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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LIGAYA RONDUEN, et al.,

Plaintiffs,

vs.

THE GEO GROUP, INC., a Florida corporation, and SPARTAN CHEMICAL COMPANY, INC., an Ohio corporation,

Defendants.

THE GEO GROUP, INC., a Florida corporation,

Third-Party Plaintiff,

vs.

SPARTAN CHEMICAL COMPANY, INC., and ROES 1-10,

Third-Party Defendants.

Case No. 5:23-cv-00481-JGB-SHKx

[REDACTED VERSION OF DOCUMENT PROPOSED TO BE FILED UNDER SEAL]

REDACTED NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[*Declarations, Application to File Under Seal, and [Proposed] Orders filed concurrently herewith*]

Date: September 29, 2025
Time: 9:00 am
Courtroom: 1
Judge: Hon. Jesus G. Bernal

TO THIS HONORABLE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on September 29, 2025, at 9:00 AM, or as soon thereafter as this matter may be heard, in Courtroom 1 of the United States District Court, Central District of California, 3470 Twelfth Street, Riverside, CA 92501, Plaintiffs will and hereby do move the Court, pursuant to Federal Rule of Civil Procedure 23, for an order: (1) certifying the proposed class and designating Ligaya Ronduen, Carlos Castillo, Miriam Scheetz, Wilfredo Gonzalez Mena, Somboon Phaymany, and Yolanda Mendoza as class representatives; (2) appointing the law firms of Social Justice Legal Foundation and Hueston Hennigan LLP as class counsel; and (3) requiring that notice of this action be provided to the class.

Plaintiffs' Motion for Class Certification is based on (1) the Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Class Certification; (2) the Proposed Order Granting Plaintiffs' Motion for Class Certification; (3) the Declaration of Hannah Comstock and exhibits thereto; (4) the Declaration of Ligaya Ronduen; (5) the Declaration of Carlos Castillo; (6) the Declaration of Miriam Scheetz; (7) the Declaration of Wilfredo Gonzalez Mena; (8) the Declaration of Somboon Phaymany; (9) the Declaration of Yolanda Mendoza; (10) the Declaration of John C. Hueston; (11) the Declaration of Robert N. Klieger; (12) the Declaration of Sara Haji; and any other evidence or argument that may be presented to the Court before the Motion is submitted for decision.

This motion is made following the conference of counsel for Plaintiffs, The GEO Group, Inc., and Spartan Chemical Company, Inc., pursuant to L.R. 7-3, which took place on June 5, 2025.

Dated: August 25, 2025

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I. INTRODUCTION

This action arises from the rampant misuse of HDQ Neutral, a toxic and highly corrosive pesticide, at the Adelanto ICE Processing Center ("Adelanto") in 2020. The incessant spraying of overconcentrated HDQ Neutral throughout Adelanto's housing units caused serious toxic injury to the several thousand detained immigrants who were confined there in 2020, resulting in respiratory distress, nosebleeds, chemical burns, rashes, horrific headaches, dizziness, and impaired vision. A class action is not only the most efficient mechanism to vindicate the detainees' rights and redress their injuries, but it is the *only* way to ensure that justice is done.

Defendant The GEO Group, Inc. ("GEO") is a for-profit owner of correctional facilities and detention centers across the country, including Adelanto. Before 2020, GEO used HDQ Neutral at Adelanto in a heavily diluted form to wipe down furniture, equipment, sinks, and showers three times per day. At the outset of the COVID-19 pandemic, GEO dramatically increased both the nature and frequency of its use of HDQ Neutral. GEO adopted a policy of spraying overconcentrated HDQ Neutral as a fine mist everywhere and on everything at least *48 times per day*, without any advance notice to detainees, without making any effort to remove them from the areas being sprayed, and without providing them adequate protective equipment to protect against inhalation of or ocular or skin contact with the toxic chemical. GEO systematically used double the concentration of HDQ Neutral acceptable for use near humans—and it used that concentration not only near detainees but on their bedding, on the telephones they used to call their families, and on the food they ate. GEO used HDQ Neutral in the kitchens and on other food contact surfaces without rinsing them as the label required, and it sprayed HDQ Neutral on bedding and other porous surfaces in direct contravention of the instructions for use. GEO did all of this without seeking or obtaining any medical guidance whatsoever regarding the efficacy of incessant spraying or, more importantly, the risks posed to the health and safety of the detainees GEO was obligated to protect in confinement.

Within days of GEO adopting its new spraying policy, detainees began reporting headaches, rashes, and chemical burns. They pleaded with GEO to reduce the frequency of spraying and guard against HDQ Neutral being inhaled and coming into contact with their skin, their eyes, and their food. GEO told them, falsely, that the near-constant spraying of HDQ Neutral was necessary to prevent the spread of COVID-19 and discouraged them from submitting grievances or seeking medical care.

Defendant Spartan Chemical Company, Inc. ("Spartan") was the manufacturer and supplier of HDQ Neutral. Under its contract with GEO, Spartan was responsible for conducting regular inspections and ensuring that the dispensing machines at Adelanto diluted HDQ Neutral at the proper dilution ratio, as well as for training GEO's staff and detainees in the voluntary work program how to properly use HDQ Neutral. Spartan abdicated those responsibilities, conducting infrequent inspections and inadequate training, and, on the few occasions when Spartan did test the dilution ratio for HDQ Neutral, it calibrated the machines to dispense the chemical in an *over*concentrated form.

In May 2020, GEO received a complaint that had been filed with the Office for Civil Rights and Civil Liberties of the Department of Homeland Security containing numerous first-person reports of the serious health consequences detainees were suffering due to exposure to HDQ Neutral. Less than 24 hours after receiving that complaint, and without conducting any investigation, GEO's Regional Director of Operations relayed instructions that [redacted] Consistent with that directive, nothing changed. GEO continued spraying overconcentrated HDQ Neutral at least 48 times per day in close proximity to detainees and without following the instructions for use as mandated by federal law. GEO's Chairman, George Zoley, testified before Congress that HDQ Neutral was being used in line with the manufacturer's instructions, when the exact opposite was true.

