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16 Attorneys for Defendants

17 UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

18
 19 ISAAC KIGONDU KINITI, et al.,)
)
 20 Plaintiffs,)
)
 21 v.)
)
 22 JULIE L. MYERS, et al.,)
)
 23 Defendants.)
)
 24)
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 26)
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 27)
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 28)

Case No. 3:05-cv-1013-DMS-PCL

**DEFENDANTS' OPPOSITION TO
 PLAINTIFFS' MOTION FOR CLASS
 CERTIFICATION¹**

Filed: June 8, 2007
 Judge: Honorable Dana M. Sabraw
 Magistrate: Honorable Peter C. Lewis
 Trial: Not Yet Set

¹ This opposition to the motion for class certification is filed on behalf of the Federal Defendants. It is not filed on behalf of defendants Corrections Corporation of America (CCA), Joe Easterling, or Charles Howard.

1 Motion to Dismiss, Declaration of Timothy L. Perry (Perry Decl.) at ¶ 17. Thus, since late January
 2 2007, SDCF has been operating well below its "capacity," as previously defined by plaintiffs.
 3 Therefore, SDCF is not "overcrowded." Id. at ¶ 18. In addition, since late January 2007, there has
 4 been no triple-celling of any of the ICE detainees at SDCF, nor has there been any situation akin to
 5 "severe and chronic overcrowding." Id. at ¶¶ 18, 19.

6 Despite these allegations, plaintiffs' Motion for Class Certification under the Second Amended
 7 Complaint should be denied, because (i) plaintiffs lack standing to sue; (ii) the claims of the proposed
 8 class are not yet ripe; and (iii) plaintiffs do not meet the prerequisites to class certification as set forth
 9 in Fed. R. Civ. P. 23(a), for the additional reasons set forth below.

11 ARGUMENT AND AUTHORITIES

12 I. Plaintiffs Lack Standing

13 "Standing is a jurisdictional element that must be satisfied prior to class certification." Lee v.
 14 State of Oregon, 107 F.3d 1382, 1390 (9th Cir. 1997). To assert claims on behalf of a class, named
 15 plaintiffs must demonstrate "a likelihood of substantial and immediate irreparable injury" as a result
 16 of the challenged official conduct. Hodgers-Durgin v. De la Vina, 199 F.3d 1037, 1042-44 (9th Cir.
 17 1999) (en banc). Where a plaintiff "seeks prospective injunctive relief, he must demonstrate 'that he
 18 is realistically threatened by a repetition of the violation.'" Armstrong v. Davis, 275 F.3d 849, 860-61
 19 (9th Cir. 2001) (quoting City of Los Angeles v. Lyons, 461 U.S. 95, 109 (1983)).

20 The plaintiffs lack standing to sue in the present case, as they have failed to demonstrate actual
 21 or potential harm arising out of defendants' alleged conduct. More specifically, plaintiffs claim that
 22 overcrowding and triple-celling at SDCF have resulted in a myriad of unconstitutional harms. Such
 23 claims are speculative and unsubstantiated, for plaintiffs fail to show past or future irreparable harm
 24 that can be directly attributed to the defendants' alleged challenged conduct. See, e.g., City of Los
 25 Angeles v. Lyons, 461 U.S. 95, 111 (1983) (finding that the speculative nature of claim of future
 26 injury precluded plaintiff from establishing a likelihood of substantial and immediate injury); Stevens

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 Facility.

1 v. Harper, 213 F.R.D. 358, 367-70 (E.D. Cal. 2002) ("Beyond bold assertions, plaintiffs do little to
 2 substantiate their claims . . ."). Without such proof, the plaintiffs cannot substantiate their claims that
 3 they are threatened by the possibility that such alleged constitutional violations will be repeated.

