

1 MICHAEL W. BIEN – 096891  
ERNEST GALVAN – 196065  
2 KARA J. JANSSEN – 274762  
GINGER JACKSON-GLEICH – 324454  
3 ROSEN BIEN  
GALVAN & GRUNFELD LLP  
4 101 Mission Street, Sixth Floor  
San Francisco, California 94105-1738  
5 Telephone: (415) 433-6830  
Email: mbien@rbgg.com  
6 egalvan@rbgg.com  
kjanssen@rbgg.com  
7 gjackson-gleich@rbgg.com

OREN NIMNI\*  
Mass. Bar No. 691821  
AMARIS MONTES\*  
Md. Bar No. 2112150205  
D DANGARAN\*  
Mass. Bar No. 708195  
RIGHTS BEHIND BARS  
416 Florida Avenue N.W. #26152  
Washington, D.C. 20001-0506  
Telephone: (202) 455-4399  
Email: oren@rightsbehindbars.org  
amaris@rightsbehindbars.org  
d@rightsbehindbars.org

8 SUSAN M. BEATY – 324048  
CALIFORNIA COLLABORATIVE FOR  
9 IMMIGRANT JUSTICE  
1999 Harrison Street, Suite 1800  
10 Oakland, California 94612-4700  
Telephone: (510) 679-3674  
11 Email: susan@ccijustice.org

\*Pro hac vice applications pending

12 Attorneys for Plaintiffs

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

15 CALIFORNIA COALITION FOR WOMEN  
PRISONERS; R.B.; A.H.R.; S.L.; J.L.; J.M.; G.M.;  
16 A.S.; and L.T., individuals on behalf of themselves  
and all others similarly situated,

17 Plaintiffs,

18 v.

19 UNITED STATES OF AMERICA FEDERAL  
BUREAU OF PRISONS, a governmental entity;  
20 BUREAU OF PRISONS DIRECTOR COLETTE  
PETERS, in her official capacity; FCI DUBLIN  
WARDEN THAHESHA JUSINO, in her official  
21 capacity; OFFICER BELLHOUSE, in his individual  
capacity; OFFICER GACAD, in his individual  
22 capacity; OFFICER JONES, in his individual  
capacity; LIEUTENANT JONES, in her individual  
23 capacity; OFFICER LEWIS, in his individual  
capacity; OFFICER NUNLEY, in his individual  
24 capacity; OFFICER POOL, in his individual capacity;  
LIEUTENANT PUTNAM, in his individual capacity;  
25 OFFICER SERRANO, in his individual capacity;  
OFFICER SHIRLEY, in his individual capacity;  
26 OFFICER SMITH, in his individual capacity; and  
OFFICER VASQUEZ, in her individual capacity  
27

Defendants.

Case No. 3:23-cv-04155

**NOTICE OF MOTION AND  
MEMORANDUM IN SUPPORT OF  
MOTION FOR  
CLASS CERTIFICATION AND  
APPOINTMENT OF  
CLASS COUNSEL**

Date: October 6, 2023  
Time: 9:30 am.  
Crtrm.: D, 15<sup>th</sup> Floor  
Place: 450 Golden Gate Avenue  
San Francisco, CA 94102

Judge: Hon. Joseph Spero

Trial Date: None Set

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**NOTICE OF MOTION AND MOTION**

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NOTICE IS HEREBY GIVEN that on October 6, 2023, or as soon thereafter as the matter may be heard by the above-entitled Court, located at Courtroom D – 15th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiffs California Coalition for Women Prisoners (“CCWP”), R.B., A.H.R., S.L., J.L., J.M., G.M., A.S., and L.T. (collectively “proposed class representatives”) will and hereby do jointly move the Court for entry of an Order: (1) Provisionally certifying a class of “all people who are now, or will be in the future, incarcerated at FCI Dublin and subject to FCI Dublin’s uniform policies, customs, and practices concerning sexual assault, including those policies, customs, and practices related to care in the aftermath of an assault and protection from retaliation for reporting an assault” for purposes of issuing the concurrently filed request for a preliminary injunction; (2) Certifying the class of “all people who are now, or will be in the future, incarcerated at FCI Dublin and subject to FCI Dublin’s uniform policies, customs, and practices concerning sexual assault, including those policies, customs, and practices related to care in the aftermath of an assault and protection from retaliation for reporting an assault” under Federal Rules of Civil Procedure 23(a) and 23(b)(2) as to each of Plaintiffs’ causes of action; (3) appointing CCWP, R.B., A.H.R., S.L., J.L., J.M., G.M., A.S., and L.T. as class representatives; and (4) appointing counsel of record as class counsel.