Finally, in late September 2020, a federal judge ordered GEO to stop using HDQ Neutral in Adelanto's housing units, finding that its use was "objectively unreasonable and in callous disregard for the reasonable safety of the civil detainees who are housed there." By that time, at least 3,000 detainees had been repeatedly exposed to overconcentrated HDQ Neutral and had suffered grievous injuries, some of which continue to this day.

The central legal and factual questions of this case are the same for all class members and are well-suited for class-wide resolution. Fact discovery is complete, with more than 120,000 documents produced and over 23 percipient witness depositions completed. The parties have designated a total of 14 retained expert witnesses, and Defendants have additionally designated 10 non-retained expert witnesses. Common questions of fact and law abound, since Plaintiffs' claims and those of the roughly 3,000 class member detainees can be resolved as part of a single, fair, and efficient proceeding, wherein damages are calculable on a class-wide basis. Absent class treatment, few if any of the affected detainees will have the resources or legal wherewithal to pursue claims and vindicate their rights. Accordingly, Plaintiffs respectfully request that the Court certify the proposed class, designate Plaintiffs as class representatives, appoint the undersigned as class counsel, and order notice of this action to the class.

II. FACTUAL BACKGROUND

A. GEO Owns and Operates Adelanto

Adelanto is an immigration detention center owned, operated, and managed by GEO in San Bernardino County, California. *See* ECF 176 [GEO Answer to FAC] at ¶ 3. Adelanto has two primary buildings: the East Building, which was an existing prison purchased around 2011 from the City of Adelanto; and the newer West Building, which GEO built in 2013 and expanded in 2015. *See* Declaration of Hannah

Comstock ("Comstock Decl."), Ex. 1 at 42:17–43:12.[1] [redacted] *See* Ex. 72 at 24:23–25:9. GEO must also comply with ICE's Performance Based National Detention Standards ("PBNDS"), which require GEO to maintain sanitation to protect detainees from injury and illness, and to comply with all applicable safety and sanitation laws. *See* Ex. 73 at 19 (Section 1.2).

The East Building contains two housing units with a total of seven dormitory blocks. *See* Ex. 1 at 31:16–19. Each dormitory block has a day room area at the front, with tables, chairs, a cooking area, a phone bank, and large screen televisions, and rows of double-bunks and single beds in the rear. *See id.* at 31:23–32:15, 30:16–31:2. There are no windows that open to the outside, and ventilation was largely unmonitored in 2020. *See* Ex. 2 [2019 memo re: HVAC]. There is a separate kitchen but no dining hall in the East Building, and meals are instead consumed in the day room areas. *See* Ex. 1 at 33:19–24, 36:8–9. Each dorm also has a kitchen area with a microwave, hot pot, and sink, where meals may be prepared. *See id.* at 30:16–21.

The West Building contains four housing units of four "pods" each. *Id.* at 30:2–9. Each pod has eighteen cells (sixteen four-person cells and two eight-person cells) with a day room area in the center. *See id.* at 30:10–15. As with the dormitory blocks, each day room has tables, chairs, a cooking area, a phone bank, and large screen televisions. *See id.* at 30:16–31:2. In addition to the day room areas, the West Building contains four dining halls that are serviced by a single kitchen. *See id.* at 33:5–11, 34:5–7, 36:5–7. None of the cells, day room areas, or dining halls have any windows that open to the outside, and, as with the East Building, ventilation was largely unmonitored in 2020. *See* Ex. 2; Ronduen Decl. ¶¶ 4–6; Castillo Decl. ¶ 10. From

[1] Except as otherwise noted, all exhibits are appended to the Declaration of Hannah Comstock ("Comstock Decl.") in support of this Motion.

March 10 to September 29, 2020, over 3,000 individual civil immigration detainees were detained at Adelanto. *See* Ex. 68 [GEO Resps. & Objs. to Scheetz Interrogs., Set 3] at 12. As the then-Facility Administrator of Adelanto testified, [redacted] *See* Ex. 72 [Janecka Dep., *Novoa v. The GEO Group, Inc.*] at 29:21–30:1.

B. HDQ Neutral Is A Toxic and Corrosive Chemical Disinfectant

HDQ Neutral is a toxic and corrosive chemical disinfectant that utilizes two quaternary ammonium compounds (QACs or quats) known as DDAC and ABDAC. *See* Ex. 76 [Report of Stuart Batterman, Ph.D.] at 5–6. HDQ Neutral is an Environmental Protection Agency ("EPA") sub registrant of Maquat 128-NHQ, which is classified as a "pesticide" that is regulated by the EPA. *See id.* at 6, 31–32.[2] Any use of HDQ Neutral in a manner inconsistent with its labeling violates section 12(A)(2)(G) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136j(a)(2)(G).

Spartan supplied HDQ Neutral to GEO Adelanto in 5-gallon buckets. *See* Ex. 1 [Janecka Dep. Day 1] at 122:3–8. The labels on the buckets specified that HDQ Neutral was designed for use on "hard, non-porous surfaces" only, and only when heavily diluted with water. Ex. 3. For virtually all uses, including use as a general disinfectant capable of killing human coronaviruses, the label required HDQ Neutral to be diluted at a 1:128 ratio—i.e., one ounce of HDQ Neutral per gallon of water—which achieved a target concentration of 660 parts per million (PPM) active quat (with lower and upper limits of 627 PPM and 693 PPM, respectively). *See id.*; Ex. 4.[3] The

[2] The EPA maintains historic label approvals for the pesticide Maquat 128-NHQ at https://ordspub.epa.gov/ords/pesticides/f?p=PPLS:8:5126398602200::NO::P8_PUID,P8_RINUM:468182,10324-155.

