Regional Medical Center
15 for an evaluation. (Id.) Rosson has had difficulties
16 seeing mental health staff; often waiting for weeks.
17 (Id. ¶ 11.) Any meetings with the psychiatrist always
18 happen at his cell door where other inmates can overhear
19 the conversation. (Id. ¶ 12.)

20
21 **e. Michael Wohlfeil**

22 Wohlfeil has been in the custody of Riverside Jails
23 since January 2011. (Wohlfeil Decl. ¶ 1.) He suffers
24 from hypothyroidism, Hepatitis C, back pain, and "foot
25 drop." (Id. ¶ 4.) Shortly before Wohlfeil entered jail,
26 his doctor told him he needed to be tested for colon
27 cancer. Once in jail, he began developing lumps on his
28 body, losing weight, and suffering diarrhea attacks five

1 or six times a day. (Id. ¶ 5.) He filed a blue slip to
2 see a doctor for his thyroid medication, but did not get
3 a prescription until the judge in his case issued a court
4 order. (Id. ¶ 6.) Wohlfeil did not see a doctor about
5 his other medical conditions for five months, and after
6 he saw the doctor it was over a year before his tumors
7 were biopsied. (Id. ¶ 8.) The tumors were not
8 cancerous, and he had surgery to remove the two largest
9 ones. (Id. ¶ 10.) He did not receive an MRI for his
10 back pain until October 2013, and after the MRI he was
11 prescribed pain medication. He saw a gastroenterology
12 specialist for his diarrhea in July 2013, but could not
13 complete the procedures ordered by the specialist because
14 he was not given appropriate pre-procedure instructions.
15 (Id. ¶ 12.) He has experienced lapses in medication due
16 to delays in renewing his prescriptions.

17
18 **f. Angela Patterson**

19 Patterson was an inmate in the Riverside Jails from
20 July 2009 to March 2013. (Patterson Decl. ¶ 1.) In June
21 2009, doctors placed a temporary filter in her inferior
22 vena cava (IVC) to prevent blood clots in her legs from
23 traveling to her heart. (Id. ¶ 4.) The filter was
24 intended to be in place for three months, and during this
25 time Patterson was prescribed blood-thinners. Patterson
26 was transferred directly from the hospital to Presley,
27 and she released her medical records to the County and
28 informed the County jail staff of her medical conditions

1 and the IVC filter when she arrived. (Id. ¶ 7-8.)
2 Surgery to remove the filter was not scheduled until June
3 2010, and when it did occur, the surgery was unsuccessful
4 because too much scar tissue attached to the IVC. As a
5 result, the IVC filter is now permanent and Patterson
6 must remain on blood thinning medication for the rest of
7 her life. In addition, daily doses of medication were
8 often not delivered because of understaffing; pills were
9 delivered at different hours throughout the day; she did
10 not receive medication when she went to court; and she
11 does not receive regular blood testing or monitoring.
12 (Id. ¶¶ 20-22.) Finally, she never received follow-up
13 treatment for a lump on her scalp. (Id. ¶ 23.)

14 **iv. Plaintiffs' Expert Opinions**

15 Plaintiffs filed the expert opinions of Dr. Pablo
16 Stewart and Dr. Thomas Wilcox in support of their Motion.
17 (See Stewart Decl. (Doc. No. 29); Stewart Reply Decl.
18 (Doc. No. 103); Wilcox Decl. (Doc. No. 35-1); Wilcox
19 Reply Decl. (Doc. No. 104).) Defendant filed voluminous
20 evidentiary objections to both expert opinions.
21

22 **a. Dr. Pablo Stewart**

23 Defendant filed 418 evidentiary objections to Dr.
24 Stewart's 42 page Declaration (Stewart Evid. Objs. (Doc.
25 No. 79)); as well as additional, separate, objections to
26 Dr. Stewart's analysis of the medical care individual
27 Plaintiffs and inmates received. (See Stewart Inmate
28

1 Evid. Objs. (Doc. No. 81).) Defendant also filed an
2 additional 136 evidentiary objections to Dr. Stewart's
3 Reply Declaration. ("Stewart Evid. Objs. 2" (Doc. No.
4 114).) Plaintiffs filed responses to all of Defendant's
5 objections to the first Declaration.¹⁶ See Pls. Resp.
6 Def.'s Objs. (Doc. Nos. 96, 98, 99, 100, 101, 106, 107,
7 108, 109.) Defendant's objections to Dr. Stewart's first
8 declaration boil down to the argument that Dr. Stewart is
9 not qualified to render an expert opinion because he
10 relies on sources, namely inmate declarations and
11 grievances, that are not reasonably relied on by experts
12 in the field. (Stewart Evid. Objs. at 3.) Accordingly,
13 Defendant objects that all of his opinions are "ipse
14 dixit conclusions"; his declaration lacks foundation; and
15 all references to medical records are inadmissible
16 hearsay.¹⁷

17 ¹⁶After submitting approximately 500 evidentiary
18 objections to Dr. Stewart's Declaration, Defendant has
19 the audacity to suggest that, under Federal Rule of
20 Evidence 103, Plaintiffs are not permitted to respond to
21 these objections because there is no procedural basis for
22 Plaintiffs to file any kind of response. (See Def.'s
23 Response at 7-11.) Federal Rule of Evidence 103 governs
24 rulings on evidence, and after reviewing the Rule, the
25 Court finds no basis for Defendant's contention. In a
26 reply, it is perfectly appropriate for the moving party
27 to respond to issues in raised by the non-moving party in
28 opposition. Accordingly, the Court will consider the
Plaintiffs' response to Defendant's objections to Dr.
Stewart's Declaration, as well as Plaintiffs' response to
the hundreds of other evidentiary objections Defendant
submitted in opposition.

¹⁷Defendant also objects on the basis that the
medical records that Dr. Stewart reviewed in forming his
opinion were not submitted to the Court, and therefore
are hearsay. The medical records described in Dr.

(continued...)

1 Dr. Stewart is a psychiatrist and Clinical Professor
2 in the Department of Psychiatry of the University of
3 California, San Francisco. He has experience managing,
4 monitoring, and reforming correctional mental health
5 systems, and previously served as a Director of Forensic
6 Psychiatric Services for the City and County of San
7 Francisco. (Stewart Decl. ¶¶ 1-4.) Dr. Stewart has
8 served as a psychiatric expert to federal courts and
9 other organizations implementing remedial decrees or
10 inspecting facilities regarding the provision of mental
11 health care in correctional institutions, including the
12 United States Department of Justice, the State of New
13 Mexico, and federal courts in the Eastern District of
14 California. (Id. ¶ 3.)

15
16 Dr. Stewart reviewed healthcare records from current
17 and former Riverside prisoners, Riverside jail health
18 care policies, prisoner declarations and grievances,
19 death reports, autopsy reports, safety cell and restraint
20 chair logs, audits and reports regarding health care

21 _____
22 ¹⁷(...continued)

23 Stewart's declaration are not offered for the truth of
24 the matter asserted. Rather, they are illustrations of
25 the reasons for Dr. Stewart's opinion. As the Ninth
26 Circuit case cited by the Defendant states, "Rule 703
27 merely permits such hearsay, or other inadmissible
28 evidence, upon which an expert properly relies, to be
admitted to explain the basis of the expert's opinion."
Paddack v. Dave Christensen, Inc., 745 F.2d 1254, 1261
(9th Cir. 1984). Accordingly, the Court may consider the
medical records in the context of Dr. Stewart's opinion,
but they are not being considered, at this stage, for
their truth.

1 delivery in the Riverside jails, and budget and staffing
2 information. (Id. ¶ 5.) In addition, Dr. Stewart
3 submitted a reply declaration after reviewing the
4 declarations of the County employees, the declarations of
5 Defendant's physicians, and the County's records of court
6 orders. (Stewart Reply Decl. ¶ 1.) Dr. Stewart has not
7 yet visited the Riverside Jails or spoken to staff or
8 prisoners; however, he offers his preliminary opinion
9 that the County fails to deliver adequate and appropriate
10 mental health care to inmates in its jails. (Id. ¶¶ 7-
11 8.)

12
13 Defendant does not contest Dr. Stewart's training or
14 experience. Rather, Defendant argues that his opinion is
15 inadmissible because it is based on information on which
16 reasonable experts in the field would not rely. (Stewart
17 Evid. Objs. at 3; Opp'n. at 14-15.) Specifically,
18 Defendant criticizes Stewart's consideration of inmates'
19 grievances on the basis that the grievances are
20 contradicted by jail records, and many recent grievances
21 were "created by inmates at the direction of counsel for
22 Plaintiffs'." (Opp'n. at 15.) In addition, Defendant
23 argues that inmates often lie, so a grievance or a
24 declaration written by an inmate is not reliable. (Id.
25 at 14-15; see, e.g., Ex. B to Stewart Inmate Evid. Objs.
26 at 7 ("Hearsay . . . No reasonable expert would rely on
27 the declaration of an inmate as a sole source of
28 information.")) Defendant's criticism is supported by

1 Defendant's expert Dr. Gislason, who criticizes Dr.
2 Stewart's consideration of Gray's and Rosson's
3 declarations because he finds the declarations
4 untrustworthy. (Gislason Decl. ¶¶ 28-29, 70.)

5
6 The Court notes that Dr. Gislason does not challenge
7 the type of information, i.e., inmate grievances and
8 declarations. Rather, Dr. Gislason challenges the
9 specific declarations of Rosson and Gray on the basis
10 that he believes they are not credible. After reviewing
11 the testimony and qualifications of Dr. Stewart, and the
12 declaration of Dr. Gislason, the Court finds that Dr.
13 Stewart's consideration of the inmates' declarations and
14 grievances as one of several sources informing his
15 opinion is a valid methodology and does not render his
16 opinion inadmissible.

17
18 Aside from Defendant's objections to Dr. Stewart's
19 methodology, a large number of Defendant's other
20 "objections" are simply catalogued disagreements with Dr.
21 Stewart's opinions. (See, e.g., Stewart Evid. Obj. 34
22 (Objection because Defendant's Expert, Dr. Gilbert,
23 reached a different conclusion regarding adequacy of
24 County's core patient treatment processes and policies).)
25 Other common objections include "lack of standing," lack
26 of foundation, hearsay, reliance on documents dated prior
27 to 2013, and "misstates the evidence." (See generally
28 Stewart Evid. Objs.; Stewart Inmate Evid. Objs.) The

1 Court has reviewed Defendant's objections that Dr.
2 Stewart's opinion misstates facts in the record and finds
3 that the "misstated facts" are more accurately cast as
4 differences in opinion. Similarly, Defendant's
5 "relevance" objections to Dr. Stewart's opinions are
6 largely disagreements about how to interpret facts in the
7 record. (See, e.g., Ex. A to Stewart Inmate Evid. Objs.
8 ("Dr. Stewart unnecessarily and unreasonably criticizes
9 the County for complying with the statute."))
10 Accordingly, to the extent the Court has relied on any
11 portions of Dr. Stewart's declaration to which Defendant
12 objects, Defendant's objection to Dr. Stewart's testimony
13 is overruled.¹⁸
14
15
16

17 ¹⁸Defendant's objections to Stewart's Supplemental
18 Declaration are largely similar, with the addition of the
19 following objections: (1) new evidence in reply; (2)
20 improper expert argument under United States v. Cano, 289
21 F.3d 1354, 1363 (11th Cir. 2002); (3) best evidence rule;
22 and (4) improper summary to prove content (Fed. R. Evid.
23 1006). (See generally Def.'s Objs. to Stewart Reply
24 Decl.) It is not necessary for the Court to address
25 these objections for the purposes of this Motion,
26 especially since many are raised on questionable grounds.
27 Defendant asserts the "new evidence in argument in reply"
28 objections when Dr. Stewart opines on information
submitted by the Plaintiffs in Reply, and even when he
opines on declarations submitted by the Defendant in
Opposition. (See, e.g., id. at Obj. 111.) Cano
addresses a lay witness delivering a "jury argument from
the witness stand"; it does not address an expert's
opinions. See 289 F.3d at 1363. Finally, the best
evidence and "improper summary to prove content"
objections do not apply to Dr. Stewart's descriptions of
the court orders because the references are made only for
the purpose of Dr. Stewart explaining the basis for his
expert opinion.