This motion is based on the Complaint filed August 16, 2023 (Dkt. 1), the concurrently filed Motion for Preliminary Injunctions (Dkt. 10) this Notice of Motion and Motion, the Memorandum of Points and Authorities, and the Declarations of CCWP, Oren Nimni, Susan Beatty, Kara Janssen, R.B., A.H.R., S.L., J.L., J.M., G.M., A.S., and L.T. and associated documents, filed and served concurrently herewith.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 As described in Plaintiffs' Complaint and Motion for Preliminary Injunction, the  
 4 Federal Correctional Institution ("FCI") Dublin has become notorious due to brutal and  
 5 pervasive staff sexual abuse and retaliation against those who report it. Dkt. 1 ¶¶ 91-230;  
 6 Plaintiffs Motion for Preliminary Injunction (Dkt. 10) at 5-21. Due to the Bureau of  
 7 Prisons' ("BOP") failure to address these problems, Plaintiffs and the proposed class face  
 8 an unacceptable and unconstitutional risk of serious bodily harm on a daily basis.  
 9 Plaintiffs are not alone in sounding the alarm about the conditions at FCI Dublin.  
 10 Numerous government entities and officials, media outlets, and advocacy organizations  
 11 have repeatedly noted the scale of ongoing harm at FCI Dublin, including the Department  
 12 of Justice ("DOJ"), which has prosecuted eight former officials including the Warden,  
 13 Chaplain, and other officers for sexually abusing people in their custody. Dkt. 1 at ¶¶ 5,  
 14 65-73. Numerous other FCI Dublin staff are currently under investigation following  
 15 reports of sexual assault or harassment. *Id.* ¶ 93.

16 Despite widespread outcry and repeated calls for action, FCI Dublin and the BOP  
 17 have refused to take steps to remove the unconstitutional risk that people inside the prison  
 18 face. As a result, FCI Dublin and the BOP continue to knowingly place all those  
 19 incarcerated at the facility in harm's way. Plaintiffs, therefore, seek preliminary relief on  
 20 behalf of the following class:

21 All people who are now, or will be in the future, incarcerated at FCI Dublin  
 22 and subject to FCI Dublin's uniform policies, customs, and practices  
 23 concerning sexual assault, including those policies, customs, and practices  
 related to care in the aftermath of an assault and protection from retaliation  
 for reporting an assault.

24 When issuing a preliminary injunction on a class-wide basis, courts may  
 25 provisionally certify a class. *See, e.g., Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d  
 26 1036, 1043 (9th Cir. 2012). This motion seeks provisional class certification for purposes  
 27 of adjudicating the preliminary injunctive relief sought by Plaintiffs and ongoing  
 28 certification of a class of imprisoned people who are in desperate need of that relief, lest

1 they continue to suffer ongoing harm.

2 Plaintiffs meet all Rule 23 requirements as set forth below. Plaintiffs' preliminary  
3 injunction motion seeks only injunctive relief and presents the kinds of systemic legal and  
4 factual issues for which class certification was intended. Prisons are unique facilities  
5 where incarcerated individuals are subject to centralized and standard policies and  
6 practices, including in the context of preventing and addressing sexual assault, and where  
7 nearly all aspects of their lives are controlled by the BOP. Due to the BOP's centralized  
8 policies and practices, this matter will necessarily involve numerous questions of fact and  
9 law that are common to the proposed class, and certification will allow the parties to  
10 address these issues most efficiently.

### 11 LEGAL STANDARD

12 Class certification is proper under Federal Rule of Civil Procedure 23(a) if: (1) the  
13 class is so numerous that joinder of all members is impracticable; (2) there are questions of  
14 law or fact common to the class; (3) the claims or defenses of the representative parties are  
15 typical of the claims or defenses of the class; and (4) the representative parties will fairly  
16 and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). In addition, the  
17 proposed class must be certifiable under one of the three sub-provisions of Rule 23(b).  
18 The moving party meets this burden by providing the court with a sufficient basis for  
19 forming a "reasonable judgment" that each of these requirements is met. *Blackie v*  
20 *Barrack*, 524 F.2d 891, 900-01 (9th Cir. 1975).