[3] The only authorized uses of HDQ Neutral for disinfection at a dilution ratio greater than one ounce per gallon of water was for use in animal premises to kill rabies or canine parvovirus, and all animals were required to be removed from the premises before any such use. *See* Ex. 3.

2018 label directed that food-contact surfaces were to be rinsed with potable water after application of HDQ Neutral. *See* Ex. 3.

HDQ Neutral is caustic and harmful if it is inhaled or comes into contact with a person's skin or eyes. *See* Ex. 76 [Report of Stuart Batterman, Ph.D.] at 5; Ex. 79 [Report of Dr. Rangan] at 3. As described on the product's Safety Data Sheet ("SDS"), inhalation can result in "[n]asal discomfort and coughing" and "[i]rritation or damage to the mucus membranes of the respiratory tract." Ex 5 at GEO_Ronduen-0057202. Skin contact can result in "[p]ain, redness, blistering and possible chemical burn." *Id.* Eye contact can result in "[p]ain, redness, swelling of the conjunctiva and tissue damage," including "permanent damage." *Id.* The SDS therefore directed that HDQ Neutral was to be used only in well-ventilated areas and in a manner that would protect against inhalation and contact with skin, eyes, or clothing. *See id.* at GEO_Ronduen-0057199.

C. GEO Sprayed HDQ Neutral 48 Times Per Day

[redacted] *See* Ex. 6 at 4. That changed dramatically at the onset of the COVID-19 pandemic. On March 11, 2020, GEO adopted a new policy (the "Adelanto Spray Policy"): [redacted] Ex. 7. The decision came from the Facility Administrator of Adelanto, James Janecka. *See* Ex. 1 [Janecka Dep. Day 1] at 86:2–21 ("I made the decision, officers made their rounds every 30 minutes, let's just make [spraying HDQ Neutral] part of their rounds."). Instead of specific surfaces being wiped down with HDQ Neutral three times per day, HDQ Neutral would now be sprayed as a fine mist on all areas with staff and detainee contact at least *48 times per day*.

As Facility Administrator, Janecka had six direct reports, including the Fire and Safety Manager, Heads of Compliance and Grievances, and the Deputy Facility

Administrator. *See* Ex. 1 [Janecka Dep. Day 1] at 47:13–56:4. Below the Deputy Facility Administrator was the Chief of Security, who, in turn, directed all of the guards who executed the Adelanto Spray Policy. *See id.* Janecka, as Facility Administrator, directed the implementation of the Adelanto Spray Policy; he did not consult any doctors or medical staff regarding the health risks associated with that staggering increase in the breadth and frequency of use. *See id.* at 129:16–130:20.[4]

Within days of this policy change, detainees began reporting headaches, rashes, and chemical burns associated with the incessant spraying of HDQ Neutral. *See* Ex. 69 [03/15/20 Email from T. Abatti to W. Baca, et al. re "Disinfectant."]. Detainees also reported painful, burning, red, and swollen throat and painful coughing after inhaling HDQ Neutral, which was sprayed in a mist nearly continuously throughout the day rooms and living areas, without any effort to remove detainees from the areas being sprayed or otherwise protect them from the known hazards associated even with proper use of HDQ Neutral. *See, e.g.*, Ex. 70 [5/22/2020 Email from P. Lopez to J. Janecka et al. "Re: Toxic Exposure of People in ICE Detention at Adelanto to Hazardous Chemicals"]; Ex. 71 [Ferretiz Decl.] ¶¶ 11–13. Over just a two-week period in May 2020, nearly 50 detainees sought medical attention for symptoms associated with inhalation of, or dermal exposure to, HDQ Neutral. *See* Ex. 70.

On March 23, 2020, the CDC issued its first interim guidance on managing COVID-19 in correctional and detention facilities. *See* Ex. 12. The CDC recommended that "*[s]everal times per day*," facilities should "clean and disinfect surfaces and objects that are frequently touched, especially in common areas." *Id.* at 9 (emphasis added). The CDC guidance was incorporated into the ICE Enforcement and Removal Operations ("ERO") COVID-19 Pandemic Response Requirements ("PRR"), which were distributed by ICE to detention facilities nationwide. It was

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[4] GEO reiterated its Adelanto Spray Policy [redacted] *See, e.g.*, Exs. 8–11.

never revised to recommend cleaning and disinfecting high-touch areas any more frequently than "several times per day." *See* Ex. 13 [Version 1.0, April 10, 2020] at 10; Ex. 14 [Version 2.0, June 22, 2020] at 15; Ex. 15 [Version 3.0, July 28, 2020] at 16; Ex. 16 [Version 4.0, Sept. 4, 2020] at 15. Yet throughout the class period, GEO continued to direct that high-touch areas be sprayed until wet with HDQ Neutral at least every 30 minutes. *See, e.g.*, Ex. 17; Ex. 18; Ex. 10 at 6; Ex. 20 at 2.[5] Those areas included the day room kitchen areas for food preparation, door plates and doorknobs to all cells, stairway railings, tables where food was consumed, and telephones. *See* Ex. 10 at 6; Ex. 20 at 2. Plaintiffs' expert industrial hygienist, Dr. Eric Brown, posited that a reasonable interpretation of the CDC and ICE guidance during the height of COVID-19 was to disinfect, using proper procedures protective of human health, between three and eight times a day. *See* Ex. 74 [Brown Report] at 6. The Adelanto Spray Policy called for misting HDQ Neutral nearly 50 times per day, virtually fumigating the poorly ventilated and overcrowded space.