1 In his Declarations, Dr. Stewart evaluated a variety
2 of sources. In regard to his opinions regarding suicide
3 prevention, Dr. Stewart discusses three inmates who
4 committed suicide while held in Riverside Jails. The
5 first was a 24-year-old war veteran who suffered
6 posttraumatic stress disorder and bipolar disorder. When
7 he was booked, he attempted to stab himself with a pen,
8 and was placed in a safety cell. Once in the safety cell
9 he admitted to previous suicide attempts. He was removed
10 from the safety cell after Mr. Matloff, a marriage and
11 family therapist, interviewed him through the pill slot
12 in the door and determined he was no longer suicidal.
13 (Stewart Reply Decl. ¶ 7.) He was then placed by himself
14 in a cell that contained a telephone with a cord.
15 (Stewart Decl. ¶ 81.) An hour later he was found
16 unconscious with the cord wrapped around his neck, and he
17 later died. (Id.) Dr. Stewart opines that Mr. Matloff
18 was unqualified to assess whether the inmate was
19 suicidal, it was inadequate to conduct such an interview
20 through the pill slot, and that the inmate's death could
21 have been prevented with proper placement and monitoring
22 of his condition. (Id.; Stewart Reply Decl. ¶ 7.)

23
24 Another inmate admitted to suicidal thoughts at
25 intake, was placed in a safety cell, and then six hours
26 later was cleared for release from the safety cell. A
27 day later he committed suicide by fashioning a noose from
28 a bed sheet and hanging himself from a bookshelf. Dr.

1 Stewart opines that he was inadequately monitored, and
2 that his suicide was preventable. (Id. ¶ 82.) A third
3 case of suicide involved an inmate who had entered the
4 Riverside Jails based on allegations of sexual acts with
5 a child. He committed suicide by hanging himself with a
6 bed sheet attached to the top bunk of the bed in his cell
7 during a 90 minute period in which he was unobserved.
8 Dr. Stewart opines that he should have been monitored for
9 self-harming behavior due to the nature of his alleged
10 crime. (Id. ¶ 83.)

11
12 Dr. Stewart concludes that the County "clearly
13 intends the Riverside jails to operate according to
14 system-wide policies, but that does not mean those
15 policies are adequate." (Stewart Decl. ¶ 12.) Dr.
16 Stewart identifies the following deficiencies in
17 Defendant's mental health policies and procedures:

- 18
19 • Chronic staffing shortages¹⁹ (¶¶ 28, 29).
20 • Inadequate intake policies and procedures,
21 including reliance on intake officers with no
22 specialized training to conduct mental health

23
24
25 ¹⁹Dr. Stewart acknowledges that the staffing
26 shortages have improved since 2011 and that the County is
27 currently staffed at or near their own desired staffing
28 levels, but questions whether the desired levels of
staffing are adequate given his assessment that the
amount of mental health care provided is insufficient.
(Stewart Decl. ¶ 29.)

1 screenings during intake procedures (¶¶ 18, 30-
2 37; Reply Decl. ¶ 12).²⁰

- 3 • Failure to provide timely access to mental
4 health care (¶¶ 51, 58; Reply Decl. ¶ 13).
- 5 • Failure to manage medication administration (¶¶
6 66, 75), including prescribing medication (¶¶
7 39, 43, 49), monitoring side effects and track
8 dangerous drug interactions (¶¶ 39-42), relying
9 on inmates to initiate refills of medication,
10 including psychotropic medication (¶ 75); and
11 failing to distribute medication at proper times
12 and in proper doses (¶¶ 39, 73, 76).
- 13 • Inadequate suicide prevention policies,
14 including delegating decisions regarding removal
15 from safety cells to unqualified mental health
16 staff and conducting evaluations of inmates in
17 safety cells through the pill slot (¶¶ 78, 79,
18 Reply Decl. ¶ 7).
- 19 • Misuse of safety cells and restraint chairs as
20 disciplinary measures (¶ 94).
- 21 • Failure to care for inmates in safety cells and
22 restraint chairs, including failure to monitor
23 restrained inmates, perform regular motion

24
25 ²⁰Dr. Stewart notes that the County's written policy
26 now provides that a registered nurse will do a follow-up
27 health screening with all inmates, but finds that this
28 policy is still inadequate because it does not provide a
time frame for the screening except that it has to be
done prior to the inmate being housed in the jail
population and does not require the nurse to have any
mental health training. (Stewart Decl. ¶ 19, n.3.)

1 checks, administer mental health treatment, or
2 provide food and water. In addition, there is a
3 pattern of inmates being removed from safety
4 cells before the internal 48 hour time limit and
5 then being returned to the cell shortly after
6 (¶¶ 88, 90. 92, 93, 95, 97, 98; Reply Decl. ¶ 6
7 n.1).

- 8 • Failure to clean safety cells (¶ 88).
- 9 • Failure to ensure appropriate record-keeping (¶
10 100).
- 11 • Use of custody staff to enter health requests
12 into medical records system which violates
13 inmates's privacy and inhibits mentally ill
14 inmates from seeking help they need (Reply Decl.
15 ¶ 3).

16
17 **b. Dr. Todd Wilcox**

18 Defendant submitted 291 objections to the 37 page
19 Declaration of Dr. Wilcox, and 185 to Dr. Wilcox's Reply
20 Declaration.²¹ (Wilcox Evid. Objs. (Doc. No. 82); Wilcox
21 Reply Evid. Objs.) Plaintiffs filed a response to all of
22 Defendant's objections to Dr. Wilcox's first Declaration.
23 (Doc. No. 97.)
24

25
26 ²¹Defendant's objections to Dr. Wilcox's Reply
27 Declaration are largely similar, if not identical, to the
28 objections submitted to Dr. Stewart's Reply Declaration.
Accordingly, the Court declines to rule on these
objections for the reasons stated above in regard to the
objections to Dr. Stewart's Reply Declaration.

1 Dr. Wilcox is a physician who has worked in jail and
2 prison environments for 18 years. (Wilcox Decl. ¶ 1.)
3 He is currently the Medical Director of the Salt Lake
4 County Jail System. (Id.) He has assisted facilities
5 and organizations around the country, such as the
6 California Department of Corrections and Rehabilitation,
7 the Mississippi Department of Corrections, Pima County
8 Department of Institutional Health, the National
9 Institutes of Corrections, the American Jail Association,
10 and the American Correctional Association, in improving
11 their delivery of care. (Id.) Dr. Wilcox's opinion is
12 based on his "extensive experience studying and
13 researching correctional systems," his experience in the
14 field, his experience as an expert and monitor in prison
15 and jail condition cases, and a review of depositions of
16 county employees, the declarations of named Plaintiffs,
17 and inmates' medical files and records. (Decl. ¶ 3.) In
18 addition, Dr. Wilcox submitted a reply declaration after
19 reviewing the declarations of the County employees, the
20 declarations of Defendant's physicians, and documents
21 related to the County's court order tracking system. Dr.
22 Wilcox has not yet visited the Riverside Jails or spoken
23 to staff or prisoners. (Id. ¶ 4.)

24
25 Defendant does not challenge Dr. Wilcox's
26 credentials, instead it objects to Dr. Wilcox's expert
27 opinion on the same grounds it objects to Dr. Stewart's,
28 i.e., Dr. Wilcox's reliance on inmates' declarations and

1 grievances. For the reasons stated above in relation to
2 Dr. Stewart's declaration, the Court finds that Dr.
3 Wilcox has employed reliable methodologies and is
4 qualified to give an expert opinion on the medical and
5 mental health care provided by Defendant in the Riverside
6 Jails. Defendant also objects to Dr. Wilcox's opinions
7 on the basis they are improper expert testimony, lack
8 foundation because the practices did not result in harm,
9 consist of "ipse dixit conclusions," improperly rely on
10 pre-2013 jail conditions, and are substantively
11 incorrect. Again, the Court need not resolve all of
12 these evidentiary objections for the purposes of class
13 certification, especially since many of the objections
14 are repetitive and based on questionable grounds. See
15 Cholakyan, 281 F.R.D. at 550.

16
17 Dr. Wilcox opines that there is "widespread,
18 pervasive, and systemic neglect throughout the critical
19 systems of the healthcare delivery model" and that the
20 "severe deficiencies" within the jail system are best
21 corrected through a common remedy. (Wilcox Decl. ¶¶ 5,
22 6.) In his Declarations, Dr. Wilcox identifies the
23 following deficiencies in Defendant's policies and
24 procedures:

- 25
26 • A system-wide practice of not following or
27 implementing the policies and procedures
28

1 governing the provision of health care to
2 prisoners (¶ 12).

- 3 • Grossly inadequate medical records system and
4 note taking that deviates from written policies
5 (¶¶ 13, 95, 96, 119).
- 6 • Reliance on court orders to spur provision of
7 medical care (¶¶ 14, 38, 39; Reply Decl. ¶¶ 6-
8 15).
- 9 • Inadequate staffing and reliance on temporary
10 staff (¶¶ 22, 27-29, 96, 114; Reply Decl. ¶ 19).
- 11 • Ineffective intake screening performed by
12 untrained custody staff who fail to identify
13 health concerns and accurately record medical
14 issues on booking forms (¶¶ 31, 32, 115).
- 15 • Failure to provide timely care (¶¶ 39, 49, 51,
16 55, 59).
- 17 • Lack of adequate policies and procedures to
18 provide for specialty medical consultations and
19 procedures (¶¶ 63, 67).
- 20 • Deficient procedures in the distribution and
21 refill of medications, including delivery of
22 evening pills in the early afternoon (¶¶ 79, 81,
23 94, 115).
- 24 • Defendant's medical and mental health grievance
25 policy inappropriately involves custody staff
26
27
28

1 and violates inmates' privacy (¶ 73, Reply Decl.
2 ¶ 18).²²

- 3 • Inadequate policies to ensure quality assurance,
4 including insufficient use of outside mechanism
5 to ensure quality (¶¶ 102-105, 120).

6
7 **v. Court Orders**

8 In their Reply, Plaintiffs organized and submitted
9 the County's records of court orders issued from
10 Riverside County Superior Courts to Riverside County
11 jails from 2011-2014 ("court orders")²³ into five
12 exhibits. (See Exs. A-E to the Decl. of Megan Lynch
13 ("Lynch Decl.") (Doc. No. 92.) Ms. Lynch, with the
14 assistance of John Bonacorsi, organized the court orders
15 by year and then catalogued the court orders within that
16 year based on several different categories. Exhibit A
17 organizes records of all of the court orders issued in
18

19 _____
20 ²²Dr. Wilcox acknowledges that Defendant changed its
21 policy so that requests for healthcare are provided
22 directly to nursing staff instead of being screened by
23 custodial staff, but opines that the new policy continues
24 to violate inmates' privacy, and thus create a risk of
25 harm, because the deputy is responsible for inputting the
26 request into the system and is aware of contents of the
27 request. As a result, prisoners remain in the "awkward
28 position of relaying sensitive information to those who
monitor their behavior on a daily basis." (Wilcox Reply
Decl. ¶ 18.)

29 ²³The documents submitted are the records of the
30 court orders and not copies of each individual court
31 order issued. For ease of reference, the Court refers to
32 the individual entries as "court orders." Defendant
33 provided Plaintiffs with the records of the court orders
34 in discovery.

1 2011 into eight "sheets"²⁴: (1) Court Orders 2011; (2)
2 JIMS Court Order Key; (3) Court Order History 2011²⁵; (4)
3 Medical; (5) Mental Health²⁶; (6) Unique Medical and
4 Mental Health²⁷; (7) Urgent²⁸; and (8) Annual Statistics.

5 _____
6 ²⁴"Sheet" is a term of art used by Excel, the brand
7 of software Defendant used to create records of the court
8 orders turned over to Plaintiffs. Plaintiffs also used
9 Excel in producing the Exhibits submitted to the Court.
10 (Lynch Decl. ¶ 4.)