4
 5 **II. The Claims of the Proposed Class Are Not Yet Ripe.**

6 The definition of the plaintiffs' proposed class would include the claims of unnamed, future
 7 detainees (i.e. persons who have not yet even been detained at SDCF), and, as such, whose claims are
 8 not yet ripe. "A claim is not ripe for adjudication if it rests upon 'contingent future events that may
 9 not occur as anticipated, or indeed may not occur at all.'" Texas v. United States, 523 U.S. 296, 300
 10 (1998) (quoting Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568, 581 (1985) (internal
 11 quotation omitted)). See also Immigrant Assistance Project v. INS, 306 F.3d 842, 859 (9th Cir. 2000)
 12 ("The ripeness question is whether the harm asserted has matured sufficiently to warrant judicial
 13 intervention.") (internal quotation omitted). In essence, plaintiffs seek certification of a class
 14 including unnamed future detainees based on the purely speculative premise that future detainees will
 15 automatically be subject to triple-celling and/or overcrowding. Such prospective plaintiffs/detainees
 16 fail to satisfy their affirmative burden to show that they are realistically subject to present and/or
 17 future irreparable harm resulting from the defendants' alleged wrongful conduct. Moreover, as stated
 18 earlier, SDCF has been below capacity since late January 2007, prior to the filing on the Second
 19 Amended Complaint and has not engaged in any triple-celling since that time. Thus, there is no
 20 reasonable expectation that the alleged wrongful conduct will occur in the future, see Perry Decl. at
 21 ¶¶ 14-26. As a result, such claims are not ripe, and those prospective plaintiffs are not eligible for
 22 certification as part of a class.

23 For all these reasons, plaintiffs lack the requisite standing to bring forth this action, and
 24 plaintiffs' motion for class certification should be denied.

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1 **III. Plaintiffs Fail to Meet The Requirements of Rule 23 and The Applicable Standard of**
 2 **Review.**

3 Upon a motion for class certification, the plaintiff class -- and not the defendants -- bears the
 4 burden of establishing that the requirements of Federal Rule 23 are met. Zinser v. Accufix Research
 5 Institute, Inc., 253 F.3d 1180, 1186 (9th Cir. 2001). Should plaintiffs fail to carry out their burden as
 6 to any of the requirements of Rule 23, they will be precluded from the maintaining of the lawsuit as
 7 a class action. Schwartz v. Upper Deck Co., 183 F.R.D. 672, 675 (S.D. Cal. 1999) (citing Rutledge
 8 v. Electric Hose & Rubber Co., 511 F.2d 668, 673 (9th Cir. 1975)). To this end, maintenance of a
 9 class action lawsuit, as governed by Rule 23 of the Federal Rules of Civil Procedure (the FRCP),
 10 requires the satisfaction of a two-step procedure prior to judicial certification of a "class" of plaintiffs.
 11 First, plaintiffs must satisfy all four (4) of the conjunctive requirements expressed in Rule 23(a).
 12 Namely,

13 [o]ne or more members of a class [must] sue or be sued as representative parties on
 14 behalf of all only if (1) the class is so numerous that joinder of all members [would be]
 15 impracticable, (2) there [would be] questions of law or fact common to the class, (3)
 16 the claims or defenses of the representative parties [would be] typical of the claims or
 17 defenses of the class, and (4) the representative parties will fairly and adequately
 18 protect the interests of the class.

19 See Fed. R. Civ. P. 23(a). In addition to satisfying these four requirements for class certification, the
 20 plaintiffs must also satisfy one of the three subsections listed in Rule 23(b), such that:

21 (1) the prosecution of separate actions by or against individual members of the class would
 22 create a risk of

23 (A) inconsistent or varying adjudications with respect to individual members of the
 24 class which would establish incompatible standards of conduct for the party opposing
 25 the class, or

26 (B) adjudications with respect to individual members of the class which would as a
 27 practical matter be dispositive of the interests of the other members not parties to the
 28 adjudications or substantially impair or impede their ability to protect their interests;
 or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to
 the class, thereby making appropriate final injunctive relief or corresponding declaratory relief
 with respect to the class as a whole (otherwise referred to as the "commonality requirement");
 or

(3) the court finds that the questions of law or fact common to the members of the class
 predominate over any questions affecting only individual members, and that a class action is
 superior to other available methods for the fair and efficient adjudication of the controversy

1 (otherwise referred to as the "typicality requirement").