21 Here, Plaintiffs seek certification under Rule 23(b)(2), pursuant to which class  
22 certification is proper if the party opposing the class has acted or refused to act on grounds  
23 generally applicable to the class, thereby making appropriate final injunctive relief or  
24 corresponding declaratory relief with respect to the class as a whole. Fed. R. Civ. P.  
25 23(b)(2).

### 26 ARGUMENT

#### 27 I. THE PROPOSED CLASS IS SUFFICIENTLY NUMEROUS

28 A class must be sufficiently numerous that joinder of all members is impracticable.



1 Fed. R. Civ. P. 23(a)(1). No specific number is needed, but “numerosity is presumed  
2 where the plaintiff class contains forty or more members.” *In re Cooper Cos. Inc. Sec.*  
3 *Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009). Numerosity is satisfied when “general  
4 knowledge and common sense indicate that [the class] is large.” *Cervantez v. Celestica*  
5 *Corp.*, 253 F.R.D. 562, 569 (C.D. Cal. 2008). To be impracticable, joinder must be  
6 difficult or inconvenient but need not be impossible. *Keegan v. Am. Honda Motor Co.*,  
7 284 F.R.D. 504, 522 (C.D. Cal. 2012); *A.B. v. Haw. State Dep’t of Educ.*, 30 F. 4th 828,  
8 837-38 (9th Cir. 2022) (finding class of over 300 individuals sufficiently numerous and  
9 noting “when, as here, a class’s membership changes continually over time, that factor  
10 weighs in factor of concluding that joinder of all members is impracticable”). Moreover,  
11 where, as here, “only injunctive or declaratory relief is sought, ... the numerosity  
12 requirement is relaxed so that even speculative or conclusory allegations regarding  
13 numerosity are sufficient to permit class certification.” *Sueoka v. United States*, 101 F.  
14 App’x 649, 653 (9th Cir. 2004) (quoting 5 Moore’s Federal Practice § 23.22[3][b] (3d ed.  
15 2003)).

16 The proposed class easily satisfies the requirements of Rule 23(a)(1). While the  
17 exact number of current people held at FCI Dublin fluctuates, as of August 14, 2023, the  
18 BOP reports that there are approximately 674 incarcerated people at FCI Dublin including  
19 549 at the FCI facility and 125 at the attached Camp—an increase of over 150 people since  
20 May 2023. Declaration of Kara Janssen in Support of Plaintiff’s Motions for Preliminary  
21 Injunction and Provisional Class Certification (Janssen Decl.) ¶ 9, Ex. E. There are also a  
22 significant number of individuals in the community on probation, mandatory supervision,  
23 and home confinement, who are subject to being returned to FCI Dublin at any time on an  
24 alleged violation or revocation of their supervision. As a result, even with fluctuations  
25 around the margins, the number of people comprising the proposed class is well above 40.

26 Additionally, Courts routinely find numerosity satisfied where, as here, the  
27 proposed class comprises current and future inmates who seek only declaratory and  
28 injunctive relief. *See, e.g., Rosas v. Baca*, No. CV 12-00428 DDP (SHx), 2012 WL

1 2061694 at \*2 (C.D. Cal. June 7, 2012) (finding a class of inmates sufficiently numerous  
 2 where “the Jails currently house thousands of inmates, and are certain to house many more  
 3 in the future”); *Jewett v. California Forensic Medical Group, Inc.*, No. 2:13-cv-0882 MCE  
 4 ACP, 2017 WL 980446 at \*5 (E.D. Cal. March 13, 2017) (presumption of impracticability  
 5 of joinder “especially true where, as here, the class includes future, unknowable class  
 6 members”) (citing *Hernandez v. Cnty of Monterey*, 305 F.R.D. 132, 153 (N.D. Cal 2015)).  
 7 Given the hundreds of individuals held at FCI Dublin on a daily basis, the proposed class  
 8 clearly meets the numerosity requirement of Rule 23(a)(1).

## 9 **II. THE PROPOSED CLASS MEETS THE COMMONALITY REQUIREMENT**

10 To satisfy commonality under Federal Rule 23(a)(2), plaintiffs must present “a  
 11 ‘common question of law or fact’ that can be litigated in ‘one stroke.’” *B.K. ex rel. Tinsley*  
 12 *v. Snyder*, 922 F.3d 957, 969 (9th Cir. 2019) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564  
 13 U.S. 338, 350 (2011)). “What matters to class certification ... is not the raising of  
 14 common ‘questions’—even in droves—but rather, the capacity of a class-wide proceeding  
 15 to generate common *answers* apt to drive the resolution of the litigation.” *Wal-Mart*, 564  
 16 U.S. at 350 (alteration in original) (citation omitted). For the purposes of commonality,  
 17 “even a single common question will do.” *Id.* at 359 (internal punctuation removed).