In practice, HDQ Neutral was sprayed even more often—as frequently as every 10–15 minutes—causing a lingering mist that was omnipresent throughout the detainee living areas. *See* Castillo Decl. ¶ 10; Ex. 21 [Mendoza Dep.] at 142:22–143:16; Mendoza Decl. ¶¶ 6–9; Gonzalez Mena Decl. ¶¶ 6–12; Ronduen Decl. ¶¶ 14–15; Phaymany Decl. ¶¶ 6–9; Ex. 22 [Phaymany Dep.] at 107:2–13, 109:6–15; Scheetz Decl. ¶¶ 6–9; Ex. 23 [06/03/20 Email from Chief of Security Donald Dutcher re "DORM CONCERNS" ("[redacted].")].

D. Spartan Overconcentrated HDQ Neutral at Adelanto

[redacted]

[5] [redacted] *See* Ex. 19.

[redacted]. Ex. 24 at SPARTAN_000044. [redacted] *Id.* at SPARTAN_000047. [redacted] *Id.* at SPARTAN_000045. [redacted] *Id.* at SPARTAN_000047. Spartan never did. *See* Ex. 27 [Schauff 30(b)(6) Dep.] at 132:16–133:6.

Throughout the class period, Spartan set the dispensing equipment at Adelanto to dispense HDQ Neutral at a dilution ratio of *2 ounces* per gallon of water, or twice that specified on the product label. *See, e.g.*, Ex. 25 at 4 n.4; Ex. 10 at 6. [redacted] *See* Ex. 26. Spartan was able to manipulate the concentration of HDQ Neutral flowing from the Spartan-installed dispensing equipment by selecting the appropriate nozzle tip(s) that connected the 5-gallon buckets of HDQ Neutral to a "low flow" nozzle. Ex. 27 [Schauff 30(b)(6) Dep.] at 200:6–14, 202:3–20, 203:14–204:11; *see* Ex. 28 at SPARTAN_017620. Spartan distributed a variety of tips with different orifice sizes, with certain tips capable of restraining the flow of HDQ Neutral to match a target of 660 PPM. *See* Ex. 27 [Schauff 30(b)(6) Dep.] at 203:14–204:11; Ex. 28 at SPARTAN_017620. Changing the tips to larger sizes throughout the Adelanto housing units would increase the PPMs of the active ingredients of HDQ Neutral (*see* Ex. 29; Ex. 30), and installing smaller tips would decrease the PPMs. *See* Ex. 27 [Schauff 30(b)(6) Dep.] at 202:3–20, 203:14–204:11; Ex. 28 at SPARTAN_017620. [redacted] *See* Ex. 26.

[redacted] *See, e.g.*, Ex. 31; Ex. 32 at GEO_Ronduen-0011062; Ex. 33 at GEO_Ronduen-0011340; Ex. 34 at GEO_Ronduen-0010548. [redacted] *See* Ex. 31. [redacted] *See generally* Ex. 35. In fact, GEO asked Spartan to inspect the HDQ Neutral dispensers and see if Spartan could *increase* the concentration of HDQ Neutral. Ex. 30; *see* Ex. 29.

E. GEO's Application of HDQ Neutral Caused Maximum Exposure

GEO made no effort to spare detainees the certain toxic exposure of the Adelanto Spray Policy. At night, GEO officers sprayed where detainees slept; during the day, they sprayed in the air, on the phones, and around food. *See* Ex. 10 at 6, 8–9; Castillo Decl. ¶¶ 4–10; Ex. 21 [Mendoza Dep.] at 142:22–143:16; Mendoza Decl. ¶¶ 6–9; Gonzalez Mena Decl. ¶¶ 6–12; Ronduen Decl. ¶¶ 12–17; Phaymany Decl. ¶¶ 6–9; Ex. 22, [Phaymany Dep.] 107:2–13, 109:6–15; Scheetz Decl. ¶¶ 6–9. The product was applied "like Lysol." Ex. 71 [Ferretiz Decl.] ¶ 10. Not only did GEO spray HDQ Neutral rather than apply the product using a rag and bucket to avoid aerosolizing it, but GEO also failed to provide sufficient face masks or safety goggles to those trapped in close proximity to the near-constant spray of the product. *See* Ex. 36 [Wise-McCormick Dep.] at 48:13–23; Ex. 37 at GEO_Ronduen-0102310; Ex. 10 at 11; *see also* Ex. 74 [Expert Rebuttal Report of Eric Brown, D.P.H. May 28, 2025] at 6.[6]

[6] With the exception of nitrile gloves and at times face masks, the only PPE that was available in 2020—rubber boots, googles, and splash aprons—were kept in the (Continued...)

Without clearing the space to be sprayed, GEO staff would use trigger-spray bottles to spray HDQ Neutral at targets such as railings that detainees sat, stood, or walked under, and telephones that detainees used to communicate with their family and friends. As a result, HDQ Neutral spray mist fell upon and near detainees, exposing them to an aerosolized disinfectant that contained particles consisting of nearly pure QAC at a size that was readily inhalable by detainees, especially when unmasked. *See* Ex. 76 [Expert Report of Stuart Batterman, Ph.D.] at 29, Table 10; *see also* Ex. 74 [Expert Rebuttal Report of Eric Brown, D.P.H. May 28, 2025] at 6. The consistent spray application of HDQ Neutral in occupied rooms such as day rooms, or on doorways leading to small 4 or 8 person cells, even at just several times a day, let alone 48 times a day, resulted in QAC exposure far below EPA's safe margin of exposure (safe levels for this measure are *above*) by between ten and fifty-fold. *See* Ex. 76 [Expert Report of Stuart Batterman, Ph.D.] at 24, Table 7; *see also* Ex. 74 [Expert Rebuttal Report of Eric Brown, D.P.H. May 28, 2025] at 6.

