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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MATTHEW SCOTT, et al.,

Plaintiffs,

vs.

CALIFORNIA FORENSIC MEDICAL
GROUP et al.,

Defendants.

Case No. 2:16-cv-03084-DSF (RAOx)

ORDER GRANTING MOTION FOR
CLASS CERTIFICATION

1 Plaintiffs' Motion to Certify Class Under Fed. R. Civ. P. Rule 23(b)(3)
2 having come before this Court, the files and records having been reviewed, and the
3 Court having determined that this matter is appropriate for decision without oral
4 argument, see Fed. R. Civ. P. 78; Local Rule 7-15:

5 The Court finds that the requirements of Rule 23(b)(3) have been met, and that
6 Class Certification as set forth in Plaintiffs' Motion is GRANTED.

7
8 **I. INTRODUCTION**

9 This lawsuit arises from Plaintiffs' allegations of lengthy and unjustified delays in
10 providing restorative psychiatric treatment to criminal defendants who have been
11 declared Incompetent to Stand Trial ("ISTs"), all of which Defendants deny. Although
12 this motion for class certification arises in the context of a proposed class settlement, the
13 court addresses independently whether the criteria for class certification have been met.

14 The facts supporting Plaintiff's motion are based on the allegations in ¶¶ 8-27, 30-
15 56, 60-82, 84-96, and 102-108 of the Fourth Amended Complaint. Defendants do not
16 oppose certification conditioned on approval of the settlement. The Court's findings are
17 based solely on the allegations in Plaintiffs' complaint, and are made only for purposes
18 of class certification and approval of the proposed settlement, and are not intended as a
19 final adjudication of facts or law in dispute in this litigation.

20 For this unopposed motion, the class is defined to conform to the class definition
21 contained in the settlement agreement (which limits the class definition to those eligible
22 to receive compensation under the settlement agreement), to wit: all persons who 1)
23 were found IST by a court, confined to Ventura County jail, admitted to a DSH facility,
24 and restored to competency and discharged by DSH between May 5, 2013 (three years
25 prior to the filing of the complaint in this case) and the date this motion was filed
26 (September 6, 2020), and 2) were not admitted to a DHS facility within 28 days from the
27 date of the Court's Commitment Order committing an IST defendant to the DSH.

1 The Class Representative Plaintiffs are Matthew Scott, represented by Mary
2 Rodgers-Vey (his mother and guardian ad litem), and Omar Mojica, represented by his
3 brother and guardian ad litem, Adrian Mojica. Both Mr. Scott and Mr. Mojica were
4 found IST and waited longer than 30 days before they were admitted to a DSH facility
5 and received restorative treatment.

6 Plaintiffs' claim, based on the facts stipulated to for purposes of this motion, is
7 that, since the beginning of the class period (and before), DSH has lacked the bed space
8 to admit ISTs to state hospitals for restorative, psychiatric treatment within a reasonable
9 time. With hospital waitlists consistently in the hundreds, ISTs have been forced to
10 spend weeks, sometimes months, waiting in county jails before they are transferred to
11 state hospitals. Plaintiffs contend that these delays undermine mental health outcomes.
12 While this is an issue throughout the State, this lawsuit addresses only Ventura County
13 ISTs.

14 In addition to the DSH employees named in this lawsuit¹, there are two other
15 defendants – California Forensic Medical Group (“CFMG”) and MHM Services of
16 California, Inc. (“MHM”). CFMG, Ventura’s mental health care provider, operates a
17 medical unit inside the Ventura County jail, and Plaintiffs contend that it failed to
18 provide adequate mental health treatment to ISTs while housed in Ventura County Jail.

19 Similarly, Plaintiffs assert due process and other violations against MHM. MHM
20 is DSH’s designated community program for Ventura County responsible to evaluate an
21 IST and make a written recommendation as to where the individual should be placed for
22 treatment. In accordance with state law and DSH guidelines, MHM may recommend
23 placement in (1) a DSH hospital or jail-based treatment program (“JBCT”); (2) a private
24 treatment facility; or (3) a community-based residential treatment system. Plaintiffs

25
26 ¹ DSH, as a state entity, is not a named defendant in this federal lawsuit. References to DSH are,
27 for purposes of this Order, references collectively to the named DSH executives who are defendants in
28 this case, to wit Pam Ahlin, Director of the California Department of State Hospitals, and Harry Oreol,
Director of Patton State Hospital.