18 In civil rights lawsuits challenging conditions of detention, commonality is satisfied  
 19 where the lawsuit challenges “systemic policies and practices that allegedly expose  
 20 inmates to a substantial risk of harm,” even where there are “individual factual differences  
 21 among class members.” *Parsons v. Ryan*, 754 F.3d 657, 681–82 (9th Cir. 2014)  
 22 (collecting cases) (citation omitted); *see also Armstrong v. Davis*, 275 F.3d 849, 868 (9th  
 23 Cir. 2001) (commonality exists where “the lawsuit challenges a system-wide practice or  
 24 policy that affects all of the putative class members”); *Hernandez v. Lynch*, Case  
 25 No. EDCV 16-00620-JGB (KKx), 2016 WL 7116611, at \*17 (C.D. Cal. Nov. 10, 2016),  
 26 *aff’d sub nom. Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017). “The existence of  
 27 shared legal issues with divergent factual predicates is sufficient, as is a common core of  
 28 salient facts coupled with disparate legal remedies within the class.” *Staton v. Boeing Co.*,

1 327 F.3d 938, 953 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019  
2 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S.  
3 338 (2011)).

4 The Ninth Circuit’s decision in *Parsons v. Ryan*, 754 F.3d 657 (9th Cir. 2014),  
5 provides a roadmap to assessing commonality, particularly in the prison context. In  
6 *Parsons*, the Ninth Circuit affirmed the certification of a class of Arizona prisoners who  
7 sought to challenge (as Plaintiffs here seek to challenge) practices and policies of the  
8 prison that put them at substantial risk of serious harm. *See id.* at 662. Those substantial  
9 risks included (as they do here) denial of access to medical and mental health care through  
10 poor provision and understaffing. *Id.* Plaintiffs here also allege specific facts regarding  
11 policies and practices of being deliberately indifferent to ongoing sexual assault and  
12 harassment and to retaliation for reporting claims of such assault and harassment. CCWP  
13 Decl. ¶¶ 13-18; R.B. Decl. ¶¶ 3-17; A.H.R. Decl. ¶¶ 3-19; S.L. Decl. ¶¶ 3-21; J.L. Decl.  
14 ¶¶ 3-13; J.M. Decl. ¶¶ 3-18; G.M. Decl. ¶¶ 3-20; A.S. Decl. ¶¶ 3-26; L.T. Decl. ¶¶ 3-18.  
15 The Ninth Circuit in *Parsons* held that the Plaintiffs there satisfied the commonality  
16 requirement because “[w]hat all members of the putative class and subclass have in  
17 common is their alleged exposure, as a result of specified statewide ... policies and  
18 practices that govern the overall conditions of health care services and confinement, to a  
19 substantial risk of serious future harm to which the defendants are allegedly deliberately  
20 indifferent.” *Parsons*, 754 F.3d at 678. The same is true of the members of the proposed  
21 class here, all of whom are subject to the same policies and practices that govern FCI  
22 Dublin—policies and practices that should be protecting them from sexual assault and its  
23 resultant consequences, but which actually allow such abuse to persist and spread. *Cf.*  
24 *Lyon v. U.S. Immigr. & Customs Enforcement*, 171 F. Supp. 3d 961, 983 n.16 (N.D. Cal.  
25 2016) (“[I]f a prison hospital had a policy of not sterilizing its equipment, resulting in  
26 significantly increased risk of infection or spread of a disease (such as HIV), the fact that  
27 not every class member or even the named plaintiff contracted the disease would not  
28 preclude an injunction.”)