GEO also did not remove the residue that persisted on surfaces after application of HDQ Neutral. As a result, the product layered on surfaces with each new application, causing detainees chemical burns on their skin when they sat at the tables in the day room or used the phones to call loved ones or attorneys. *See* Gonzalez Mena Decl. ¶ 8; Scheetz Decl. ¶¶ 6–7, 11; Ronduen Decl. ¶¶ 15–16; Castillo Decl. ¶ 8; Mendoza Decl. ¶¶ 6–7; Ex. 21, [Mendoza Dep.] 45:10–46:1, 47:11–19; Phaymany Decl. ¶¶ 7–9; *see also* Ex. 38; Ex. 39. This dermal exposure to quat residue was measured by Plaintiffs' expert toxicologist, Dr. Michael Dourson, to be *ten times* that of a safe exposure, if not more. *See* Ex. 81 [Expert Report of Michael Dourson, Ph.D.] at 10–11, Figure 1.

janitor's closet, which was off limits to the general population. Ex. 36 [Wise-McCormick Dep.] at 47:23–25.

F. Spartan Obscured Master "Directional" Label, Misapplied Secondary Label

The Adelanto Spray Policy was compounded by Spartan's failure to provide adequate instructions and warnings to detainees. As a result, detainees did not understand what product was being sprayed, whether it was properly diluted, whether its use was appropriate, and most importantly, what precautions, if any, detainees could take to protect their own health. [redacted] *See* Ex. 24 at SPARTAN_000047. The only container that Spartan sold to GEO at Adelanto that bore the full label, which included the EPA-approved dilution ratio for disinfection and instructions for use (with the instruction to rinse all food contact surfaces with potable water) (the "Directional Label"), was the 5-gallon bucket. *See* Ex. 40 [Schalitz 30(b)(6) Dep. Day 2] 22:3–11; 30:9-21; 37:3–38:1. [redacted] *See* Ex. 41 at GEO_Ronduen-0152644; Ex. 27 [Schauff 30(b)(6) Dep.] 162:11–163:6, 164:7–165:5, 165:15–23.

The secondary label, which Spartan printed for placement on handheld 32-ounce trigger spray bottles, contained no directions for use. *See* Ex. 40 [Schalitz 30(b)(6) Dep. Day 2] 37:3–38:1. Instead, they contained the full set of hazard warnings applicable to the presumed liquid inside the bottle, *see id.*, and directed the user to refer to the [obscured] Master Container label. *See, e.g.*, Ex. 41; Ex. 51 (secondary label). [redacted] *See* Ex. 50; Ex. 41; Ex. 42; Ex. 43; Ex. 44, [Schalitz 30(b)(6) Dep. Day 1] 167:18–21; Ex. 48; Ex. 49; Ex. 45. Spartan's approach to labeling kept

detainees from understanding what product was saturating the air, and how best to protect themselves from it.

G. GEO and Spartan Provided Inadequate Training for HDQ Neutral

[redacted] Ex. 24 at SPARTAN_000046. [redacted] *See* Ex. 53; Ex. 54. [redacted] *See* Ex. 55; Ex. 47; Ex. 56 [Peterson Dep.] 102:7–15.[7] As a result, detainees were unable to mitigate the harmful effects of the Adelanto Spray Policy.

H. GEO's Inadequate Ventilation in Both Buildings Could Not Mitigate the Fog of HDQ Neutral

Given the extraordinary levels of QACs GEO sprayed into the air on a near constant basis, GEO's stated ventilation air supply rate of 3 or fewer air changes per hour were insufficient to clear the air of toxic QAC aerosols from HDQ Neutral. *See* Ex. 20 at GEO_Ronduen-0012312; Ex. 2 at 3; *see also* Ex. 76 [Expert Report of Stuart Batterman, Ph.D.] at 28 and 29, Table 10.

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[7] Spartan did not properly train even its own staff responsible for maintaining the dispensing equipment at Adelanto. By Spartan's own admission, [redacted] Ex. 42.

I. Detainees Complained of Serious Health Consequences from Exposure to HDQ Neutral

[redacted] *See* Ex. 69; Ex. 57 at 2–3; Ex. 58 at 2; Ex. 59 at 8; Ex. 60. Plaintiffs, like other detainees, experienced acute and chronic symptoms resulting from improper exposure to HDQ Neutral, including coughing, headaches, nosebleeds, dizziness, and irritation to the skin, eyes, nose, and throat. *See* Ronduen Decl. ¶¶ 32–38; Scheetz Decl. ¶¶ 22–31; Gonzalez Mena Decl. ¶¶ 24–32; Phaymany Decl. ¶¶ 18–24; Mendoza Decl. ¶¶ 19–24; Castillo Decl. ¶¶ 20–30.

Detainees were discouraged from submitting grievances or sick call requests related to the use of HDQ Neutral. *See* Gonzalez Mena Decl. ¶ 21; Castillo Decl. ¶ 15. Officers and other GEO staff regularly told detainees that HDQ Neutral was necessary to prevent the spread of COVID-19 and that they should just rinse their eyes with cold water or use ice on blistering skin to treat the adverse effects of exposure to HDQ Neutral. *See* Ronduen Decl. ¶¶ 28–29; Gonzalez Mena Decl. ¶ 19; Castillo Decl. ¶ 15; Mendoza Decl. ¶¶ 14, 16; Scheetz Decl. ¶¶ 14, 18; Phaymany Decl. ¶¶ 13, 15; *see also* Ex. 71 [Ferretiz Decl.] ¶¶ 17–18.