11 ²⁵Sheet one includes: the prisoner's booking number,
12 the issue date of the court order, the category assigned
13 to the order by the County, and other identifying
14 information. (Lynch Decl. ¶ 6.) This sheet is a
15 modified version of Joint Trial Exhibit 4377, which was
16 produced by Defendant. Sheet two contains a key that
17 explains the codes used in the other sheets. (Lynch
18 Decl. ¶ 6.) This sheet is a modified version of Joint
19 Trial Exhibit 4377, which was produced by Defendant.
20 Sheet three "appears" to contain notes regarding the
21 County's responses to the court orders. (Id.) This
22 sheet is a modified version of Joint Trial Exhibit 4377,
23 which was produced by Defendant.

24 ²⁶Sheet four lists all the court orders from 2011
25 that pertain to medical treatment. (Lynch Decl. ¶¶ 16-
26 21.) Lynch created this sheet by using the County's
27 code, as provided in sheet two, to identify all the
28 orders that had been marked by the County as relating to
29 medical needs. Sheet five lists all the court orders
30 from 2011 that pertain to mental health treatment.
31 (Lynch Decl. ¶¶ 16-21.) Lynch created this sheet by
32 using the County's code to identify all the orders that
33 had been marked as the County as relating to mental
34 health. Lynch then manually reviewed these records and
35 removed entries "clearly not related to mental health
36 treatment in jails." (Id. ¶ 23.)

37 ²⁷Sheet six lists the booking number of each prisoner
38 who received a medical or mental health care court order
39 during 2011. (Lynch Decl. ¶¶ 24-28.) This sheet was
40 created by Bonacorsi at Lynch's direction.

41 ²⁸Sheet seven lists all "urgent" medical and mental
42 health orders for 2011. This list was compiled by
43 conducting a search of all court orders using the terms:
44 A.S.A.P, before, day, emergency, forthwith, hours, hrs.,
45 immediately, today, tomorrow, urgent, w/in, week, and
46 within. (Lynch Decl. ¶¶ 29-30.)

1 The court orders from 2012 (Ex. B), 2013 (Ex. C), and
2 2014 (Ex D), were organized in the same manner. Exhibit
3 E compiles all the information from Exhibits A-D and
4 provides a statistical analysis of the court orders
5 issued in 2011-2014.

6
7 Defendant objects to Lynch's analysis on the basis
8 that neither Lynch or Bonacorsi are experts, they are not
9 qualified to determine whether a court order pertains to
10 medical or mental health care based on "allegedly
11 disputed system-wide policies"; they are not qualified to
12 assess whether the county's codes relate to medical or
13 mental health care allegedly based on one of the disputed
14 system-wide policies; they are not qualified to determine
15 whether a court order is irrelevant to medical or mental
16 health treatment in jails; and they are not qualified to
17 determine whether a particular court order is "urgent."
18 (Def.'s Objs. to Pls.'s Ex. A-E.) In addition, Defendant
19 objects that the records of the court orders do not
20 reflect court orders for medical and mental health care
21 that was allegedly denied as a result of one of
22 Defendant's policies. (Id.)

23
24 Federal Rule of Evidence 1006 provides that "[t]he
25 contents of voluminous writings, recordings, or
26 photographs which cannot conveniently be examined in
27 court may be presented in the form of a chart, summary or
28 calculation." Fed. R. Evid. 1006. When a chart or

1 summary of evidence "does not contain complicated
2 calculations requiring the need of an expert for
3 accuracy, no special expertise is required in presenting
4 the chart," and thus a lay witness may establish the
5 foundation for admission of the summary evidence under
6 Rule 1006. Terry v. City of San Diego, 2011 WL 1897491,
7 *7 (S.D. Cal. May 18, 2011) (quoting U.S. v. Jennings,
8 724 F.2d 436, 442 (5th Cir. 1984)). The process Lynch
9 and Bonacorsi used is explained in detail in her
10 declaration. After reviewing the Lynch Declaration and
11 the exhibits, the Court is satisfied that her methodology
12 of categorizing the court orders is sufficiently reliable
13 and that the level of data analysis performed does
14 require specialized expertise or training.²⁹ Furthermore,
15 the Court notes that the court orders were organized
16 based on Defendant's coding system, and recognizes that
17 the court orders do not represent medical or mental
18 health that was denied based on one of the Defendant's

19
20 ²⁹The methods used consist of sorting the court
21 orders using the County's coding labels, applying the
22 "remove duplicate" function of Excel, and using the "find
23 and replace" and "keyword search" function of Excel. To
24 the extent some discretion was exercised, it was in
25 manually deleting orders not related to mental or medical
26 health care treatment at the jails, such as orders
27 related to releases of medical information, competency
28 evaluations and attorney access to records. Defendant
argues it is impossible to make such decisions without
the original court orders and that Lynch is not qualified
to do so. After reviewing the records the Court finds
they provide sufficient detail such that Ms. Lynch could
exclude non-relevant records. Moreover, Defendant has
not identified any specific court orders that is disputes
being classified as "medical health care" or "mental
health care."

1 alleged health care policies. Accordingly, the Court
2 overrules these objections and will consider the Exhibits
3 for the purposes of this Motion.

4
5 According to Lynch's analysis, a total of 9,316 court
6 orders relating to medical or mental health treatment
7 were issued between January 1, 2011 and March 10, 2014.
8 During this time period, a little over 4,000 different
9 prisoners received court orders related to healthcare.
10 (See Ex. E to Lynch Decl. at 766).³⁰ 1,737 of the court
11 orders during this period related to what Plaintiffs
12 classified as "urgent" medical needs. (See Ex. E to
13 Lynch Decl. at p. 766.) For example, an order issued on
14 November 6, 2013, states "Deft to be seen immediately
15 following court by jail mental health staff." (Ex. E to
16 Lynch Decl. at 521; see, e.g., December 11, 2013 Court
17 Order, "Crt Ord. Deft. be seen by jail physician regard
18 med. cond. and meds within 24H" (Id. at 389); May 2, 2012
19 Order, "Def to be seen by jail medical staff ASAP" (Id.
20 at 232); August 3, 2011 Order, "Inmate to be seen by
21 medical staff within 48 hours." (Id. at 114)).

22
23 Some of the court orders appear to reflect a poor
24 record of compliance by the Defendant with previous court

25
26 _____
27 ³⁰In 2011, 2,892 court orders issued; in 2012, 2,998
28 court orders issued; in 2013, 2,870 court orders issued,
and as of May 14, 2014, 556 court orders issued. (See
Ex. A to Lynch Decl. at 504, Ex. B at 489, Ex. C at 416,
Ex. D at 238.)

1 orders. (Wilcox Reply Decl. ¶ 11; Stewart Reply Decl. ¶
2 18.) In addition, some of the orders relate to what
3 appear to be serious medical conditions, such as brain
4 tumors and heart conditions. (Wilcox Reply Decl. ¶ 9;
5 Stewart Reply Decl. ¶ 15.) After reviewing the court
6 orders, Dr. Stewart opined that in a well-functioning
7 health care delivery system, there would be no need for
8 inmates to raise health care concerns with the judges
9 presiding in their criminal cases and no need for the
10 judge to take action. (Stewart Reply Decl. ¶ 14.) Dr.
11 Stewart was "astounded" by this practice, and opined that
12 the "sheer scope" of the orders demanded accounting.
13 (Stewart Reply Decl. ¶¶ 14, 17.) Similarly, Dr. Wilcox
14 concluded that in his experience, he has "never seen
15 courts involved in the minutia of the day-to-day health
16 care of prisoners as I see here." (Wilcox Reply Decl. ¶
17 15.) Both Dr. Wilcox and Dr. Stewart agree that although
18 the court orders are not proof that the medical care
19 ordered was necessarily needed or had previously been
20 denied, the "extraordinary numbers and nature of the
21 court orders" support the existence of a systemic policy
22 of failing to provide timely medical care. (Wilcox Reply
23 Decl. ¶ 7; Stewart Reply Decl. ¶ 13.) Indeed, Dr. Wilcox
24 concludes that "the most egregious constraint on timely
25 access to healthcare is that routine healthcare is
26 accessed via court orders mandating that healthcare
27 providers see and treat patients." (Wilcox Decl. ¶ 61.)
28

1 In opposition, Defendant submitted the Declaration of
2 Jerry Gutierrez, the Correctional Chief Deputy. (See Ex.
3 D to Decl. of Cnty Personnel (Doc. No. 86).) Mr.
4 Gutierrez explains that the court orders are completely
5 ex parte procedures, and the court "never" inquires as to
6 whether the inmate has sought medical care through the
7 regular procedures before requesting a court order.³¹
8 (Id. ¶ 22.) On many occasions, the inmate did not make a
9 request through regular procedures, the inmate did not
10 file a grievance before requesting the court order, the
11 medical or mental health care was already scheduled, or
12 the medical or mental health care was not medically
13 appropriate. (Id.) Mr. Gutierrez met with some of the
14 criminal judges on the Superior Court to request they
15 inquire as to whether the inmate has sought medical care
16 through the regular procedures before issuing a court
17 order. (Id. ¶ 24.)

18 **vi. Grand Jury Reports**

19 In California, the Grand Jury has the responsibility
20 to review the operations of all local governments within
21 that jury's county. (Ex. 150 to Crockett Decl., ("The
22 California Grand Jury System") at 2104.) Under
23

24 ³¹As Correctional Chief Deputy, Mr. Gutierrez is
25 responsible for "corrections support" and ensuring
26 compliance with policies and procedures in the Riverside
27 Jails. (Gutierrez Decl. ¶¶ 2, 4.) Mr. Gutierrez offers
28 no explanation as to how he has knowledge of what occurs
during Superior Court proceedings, or the practices of
the Superior Court judges when issuing orders regarding
medical and mental health care.

1 California Penal Code section 919(b), the Grand Jury is
2 required to inquire into the condition and management of
3 public prisons within the County. (Id. at 2118; Cal.
4 Penal Code § 919(b).) In 2010-2011, the Grand Jury
5 issues two reports concerning conditions in Riverside
6 Jails: 2010-2011 Mental Health Detention Services Grand
7 Jury Report (Ex. 15 to Crockett Decl., ("2011 Mental
8 Health Grand Jury Report")) and the 2010-2011 Riverside
9 County Detention Health Care Administration Grand Jury
10 Report (Ex. 149 to Crockett Decl., ("2011 Medical Grand
11 Jury Report")).

12
13 The 2011 Mental Health Grand Jury Report identified
14 several deficiencies in the provision of mental health
15 care in Riverside Jails and made numerous recommendations
16 to the County, including: (1) mental health personnel
17 should be assigned to each jail and should screen inmates
18 during the intake proceeding for possible mental illness
19 using a validated mental health screening tool; (2) a
20 mental health evaluation should be conducted for any
21 inmate who screens positively for possible mental illness
22 within 24 hours of booking; and a qualified medical
23 professional should complete and document a mental health
24 evaluation within two weeks of booking; (3) medications
25 should be distributed and administered properly with
26 trained health care personnel monitoring for side
27 effects; (4) mental health staffing should be available
28 on a 24-hour basis; (5) a confidential self-referral

1 system for inmates should be developed; and (6) a
2 computer system should be implemented to allow prompt,
3 up-to-date access to inmates' medical and mental health
4 records. (See 2011 Mental Health Grand Jury Report at
5 307-10.)

6
7 Similarly, the 2011 Medical Grand Jury Report
8 identified serious deficiencies in the staffing and
9 provision of medical care in Riverside Jails, including
10 violations of California law in regard to the provision
11 of medical care and the medical assessment of inmates
12 held in physical restraint chairs and safety rooms.³²
13 (2011 Medical Grand Jury Report at 2093-98.)

14
15 In response to the 2011 Grand Jury reports, the
16 Sheriff's Department acknowledged that "budget and
17 medical personnel staffing cuts had . . . unacceptably
18 impacted the delivery of medical services," and there was
19 a "need to remedy these issues." (Ex. 125 to Crockett
20 Decl. ("Sheriff's Response to 2011 Medical Grand Jury
21 Report") at 1799, 1802; Ex. 16 to Crockett Decl.
22 ("Sheriff's Response to 2011 Mental Health Grand Jury
23 Report") at 316.) The Sheriff's Department requested the

24
25 ³²A key Grand Jury recommendation was that all health
26 care administration authority be transferred back to the
27 Riverside County Sheriff. It appears that the provision
28 of health care has been affected by a division between
the "legal authority" of the Sheriff's Department and the
"practical authority" of the Riverside County Regional
Medical Center ("RCRMC"). (Sheriff's Response to 2011
Medical Grand Jury Report at 1802.)