1 Each and every person incarcerated at FCI Dublin is subject to the BOP and FCI  
 2 Dublin's system-wide failure to take measures to prevent sexual assault by prison  
 3 employees. Named Plaintiffs, their members, and others incarcerated at FCI Dublin are  
 4 also subject to the BOP and the prison's condoning of retaliation in various forms. CCWP  
 5 Decl. ¶¶ 13-18; R.B. Decl. ¶¶ 3-17; A.H.R. Decl. ¶¶ 3-19; S.L. Decl. ¶¶ 3-21; J.L. Decl.  
 6 ¶¶ 3-13; J.M. Decl. ¶¶ 3-18; G.M. Decl. ¶¶ 3-20; A.S. Decl. ¶¶ 3-26; L.T. Decl. ¶¶ 3-18.  
 7 The declarations of people currently and formerly incarcerated at FCI Dublin paint a clear  
 8 picture that the BOP's failures have been consistent and longstanding, and that they are  
 9 continuing. *See generally* Decls. of A.J.F.; N.S.; S.T.; M.V.R.; J.B.; L.B.; F.M.C.; A.R.;  
 10 F.G.A.; H.V.; S.Y.; S.F.V. (released declarants); *see also* Decls. of C.B.; R.B.; J.L.; J.M.;  
 11 G.M.; A.S.; J.D.; C.F.B.; S.S.; N.A.; L.T.; S.M.; T.T.; A.H.R.; S.L.; B.F.; J.L.H.; E.A.;  
 12 Y.M.; B.S.; M.R.; J.T.; C.H.; A.T.; T.M.N.; C.D.; A.V.; M.M.; A.S.H.; C.A.H.; M.S.  
 13 (declarants incarcerated at FCI Dublin); Decls. of Z.T.S.; M.D.; C.C.; K.D. (declarants  
 14 incarcerated elsewhere). These statements from individuals currently and formerly  
 15 incarcerated at FCI Dublin are further supported by multiple Congressional reports, ongoing  
 16 criminal proceedings against abusive FCI Dublin employees, and BOP's own admissions,  
 17 detailing the agency's widespread failure to address the ongoing harm experienced by  
 18 people in its custody, including: (1) the system-wide complicity and participation in regular  
 19 and repeated sexual assault and harassment of imprisoned people by employees; (2) the  
 20 system-wide practice of punishing people who report staff or may report sexual assault or  
 21 harassment through use of solitary confinement or punitive confinement, transfers, strip  
 22 searches, room searches, seizure of possessions, or denial of access to good or services;  
 23 (3) the system-wide practice of using threats of harm—including threats of physical harm,  
 24 reputational harm, negative immigration consequences, punitive transfers, and loss of  
 25 services or programming—to deter individuals from reporting abuse or otherwise asserting  
 26 their rights; (4) the denial of access to adequate medical and mental health care; and (5) the  
 27 denial of access to counsel. Dkt. 1 ¶¶ 45-92; Janssen Decl. ¶¶ 10 (attaching Senate  
 28 Subcommittee Report on Sexual Abuse of Female Inmates in Federal Prisons); ¶ 11

1 (attaching Report and Recommendations Concerning the Department of Justice’s Response  
2 to Sexual Misconduct by Employees of the Federal Bureau of Prisons).

3 Plaintiffs’ and the proposed class’s challenges to these failures present common  
4 legal questions that can be addressed by common answers without any inquiry into the  
5 individual circumstances of Plaintiffs or proposed class members. Such common  
6 questions include, among others: (1) Whether Defendants’ policies and practices place  
7 members of the class at a substantial risk of harm because they permit sexual assault to  
8 occur, provide ineffective reporting mechanisms, fail to impose accountability, and  
9 facilitate retaliation; (2) Whether Defendants, who have known about staff sexual abuse  
10 and harmful conditions at FCI Dublin for years, have been deliberately indifferent to that  
11 risk; (3) Whether Defendants have abdicated their oversight obligations to ensure adequate  
12 medical and mental health responses have been taken to mitigate the risk of harm to the  
13 class; and (4) Whether, as part of their denial of effective reporting mechanisms,  
14 Defendants’ denial of access to counsel violates the constitutional rights of the class.

15 Any one of these common issues, standing alone, is enough to satisfy Rule  
16 23(a)(2)’s permissive standard. *See Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 957 (9th  
17 Cir. 2013); *Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 257 (C.D. Cal. 2008) (“Courts have  
18 found that a single common issue of law or fact is sufficient ....”); *see also Sweet v. Pfizer*,  
19 232 F.R.D. 360, 367 (C.D. Cal. 2005) (“[T]here must only be one single issue common to  
20 the proposed class.”) (citation omitted). Thus, the proposed class clearly meets the  
21 commonality requirement of Rule 23(a)(1).