[redacted] Ex. 57 at 3; *see e.g.*, Ex. 58 at 2. Ms. Woelke, Adelanto's Grievance Coordinator both now and in 2020, testified that this response was made at the direction of GEO "administration." Ex. 61 [Woelke Dep.] 79:12–80:12. That response was untrue. CDC guidance recommended that chemical disinfectants such as HDQ Neutral be applied to high-touch areas "several times per day," Ex. 12, not *48 times per day*, and did not even remotely support the over-concentration of HDQ Neutral, its use on food-contact surfaces or in poorly ventilated areas and without adequate protective equipment to

avoid inhalation, the danger of quat burns, or any of the other rampant misuses of HDQ Neutral throughout Adelanto.

On May 21, 2020, the Inland Coalition for Immigrant Justice submitted a detailed complaint to the Office for Civil Rights and Civil Liberties within the Department of Homeland Security, ICE, and GEO regarding the negative health consequences that detainees were suffering from GEO's use of HDQ Neutral at Adelanto (the "CRCL Complaint"). *See* Ex. 62. The CRCL Complaint included numerous reports of the misuse of HDQ Neutral at Adelanto and the serious respiratory, ocular, and dermatological symptoms caused thereby, including painful breathing, sneezing, coughing, nosebleeds, rashes, and blistering skin. *See id.* at 347. [redacted]. *See* Ex. 17; Ex. 63; Ex. 64; Ex. 65; Ex. 66. [redacted] *See* Ex. 84.

The detainees' health complaints and the symptoms they experienced were predictable given the saturation levels of exposure created by GEO staff using Spartan's overconcentrated product. Dr. Stuart Batterman found that the size, weight fraction, and prevalence of QAC particles resulting from the constant mist of HDQ Neutral were small enough to reach the lower thoracic regions, and prevalent enough to cause toxic exposure. *See* Ex. 76 [Expert Report of Stuart Batterman, Ph.D.] at p. 9–10, 29, Table 10. Dr. Dourson found that at these exposure scenarios (and ones even less extreme), the human body will produce an inflammatory response. *See* Ex. 82 [Expert Rebuttal Report of Michael Dourson May 28, 2025] at 1.

QACs are a known irritant and, when inhaled, are known to cause occupational asthma and Chronic Obstructive Pulmonary Disease ("COPD"). *See* Ex. 77 [Expert Report of Peter DeLong, M.D.] ¶¶ 8–17. Additional known conditions caused by toxic exposures to QACs include dermal burns, cellular damage to the eyes, damage to the mucosal membranes throughout the respiratory system,

and damage to the digestive tract when ingested. *See* Ex. 79 [Expert Report of Cyrus Rangan, M.D.] at 2–6. This damage can cause burning sensations in the skin and the eyes, nosebleeds, and abrasions of the cornea; constant throat irritation leading to inflammation, blood in the mucosa, and tightness in the chest or shortness of breath. *See id.* In short, the exposure detainees experienced throughout the East and West buildings—when they passed through a fog of HDQ Neutral to access the showers or the telephone, or when their skin was wet with HDQ Neutral when they awoke at night—had known short-term and long-term health effects.

J. GEO Was Defiant in the Face of Mounting Complaints

Still, GEO responded to the CRCL Complaint not with concern but instead with defiance. Less than 24 hours after receiving the CRCL Complaint, and without conducting any investigation whatsoever, [redacted] Ex. 17.

GEO falsely represented both to the detainees at Adelanto and in response to governmental inquiries that HDQ Neutral was being used in accordance with its label, as FIFRA dictated. Indeed, in his testimony before Congress on July 13, 2020, GEO's Chairman, George Zoley, gave an "absolute[]" assurance that HDQ Neutral was being used in line with the manufacturer's instructions. Ex. 67 at 83. Meanwhile, GEO continued to implement the Adelanto Spray Policy, spraying overconcentrated HDQ Neutral at two ounces per gallon of water, rather than one ounce per gallon of water as directed on the label; spraying HDQ Neutral in poorly ventilated areas and without removing or relocating detainees; and applying HDQ Neutral to food contact surfaces that were not then rinsed with potable water. *See supra* Sections I.C–H.

On July 29, 2020, the EPA conducted a "For Cause" virtual inspection of Adelanto that uncovered numerous ongoing FIFRA violations, including:

- "HDQ Neutral was being applied as a disinfectant at a dilution rate of 2 ounces per gallon of water";
- "[a]though the product label requires that goggles and chemical resistant gloves be worn while handling the product, detainees were not required to do so";
- "detainees were frequently in close proximity when HDQ Neutral was sprayed by detention officers or detainees in the volunteer work program," resulting in adverse health consequences from inhalation and skin contact;
- HDQ Neutral was "applied onto bedding (including mattresses and sheets), a soft porous surface"; and
- HDQ Neutral was applied to food contact surfaces "without any wiping of the product afterwards."

Ex. 10. [redacted]

[redacted] Ex. 17.

K. A Court Ordered GEO to Stop Using HDQ Neutral at Adelanto

On September 29, 2020, the Honorable Judge Hatter issued a Modified Preliminary Injunction and Additional Findings of Fact in *Hernandez Roman v. Wolf*, holding that GEO's use of HDQ Neutral at Adelanto was "objectively unreasonable" and "in callous disregard for the reasonable safety of the civil detainees who are housed there." 2020 WL 5797918, *5 (C.D. Cal. Sept. 29, 2020). In reaching that conclusion, Judge Hatter found that, "[a]fter receiving what appear to be valid complaints from detainees regarding the toxicity and noxiousness of HDQ Neutral, the Government and its contractor, the GEO Group, did absolutely nothing other than to continue the use of HDQ Neutral." *Id.* at *5. At end, Judge Hatter held that "[t]he Government does not have an unfettered right to manage and operate, free of any judicial oversight, a civil detention facility in a way that violates the constitutional

rights of its detainees, especially where the constitutional violations affect the health and safety of individuals in the Government's care," and ordered that "Adelanto's use of HDQ Neutral must stop, immediately." *Id.* at *5, 6.