1 Corrections Standards Authority ("CSA") assess whether
2 the Riverside Jails were compliant with California law,
3 and also contracted with Inmate Medical Quality ("IMQ")
4 to conduct an expert analysis on staffing at the
5 Riverside Jails. (Sheriff's Response to 2011 Mental
6 Health Grand Jury Report at 316.) The CSA Report found
7 that the provision of medical and mental health care in
8 the Riverside Jails did not comply with the intent of
9 California law³³ in several areas, including medication
10 delivery, access to medical and mental health care staff,
11 use of safety cells and restraint chairs, and the inmate
12 grievance processes. (Ex. 18 to Crockett Decl. ("2011
13 CSA Report").) The IMQ Report found medical and mental
14 health staffing at the Riverside Jails was inadequate,
15 and that as a result of inadequate staffing there were
16 deficiencies in many areas, including the evaluation of
17 inmates at booking, distribution of medications, and
18 medical evaluations of inmates held in safety cells and
19 restraint chairs. (Ex. 14 to Crockett Decl. ("2011 IMQ
20 Report").)

21
22 Finally, the Sheriff's Department, Detention Mental
23 Health Services, and Detention Health Services entered
24 into a Memorandum of Understanding to provide adequate
25 services and personnel for Riverside Jail inmates in need

26
27 ³³California law does not apply to this action. The
28 Court only recites the facts related to the Grand Jury
reports and subsequent state actions as evidence of
commonality.

1 of mental and medical health care in 2011. (Ex. 13 to
2 Crockett Decl. ("MOU").) The MOU includes an agreement
3 as to minimum staffing patterns and levels, as well as
4 the need to implement policies in compliance with
5 California law. It also provides specific policies
6 governing various aspects of the delivery of medical and
7 mental health care, including intake, that are intended
8 to bring in the policies in compliance with California
9 law.

10
11 In 2012, the Grand Jury issued a second report
12 concerning mental health care in the Riverside Jails.
13 (Ex. 148 to Crockett Decl., ("2012 Mental Health Grand
14 Jury Report")). The Report noted that despite the MOU,
15 staffing levels actually had decreased and that there
16 were a large number of vacancies in mental health
17 staffing. In response, Mental Health Detention Services
18 contended that, due to the use of per diem clinical
19 therapists and overtime for mental health employees, its
20 current level of staffing was at 91 percent. (Ex. 17 to
21 Crockett Decl., ("Response to 2012 Mental Health Grand
22 Jury Report").)

vii. Defendant's Evidence in Opposition to Commonality

1
2
3 Defendant submitted extensive evidence in Opposition,
4 including the declarations of 14 County employees,³⁴ four
5 physicians³⁵, and Bradley Gilbert, the Chief Executive
6 Officer for the Inland Empire Health Plan. Defendant
7 offers this evidence in support of its two main arguments
8 against commonality. First, Defendant argues that
9 although there may have been issues in regard to the
10 policies and provision of medical and mental health care
11 in the past, any issues have been resolved. (See Opp'n.
12 at 40 ("Plaintiffs' motion is based largely on a

13
14 ³⁴Arnisa Adewumni, Institutional Supervising Nurse at
15 Smith and Twin Pines Ranch Juvenile Center ("Adewumni
16 Decl."); Allison Apgar, Mental Health Clinical Therapist
17 II ("Apgar Decl."); Lt. Edward Delgado, Lieutenant at
18 Presley ("Delgado Decl."); Jerry Gutierrez, Correctional
19 Chief Deputy ("Gutierrez Decl."); Deborah Johnson, Deputy
20 Director of Forensics at the Riverside County Department
21 of Mental Health ("Johnson Decl."); Victor Laus, Chief of
22 Medical Speciality, Detention Health Services ("Laus
23 Decl."); Daniel Matloff, Clinical Therapist II at Banning
24 ("Matloff Decl."); Espergene Manalo, Nurse ("Manalo
25 Decl."); Gregory Prouty, Pharmacy Director of Riverside
26 County Health System and Riverside County Regional
27 Medical Center ("Prouty Decl."); Rhonda Reeves,
28 Supervising Institutional Nurse at Southwest Detention
Center ("Reeves Decl."); Leticia Stillwell, Institutional
Supervising Nurse at Presley ("Stillwell Decl."); Carl
Strong, Mental Health Services Supervisor at Southwest
Detention Center ("Strong Decl."); William Wilson,
Assistant Hospital Administrator and Director of
Detention Health Services ("Wilson Decl."); Joseph
McNamara, Correctional Captain ("McNamara Decl.") (See
Doc. No. 86.)

³⁵Dr. Lee Gislason, Psychiatrist ("Gislason Decl.");
Dr. William Klein, Internist ("Klein Decl."); Dr. Kendall
Wagner, Orthopedic Surgeon ("Wagner Decl."); James
Lineback, Internist with experience providing medical
care to inmates in the Los Angeles County jail system
("Lineback Decl.") (See Doc. No. 88.)

1 purported medical and mental health care system which
2 does not currently exist.".) Defendant disputes any
3 evidence relating to conditions before January 1, 2013,
4 and argues that in light of the current policies and
5 practices at the Riverside Jails, any deficiencies in
6 care are simply isolated deviations and do not suffice to
7 support a finding of commonality. Second, Defendant
8 offers extensive evidence in support of its contention
9 that the specific medical and mental health care received
10 by the named Plaintiffs, as well as other individual
11 inmates described in Plaintiffs' evidence, was
12 constitutionally adequate. In addition, Defendant offers
13 evidence that its policies are constitutionally adequate
14 because they are equal to the "community standards" for
15 Medi-Cal recipients under the Inland Empire Health Plan.

16
17 **a. Current Conditions**

18 As the Court detailed above in regard to the Grand
19 Jury reports, in 2009 and 2010, the County made
20 significant cuts to the budgets for medical and mental
21 health care in the Riverside Jails. As a result of these
22 cuts, as well as an influx of inmates from the California
23 state prison system, the Riverside Jails were confronted
24 with a decrease in medical and mental health staffing and
25 an increase in medical and mental health needs.
26 Defendant contends that any deficiencies in the provision
27 of health care caused by those unique circumstances have
28 been remedied, and thus Plaintiffs' complaints are either

1 moot, or reflect isolated deviations from the County's
2 policies. Defendant identifies the policies it contends
3 currently apply, including:

- 4 • Staffing: Increases in levels of staffing and
5 coverage of vacancies in permanent positions
6 through per diem employees, county temporary
7 employees, overtime work, and registry
8 employees. (Wilson Decl. ¶¶ 7,8; Johnson Decl.
9 ¶ 6.)
- 10 • Intake: Some inmates are screened by nurses
11 during the intake process. (Adewunmi Decl. ¶
12 4.) Those who are not screened by nurses are
13 interviewed by trained correctional officers
14 regarding the inmate's medical and mental health
15 history and needs. (Reeves Decl. ¶ 8.) If an
16 inmate identifies a need for medical or mental
17 health services, or the correctional officer
18 observes such a need, the inmate is referred for
19 treatment. (Delgado Decl. ¶¶ 8-10; Adewunmi
20 Decl. ¶ 4.) Before an inmate is placed in the
21 general population a "classification deputy"
22 interviews the inmate to determine housing, and
23 can also refer the inmate for medical or mental
24 health treatment. (Adewunmi Decl. ¶ 4; Reeves
25 Decl. ¶ 8, Delgado Decl. ¶ 13; Strong Decl. ¶ 5;
26 McNamara Decl. ¶ 4.)
27
28

- 1 • Access to Medical Care: Recently, Defendant
2 changed its policy regarding medical and mental
3 health request slips, which are also known as
4 "blue slips." Inmates now hand the blue slips
5 directly to a nurse or other medical staff and
6 the requests are no longer handled by the
7 correctional officers. All requests for medical
8 care are entered into the Jail Information
9 Management System ("JIMS") by a deputy.
10 (Delgado Decl. ¶ 15; Reeves Decl. ¶¶ 8, 10.)
11 The response to the request is tracked, and the
12 goal is to triage all requests in 24 hours and
13 provide a response within five days. (Reeves
14 Decl. ¶¶ 11-12.) JIMS automatically prints out
15 a list of any inmate not seen within five days
16 and the sergeant assigned to that area is
17 responsible for ensuring that inmate is seen.
18 (Delgado Decl. ¶ 17.)
- 19 • Medication: The Pharmacy Director for the
20 Riverside County Medical Center pharmacy uses a
21 program, CIPS, to address potential drug
22 interactions. (Prouty Decl. ¶ 4.) A nurse
23 provides twice daily pill call. Inmates may
24 refuse their medications. (Reeves Decl. ¶ 27.)
25 Medications which require more frequent
26 administration may either be kept on the
27 inmate's person or administered by a nurse.
28 (Reeves Decl. ¶ 29.)

- 1 • Prescription Renewals: if the medication is non-
2 essential, the inmate must request a renewal.
3 If the medication is for an essential medical
4 issue, the medication will be renewed by the
5 medical staff without any action by the inmate.
6 (Reeves Decl. ¶ 25.)
- 7 • Inmates have a right to obtain outside care at
8 their own expense. (Gutierrez Decl. ¶ 16.)
- 9 • Court Orders: Riverside Jails do not rely on
10 court orders to provide medical or mental health
11 care. Inmates often request a court order
12 before seeking the care through a request or
13 grievance, and the judges issue the orders
14 without inquiring as to whether the inmate has
15 sought other means of getting the care needed.
16 (Gutierrez Decl. ¶ 22.)
- 17 • Safety Cells: It is the County's policy to clean
18 the safety cells after every use. (Delgado
19 Decl. ¶ 23.) A Detention Health Services nurse
20 assesses the inmate shortly after the inmate is
21 placed in the safety cell.³⁶ (Adewunmi Decl. ¶
22 25; Reeves Decl. ¶ 30.) Medical staff check on
23 the inmate at least every eight hours after the
24 initial assessment, and the policy requires a

25
26 ³⁶It is unclear whether this policy only applies to
27 suicidal inmates. Strong states that if an inmate is
28 placed in a safety cell for reasons other than potential
suicide, a psychiatrist will see the inmate within 24
hours. (Strong Decl. ¶ 17.)

1 Mental Health employee see the inmate at least
2 every 24 hours. (Adewunmi Decl. ¶ 25; Reeves
3 Decl. ¶ 30; Strong ¶ 15.) All the safety cells
4 are monitored by camera, and there is a visual
5 check of any inmate in the safety cell every 30
6 minutes. (Delgado Decl. ¶ 19.) An inmate may
7 not be kept in a safety cell for more than 48
8 hours. (Delgado Decl. ¶ 19.) If an inmate was
9 placed in a safety cell because he is
10 potentially suicidal or self-harming, he may
11 only be released after authorization by a Mental
12 Health employee. (Delgado Decl. ¶ 21.) If the
13 inmate is can not be released after 48 hours he
14 is transferred to an outside mental health
15 facility. (Delgado Decl. ¶ 22.)

- 16 • Restraint Chairs: Inmates in restraint chairs
17 are evaluated by Detention Health Services staff
18 directly after placement and then at least every
19 four hours. (Reeves Decl. ¶ 31.) Inmates may
20 not be kept in a restraint chair for more than
21 six hours. (Delgado Decl. ¶ 24.) A sergeant
22 reviews whether continued placement is necessary
23 every two hours. (Id.) Restraint chairs are
24 monitored by camera and the policy requires
25 visual checks every two hours and allowances for
26 range of motion every thirty minutes. Before
27 the increase in staffing, medical and mental
28 health staff did not have time to accurately

1 record all of the contacts with inmates in
2 safety cells, and presumably in restraint
3 chairs. (See Delgado Decl. ¶ 22.)