2 See Fed. R. Civ. P. 23(b).

3 In determining whether plaintiffs have met their burden of proof regarding these requirements,
4 the Court may not consider the merits of plaintiffs' claims, see Eisen v. Carlisle & Jacquelin, 417 U.S.
5 156, 178 (1974) and should take the substantive allegations of the complaint as true. Schwartz, 183
6 F.R.D. at 675 (citing Blackie v. Barrack, 524 F.2d 891, 901, n. 17 (9th Cir. 1975)). Of course, if the
7 court is not fully satisfied with the legal sufficiency of the allegations, the class should not be certified.
8 Chamberlan v. Ford Motor Co., 402 F.3d 952, 962 (9th Cir. 2005) (citing General Telephone Co. of
9 the Southwest v. Falcon, 457 U.S. 147, 161 (1982)). The Court is not, however, required to accept
10 conclusory or generic allegations regarding the suitability of the litigation for resolution through class
11 action. Stevens v. Harper, 213 F.R.D. 358, 378 (E.D. Cal. 2002) (citing Morrison v. Booth, 763 F.2d
12 1366 (11th Cir. 1985) (rejecting certification in the absence of factually specific allegations)).

13 In addition, before ordering that a lawsuit may proceed as a class action, the trial court must
14 rigorously analyze whether the class action allegations meet the requirements of Rule 23. To this end,
15 the Court may consider evidence that relates to the merits, if such evidence is relevant to the
16 requirements of Rule 23. Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992). In the face
17 of these obligations, plaintiffs have failed to satisfy their affirmative burdens for class certification with
18 the allegations of the Second Amended Complaint. At best, before the Court can conduct its rigorous
19 analysis to determine whether class certification is appropriate in this case, plaintiffs' factual
20 deficiencies necessitate preliminary discovery on a number of issues, including whether all members
21 of the proposed class are similarly impacted by the alleged wrongful conduct; whether the named
22 plaintiffs' claims are typical of the claims of the proposed class; and whether the named plaintiffs
23 adequately represent the interests of the proposed class. Class certification of this case, without an
24 evidentiary showing by plaintiffs on these issues would be premature. Thus, while defendants strongly
25 assert that plaintiffs' class certification motion should be denied, defendants alternatively request that
26 the Court conduct an evidentiary hearing after preliminary discovery and further briefing on the
27 aforementioned factual issues.

1 **A. Plaintiffs Fail to Meet the Commonality Requirement of Rule 23(a)(2) and**
2 **Consequently Fail to Demonstrate the Existence of Common Issues of Law or Fact**
3 **Linking the Class Members Together.**

4 Rule 23(a)(2) requires that there be "questions of law or fact common to the class" prior to
5 certifying a case potentially suitable for class action. "The commonality requirement is said to be met
6 if plaintiffs' grievances share a common question of law or of fact." Armstrong v. Davis, 275 F.3d 849,
7 868 (9th Cir. 2001). More specifically, "commonality focuses on the relationship of common facts
8 and legal issues among class members." Dukes v. Wal-Mart, Inc., 474 F.3d 1214, 1342 (9th Cir.
9 2007). Thus, the commonality requirement is satisfied "where the question of law linking the class
10 members is substantially related to the resolution of the litigation even though the individuals are not
11 identically situated." Smith v. University of Washington Law School, 2 F.Supp.2d 1324, 1342 (W.D.
12 Wash. 1998) (quoting Yslava v. Hughes Aircraft Co., 845 F.Supp. 705, 712 (D. Ariz.1993); see also
13 Foreman v. Heineman, 240 F.R.D. 456, 506 (D. Neb. 2007).