III. CLASS DEFINITION: THE DETAINED CLASS

Plaintiffs seek to certify the following class ("the Detained Class") against Defendants GEO and Spartan on all nine causes of action:

> All persons who were detained at the Adelanto Detention Center for any amount of time between March 11, 2020 and September 29, 2020 and were exposed to HDQ Neutral. The class excludes The GEO Group, Inc., and Spartan Chemical Company, Inc. their officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assignees, and any other individual whose interests are antagonistic to other class members.[8]

IV. THE DETAINED CLASS SHOULD BE CERTIFIED

Trial courts have broad discretion to certify class actions. *See Bateman v. Am. Multi-Cinema, Inc.*, 623 F.3d 708, 712 (9th Cir. 2010). To certify a class, plaintiffs must satisfy Rule 23(a)'s threshold requirements of numerosity, commonality, typicality, and adequacy. *See Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 665 (9th Cir. 2022) (en banc). The class must also be maintainable under at least one category outlined in Rule 23(b). Plaintiffs seek to certify the Detained Class under Rule 23(b)(3). Because the Detained Class meets the requirements of Rule 23(a) and 23(b)(3), the Court should certify the Detained Class.

A. The Detained Class Satisfies Rule 23(a)'s Requirements

1. <u>The Class Likely Includes 3,000 Individuals</u>

A class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "Courts have not required evidence of exact class size or the

[8] Discovery obtained since Plaintiffs filed the First Amended Complaint shows that GEO issued the Adelanto Spray Policy on or around March 11, 2020 and ended it on or around September 29, 2020. *See* Ex. 1 at 239:20–24; Ex. 7. Plaintiffs thus move on a lesser-included class definition than alleged in the FAC. *See Coppel v. SeaWorld Parks & Ent., Inc.*, 347 F.R.D. 338, 350 (S.D. Cal. 2024) (allowing motion to certify class for a narrower period than alleged in the complaint).

identities of class members to satisfy" this requirement. *Novoa v. Geo Grp., Inc.*, 2019 WL 7195331, at *11 (C.D. Cal. Nov. 26, 2019) (Bernal, J.) (finding numerosity satisfied by "a large number of individuals, far more than 40"). Although there is no numerical threshold, a class of over 300 persons is sufficiently numerous "by any metric." *A. B. v. Hawaii State Dep't of Educ.*, 30 F.4th 828, 837 (9th Cir. 2022).

The Detained Class is sufficiently numerous because it likely includes upwards of 3,000 unique individuals. *See* Ex. 68 [GEO Resp. to Scheetz Interrog. 23] at 12 (3,361 people detained at Adelanto between February 2020 and November 2020); *see also Hernandez-Roman v. Wolf*, 2020 WL 3869729, at *2 (C.D. Cal. Apr. 23, 2020) (certifying a class of 1,370 individuals detained at Adelanto in April 2020).

2. Common Questions of Law and Fact Predominate

Plaintiffs here address commonality under Rule 23(a) and predominance under Rule 23(b)(3) together "because the latter is an extension of the former, and is more stringent." *Novoa*, 2019 WL 7195331, at *16. That is, "the plaintiffs must prove that there are questions of law or fact common to class members that can be determined in one stroke, in order to prove that such common questions predominate over individualized ones." *DZ Reserve v. Meta Platforms, Inc.*, 96 F.4th 1223, 1233 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 1051 (2025) (quoting *Olean*, 31 F.4th at 664).

"Courts have construed Rule 23(a)(2)'s commonality requirement permissively." *Novoa*, 2019 WL 7195331, at *15. "So long as there is even a single common question, a would-be class can satisfy the commonality requirement." *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014) (cleaned up). Predominance then turns on the relationship between the common questions and "the underlying legal claims that the class members have raised." *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014).

In the Ninth Circuit, the combined analysis of commonality and predominance follows three steps with respect to the claims asserted. *See DZ Rsrv.*, 96 F.4th at 1233. "First, [a court must] identify which questions are central to the plaintiffs' claim, …

'which "begins, of course, with the elements of the underlying cause of action.'" *Id.* (citation omitted). "Second, [a court must] determine which of these questions are common to the class and which present individualized issues." *Id.* Questions are "common" when "they are 'capable of being established through a common body of evidence, applicable to the whole class.'" *Id.* (citation omitted). "Because this standard is identical to the analysis under Rule 23(a)(2)'s commonality requirement, 'courts must consider cases examining both subsections in performing a Rule 23(b)(3) analysis.'" *Id.* (citation omitted). Third, courts must "analyze whether the common questions predominate over the individual questions." *Id.* At this step, courts must consider "whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016). "When one or more of the central issues in the action are common to the class and can be said to predominate," the predominance requirement is met "even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members." *Novoa*, 2019 WL 7195331, at *16 (quoting *Tyson Foods*, 577 U.S. at 453).

After these three steps, courts must determine whether common issues predominate as to damages—i.e., that damages are calculable on a class-wide basis and "the whole class suffered damages traceable to the same injurious course of conduct underlying the plaintiffs' legal theory." *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1120 (9th Cir. 2017).

Here, common issues predominate in each claim that Plaintiffs seek to certify.

a) Common Questions Predominate in the Proposed Class Claims Against GEO

Plaintiffs assert six claims against GEO: (1) negligence; (2) battery; (3) premises liability; (4) concealment; (5) intentional misrepresentation; and (6) negligent misrepresentation. *See* ECF 152 ("FAC") ¶¶ 259–325. All six claims are rooted in a

"centralized policy or procedure"—the Adelanto Spray Policy—implemented at a single institution in a discrete period. *Maney v. State*, 2022 WL 986580, at *16 (D. Or. Apr. 1, 2022). The resolution of each claim will turn on Plaintiffs proving that:

- GEO implemented the facility-wide Adelanto Spray Policy;
- The Adelanto Spray Policy consistently exposed the Detained Class to dangerous levels of HDQ Neutral;
- The compounds in HDQ Neutral corrode and inflame the body systems exposed to the pesticide and thus cause common injury;
- GEO should have known and actually did know that the Adelanto Spray Policy was harming the Detained Class; and
- As to the fraud-based claims, GEO concealed those harms from the Detained Class.