1 allege that MHM failed to recommend any option other than placement in a DSH
 2 Hospital even though it was known that such placements would substantially delay
 3 meaningful treatment and that particularly the JBCT option was the obvious alternative
 4 to provide more timely treatment. In the past approximately two years, MHM began
 5 referring a small number of Ventura County ISTs to the JBCT program in San
 6 Bernardino County. Plaintiffs allege that MHM's failure to refer eligible Ventura County
 7 ISTs to the regional JBCT program when beds were always available contributed to
 8 delays suffered by Ventura County ISTs.

9 Plaintiffs contend that, as a result of Defendants' foregoing conduct, they were
 10 damaged in that they were all deprived of timely restorative treatment during the time
 11 they awaited transfer to DSH, and were deprived of good time credits (thereby
 12 prolonging their time in custody) while awaiting DSH treatment (which varies to some
 13 extent based on the nature of the charges but applies to the great majority of class
 14 members).

15 16 **II. THIS ACTION SATISFIES THE REQUIREMENTS OF RULE 23(A) AND** 17 **(B)(3).**

18 Class certification standards require that Plaintiffs establish that (1) the class is so
 19 numerous that joinder of all members is impracticable; (2) there are questions of law or
 20 fact common to the class; (3) the claims or defenses of the representative parties are
 21 typical of the claims or defenses of the class; and (4) the representative parties will fairly
 22 and adequately protect the interests of the class. Fed. R. Civ. P. 23(a); *Amchem Prods.,*
 23 *Inc. v. Windsor (Amchem)*, 521 U.S. 591, 613 (1997). In addition, the party seeking class
 24 certification must show that the action is maintainable under at least one of the three
 25 subdivisions of Rule 23(b). *Amchem, supra*, at 614. In this case, Plaintiffs seek
 26 certification under Rule 23(b)(3).

27 **A. NUMEROSITY**

1 Plaintiffs have presented uncontested evidence that there are between 200-300
2 damages class members, which satisfies Rule 23's numerosity requirement. "[I]t is
3 sufficient if the difficulty or inconvenience of joining all members of the class makes
4 class litigation desirable." *International Molders' & Allied Workers' Local 164 v.*
5 *Nelson*, 102 F.R.D. 457, 461 (N.D. Cal. 1983). Forty or fewer class members have
6 regularly been found sufficient. See *id.* ("where the number of class members exceeds
7 forty..., the numerosity requirement will generally be found to be met"); *Newberg on*
8 *Class Actions* (5th Ed.), §3:5 ("in light of prevailing precedent, the difficulty inherent in
9 joining as few as 40 class members should raise a presumption that joinder is
10 impracticable").

11 **B. TYPICALITY**

12 Typicality is met if class representatives and members of the class "share a
13 common issue of law or fact and are sufficiently parallel to insure a vigorous and full
14 presentation of all claims for relief." *Cal. Rural Legal Assistance, Inc. v. Legal Servs.*
15 *Corp.*, 917 F.2d 1171, 1175 (9th Cir. 1990) (quot. marks and cits. omitted.).
16 "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of
17 absent class members; they need not be substantially identical." *Hanlon v. Chrysler*
18 *Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). "As long as the named representative's
19 claim arises from the same event, practice, or course of conduct that forms the basis of
20 the class claims, and is based upon the same legal theory, varying factual differences
21 between the claims or defenses of the class and the class representative will not render
22 the named representative's claim atypical." *Jordan*, cited in Fn. 6, 669 F.2d at 1321.