14 Plaintiffs have failed to satisfy this particular prerequisite for class certification because there
15 is no causal link between the alleged harms and the defendants' actions. More specifically, plaintiffs
16 propose that the class include "all immigration detainees in ICE custody who are now or in the future
17 will be confined at [SDCF]." Plaintiffs further assert that the common questions of law and fact shared
18 between these proposed class members include:

19 whether defendants have failed to provide adequate shelter, reasonable safety, and basic
20 human needs to plaintiffs as a result of overcrowding at SDCF; whether plaintiffs'
21 conditions of confinement subject them to unreasonable risk of violence, injury, illness
22 and mental suffering; whether plaintiffs' conditions of confinement are effectively
23 punitive; whether defendants' conduct violates the Fifth Amendment; and whether
24 defendants' conduct shows a pattern of officially sanctioned behavior that violates
25 plaintiffs rights and establishes a credible threat of future injury.

26 Second Amended Complaint at ¶ 107. The problem with the plaintiffs' proposed class is evidenced
27 by this "laundry list" of general harms or injuries growing out of the alleged overcrowding and claimed
28 "punitive" living conditions. The complaint not only fails to establish that a common question of
either law or fact exists between the named plaintiffs and the proposed class with regard to their
alleged harms, but also fails to show how any of the alleged harms suffered by the named plaintiffs and
the proposed class are specifically caused by defendants' actions. Therefore, these claims, as they are
outlined in plaintiffs' brief, lack commonality between their respective situations and simultaneously

1 demonstrate why the Motion for Class Certification should be denied.

2 Further still, a Rule 23(a) motion "require[s a court's] 'rigorous analysis' to ensure 'actual, not
3 presumed, conformance' with the criteria for class certification." Dukes, 474 F.3d at 1214 (quoting
4 General Tel. Co. of Southwest, 457 U.S. at 161). The various incidents and claims specified by the
5 named plaintiffs in the Second Amended Complaint appear unrelated to their allegations of
6 overcrowding and triple celling. For example, plaintiff Any Castro ("Castro") complains of both cold
7 conditions and restlessness due to prescription medication, as well as of her discomfort in her sleeping
8 arrangement. Second Amended Complaint at ¶ 62. Plaintiff Sylvester Owino ("Owino") alleges to
9 have "witnessed numerous fights among detainees." Id. at ¶ 72. In addition, an unnamed asylum
10 seeker allegedly spent two consecutive days in a holding cell with 18 people⁴. Id. at ¶ 77. Finally,
11 plaintiff Kiniti alleges a mentally ill detainee assaulted another cell mate. Id. at ¶ 83. However, none
12 of these claims provide a reasonable foundation for finding commonality among the proposed class
13 members because none of them have been proven to be directly linked to the allegedly "overcrowded"
14 conditions or periodic implementation of triple-celling at SDCF. See id. at ¶¶ 107-108, ¶¶ 111-117.
15 Without such evidence, plaintiffs' allegations fail to support a finding of common questions of law
16 between the individual plaintiffs as alleged in the Second Amended Complaint, and do not entitle
17 plaintiffs to any relief.

18 Along similar lines, an examination of a couple of the named plaintiffs' medical records shows
19 no qualitatively similar pattern of harm, but instead illustrates a myriad of injuries, ailments or
20 illnesses among the plaintiffs -- ranging from tooth sensitivity to Bells Palsy -- and unrelated to any
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24 ⁴ Plaintiffs' description of the experience of an unnamed party is specific to that
25 individual, and thus random and atypical of the proposed class. In such instances, the court
26 should not find in favor of plaintiffs' claims. See Landfair v. Sheahan, 911 F.Supp. 323 (N.D.Ill.
27 1995) ("Pretrial detainee alleged that his due process rights were violated when, because of
28 prison overcrowding..." Petitioner claimed that he contracted meningitis due to the
overcrowding, but failed to show he had suffered any injury. The "detainee did not set forth
specific facts showing that he actually contracted meningitis, but instead submitted [...] articles
about another detainee being transferred to county hospital because of meningitis-like
symptoms.").