4
5 **b. Adequate Medical Care**

6 Defendant argues the evidence it submitted
7 demonstrates that the care the named Plaintiffs, as well
8 as various other inmates, received, was adequate.³⁷ For
9 example, Dr. Wagner reviewed the medical records of each
10 named Plaintiff and found that the care provided meets or
11 exceeds the applicable standard of care. He also
12 provides a detailed analysis regarding Plaintiff
13 Kujawsky. (See generally Wagner Decl.) Dr. Gislason
14 disagrees with Plaintiffs' expert, Dr. Stewart, regarding
15 whether the named Plaintiffs, as well as many of the
16 unnamed inmates described in Dr. Stewart's report,
17 received adequate care, and whether the policies are
18 adequate. (Gislason Decl. ¶ 7 ("In sum . . . I disagree
19 with Dr. Stewart's assertions regarding mental health
20 care in the Riverside County Jails.")). Similarly, Dr.
21 Lineback opines that it was within the standard of care

22
23 _____
24 ³⁷In their Reply, Plaintiffs do not challenge the
25 qualifications of any of Defendant's experts. The Court
26 has reviewed the qualifications of these doctors and
27 notes that only Dr. Lineback has any experience working
28 in prisons. The Court has some doubts as to the ability
of these experts to opine on the adequacy of medical and
mental health policies and procedures in the prison
context. At this stage, the Court has not relied on
these experts' opinions regarding the adequacy of the
policies and thus it is not necessary to perform a full
Daubert analysis as to their qualifications.

1 to leave Patterson's IVC filter in place; and that Gray
2 did not actually suffer a seizure, and instead suffered
3 an episode of syncope (passing out) as a side effect of
4 his medication. (Lineback Decl. ¶¶ 9-11; 16-18.)
5 Similarly, Dr. Klein disagrees with Plaintiffs' expert,
6 Dr. Wilcox, and opines, based on review of the medical
7 records of individual Plaintiffs and inmates, that the
8 combinations of drugs prescribed were appropriate. (See,
9 e.g., Klein Decl. ¶¶ 8, 9.)

10
11 In regard to the adequacy of the Defendant's
12 policies, Defendant submits the Declaration of Dr.
13 Gilbert, who is the CEO of the Inland Empire Health Plan
14 ("IEHP"). ("Gilbert Decl.") (Doc. No. 56.) IEHP is an
15 agency of Riverside and San Bernardino Counties and
16 serves as the Local Initiative Medi-Cal Managed Care Plan
17 for both counties. Dr. Gilbert reviewed the allegations
18 in Plaintiffs' complaint and compared the alleged
19 policies to the "community standard for Medi-Cal
20 members," on the basis that the majority of jail inmates
21 were eligible for Medi-Cal before incarceration and will
22 continue to be eligible after they are released. (Id. ¶
23 69.) For example, Dr. Gilbert concludes that the ability
24 for an inmate to choose to pay for a private provider is
25 comparable to an IEHP member choosing to go to an out-of-
26 network doctor. (Id. ¶ 34.) Dr. Gilbert even opines
27 that the standard of care in Riverside Jails is actually
28 higher than the community standard in certain respects;

1 e.g., inmates receive a twice daily reminder to take
2 their medication, but members in the community do not
3 receive an equivalent "summons." (Id. ¶ 51.) Dr.
4 Gilbert concludes that the medical and mental health care
5 standards in the Riverside Jails are "comparable" to the
6 standard of care members in IEHP should receive. (Id. ¶
7 71.)

8
9 **viii. Commonality Analysis**

10 Plaintiffs contend, based on the above evidence, that
11 the question common to all members in the Class and the
12 Subclasses is whether Defendant's systemic practices
13 constitute deliberate indifference to the medical and
14 mental health care needs of inmates and place inmates a
15 substantial risk of serious harm in violation of the
16 Fourteenth and Eighth Amendments. Furthermore, they
17 contend that the common question may generate common
18 answers that are capable of resolving the litigation "in
19 one stroke." Reply at 3 (quoting Wal-Mart, 131 S. Ct. at
20 2551).

21
22 Defendant argues the commonality requirement for the
23 Class and Subclasses has not been satisfied here because:
24 (1) Plaintiffs have not met their burden of demonstrating
25 "significant proof" of the existence of any systemic
26 policies; (2) Defendant's evidence refutes all of
27 Plaintiffs' contentions and accurately portrays current
28 conditions and policies regarding medical and mental

1 health care; (3) any claim that an inmate receives
2 inadequate medical or mental health care requires an
3 individual determination and may not be resolved on a
4 class-wide basis; and (4) even as alleged by Plaintiffs,
5 the policies are comparable to community standards and
6 all named Plaintiffs and inmates referenced in the papers
7 received adequate care. As discussed below, these
8 arguments are unavailing.

9
10 Defendant's contention that an individual inquiry is
11 required to determine whether each member of the proposed
12 class receives inadequate medical or mental health, and
13 thus suffered an injury, is misplaced. As in Parsons II,
14 Plaintiffs' injury is that Defendant's alleged policies
15 expose each inmate to a "substantial risk of serious
16 harm." 754 F.3d at 678 ("What all members of the
17 putative class and subclass have in common is their
18 alleged exposure, as a result of specified statewide ADC
19 policies and practices that govern the overall conditions
20 of health care services and confinement, to a substantial
21 risk of serious future harm to which the defendants are
22 allegedly deliberately indifferent."). Thus, an
23 individual determination is not required because it is
24 the exposure to the policy that constitutes the harm;
25 courts have routinely held that "many inmates can
26 simultaneously be endangered by a single policy." Id.
27 (collecting cases).

1 Plaintiffs challenge numerous policies and practices
2 of the Defendant. Some of these policies are written,
3 official policies of the Riverside Jails; for these it is
4 clear that commonality exists.³⁸ See Parsons II, 754 F.3d
5 at 664. In regard to Plaintiff's claims that Defendant
6 has policies and practices that deviate from the written
7 policies,³⁹ the key question before the Court is whether
8 there is "sufficient evidence of systemic issues in the
9 provision" of medical and mental health care or whether
10 "Plaintiffs' allegations are simply many examples of
11 isolated instances of deliberate indifference." Parsons
12 I, 289 F.R.D. at 521. A policy or practice may be
13 inferred from a widespread practice or evidence of
14 repeated constitutional violations for which the errant
15 officials are not reprimanded. Menotti v. City of
16 Seattle, 409 F.3d 1113, 1147 (9th Cir. 2005) (citing

17
18 ³⁸These include: (1) the medical and mental health
19 staffing levels and reliance on temporary and per diem
20 employees to fill vacancies; (2) using custody staff to
21 conduct intake interviews and screen for medical and
22 mental health issues; (3) requiring inmates to request
23 renewals of non-essential prescriptions; (4) using
24 custody staff to enter data regarding medical and mental
25 health blue slips and grievances into JIMS; (5) allowing
26 mental health staff qualified as marriage and family
27 therapists to make decisions regarding release from
28 safety cells for potentially suicidal inmates; and (6)
performing mental health treatment and counseling for
inmates in safety cells through the pill slot.

25 ³⁹Such as (1) failure to provide timely care and
26 instead relying on court orders; (2) failure to adhere to
27 medical records policies and note taking requirements;
28 (3) failure to monitor inmates for dangerous drug
interactions and refill medications in a timely manner;
and (4) failure to monitor inmates in safety cells and
restraint chairs.

1 Nadell v. Las Vegas Metro. Police Dep't., 268 F.3d 924,
2 929 (9th Cir. 2001)). When examining liability for an
3 improper custom or practice, courts should look at
4 whether the practice at issue reflects "isolated or
5 sporadic incidents" or is one of sufficient duration,
6 frequency, and consistency such that the alleged conduct
7 may be the "traditional method of carrying out policy."
8 Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996); see
9 Parsons I, 289 F.R.D. at 521.

10
11 Plaintiffs have provided "significant proof," at the
12 class certification stage, of the existence of systemic
13 policies governing the provision of medical and mental
14 health care that deviate from the written policies.
15 Unlike cases cited by Defendant, Plaintiffs have
16 identified specific systemic policies relating to (1) the
17 timeliness of treatment; (2) administration of
18 medication; (3) maintenance of medical and mental health
19 records; and (4) the use of safety cells and restraint
20 chairs and monitoring of inmates held in restraint, that
21 differ from the County's written policies. See Stevens
22 v. Harper, 213 F.R.D. 358, 382 (E.D. Cal. 2002) (alleging
23 that the provision of mental health care is inadequate
24 without identifying specific policies); Mathis v. GEO
25 Grp., Inc., 2012 WL 600865, at *6 (E.D.N.C. Feb. 23,
26 2012) (no commonality where plaintiff failed to specify
27 any specific policy and instead alleged a "constellation
28 of unspecified "organizations, systems, policies,

1 procedures, practices, acts, and omissions.").
2 Plaintiffs have supported the existence of the alleged
3 inadequacies in the written and unwritten systemic
4 policies with declarations illustrating the impact of
5 these deficiencies on individual inmates, including named
6 Plaintiffs.⁴⁰ This is not the extent of Plaintiffs'
7 proof, however. Unlike the cases cited by the Defendant,
8 Plaintiffs have offered more than a collection of
9 isolated instances. See e.g. Lewis v. Casey, 518 U.S.
10 343, 359 (1996) (factual findings consisting of only two
11 instances of lack of access to law library was a
12 "patently inadequate basis for a conclusion of systemwide
13 violation and imposition of systemwide relief."); Amador
14 v. Baca, 2014 WL 1679013, at *5-8 (C.D. Cal. Mar. 12,
15 2014) (156 declarations, without any additional evidence,
16 was not sufficient evidence to demonstrate a common
17 practice or policy that deviated from the written
18 policy).

19
20 ⁴⁰Defendant argues that Plaintiffs must demonstrate
21 systemic deficiencies by providing statistical evidence
22 of the percentage of prisoners who suffered harm as a
23 result of an unwritten policy, i.e., the number of
24 documented instances where prisoners were not provided
25 their medications in proportion to the total number of
26 prisoners in the jail. Applying this methodology,
27 Defendant argues Plaintiffs rely on anecdotal evidence
28 from 59 inmates that occurred over a three-period of
time. (Opp'n. at 16.) The Court agrees that this
evidence, on its own, is not significant proof of the
existence of practices that deviate from the official
policies. Nevertheless, Plaintiffs have offered other
evidence, including expert opinion and the County's own
records, that support their claims. The anecdotes are
mere illustrations of the impact of the these policies,
and are not offered as statistical proof of their
existence. (See Reply at 20 n.5.)

1 In addition to the declarations, Plaintiffs provided
2 the expert opinions of Dr. Stewart and Dr. Wilcox, who,
3 based on their review of the safety cell logs,
4 grievances, records of court orders, and inmates' medical
5 records, each identified several systemic deficiencies in
6 Defendant's medical and mental health policies, including
7 deviations from the County's written policies.

8 Furthermore, in support of the alleged policy that
9 Defendant fails to provide timely access to medical and
10 mental care, Plaintiffs submitted records of over 9,000
11 court orders regarding medical and mental health care.
12 Some of these court orders appear to concern routine
13 medical issues such as prescriptions and doctor visits,
14 and others appear to instruct urgent action and concern
15 serious medical and mental conditions. The Court
16 recognizes the limits of these records, and does not
17 interpret the records as suggesting that each order
18 necessarily reflects an instance of failure to provide
19 timely care. Nevertheless, the sheer volume of the
20 records, as well as Dr. Stewart's and Dr. Wilcox's
21 interpretation of the court orders, strongly suggest that
22 there are systemic deficiencies in access to care that go
23 beyond the isolated experiences of the named Plaintiffs
24 in this action.

25
26 Finally, the Grand Jury reports and the related
27 correspondence lend additional support to Plaintiffs'
28 contention that the policies are designed and implemented

1 at a systemic level, and thus are best suited for class
2 wide resolution. See Parsons I, 289 F.R.D. at 521 (court
3 found that a cure notification to the contractor
4 responsible for providing medical care to prisoners "tips
5 the balance" in favor of commonality). In particular,
6 the Grand Jury reports note deficiencies in the
7 Defendant's policies related to several areas, including
8 intake, staffing, access to care, safety cells, and
9 restraint chairs, health care requests, medical records,
10 and recommended actions the Defendant take to remedy the
11 identified issues. These reports support a finding of
12 commonality, and suggest that questions regarding the
13 adequacy of Defendant's policies are best addressed on a
14 class-wide basis.