23 The Named Plaintiffs' claims here are typical of the class. Like all class members,
24 they were ISTs committed to the custody of DSH for restorative treatment, and were not
25 admitted to a DSH facility within four weeks of those commitment orders. As a result,
26 Plaintiffs assert that they suffered from lack of timely treatment and loss of good time
27 credits that similarly applied to other class members. Hence, as alleged by Plaintiffs,
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they possess the “same interest and suffer[ed] the same injury” as class members, thus satisfying the typicality requirement. *Krzesniak v. Cendant Corp.*, No. C05-05156 MEJ, 2007 WL 1795703 at *7 (N.D. Cal. June 20, 2007) (citation omitted); *see also, e.g., In re AutoZone, Inc., Wage & Hour Employment Practices Litig.*, 289 F.R.D. 526, 535 (N.D. Cal. 2012) *reconsideration denied*, No. 3:10-MD-02159-CRB, 2013 WL 163289 (N.D. Cal. Jan. 15, 2013) (“Plaintiffs are typical of the proposed class because they were subject to the same policy as the proposed class”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998) (“claims are ‘typical’ if they are reasonably co-extensive with those of absent class members; they need not be substantially identical”).

C. ADEQUACY OF REPRESENTATION

Representation is “adequate” when counsel for the class is qualified and competent, the representative's interests are not antagonistic to the interests of absent class members, and it is unlikely that the action is collusive. *In re Northern District of California, Dalkon Shield IUD Products Liability Litigation*, 693 F.2d 847, 855 (9th Cir.1982). In addition, there must be “common interests between the proposed lead plaintiffs and the class, and a willingness on the part of the proposed lead plaintiff to vigorously prosecute the action.” *Tanne v. Autobyte, Inc.*, 226 F.R.D. 659, 667-68 (C.D. Cal. 2005) (quoting *In re Milestone Scientific Securities Litigation*, 183 F.R.D. 404, 416 (D.N.J.1998); *see also, e.g., Lenvill v. Inflight Motion Pictures, Inc.*, 582 F. 2d 507, 512 (9th Cir. 1978); *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003).

The interests of all members of the class are aligned in this action. There are no anticipated or known conflicts of interest. Plaintiffs assert that the Defendants' policy and actions have subjected and continue to subject all of the Plaintiff class to the same unlawful conduct. Plaintiffs further assert that all of the Named Plaintiffs and the class members have suffered substantially similar injuries as a result. Because the policies, customs, and practices at issue were applied to all class members, the Named Plaintiffs assert that they suffered similar constitutional violations and injuries.

1 Plaintiffs' counsel from the firm of Kaye, McLane, Bednarski & Litt and the Law
 2 Office of Brian A. Vogel are experienced class action and civil rights practitioners. As
 3 their accompanying declarations and resumes attest, Plaintiffs' counsel collectively has
 4 extensive civil rights and class action expertise and experience.

5 **D. COMMONALITY UNDER RULE 23(A) AND PREDOMINANCE UNDER RULE**
 6 **23(B)(3)**

7 There are several common factual and legal questions, including:

- 8 1. Did Defendants fail to provide timely psychological treatment (including
 9 restorative treatment) in violation of class members' due process or other
 10 rights under both federal and California law, including the ADA,
 11 Rehabilitation Act, 42 U.S.C. § 1983, and California Civil Code § 52.1 (the
 12 Bane Act)?
- 13 2. More specifically, as to DSH and MHM, did failing to admit ISTs to a DSH
 14 facility for restorative treatment within 28 days after a commitment order
 15 violate class members' due process or other rights under Federal and State
 16 law?
- 17 3. Did CFMG provide constitutionally adequate mental health treatment to
 18 ISTs awaiting transfer to a DSH facility in violation of class members' due
 19 process or other rights?
- 20 4. Assuming liability, are class members entitled to minimum statutory
 21 damages under Civil Code § 52.1 and 52(a), or presumed or general
 22 damages, on a class-wide basis?