### 22 **III. THE PROPOSED CLASS REPRESENTATIVES MEET THE TYPICALITY** 23 **REQUIREMENT**

24 Rule 23(a)(3) requires that the putative class representatives’ claims are typical of  
25 those of the class. Fed. R. Civ. P. 23(a)(3). “The purpose of the typicality requirement is  
26 to assure that the interest of the named representative aligns with the interests of the class.”  
27 *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). “Under the rule’s  
28 permissive standards, representative claims are ‘typical’ if they are reasonably coextensive

1 with those of absent class members; they need not be substantially identical.” *Parsons*, 754  
 2 F.3d at 685 (citation omitted); *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168,  
 3 1175 (9th Cir. 2010) (“The purpose of the typicality requirement is to assure that the  
 4 interest of the named representative aligns with the interests of the class.”) (internal  
 5 quotation marks and citation omitted).

6 Here, the named Plaintiffs and members of CCWP have experienced and face the  
 7 same harms as members of the proposed class. CCWP Decl. ¶¶ 1-18; R.B. Decl. ¶¶ 3-17;  
 8 A.H.R. Decl. ¶¶ 3-19; S.L. Decl. ¶¶ 3-21; J.L. Decl. ¶¶ 3-13; J.M. Decl. ¶¶ 3-18; G.M.  
 9 Decl. ¶¶ 3-20; A.S. Decl. ¶¶ 3-26; L.T. Decl. ¶¶ 3-18. The proposed Class Representatives  
 10 and their members have all spent significant time in FCI Dublin and experienced  
 11 significant past and ongoing harms flowing from FCI Dublin’s uniform practices  
 12 concerning staff sexual abuse. CCWP Decl. ¶¶ 8, 13-18; R.B. Decl. ¶¶ 2-17; A.H.R. Decl.  
 13 ¶¶ 2-19; S.L. Decl. ¶¶ 2-21; J.L. Decl. ¶¶ 2-13; J.M. Decl. ¶¶ 2-18; G.M. Decl. ¶¶ 2-20;  
 14 A.S. Decl. ¶¶ 2-26; L.T. Decl. ¶¶ 2-18. They have also experienced the retaliatory practices  
 15 and lack of basic care that are used to silence and punish people who report staff  
 16 misconduct, and which exacerbate the conditions that allow sexual assault and harassment  
 17 to continue unabated. CCWP Decl. ¶ 16; R.B. Decl. ¶¶ 3-17; A.H.R. Decl. ¶¶ 3-19; S.L.  
 18 Decl. ¶¶ 3-21; J.L. Decl. ¶¶ 3-13; J.M. Decl. ¶¶ 3-18; G.M. Decl. ¶¶ 3-20; A.S. Decl. ¶¶ 3-  
 19 26; L.T. Decl. ¶¶ 3-18 (detailing various forms of sexual misconduct and retaliation  
 20 against survivors of staff abuse such as use of restrictive housing, cell searches, and  
 21 withdrawal of privileges). Each has significant past experience both as a direct victim of  
 22 the harms alleged in the complaint and as witnesses to the system-wide practices alleged.  
 23 *See id.* (demonstrating specific harms to each named Plaintiff and knowledge each named  
 24 Plaintiff has of the entire scheme and of specific assaults of other incarcerated persons).

25 Each proposed representative is currently incarcerated at FCI Dublin and CCWP  
 26 has members currently incarcerated at FCI Dublin, and therefore the “claims at issue are  
 27 current for at least one named Plaintiff.” *Hernandez*, 305 F.R.D. at 149 (certifying class in  
 28 jail conditions case where certain named Plaintiffs had been transferred to CDCR); *Bates*

1 *v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (en banc) (holding that “[i]n  
 2 a class action, standing is satisfied if at least one named plaintiff meets the requirements”).  
 3 CCWP Decl. ¶ 8; R.B. Decl. ¶ 2; A.H.R. Decl. ¶ 2; S.L. Decl. ¶ 2; J.L. Decl. ¶ 2; J.M.  
 4 Decl. ¶ 2; G.M. Decl. ¶ 2; A.S. Decl. ¶ 2; L.T. Decl. ¶ 2. If any representative were to be  
 5 transferred to a different BOP facility, they could be transferred back to FCI Dublin at any  
 6 time. As a result, all Plaintiffs continue to “have ‘a personal stake in the outcome of the  
 7 controversy.’” *Hernandez v. Cnty. of Monterey*, 70 F. Supp. 3d 963, 976 (N.D. Cal. 2014)  
 8 (finding county prisoners transferred to CDCR continued to have standing in class action  
 9 challenging jail conditions.)