1 one source of conduct.⁵ See generally Medical Records of Plaintiffs Sylvester Otieno Owino and Isaac
2 Kigondu Kiniti, to be filed as Exhibit A, under seal.⁶

3 Admittedly, plaintiffs assert that the common source of conduct from which their claims stem
4 is due to the defendants permitting overcrowding or triple-celling at SDCF⁷. See Second Amended
5 Complaint ¶¶ 107-108. Plaintiffs further suggest that overcrowding or triple-celling denies them some
6 right of entitlement as immigration (pre-trial equivalent) detainees. Despite these claims, however,
7 triple-celling is not *per se* unconstitutional. Strickler v. Waters, 989 F.2d 1375, 1382 (4th Cir. 1993)
8 (citing Williams v. Griffin, 952 F.2d 820, 824 (4th Cir. 1991). See also Chilcote v. Mitchell, 166
9 F.Supp.2d 1313, 1315, 1318 (D. Or. 2001) (confinement of pretrial detainees in cramped,
10 triple-bunked cells for 20 to 21 hours a day did not rise to the level of a constitutional violation in the
11 face of the law enforcement interests, population-based needs and security concerns)); see also
12 Crocamo v. Hudson County Correctional Center, No. 06-1441, slip op. at 4-5 (D.N.J. 2007), where
13 plaintiffs complained that,

14 as pretrial detainees, they were living in an overcrowded prison, at over 150% capacity
15 for approximately 10 months . . . Certain cells, designed for two inmates, are 'triple
16 bunked.' The plaintiffs argued the third bunk was within inches of the toilet and sink.
17 The facts [did] not indicate that plaintiffs were being punished but, rather, that
18 triple-celling occurred because the institution ran out of bed space. Here, however, the
19 plaintiffs were never required to sleep on the floor, but in a third bunk. Moreover,
20 inmates were allowed out of their cells on a daily basis from 7:00 a.m. to 12:30 p.m.
21 and from 2:30 p.m. to 9:00 p.m. for various activities. Thus, the court denied plaintiff's

19 ⁵ In Baby Neal for and by Kanter v. Casey, 43 F.3d 48, 56 (3d Cir. 1994), the court
20 suggested that even where plaintiffs are differently impacted by a violation, the requirement of
21 commonality is only satisfied wherein there is evidence of the harm being attributable to the
22 violation and not some alternate cause. Id. at 58. While Baby Neal held that "[i]ndividual factual
23 differences do not affect the central allegation that [a party] violates various statutory and
24 constitutional rights in its provision," Id. at 61, In re New England Mut. Life Ins. Co. Sales
25 Practices Litigation, 183 F.R.D. 33, 40 (D. Mass.,1998), "determined that serious intra-class
26 conflicts of interest between plaintiffs with diverse medical conditions precluded adequate and
27 fair representation of the class under Rule 23(a)(4)." (Citing Amchem Products, Inc. v. Windsor,
28 521 U.S. 591, 595 (1997) wherein the "named parties with diverse medical conditions sought to
act on behalf of a single giant class rather than on behalf of discrete subclasses. In significant
respects, the interests of those within the single class are not aligned.")

27 ⁶ Due to privacy concerns, defendants will not file these medical records electronically.
28 Instead, defendants will file these medical records under seal early next week.

1 claim and determined that the housing conditions would not reasonably be considered
2 punishment.

3 Id. at *4-5. Thus, regardless of their constitutionality, plaintiffs have failed to demonstrate, rather
4 than simply allege, that any of these conditions were caused by either the alleged triple-celling or
5 overcrowded conditions at the facility.