23 “A common question is one where ‘the same evidence will suffice for each
 24 member to make a *prima facie* showing [or] the issue is susceptible to generalized, class-
 25 wide proof.’” *Tyson Foods, Inc. v. Bouaphakeo*, 2016 WL 1092414, at *7 (U.S. Mar. 22,
 26 2016) (internal quotations and citations omitted). The “predominance inquiry tests
 27 whether proposed classes are sufficiently cohesive to warrant adjudication by
 28 representation and ‘asks whether the common, aggregation-enabling, issues in the case

1 are more prevalent or important than the non-common, aggregation-defeating, individual
2 issues.’” *Id.* When ‘one or more of the central issues in the action are common to the
3 class and can be said to predominate, the action may be considered proper under Rule
4 23(b)(3) even though other important matters will have to be tried separately, such as
5 damages or some affirmative defenses peculiar to some individual class members.’” *Id.*

6 Commonality is satisfied where “all members of the class are subject identically to
7 [the] same policies and practices, and the constitutionality of any given policy and
8 practice ... can be answered in a single stroke.” *Parsons v. Ryan*, 754 F.3d 657, 679 (9th
9 Cir. 2014). Where “plaintiffs are ‘allegedly aggrieved by a single policy of defendants,’
10 ... the case presents ‘precisely the type of situation for which the class action device is
11 suited’ since many nearly identical litigations can be adjudicated in unison.” *In re*
12 *Nassau Cnty. Strip Search Cases*, 461 F.3d 219, 228 (2d Cir. 2006) (quoting *In re Visa*
13 *Check*, 280 F.3d 124, 146 (2d Cir. 2001) (blanket strip search policy).

14 Where a uniform policy or regular and recurring practices exist, the common
15 issues predominate over the individual issues, and the class action device is superior,
16 under the standards of Rule 23(b)(3). *See, e.g., Blihovde v. St. Croix County, Wis.*, 219
17 F.R.D. 607, 620 (W.D.Wis.2003) (“case law suggests that when the class is challenging
18 a uniform policy, the validity of that policy predominates over individual issues and
19 class certification is appropriate”); *Lopez v. Youngblood*, 2009 WL 909817, at *3 (E.D.
20 Cal. Apr. 1, 2009) (routine strip search practices).

21 Courts in this Circuit and elsewhere have routinely certified both injunctive relief
22 and damages classes where there was a common practice, which obviously will vary
23 more than a single policy. For example, such classes have been certified where police
24 acted against a group of demonstrators. *See, e.g., Multi-Ethnic Immigrant Workers Org.*
25 *Network v. City of Los Angeles*, 246 F.R.D. 621, 629-30 (C.D. Cal. 2007) (damages class
26 of protestors ordered to disperse and injunctive relief class for those engaged in peaceful
27 protests in Los Angeles); *Aichele v. City of Los Angeles*, 314 F.R.D. 478 (C.D. Cal.

2013) (“All persons who were arrested in or around the vicinity of City Hall” on November 20, 2011); *Vodak v. City of Chicago*, 2006 WL 1037151, 1 (N.D. Ill. 2006) (“all persons who were surrounded by Defendants” and arrested during antiwar march); *Spalding v. City of Oakland*, No. C11-2867 TEH, 2012 WL 994644 (N.D. Cal. Mar. 23, 2012) (certifying mass arrest injunctive relief and damages classes for arrests of protestors following the Johannes Mehserle verdict in Oakland); *Dellums v. Powell*, 566 F.2d 167, 174 (D.C. Cir. 1977) (“all persons who were arrested while assembled on the Capitol steps on May 5, 1971” in protest of the Vietnam War).

Similarly, challenges to general jail conditions, even with widely varying specifics, have been certified both before and after *Wal-Mart Stores, Inc. v. Dukes*. See, e.g., *Schilling v. TransCor Am., LLC*, 2012 WL 2792688 (N.D. Cal. July 9, 2012) (post-*Dukes* rejection of decertification of (b)(3) class of pretrial detainees and prisoners “forced to remain in restraints in the transport vehicle for more than 24 hours without being allowed to sleep overnight in a bed”; the certified “claims [are those] regarding the use of restraints, lack of overnight rest, lack of access to sanitation facilities and inadequate provision of food during transportation”; if an appropriate trial plan for class-wide damages not in place, the class-wide determination would be limited to liability; citing, *inter alia*, *Tyler v. Suffolk County*, 253 F.R.D. 8, 10 (D. Mass. 2008) (certifying Eighth Amendment conditions of confinement class because they were all subject to same allegedly unlawful policies denying free access to toilet facilities even though different inmates were affected differently, given that not all inmates were housed overnight in cells without toilets or sinks, or denied toilet access when they requested it); *Logory v. County of Susquehanna*, 277 F.R.D. 135 (M.D. Pa. 2011) ((b)(3) class challenging the County Jail’s delousing policy and practice during strip searches certified); *Spalding, supra*. See also, e.g., *Amador v. Baca*, No. CV-10-1649 SVW, 2014 WL 10044904, at *1 (C.D. Cal. Dec. 18, 2014) (certifying class of women detainees based on common strip search practices).