10 All named Plaintiffs have faced the same or similar issues, and along with the rest  
 11 of the proposed class have been subject to Defendants’ centralized policies and practices,  
 12 or lack thereof, regarding preventing, reporting, and addressing staff sexual misconduct at  
 13 the facility, and all are exposed to an ongoing risk of imminent and serious harm due to  
 14 Defendants’ actions and omissions. All would be benefitted or harmed equivalently by the  
 15 common resolution of the open common questions.

16 Named Plaintiffs’ claims are therefore sufficiently coextensive with those of the  
 17 class to satisfy typicality. *See, e.g., Kuang v. United States Dep’t of Def.*, 340 F. Supp. 3d  
 18 873, 892 (N.D. Cal. 2018), *vacated and remanded on other grounds*, 778 Fed. App’x 418  
 19 (9th Cir. 2019) (finding typicality requirement met when “named Plaintiffs and putative  
 20 class members have all suffered, and continue to suffer, the same general injury”).

21 **IV. THE PROPOSED CLASS REPRESENTATIVES AND CLASS COUNSEL**  
 22 **WILL ADEQUATELY REPRESENT THE INTERESTS OF THE CLASS**

23 Rule 23(a)(4) requires that “the representative parties will fairly and adequately  
 24 protect the interests of the class.” *Hanlon*, 150 F.3d at 1020 (quoting Fed. R. Civ. P.  
 25 23(a)(4)). “Resolution of two questions determines legal adequacy: (1) do the named  
 26 plaintiffs and their counsel have any conflicts of interest with other class members, and  
 27 (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of  
 28 the class?” *Id.* Adequate representation is usually presumed absent contrary evidence.

1 See 1 Newberg on Class Actions § 3:72 (5th ed. 2019).

2 There is no conflict between the named Plaintiffs and the members of the proposed  
3 class. As described above, the named Plaintiffs and class members have the same injury and  
4 seek the same prospective relief. Further, the proposed class representatives have already  
5 committed significant time and energy to seeking reform in FCI Dublin, reporting staff abuse  
6 and harassment and participating in interviews with internal Dublin and BOP leadership, or  
7 attempting to assist the DOJ in their prosecution of the related criminal matters.

8 Plaintiffs' counsel meets Rule 23(g)'s requirements and should therefore be  
9 appointed class counsel. Counsel has substantial experience handling class actions and  
10 complex prison litigation including particular subject matter expertise on conditions of  
11 confinement prisons and jails, have done extensive work investigating and prosecuting this  
12 action, and have sufficient resources to vigorously prosecute this case. See Declaration of  
13 Oren Nimni in support of Plaintiffs' Motion for Preliminary Injunction and Provisional  
14 Class Certification (Nimni Decl.) ¶¶ 1-7; Janssen Decl. ¶¶ 1-8; Declaration of Susan Beatty  
15 in support of Plaintiffs' Motion for Preliminary Injunction and Provisional Class  
16 Certification (Beatty Decl.) ¶¶ 1-7. Further, no conflicts or collusion exist between  
17 opposing counsel, Plaintiffs, and the proposed class members that would compromise their  
18 ability to represent the class. Nimni Decl. ¶ 7; Janssen Decl. ¶ 8; Beatty Decl. ¶ 7; see also  
19 *Harper v. Law Office of Harris & Zide LLP*, No. 15-CV-01114-HSG, 2016 WL 2344194,  
20 at \*4 (N.D. Cal. May 4, 2016) (finding adequacy of class counsel where Plaintiffs'  
21 attorney has been appointed class counsel in numerous class actions around the country,  
22 including those brought under the same federal laws); *Kim v. Space Pencil, Inc.*, No. C 11-  
23 03796 LB, 2012 WL 5948951, at \*3 (N.D. Cal. Nov. 28, 2012) (finding adequacy of class  
24 counsel where counsel "have regularly engaged in major complex litigation and have  
25 extensive experience in [] class action lawsuits that are similar in size, scope and  
26 complexity to the present case").