6 Moreover, in Baby Neal, the court rejected plaintiffs' request for certification because "the
7 amended complaint does not specifically allege that any of the named plaintiffs were subjected to the
8 types of alleged misconduct." 43 F.3d at 61. Similarly, here plaintiffs fail to *specifically allege* that
9 any of the named members of the proposed class were subjected to any harm or injury resulting from
10 the alleged overcrowding.⁸ See Second Amended Complaint at ¶¶ 12-20. Instead, plaintiffs take the
11 opportunity to describe the plight of each detainee and their personal circumstances, but
12 simultaneously fail to identify any harm symptomatic of the alleged overcrowding that is claimed to
13 have occurred at SDCF.

14 As strong evidence of this missing link between the harm alleged and supposed overcrowded
15 conditions, plaintiffs' medical records contradict the claim that either overcrowding or triple-celling
16 is the ultimate cause of plaintiffs' injuries. Plaintiffs' health issues, as detailed in the medical records,
17 appear to originate from a variety of causes. More specifically, according to certain plaintiffs' medical
18 history, some illnesses or injuries either predate their detention at SDCF or reflect conditions not
19 directly attributable to the alleged overcrowding at the Facility. Thus, plaintiffs fail to provide a
20 causal connection between either (i) the harm directly attributable to an instance in which a detainee
21 was triple celled or (ii) the harm resulting from the alleged overcrowding of the facility.

22 For all these reasons, plaintiffs have failed to satisfy their affirmative burden of demonstrating
23 the existence common issues of law or fact that link the class members together. Therefore, the Court
24 should deny plaintiffs' motion for class certification.

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26
27 ⁸ See Second Amended Complaint at ¶ 107. (Conditions of pretrial detention did not
28 violate due process absent showing that detainees had been deprived of identifiable human needs.
Despite crowded conditions, however, detainees were not denied shelter, beds, food or warmth.)
Cf. Hoover v. Watson, 886 F.Supp. 410, 416-17 (D. Del. 1995).

1 **B. Plaintiffs Fail to Meet the Typicality Requirement of Rule 23(a)(3) and**
2 **Consequently Have Not Satisfied Their Burden of Demonstrating That the Claims**
3 **of the Representative Plaintiffs are Typical of the Claims of the Proposed Class**
4 **as a Whole.**

5 Rule 23(a)(3) of the FRCP essentially requires that "the claims or defenses of the
6 representative parties [be] typical of the claims or defenses of the class." Dukes, 474 F.3d at 1231.
7 "The test of typicality is whether other members have the same or similar injury, whether the action
8 is based on conduct which is not unique to the named plaintiffs, and whether other class members
9 have been injured by the same conduct." Id. at 1232 (citing Hanon, 976 F.2d at 508 (internal
10 quotation omitted))

11 To this end, plaintiffs cite the alleged overcrowding of the Facility as being the sole course of
12 conduct that tie all other claims together in this case. Memorandum in Support of Plaintiffs' Motion
13 for Class Certification ("Plaintiffs' Memo") at 6. However, there is a clear disconnect between each
14 of these plaintiffs' claims, as they are substantively dissimilar. In particular, throughout the Second
15 Amended Complaint, plaintiffs set forth allegations regarding their experiences at SDCF, as well as
16 conjecture involving unnamed detainees. Still, none of plaintiffs' claims outlined in the Second
17 Amended Complaint suffice to establish an alignment of interests among the proposed class as a
18 whole. Instead, the type of grievances alleged vary as between the current plaintiffs from:
19 (I) apprehension of hostility from other detainees; (ii) physical discomfort; (iii) mental distress;
20 (iv) despondence over unfortunate situations had by others; and (v) an array of "stories" narrated by
21 plaintiffs which are of no consequence to the cause of action in plaintiffs' claims for relief. See
22 Second Amended Complaint ¶¶ 111-117. In short, the relevant grievances outlined in the Second
23 Amended Complaint are, and should be specific to each named plaintiff and consequently,
24 unequivocally fail to substantiate cause for a class-wide cause of action against defendants.