Here, based on Plaintiffs' legal theory, the liability determination is the same for each proposed 23(b)(3) class member. For DSH and MHM, liability centers around whether being held more than 28 days after a court order committing them to treatment by DSH before transfer to a DSH facility and receipt of restorative treatment violated their due process and other rights. It also presents the question of what, if not 28 days, is the constitutional (and statutory) limit for holding ISTs without treatment. Similarly, as to CFMG, liability centers around whether, while awaiting transfer to a DSH facility, class members had the due process or other right to some form of mental health treatment from the designated Ventura County mental health provider once they were determined to be IST. Such determinations are central to the claim of each class member. Thus, the standard for common questions is met. At most, what is left for potential individualized assessment is the determination of damages. Since in this case a damages formula has been agreed to by way of settlement, there exists no commonality issue as to damages.

III. THE LITIGATION MEETS THE OTHER REQUIREMENTS OF RULE 23(B).

Rule 23(b)(3) provides that class certification should be granted where "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." Four factors guide the determination of whether common questions of law or fact predominate, and whether a class action is the superior method of adjudicating the controversy: (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in a particular forum; and (4)

1 the difficulties likely to be encountered in the management of a class action. Rule
2 23(b)(3).

3 In terms of the foregoing factors, the class action mechanism is the superior one,
4 both in terms of the efficient administration of justice and in light of the relatively small
5 size of the individualized recoveries at stake. Where, as here, the value of the claim of
6 each class member is relatively small, and the interest of any class member in bringing
7 their own lawsuit is low, it militates in favor of certification. *See, e.g., Zinser v. Accufix*
8 *Research Institute, Inc.*, 253 F.3d 1180, 1190 (9th Cir.), *amended by* 273 F.3d 1266 (9th
9 Cir.2001) (citation omitted) (“[w]here damages suffered by each putative class member
10 are not large, this factor weighs in favor of certifying a class action”); *Amchem*, 521 U.S.
11 at 617 (the policy “at the very core of the class action mechanism is to overcome the
12 problem that small recoveries do not provide the incentive” for individuals to bring
13 claims); *Tardiff v. Knox County*, 365 F.3d 1, 7 (1st Cir. 2004) (“the vast majority of
14 claims would never be brought unless aggregated because provable actual damages are
15 too small”); *Smith v. Montgomery County, MD*, 573 F.Supp. 604 at 613 (D.C.Md. 1983)
16 (“it is unlikely that most class members would pursue these claims on their own”).

17 Given the relatively small amount of damages in relation to what is required to
18 prove liability for a constitutional violation in this case, the class members lack an
19 interest in individually controlling the prosecution or defense of separate actions. There
20 is no indication that there are other cases challenging the same conduct as to Ventura
21 County or seeking class damages. The case arose in, and all parties reside in, this
22 District. There is not a manageability issue because DSH’s databases contain all the
23 necessary information to identify class members, determine the number of days they
24 lacked appropriate treatment and attempt to contact them.