15
16 Defendant seeks to distinguish this case from Parsons
17 II by submitting extensive rebuttal evidence and
18 evidentiary objections in support of its Opposition.
19 Indeed, in Parsons II, the Ninth Circuit noted with
20 seeming dismay that the defendants:

21
22 [R]elied on a few declarations by some ADC
23 officials in which those officials summarized
24 formal ADC policies – several of which had been
25 modified mere days before the defendants filed
26 their brief in the district court. The
27 defendants did not submit rebuttal expert
28 declarations, nor did they offer evidence that

1 the newly revised written statements of ADC
2 policy reflected the actual policy and practice
3 of the ADC facilities. Further, the defendants
4 did not address the individual policies and
5 practices complained of by the plaintiffs nor
6 present evidence meant to deny their existence.
7 Rather, the defendants argued in a general
8 fashion that ADC written policies are the only
9 statewide policies and practices.

10 754 F.3d at 663-64.

11
12 The voluminous evidence submitted in opposition to
13 Plaintiffs' Motion does not undermine the existence of
14 commonality. Rather, Defendant has succeeded in
15 identifying multiple triable issues of fact as to whether
16 the common policies and practices identified constitute
17 deliberate indifference. For example, the Defendant's
18 experts disagree with the Plaintiffs' experts regarding
19 whether Defendant's policies and treatment of specific
20 inmates were adequate.⁴¹ Defendant has provided new
21 statistics regarding staffing, and Plaintiffs' experts
22 opine that the staffing levels remain inadequate.
23 Defendant submits declarations stating that the intake

24
25 ⁴¹The Court notes that any trial in this action will
26 not involve adjudication of the quality of treatment
27 rendered to each individual plaintiff, or named
28 Plaintiff. Any disputes over the quality of care
provided to an individual inmate goes to the question of
whether that inmate's experience is an example of the
serious harm that may result as a consequence of
Defendant's medical and mental health policies.

1 deputies are properly trained and qualified to screen for
2 medical and mental health conditions, and Plaintiffs'
3 experts opine they are not. At the hearing, Defendant
4 argued that the Court must resolve each of these factual
5 disputes prior to class certification and determine not
6 only whether the materials relied on by Plaintiffs'
7 experts were reliable, but also decide whether the
8 information contained within the materials is credible.
9 For example, whether to credit a named Plaintiff's
10 declaration that he was given certain medicine or the
11 Riverside Jails records which do not have a record of
12 that medicine being administered. As Defendant's
13 argument suggests, at the class certification stage, the
14 Court cannot resolve questions as to the adequacy of the
15 policies identified without engaging in an assessment of
16 the merits that goes well beyond what is required in
17 order to determine commonality.

18
19 To the extent the Court makes any findings as to the
20 merits, it is limited to what is required to determine
21 commonality. In this regard, the Court finds the
22 Defendant's explanation of the 9,000 court orders is not
23 sufficiently credible to support a finding that these
24 records must be disregarded in considering whether
25 commonality exists. Similarly, Defendant's explanation
26 of the missing entries in the safety cell and restraint
27 chair logs does not convince the Court it should
28 disregard this proof of the County's deviation from

1 written policy. Moreover, the Court may not, at this
2 stage in the proceedings, make a blanket credibility
3 determination as to all inmate grievances and
4 declarations based merely on Defendant's contention that
5 an inmate is an inherently untrustworthy person.

6
7 Finally, Defendant contends that the evidence it
8 submitted demonstrates "current" conditions in the
9 Riverside Jails, and that any allegations or evidence of
10 conditions or policies before January 1, 2013 are
11 irrelevant. Given current conditions and policies,
12 Defendant argues that Plaintiffs have failed to
13 demonstrate significant proof of any ongoing deficiencies
14 in the provision of health care. (Opp'n. at 17-19.) In
15 support for this argument, Defendant relies on cases
16 where it was undisputed that remedial measures were in
17 place, and the defendant moved for judgment as a matter
18 of law.⁴² See Kress v. CCA of Tennessee, LLC, 694 F.3d
19 890, 893-94 (7th Cir. 2012) (court granted summary
20 judgment in favor of the defendant on injunctive and
21 declaratory relief claims after jail warden testified

22
23 ⁴²Defendant also relies on cases where courts held
24 that individuals do have standing to seek class wide
25 injunctive relief solely on the basis of isolated
26 constitutional violations, such as a single illegal stop
27 or single illegal chokehold. See City of Los Angeles v. Lyons, 461 U.S. 95, 105, 103 (1983); Hodgers-Durgin v. de la Vina, 199 F.3d 1037, 1044 (9th Cir. 1999). These
28 cases are not applicable to the present action, where named Plaintiffs and class members continue to be subject to the Defendant's policies, and exposure in and of itself constitutes an injury.

1 that all inadequacies in prison conditions had been
2 resolved and plaintiff did not contest that the remedial
3 measures were taken).

4
5 The Court has reviewed all of the declarations and
6 documents submitted by the Defendant, and has noted where
7 there have been recent changes to the policies at issue
8 in the action. Plaintiffs' experts have also reviewed
9 the policies and opine that they remain constitutionally
10 inadequate despite the modifications. In addition,
11 Plaintiffs' proof of unofficial practices extends to 2013
12 and 2014. The County's declarations flatly refuting
13 these unofficial practices and its expert opinions
14 disputing the adequacy of specific instances of care does
15 not, in light of Plaintiffs' proof, undermine a finding
16 of commonality.

17
18 Moreover, in regard to the Defendant's intake
19 policies, the declarations of the County employees
20 confirm that actual intake practices differ from the
21 written policies. Under the MOU, "prior to any newly
22 booked inmate being housed in the jail population, a
23 follow-up intake health screening and assessment will be
24 completed on the inmate by a registered nurse." (MOU at
25 261.) The declarations of several county employees state
26 that an inmate is interviewed by a "classifications
27 deputy" before he is placed into general housing. (See
28 Adewunmi Decl. ¶ 4; Delgado Decl. ¶ 13; Reeves Decl. ¶ 8;

1 Strong Decl. ¶ 5; McNamara Decl. ¶ 4.) An inmate is
2 referred to a medical or mental health staff only if he
3 or she discloses medical or mental health issues, or the
4 classifications deputy observes medical or mental health
5 issues. (See Adewunmi Decl. ¶ 4; Delgado Decl. ¶ 13;
6 Reeves Decl. ¶ 8; Strong Decl. ¶ 5; Wilson Decl. ¶ 20;
7 McNamara Decl. ¶ 4.)

8
9 In sum, Defendant's evidence and extensive
10 evidentiary objections confirm that there exist common
11 questions regarding the Defendant's systemic medical and
12 mental health care policies and practices.

13
14 **ix. Commonality Conclusion**

15 The Court has considered all evidence submitted in
16 support of, and in opposition to, the Motion, and finds
17 commonality exists as to the allegations that the
18 following systemic policies constitute deliberate
19 indifference to a substantial risk of serious harm. The
20 Court has included citations to where named Plaintiffs'
21 have alleged direct exposure to the policies⁴³:
22
23
24

25
26 ⁴³The Court notes that none of the named Plaintiffs
27 specifically alleged that they were denied care as a
28 result of inadequate medical staffing; however, several
Plaintiffs alleged delays in the distribution of
medication that Plaintiffs' experts attribute to
understaffing.

a. Medical Care Subclass

- 1 • Inadequate medical staffing and reliance on
2 temporary staff (Wilcox Decl. ¶¶ 22, 27-29, 96,
3 114; Wilcox Reply Decl. ¶ 19).
- 4 • Ineffective intake screening performed by
5 untrained custody staff who fail to identify
6 health concerns and accurately record medical
7 issues on booking forms (Wilcox Decl. ¶¶ 31, 32,
8 115; Patterson Decl. ¶¶ 7-8; McClellan Decl. ¶
9 3; Miller Decl. ¶ 14).
- 10 • Inadequate medical records system and note
11 taking practices that deviate from written
12 policies (Wilcox Decl. ¶¶ 13, 95, 96, 119;
13 Patterson Decl. ¶ 9).
- 14 • Failure to provide timely medical care (Wilcox
15 Decl. ¶¶ 39, 49, 51, 55, 59; Wohlfeil Decl. ¶¶
16 4-6, 8-12; Patterson Decl. ¶¶ 10-12; Rosson
17 Decl. ¶ 5).
- 18 • Reliance on court orders to spur provision of
19 medical care (Wilcox Decl. ¶¶ 14, 38, 39; Wilcox
20 Reply Decl. ¶¶ 6-15; Wohlfeil Decl. ¶ 6; Gray
21 Decl. ¶ 10; Kujawsky Dep. at 43-45).
- 22 • Lack of adequate policies and procedures to
23 provide for specialty medical consultations and
24 procedures (Wilcox Decl. ¶¶ 63, 67; Wohlfeil
25 Decl. ¶ 7; Patterson Decl. ¶¶ 23-24).
- 26 • Deficient procedures in the distribution and
27 refill of medications, including delivery of
28

1 evening pills in the early afternoon (Wilcox
2 Decl. ¶¶ 79, 81, 94, 115; Wohlfeil Decl. ¶ 13;
3 Patterson Decl. ¶¶ 13, 18-22; Gray Decl. ¶ 12;
4 Miller Decl. ¶ 9; Kujawsky Dep. at 49).

- 5 • Medical request and grievance policy that
6 inappropriately involves custody staff (Wilcox
7 Decl. ¶ 73, Reply Decl. ¶ 18; Gray Decl. ¶¶ 23-
8 25).

9
10 **b. Mental Health Care Subclass**

- 11 • Inadequate mental health staffing and chronic
12 staffing shortages (Stewart Decl. ¶¶ 28, 29).
- 13 • Inadequate intake policies and procedures,
14 including reliance on intake officers with no
15 specialized training to conduct mental health
16 screenings during intake procedures (Stewart
17 Decl. ¶¶ 18, 30-37; Stewart Reply Decl. ¶ 12;
18 Miller Decl. ¶ 14).
- 19 • Inadequate mental health record-keeping system
20 (Stewart Decl. ¶ 100; McClellan Decl. ¶ 9).
- 21 • Failure to provide timely access to mental
22 health care, including reliance on court orders
23 (Stewart Decl. ¶¶ 51, 58; Stewart Reply Decl. ¶
24 13; Gray Decl. ¶ 16; McClellan Decl. ¶ 11;
25 Miller Decl. ¶¶ 5, 7-10; Rosson Decl. ¶ 12).
- 26 • Failure to manage mental health medication
27 administration (Stewart Decl. ¶¶ 66, 75),
28 including prescribing medication (Id. ¶¶ 39, 43,

1 49), monitoring side effects and tracking
2 dangerous drug interactions (Id. ¶¶ 39-42),
3 relying on inmates to initiate refills of
4 medication, including psychotropic medication
5 (Id. ¶ 75); and failing to distribute medication
6 at proper times and in proper doses (Id. ¶¶ 39,
7 73, 76) (see Gray Decl. ¶¶ 6, 12, 14; McClellan
8 Decl. ¶¶ 7, 9, 10; Rosson Decl. ¶ 5, 6, 10).

- 9
- 10 • Inadequate suicide prevention policies,
11 including delegating decisions regarding removal
12 from safety cells to unqualified mental health
13 staff and conducting evaluations of inmates in
14 safety cells through the pill slot (Stewart
15 Decl. ¶¶ 78, 79, Stewart Reply Decl. ¶ 7; Gray
16 Decl. ¶ 22).
 - 17 • Failure to care for inmates in safety cells and
18 restraint chairs, including failure to monitor
19 restrained inmates, perform regular motion
20 checks, administer mental health treatment, or
21 provide food and water. In addition, there is a
22 pattern of inmates being removed from safety
23 cells before the internal 48 hour time limit and
24 then being returned to the cell shortly after
25 (Stewart ¶¶ 88, 90, 92, 93, 95, 97, 98; Stewart
26 Reply Decl. ¶ 6 n.1; Gray Decl. ¶¶ 28-33; Rosson
27 Decl. ¶ 7).
 - 28 • Failure to provide mental health treatment in a
confidential setting and grievance policy which

1 inappropriately involves custody staff and
2 mental health practices (Stewart Reply Decl. ¶
3 3; Gray Decl. ¶¶ 7, 8, 25-27, 35; Miller Decl. ¶
4 13, 15, 16; Rosson Decl. ¶ 13).