27 **V. THE PROPOSED CLASS IS APPROPRIATE UNDER RULE 23(b)(2)**

28 Certification under Rule 23(b)(2) is appropriate where, as here, defendants "acted or



1 refused to act on grounds that apply generally to the class.” Fed. R. Civ. P. 23(b)(2). A court  
2 may certify a Rule 23(b)(2) class where “a single injunction or declaratory judgment would  
3 provide relief to each member of the class.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 851–52  
4 (2018) (citation omitted). When conducting a Rule 23(b)(2) inquiry, courts do not “examine  
5 the viability or bases of class members’ claims for declaratory and injunctive relief, but only to  
6 look at whether class members seek uniform relief from a practice applicable to all of them.”  
7 *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010), *abrogation on other grounds*  
8 *recognized by Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022).

9       The claims raised and relief sought by Plaintiffs in this action are precisely the sort  
10 that Rule 23(b)(2) was designed to facilitate: the “primary role of [the rule] has always  
11 been the certification of civil rights class actions.” *Parsons*, 754 F.3d at 686; *see also*  
12 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997) (noting that “[c]ivil rights cases  
13 against parties charged with unlawful, class-based discrimination are prime examples” of  
14 proper (b)(2) actions). The requirements of Rule 23(b)(2) “are unquestionably satisfied  
15 when members of a putative class seek uniform injunctive or declaratory relief from  
16 policies or practices that are generally applicable to the class as a whole.” *Nat’l Fed’n of*  
17 *the Blind of California v. Uber Techs., Inc.*, No. 14-CV-04086 NC, 2016 WL 9000699, at  
18 \*6 (N.D. Cal. July 13, 2016) (quoting *Parsons*, 754 F.3d at 687-88).

19       Here, in both their Complaint and their Motion for Preliminary Injunction, Plaintiffs  
20 seek declaratory and injunctive relief—system-wide improvements in the Defendants’  
21 policies, procedures, and programs—on behalf of a large and transitory class of  
22 incarcerated persons to address ongoing sexual assault and misconduct, the lack of  
23 confidential reporting mechanisms, retaliation, and access to care for survivors. All named  
24 plaintiffs and members of the proposed class are exposed to a substantial risk of imminent  
25 and serious harm due to Defendants’ failures in each of these areas. CCWP Decl. ¶¶ 13-  
26 18; R.B. Decl. ¶¶ 3-17; A.H.R. Decl. ¶¶ 3-19; S.L. Decl. ¶¶ 3-21; J.L. Decl. ¶¶ 3-13; J.M.  
27 Decl. ¶¶ 3-18; G.M. Decl. ¶¶ 3-20; A.S. Decl. ¶¶ 3-26; L.T. Decl. ¶¶ 3-18. While each of  
28 Defendants’ policies and practices may not affect every member of the proposed class in

1 exactly the same way, they constitute shared grounds for all incarcerated persons in the  
2 proposed class. *See Rodriguez v. Hayes*, 591 F.3d at 1125 (“The fact that some class  
3 members may have suffered no injury or different injuries from the challenged practice  
4 does not prevent the class from meeting the requirements of Rule 23(b)(2).”). Therefore,  
5 certification of the proposed class under Rule 23(b)(2) is proper.

6 **CONCLUSION**

7 For the foregoing reasons Plaintiffs respectfully request that this Court issue an Order:

8 1. Provisionally certifying a class of “all people who are now, or will be in the  
9 future, incarcerated at FCI Dublin and subject to FCI Dublin’s uniform policies, customs,  
10 and practices concerning sexual assault, including those policies, customs, and practices  
11 related to care in the aftermath of an assault and protection from retaliation for reporting an  
12 assault” for purposes of issuing the concurrently filed request for a preliminary injunction;

13 2. Certifying the class of “all people who are now, or will be in the future,  
14 incarcerated at FCI Dublin and subject to FCI Dublin’s uniform policies, customs, and  
15 practices concerning sexual assault, including those policies, customs, and practices related  
16 to care in the aftermath of an assault and protection from retaliation for reporting an  
17 assault” under Federal Rules of Civil Procedure 23(a) and 23(b)(2) as to each of Plaintiffs’  
18 causes of action;

19 3. Appointing CCWP, R.B., A.H.R., S.L., J.L., J.M., G.M., A.S., and L.T. as  
20 class representatives; and

21 4. Appointing counsel of record as class counsel.

22 DATED: August 17, 2023

Respectfully submitted,

23 ROSEN BIEN GALVAN & GRUNFELD LLP

24  
25 By: */s/ Kara Janssen*

26 Kara J. Janssen

27 Attorneys for Plaintiffs