25 In addition, "[t]ypicality . . . is [also] said to require that the claims of the class representatives
26 be typical of those of the class, and [is] to be 'satisfied when each class member's claim arises from
27 the same course of events, and each class member makes similar legal arguments to prove the
28 defendant's liability.' Armstrong v. Davis, 275 F.3d 849, 868 (9th Cir. 2001) (quoting Marisol v.
Giuliani, 126 F.3d 372, 376 (2nd Cir.1997)). Thus, "[i]n order to assert claims on behalf of a class,
a named plaintiff must have personally sustained or be in immediate danger of sustaining 'some direct

1 injury as a result of the challenged statute or official conduct." Id. at 860 (quoting O'Shea v. Littleton,
2 414 U.S. 488 (1974).

3 Here, plaintiffs make numerous allegations that they have been subjected to overcrowding and
4 triple-celling, that they have been denied basic human needs, and that their environment breeds
5 unreasonable risks. See generally Second Amended Complaint ¶¶ 104-108. Plaintiffs additionally
6 assert that their conditions of confinement constitute punishment and that the defendants' policies,
7 practices, acts and omissions deprive them of their constitutional rights. Id. Despite their broad
8 nature, plaintiffs' allegations fail to identify even one specific injury that is inextricably tied to the
9 alleged overcrowding or triple-celling at SDCF. No policy or universal practice of triple-celling was
10 mandated facility-wide, such that immigration detainees were not universally triple-celled⁹ at SDCF,
11 and plaintiffs have failed to show that defendants created and employed some policy or procedure for
12 triple-celling its ICE detainees. In addition, there is no statutory obligation or agency policy in place
13 which mandates that ICE triple-cell its detainees.

14 Further still, the Second Amended Complaint only identifies either seemingly unrelated
15 incidents allegedly experienced by the ICE detainees or a number of general complaints that are not
16 tethered to any legally-mandated services.¹⁰ More specifically, it details isolated incidents unrelated
17 to the plaintiffs' general claims of misconduct or requested claims for relief. Second Amended
18 Complaint at ¶ 62 (e.g. plaintiff Castro complains of cold conditions and restlessness due to
19 prescription medication and discomfort of her sleeping arrangement); Id. at ¶ 72 (plaintiff Owino
20 complains of the humid conditions in the pod, alleging that they *could* adversely affect his asthma)
21 (emphasis added); Id. at ¶ 83 (plaintiff Kiniti alleges a mentally ill detainee assaulted another cell
22 mate, upon the supposition that the assault was a result of the detainee's illness). Nevertheless,
23 plaintiffs fail to link the alleged injuries suffered by the named plaintiffs to any ICE policy or practice

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25 ⁹ None of the named plaintiffs are currently triple-celled.

26 ¹⁰ The court in Elizabeth M. v. Montenez, 458 F.3d 779, 788 (8th Cir. 2006), stated that
27 given the individualized nature of all of the substantive due process inquiries, and plaintiffs'
28 failure to identify the specific policies under attack and the nature of their federal statutory
claims, the massive class action certified neither promoted the efficiency nor economy
underlying class actions. 458 F.3d at 788.

1 that was applied to the proffered class as a whole. Because there is no evidence of plaintiffs' having
2 suffered as a result of the same or similar official conduct, plaintiffs remain unable to establish any
3 viable connection whereby the defendants' alleged wrongful conduct can be considered the sole and
4 direct cause of harm to the named plaintiffs.

5 Therefore, for all these reasons outlined above, plaintiffs have failed to satisfy their affirmative
6 burden of demonstrating that the claims of the named plaintiffs are typical of the claims of the class
7 as a whole. Consequently, this Court should deny plaintiffs' motion for class certification.

8
9 **CONCLUSION**

10 For the foregoing reasons, the Court should deny plaintiffs' motion for class certification.

11
12 DATED: June 8, 2007

13 Respectfully submitted,

14 For Defendants:

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 8th day of June 2007 a true and correct copy of the foregoing Defendants' Opposition to Plaintiffs' Motion for Class Certification was served by ECF Filing on all counsel of record.

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