5
6 The Court does not find commonality exists as to the
7 following alleged practices: unsanitary safety cells,⁴⁴
8 inadequate facilities to conduct inmate interviews and
9 deliver medical treatment,⁴⁵ quality assurance, and the
10 use of safety or restraint chairs for purely punitive or
11 disciplinary purposes.

12
13 **3. Typicality**

14 "The commonality and typicality requirements of Rule
15 23(a) tend to merge." Wal-Mart, 131 S. Ct. at 2555 n.1.
16 "The purpose of the typicality requirement is to assure
17 that the interest of the named representative aligns with
18 the interests of the class." Wolin v. Jaguar Land Rover
19 North Am., LLC, 617 F.3d 1168, 1175 (9th Cir. 2010).

20
21 ⁴⁴Dr. Stewart opines that the safety cells are often
22 filthy, but the only evidence he appears to rely on for
23 this conclusion are the declarations of two named
24 Plaintiffs. Defendant submitted a declaration from a
25 County employee stating that it is the County's policy to
26 clean the safety cells after every use, and any failure
27 to clean is a deviation from that policy. Evidence of
28 two instances of deviation from the policy is not
sufficient to demonstrate commonality. See Amador, 2014
WL 1679013, at *6 ("In light of these declarations,
plaintiffs' 168 declarations fall short of the
"significant proof" required to show that defendants had
a pattern and practice of strip searching CRDF inmates on
an unsanitary floor.").

⁴⁵The allegations related to this alleged policy
appear to be limited to one of the five Riverside Jails.
(SAC ¶ 142.)

1 "The test of typicality 'is whether other members have
2 the same or similar injury, whether the action is based
3 on conduct which is not unique to the named plaintiffs,
4 and whether other class members have been injured by the
5 same course of conduct.'" Ellis, 657 F.3d at 984
6 (quoting Hanon v. Dataproducts Corp., 976 F.2d 497, 508
7 (9th Cir. 1992). Thus, typicality is satisfied if the
8 plaintiff's claims are "reasonably co-extensive with
9 those of absent class members; they need not be
10 substantially identical." Id.

11
12 As discussed in regard to Defendant's argument
13 regarding standing, the alleged injury among the class
14 members is that the Defendant's medical and mental health
15 policies result in exposure to a substantial risk of
16 serious harm. Any differences in the named Plaintiffs'
17 specific medical or mental needs do not defeat
18 typicality. Accordingly, Plaintiffs have satisfied the
19 typicality factor.

20 **4. Adequate Class Representation**

21
22 Finally, under Rule 23(a)(4), the named plaintiffs
23 must be deemed capable of adequately representing the
24 interests of the entire class, including absent class
25 members. See Fed. R. Civ. P. 23(a)(4) (requiring
26 "representative parties [who] will fairly and adequately
27 protect the interests of the class"). The adequacy
28 inquiry turns on: (1) whether the named plaintiff and
class counsel have any conflicts of interest with other

1 class members and (2) whether the representative
2 plaintiff and class counsel can vigorously prosecute the
3 action on behalf of the class. See Ellis, 657 F.3d at
4 985.

5
6 Defendant does not challenge the adequacy of any of
7 the named Plaintiffs as representatives. The Court notes
8 that two of the named Plaintiffs, Gray and Patterson, are
9 no longer subject to the custody of Riverside Jails and
10 are currently being held in state prison. That Gray's
11 and Patterson's individual claims have been rendered moot
12 does not render them, as proposed representatives of the
13 injunctive relief class, inadequate. See Cnty. of
14 Riverside v. McLaughlin, 500 U.S. 44, 52 (1991) ("That
15 the class was not certified until after the named
16 plaintiffs' claims had become moot does not deprive us of
17 jurisdiction."); Amador, 2014 WL 1679013, at *8. Thus,
18 the Court is satisfied that the named Plaintiffs do not
19 have any interests antagonistic to the remainder of the
20 class, nor does Plaintiffs' counsel have any conflicts
21 with the putative class. The named Plaintiffs have
22 actively participated in the litigation thus far, and
23 express an interest and commitment to responding to the
24 requests of class counsel and other parties in the
25 litigation. Accordingly, the named Plaintiffs are
26 adequate representatives.

27
28 **D. Rule 23(b)**

Since Plaintiffs have demonstrated they meet the

1 requirements of Rule 23(a), the Court turns to Rule
2 23(b). Of the three basis for certification under Rule
3 23(b), Plaintiffs seek certification under Rule 23(b)(1)
4 and Rule 23(b)(2).

5
6 **1. 23(b)(2)**

7 Plaintiffs seek certification under Rule 23(b)(2).
8 Certification is appropriate under Rule 23(b)(2) when
9 "the party opposing the class has acted or refused to act
10 on grounds that apply generally to the class, so that
11 final injunctive relief or corresponding declaratory
12 relief is appropriate respecting the class as a whole."
13 Fed. R. Civ. P. 23(b)(2); Amchem Products, Inc. v.
14 Windsor, 521 U.S. 591, 614 (2009). "Rule 23(b)(2)
15 applies only when a single injunction or declaratory
16 judgment would provide relief to each member of the
17 class. It does not authorize class certification when
18 each individual class member would be entitled to a
19 different injunction or declaratory judgment against the
20 defendant." Wal-Mart, 131 S. Ct. at 2557. The "primary
21 role" of a 23(b)(2) action is to allow civil rights
22 actions seeking injunctive and declaratory relief to be
23 brought on a class wide basis. See Parsons II, 754 F.3d
24 at 686; Walters v. Reno, 145 F.3d 1032, 1047 (9th Cir.
25 1998) ("Rule 23(b)(2) was adopted in order to permit the
26 prosecution of civil rights actions."); Baby Neal for &
27 by Kanter v. Casey, 43 F.3d 48, 63 (3d Cir. 1994) ("The
28 writers of Rule 23 intended that subsection (b)(2) foster
institutional reform by facilitating suits that challenge

1 widespread rights violations of people who are
2 individually unable to vindicate their own rights.");
3 Parsons I, 289 F.R.D. at 524 ("injunctive relief stemming
4 from allegedly unconstitutional conditions of confinement
5 are the quintessential type of claims that Rule 23(b)(2)
6 was meant to address.").

7
8 Plaintiffs contend that certification under Rule
9 23(b) is appropriate because the deficiencies in
10 Defendant's medical and mental health policies apply to
11 all members of the class, and thus injunctive and
12 declaratory relief are appropriate remedies. Plaintiffs
13 seek (1) a declaration that Defendant's acts, omissions,
14 and policies of the Defendant are in violation of the
15 rights of Plaintiffs under the Eighth and Fourteenth
16 Amendments; and (2) an injunction ordering Defendant to
17 "develop and implement, as soon as practical, a plan to
18 eliminate the substantial risk of serious harm that
19 Plaintiffs and members of the Plaintiff class suffer due
20 to Defendant's inadequate medical and mental care" that
21 addresses staffing, access, screening, emergency
22 responses, medication and supplies, chronic care, mental
23 health treatment, and quality assurance. (SAC ¶ 191.)
24 Defendant argues certification under 23(b)(2) is not
25 appropriate because Plaintiffs have failed to demonstrate
26 commonality and the proposed injunctive relief fails to
27 satisfy Rule 65(d). (Opp'n. at 35-38.)
28

1 As discussed above, Plaintiffs demonstrated
2 commonality. Plaintiffs challenge alleged systemic
3 inadequacies in Defendant's medical and mental health
4 care policies, which are applicable to the proposed class
5 as a whole. If Plaintiffs succeed on their claims,
6 injunctive and declaratory relief will provide relief to
7 all members of the proposed class. See Parsons II, 754
8 F.3d at 686-87 (certifying 23(b)(2) class of prison
9 inmates challenging prison healthcare policies); Ashker
10 v. Governor of State of California, 2014 WL 2465191, at
11 *7 (N.D. Cal. June 2, 2014) (certifying 23(b)(2) class of
12 inmates at state prison challenging secured housing unit
13 confinement policy); Rosas, 2012 WL 2061694, at *5
14 (certifying 23(b)(2) class of prisoners challenging
15 policy of deliberate indifference to unlawful violence);
16 Amador, 2014 WL 1679013, at *8 (certifying 23(b)(2) class
17 of prisoners challenging prison strip search policy).

18
19 Defendant contends that class certification must be
20 denied because the request for relief is at a
21 "stratospheric level of abstraction" and fails to comply
22 with Rule 65(f). (See Opp'n. at 38 (citing Shook v. Bd.
23 of Cnty. Commissioners of Cnty. of El Paso, 543 F.3d 597,
24 604 (10th Cir. 2008))).⁴⁶ Under Rule 65(f), an injunction

25
26 ⁴⁶In Shook the Tenth Circuit Court of Appeals
27 affirmed a district court's denial of class certification
28 on the basis that the injunctive relief requested was too
vague. In Parsons II, the Ninth Circuit rejected
reliance on Shook as out of circuit precedent, and then
reasoned that certification was proper even under the
Shook standard because plaintiffs had described their

(continued...)

1 must state its terms specifically and describe in
2 reasonable detail – and not by referring to the complaint
3 or other document – the act or acts restrained or
4 required. Fed. R. Civ. P. 65(f).

5
6 In evaluating a proposed injunction at the class
7 certification stage in a prison conditions case, the
8 Ninth Circuit recently clarified that the district court
9 should assess whether the proposed relief is "is
10 appropriate respecting the class as a whole." Parsons
11 II, 754 F.3d at 689; Ashker, 2014 WL 2465191, at *7
12 ("numerous courts have expressly held that plaintiffs are
13 not required to satisfy Rule 65(d) in order to obtain
14 class certification."). This requirement is satisfied
15 where plaintiffs have described the "general contours of
16 an injunction that would provide relief to the whole
17 class, that is more specific than a bare injunction to
18 follow the law, and that can be given greater substance
19 and specificity at an appropriate stage in the litigation
20 through fact-finding, negotiations, and expert
21 testimony." Id. In a prison conditions case, it is not
22 feasible at the class certification stage to propose
23 specific remedies as any injunction must "closely track
24 the violations established by the evidence at trial,"
25 comply with the Prison Litigation Reform Act, account for

26
27 ⁴⁶(...continued)
28 injunction in sufficiently specific terms by submitting
expert testimony outlining the alleged policy
deficiencies and potential remedies. 754 F.3d at 689
n.35.

1 changing conditions in prisons, and involve prison
2 officials in the process of determining an appropriate
3 remedy. Id.

4
5 In Parsons II, the Ninth Circuit affirmed
6 certification of a 23(b)(2) class of prisoners
7 challenging medical and mental health policies on the
8 basis that the injunctive relief proposed was based on
9 expert reports that explained how the challenged policies
10 were deficient and the sorts of policies remedies that
11 could alleviate the alleged violations. Id. Here, as in
12 Parsons II, Plaintiffs have provided the "general
13 contours" of the proposed injunctive relief by submitting
14 expert reports that identify specific deficiencies and
15 possible remedies. Accordingly, certification under
16 23(b)(2) is appropriate.

17
18 **2. 23(b)(1)**

19 Plaintiffs also seek certification under Rule
20 23(b)(1)(A) and 23(b)(1)(B). Under 23(b)(1)(A), class
21 certification is appropriate if the prosecution of
22 separate actions by individual members of the class would
23 create the risk of "inconsistent or varying adjudications
24 with respect to individual members of the class which
25 would establish incompatible standards of conduct for the
26 party opposing the class." Fed. R. Civ. P. 23(b)(1)(A).
27 A "core example" of an action under 23(b)(1)(A) is the
28 "situation in which many individuals, all challenging a
single government policy, bring separate suits for

1 injunctive relief." Newberg on Class Actions § 4:11 (5th
2 ed.) Thus, certification is appropriate under
3 23(b)(1)(A) because if each member of the proposed class
4 litigated their claims individually there would be a risk
5 of that each individual case would impose a different
6 standard on the County. See Ashker, 2014 WL 2465191, at
7 *7 (certifying class of inmates claiming prison policy
8 violated the Eighth Amendment pursuant to 23(b)(1)(A)).
9 Accordingly, the requirements for certification under
10 23(b)(1)(A) are met.