25 Rule 23(c)(4) provides that “when appropriate (A) an action may be brought or
26 maintained as a class action with respect to particular issues.” Thus, the Court could
27 certify the class for liability purposes only, leaving damages for individual determination
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1 if necessary. *Valentino v. Carter- Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996)
2 (“even if the common questions do not predominate so that certification of the entire
3 action is warranted, Rule 23 authorizes the court in appropriate cases to isolate common
4 issues under Rule 23(c)(4)(A) and proceed with class treatment of these particular
5 issues.”); 7A *Wright & Miller*, §1778 (certification of one or more issues proper “even
6 though important matters will have to be tried separately”); *Butler v. Sears, Roebuck and*
7 *Co.*, 727 F3d 796, 801 (7th Cir. 2013) (“Predominance ... is not determined simply by
8 counting noses...”; “an issue central to the validity of each one of the claims...can
9 justify class treatment [if it can be resolved in one stroke]”); *Amador v. Baca*, 2014 WL
10 10044904, at *9 (C.D. Cal. Dec. 18, 2014) (certifying Rule 23(c)(4) issue class for
11 damages and analyzing it under Rule 23(b)(3) in §1983 strip search class action).

12 Although a common damages methodology has been agreed to here,
13 predominance does not require a common methodology for determining class-wide
14 damages. *See, e.g., Vaquero v. Ashley Furniture Industries, Inc.*, 824 F.3d 1150, 1155
15 (9th Cir. 2016) (“Under [the Supreme Court’s recent decision in] *Tyson Foods* and our
16 precedent, therefore, the rule is clear: the need for individual damages calculations does
17 not, alone, defeat class certification.”); *Pulaski & Middleman, LLC v. Google, Inc.*, 802
18 F.3d 979, 987-88 (9th Cir. 2015). Federal appellate courts almost universally concur.
19 *Roach v. T.L Cannon Corp.*, 778 F.3d 401, 407-08 (2d Cir. 2015) (collecting cases; 1st,
20 2nd, 5th, 6th, 9th and 10th Circuits concur that *Comcast* does not require common
21 methodology for measuring class-wide damages); *Neale v. Volvo Cars of North*
22 *America, LLC*, 794 F.3d 353, 374-375 (3d Cir. 2015).

23 Predominance exists in this case for liability. For the reasons explained below,
24 class-wide damages also predominate. Where a case is settled, issues that might pose
25 difficulties for class certification do not where that issue has been removed by the
26 settlement. Although settlement does not obviate the need for a determination of whether
27 the criteria for certification are met, it “is relevant to a class certification” in that, in the
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1 settlement context, “a district court need not inquire whether the case, if tried, would
2 present intractable management problems, see Fed. Rule Civ. Proc. 23(b)(3)(D), for the
3 proposal is that there be no trial.” *Amchem*, 521 U.S. at 619–20). As a result, where the
4 parties have agreed on a common damages methodology as part of the settlement,
5 predominance and manageability considerations are met for certifying class-wide
6 damages. *See, e.g., Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301,
7 1306 (9th Cir. 1990) (“where damages can be assessed mechanically, individualized
8 claims for damages are no barrier to class certification”).

9 In any event, it is well-established that, where damages can be or are ultimately
10 agreed to, damages certification is appropriate. *See, e.g., Carnegie v. Household Int'l,*
11 *Inc.*, 376 F.3d 656, 661 (7th Cir.2004) (Posner, J.) (“it may be that if and when the
12 defendants are determined to have violated the law separate proceedings of some
13 character will be required,” but that “prospect need not defeat class treatment”; after a
14 liability determination favorable to the class, “a global settlement . . . will be a natural
15 and appropriate sequel”; and if not, “Rule 23 allows . . . imaginative solutions,”
16 including “bifurcation, appointment of a special master, decertifying class for
17 subsequent proceedings, and others”).

18 19 **IV. MANAGEABILITY**

20 Especially in the context of settlement, there are no manageability concerns. The
21 duration and dates of each class member’s time from an IST commitment order to
22 admission to a DHS facility are all taken from the Defendants’ databases, which allows
23 both the identification of class members and the damages to which each is entitled under
24 the settlement. Hence, this case has a simple and straightforward process for identifying
25 class members and determining each class member’s economic damages.

1 For the reasons explained above, Plaintiffs' motion for class certification is
2 granted.

3 IT IS SO ORDERED.

4 DATED: September 30, 2020

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6 Honorable Dale S. Fischer
7 UNITED STATES DISTRICT JUDGE
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