11
12 An action under 23(b)(1)(B) is appropriate when
13 prosecuting "separate actions by or against individual
14 class members would create a risk of . . . adjudications
15 with respect to individual class members that, as a
16 practical matter, would be dispositive of the interests
17 of the other members not parties to the individual
18 adjudications or would substantially impair or impede
19 their ability to protect their interests." Fed. R. Civ.
20 P. 23(b)(1)(B). The classic application of the rule is
21 in "limited fund" cases, where the putative class
22 members' only source of recovery comes from a limited
23 fund. See Ortiz v. Fibreboard Corp., 527 U.S. 815,
24 834-838 (1999). Nevertheless, the rule may be applied
25 outside the "limited fund" context, and in particular has
26 been applied in actions by prisoners challenging the
27 conditions of their confinement. See Hilton v. Wright,
28 235 F.R.D. 40, 53 (N.D.N.Y. 2006) (certification of
inmate class challenging prison's Hepatitis C treatment

1 policy under 23(b)(1)(B)); Ingles v. City of New York,
2 2003 WL 402565, at *8 (S.D.N.Y. Feb. 20, 2003)
3 (certification under 23(b)(1)(B) of class of inmates
4 challenging prison's use of force policy and seeking
5 injunctive relief); Coleman v. Wilson, 912 F. Supp. 1282,
6 1293 (E.D. Cal. 1995) (certification of inmate class
7 challenging prison's mental health care policies under
8 23(b)(1)(B)).

9
10 The Classes and Subclasses proposed seek injunctive
11 relief, that, if granted, would affect the rights of
12 similarly situated potential plaintiffs who are affected
13 by the Defendant's policies. If the Plaintiffs do not
14 succeed on the their claims, the ability of future
15 plaintiffs to challenge the same practice will be
16 inhibited under stare decisis. See Riley v. Nevada
17 Supreme Court, 763 F. Supp. 446, 453 (D. Nev. 1991)
18 (certification of class of inmates sentenced to death
19 challenging state court policies under 23(b)(1)(B)
20 because "collateral estoppel would not bind a subsequent
21 plaintiff to a finding of constitutionality. However, if
22 the subsequent plaintiff ended up in this particular
23 court, our previous finding of constitutionality would
24 bind the subsequent plaintiff as a practical matter
25 because of stare decisis.").

26
27 Defendant opposes certification under both sections
28 of 23(b)(1) on the basis that Plaintiffs have not
proposed an enforceable injunction. (Opp'n. at 39.) The

1 Court has addressed Defendant's challenge to the proposed
2 injunction above, and accordingly, finds the Classes and
3 Subclasses appropriate for certification under Rule
4 23(b)(1)(A) and 23(b)(1)(B).

5
6 **E. Appointment of Class Counsel**

7 After certifying a Class and Subclasses, the Court
8 must appoint class counsel. Fed. R. Civ. P. 23(g).
9 Under Rule 23(g), the Court considers the work counsel
10 has done in identifying or investigating potential claims
11 in the action; counsel's experience in handling class
12 actions, other complex litigation, and the types of
13 claims asserted in the action; counsel's knowledge of the
14 applicable law, and the resources that counsel will
15 commit to representing the class. Id.

16
17 Plaintiffs' counsel submitted the declarations of
18 Shawn Hanson (Doc. No. 35) and Sara Norman (Doc. No. 30),
19 which attest to the experience, qualifications, and
20 resources of Akin Gump Strauss Hauer & Feld LLP ("Akin
21 Gump") and the Prison Law Office. These declarations
22 clearly establish that Plaintiffs' counsel has extensive
23 experience in complex prisoner civil rights litigation
24 and class actions. Ms. Norman has worked at the Prison
25 Law Office for 18 years, and has represented prisoner
26 plaintiff classes in several complex and significant
27 actions in California. (Norman Decl. ¶ 5.) Similarly,
28 Mr. Hanson has represented plaintiffs in several civil
rights class actions, including multiple prisoner

1 plaintiff civil rights actions. (Hanson Decl. ¶ 4.) In
2 addition, Akin Gump, and the Prison Law Office have a
3 long history of advocating on behalf of prisoners through
4 class action law suits. Indeed, the Prison Law Office is
5 a leading advocacy organization in this area of law.

6
7 Counsel has already invested thousands of hours
8 investigating potential claims, interviewing Plaintiffs
9 and class members, drafting declarations and pleadings,
10 and conducting discovery. (Norman Decl. ¶¶ 2-3; Hanson
11 Decl. ¶ 8.) Consequently, the Court finds that
12 Plaintiffs' proposed counsel are more than qualified and
13 appoints the Prison Law Office and Akin Gump as class
14 counsel.

15
16 **F. Stay**

17 On June 5, 2014, the Ninth Circuit's opinion in
18 Parsons II affirmed certification of a class action
19 brought by prisoners challenging the provision of
20 healthcare and the conditions of confinement in prisons
21 under the control of the Arizona Department of
22 Corrections. The issues addressed in Parsons II are
23 largely similar to the questions presented in this case,
24 and the Court has looked to the reasoning of Parsons II
25 in ruling on class certification. On July 3, 2014, the
26 defendants in Parsons II requested a rehearing en banc.
27 On July 8, 2014, the plaintiffs in Parsons II were
28 ordered to file a response to defendants' request for
rehearing en banc, and on July 29, 2014, the Parsons II

1 plaintiffs filed a Response to Petition for Rehearing En
2 Banc. The Ninth Circuit has not yet issued a decision as
3 to whether it will rehear Parsons II en banc.

4
5 The County argues that these events indicate that
6 Parsons is likely to be reversed en banc. At the
7 hearing, the Court raised the issue of a stay pending the
8 Ninth Circuit's decision as to whether it will grant en
9 banc review of Parsons II. Although Defendant suggested
10 a stay would be appropriate at the hearing, the County
11 did not request a stay in a formal motion.

12
13 A district court has the discretionary power to stay
14 cases to control its docket and promote efficient use of
15 judicial resources. Dependable Highway Express v.
16 Navigators Ins. Co., 498 F.3d 1059, 1066 (9th Cir. 2007);
17 Lockyer v. Mirant Corp., 398 F.3d 1098, 1110-09 (9th Cir.
18 2005) (citing Landis v. North American Co., 299 U.S. 248
19 (1936)). "In determining whether a stay is appropriate
20 pending the resolution of another case, a district court
21 must consider various competing interests, including: (1)
22 the possible damage which may result from the granting of
23 a stay; (2) the hardship to the parties if the suit is
24 allowed to go forward; and (3) the orderly course of
25 justice measured in terms of the simplifying or
26 complicating of issues, proof, and questions of law which
27 could be expected to result from a stay." Nelson v.
28 Sisto, 2009 WL 2579194, at *1 (E.D. Cal. Aug. 20, 2009)
(citing Lockyer, 398 F.3d at 1110-09). The Court must

1 balance the likely length of the stay against the
2 strength of the justification given for it; the longer
3 the stay, the greater the showing must be to justify it.
4 Yong v. I.N.S., 208 F.3d 1116, 1119 (9th Cir. 2000).

5
6 At this time it is uncertain whether the Ninth
7 Circuit will rehear Parsons II en banc. The Court notes
8 that Parsons is currently set for trial beginning on
9 October 21, 2014 and a stay has not been entered in that
10 proceeding. In this case, a stay would result in
11 hardship to the Plaintiffs, especially since the case
12 involves the alleged existence of conditions in the
13 Riverside Jails that result in inadequate medical and
14 mental health care for inmates. It is unknown how long
15 the Ninth Circuit will take to decide whether to consider
16 Parsons en banc. The uncertainty of the length of the
17 stay outweighs the interest in staying class
18 certification because there is a possibility Parsons will
19 be reheard en banc. Accordingly, a stay of this Order is
20 not warranted at this time. If Parsons is reheard en
21 banc, the Court will consider a motion to stay the
22 proceedings at that time.

23 24 VII. CONCLUSION

25 For the foregoing reasons, the Court GRANTS
26 Plaintiffs' Motion for Class Certification and DENIES
27 Defendant's Motion to Dismiss. The following Class and
28 Subclasses are certified under Rule 23(b)(2), (b)(1)(A),
and (b)(1)(B) and defined as:

1 (A) Class – all prisoners who are now, or will be in
2 the future, subjected to the medical and mental health
3 policies and practices of Riverside County. Named
4 Plaintiffs Gray, Patterson, Kujawsky, Wohlfeil Rosson,
5 McClellan, and Miller are appointed Class
6 Representatives. The class is certified as to the
7 alleged practices detailed in the Medical and Mental
8 Health Subclasses.

9
10 (B) Medical Subclass – All prisoners who are now, or
11 will in the future be, subjected to the medical care
12 policies and practices of the Riverside Jails. Named
13 Plaintiffs Gray, Patterson, Kujawsky, and Wohlfeil are
14 appointed class representatives. The Subclass is
15 certified as to the following alleged practices:

- 16 1. Inadequate medical staffing and reliance on
17 temporary staff;
- 18 2. Ineffective intake screening performed by
19 untrained custody staff who fail to identify
20 health concerns and accurately record medical
21 issues on booking forms;
- 22 3. Inadequate medical records system and note
23 taking practice that deviates from written
24 policies;
- 25 4. Failure to provide timely medical care;
- 26 5. Reliance on court orders to spur provision of
27 medical care;
- 28 6. Lack of adequate policies and procedures to
provide specialty medical consultations and

procedures;

- 1
- 2 7. Deficient procedures in the distribution and
- 3 refill of medications, including delivery of
- 4 evening pills in the early afternoon;
- 5 8. Medical request and grievance policy that
- 6 inappropriately involves custody staff.

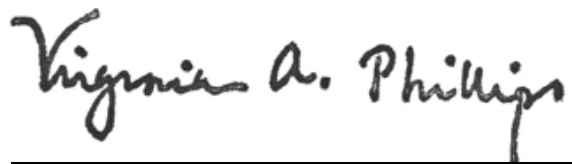
7
8 (B) Mental Health Subclass – All prisoners who are
9 now, or will in the future be, subjected to the mental
10 health care policies and practices of the Riverside
11 Jails. Named Plaintiffs Gray, Rosson, McClellan, and
12 Miller are appointed class representatives. The subclass
13 is certified as to the following alleged practices:

- 14 1. Inadequate mental health staffing and chronic
15 staffing shortages;
- 16 2. Inadequate intake polices and procedures,
17 including use of intake officers with no
18 specialized training to conduct mental health
19 screenings during intake procedures;
- 20 3. Inadequate mental health record system;
- 21 4. Failure to provide timely access to mental
22 health care;
- 23 5. Failure to manage mental health medication
24 administration, including prescribing
25 medication; monitoring side effects and tracking
26 dangerous drug interactions; relying on inmates
27 to initiate refills of medication, including
28 psychotropic medication; and failing to
distribute medication at proper times and in

proper doses;

6. Inadequate suicide prevention policies, including delegating decisions regarding removal from safety cells to unqualified mental health staff and conducting evaluations of inmates in safety cells through the pill slot;
7. Failure to care for inmates in safety cells and restraint chairs, including failure to monitor restrained inmates, perform regular motion checks, administer mental health treatment, or provide food and water. In addition, there is a pattern of inmates being removed from safety cells before the internal 48 hour time limit and then being returned to the cell shortly after;
8. Failure to provide mental health treatment in a confidential setting and grievance policy which inappropriately involves custody staff and mental health practices.

(C) Akin and Gump and the Prison Law Office are appointed counsel to the Class and Subclasses.



Dated: September 2, 2014

VIRGINIA A. PHILLIPS
United States District Judge