As detailed *infra*, the "truth or falsity" of each common contention "will resolve an issue that is central to the validity of each one of the claims in one stroke." *Parsons*, 754 F.3d at 675; *see Tinsley v. Snyder*, 922 F.3d 957 (9th Cir. 2019) (affirming commonality in challenge to statewide medical policies that were allegedly deliberately indifferent to the medical needs of foster children); *Menocal v. GEO Grp., Inc.*, 882 F.3d 905, 916–17 (10th Cir. 2018) (same, in detained-class's challenge to GEO sanitation policy "[b]ecause all members of the TVPA class base their claims on the Sanitation Policy, [and so] the answers to these questions would resolve an issue that is central to the validity of each one of the claims in one stroke." (cleaned up)).

Negligence & Premises Liability. Plaintiffs' negligence and premises liability claims share the same elements: "(1) defendant's obligation to conform to a certain standard of conduct for the protection of others against unreasonable risks (duty); (2) failure to conform to that standard (breach of the duty); (3) a reasonably close connection between the defendant's conduct and resulting injuries (proximate cause); and (4) actual loss (damages)." *Corales v. Bennett*, 567 F.3d 554, 572 (9th Cir. 2009); *Jones v. Awad*, 39 Cal. App. 5th 1200, 1207 (2019) ("The elements of a cause of action

for premises liability are the same as those for negligence."). Common questions predominate for these claims.

First, GEO's duty of care to the Detained Class is a common question with a uniform answer, as the class consists entirely of civil immigrant detainees in GEO's custody and control. *See Kesner v. Superior Ct.*, 1 Cal. 5th 1132, 1142 (2016) (duty is a question of law); *Martinez v. Geo Grp., Inc.*, 2019 WL 3758026, at *4 (C.D. Cal. Apr. 30, 2019) (holding that GEO owed a duty of care to "[i]mmigrant detainees, such as Plaintiffs here, [because they] are vulnerable and dependent upon the government agents and/or contractors in whose care they are placed in much the same way as a prisoner is vulnerable and dependent upon his jailers."); *see also Pollard v. The GEO Grp., Inc.*, 629 F.3d 843, 874 (9th Cir. 2010) (Restani, J., concurring).

Second, whether GEO breached its duty of care turns on the common manner, method, and frequency of its application of HDQ Neutral. Courts routinely certify classes "where class members' claims are based on a centralized policy or procedure." *Maney*, 2022 WL 986580, at *16 (collecting cases). This is because such pattern and practice questions have "a direct impact on every class member's effort to establish liability and on every class member's entitlement to . . . monetary relief." *Ellis v. Costco Wholesale Corp.*, 285 F.R.D. 492, 538 (N.D. Cal. 2012); *In re Oil Spill by Oil Rig Deepwater Horizon*, 295 F.R.D. 112, 134 (E.D. La. 2013) (finding predominance where a "mass disaster [could] be traced to a single root: a chain of decisions made and actions taken by BP leading up to the spill"); *Turner v. Murphy Oil USA, Inc.*, 234 F.R.D. 597, 606 (E.D. La. 2006) (finding predominance despite different degrees of contamination to plaintiffs' property where "the central factual basis for all of [p]laintiffs' claims is the [oil] leak itself—how it occurred, and where the oil went"); *Parsons*, 754 F.3d at 681 (finding predominance based on a uniform set of policies that affected class members).

In *Owino v. CoreCivic, Inc.*, 60 F.4th 437 (9th Cir. 2022), for example, the Ninth Circuit found a "quintessential 'common question'" for purposes of predominance

where a class of immigrant detainees challenged a forced labor program implemented class-wide at CoreCivic-managed detention centers. *Id.* at 445. The Court emphasized that the class "share[d] a large number of common attributes, including that they are immigrants who are or were involuntarily detained in [CoreCivic's] facilities and subjected to common sanitation and disciplinary policies." *Id.* at 444–45.

Here, too, the fact questions are uniform and will be answered with common proof—proof that based on direction from the Facility Administrator (James Janecka) down, GEO sprayed HDQ Neutral throughout the Adelanto housing units from March 11 to September 29, 2020, at a frequency and concentration that endangers human health, in occupied and poorly ventilated rooms, and without providing the Detained Class adequate PPE. As detailed in Sections II.B–II.F, Plaintiffs present "[s]ignificant proof" of a class-wide Adelanto Spray Policy, which "applied uniformly to all detainees." Ex. 72 at 29:21–23; *see Owino*, 60 F.4th at 444. Thus, whether GEO breached its duty of care is a question answered with common evidence of GEO's centralized, facility-wide conduct during a more than six-month period. *See Lockheed v. Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1106 (2003) (finding significant common issues of fact where breach was based on "the pattern and degree of contamination of Redlands groundwater with various chemicals and the potential health consequences to humans of exposure to those chemicals").

Finally, whether Detained Class members' exposure to HDQ Neutral because of the Adelanto Spray Policy resulted in predictable inflammation responses is a shared question of fact that will be established through common expert medical, toxicological, and epidemiological evidence,[9] which will resolve the injury and causation elements with little to no individualized inquiry. *See Deepwater Horizon*, 295 F.R.D. at 141 (holding that, on injury and causation, common issues predominated where class

[9] Expert testimony is relevant at class certification when "assessing whether there was a common pattern and practice that could affect the class as a whole." *Townsend v. Monster Beverage Corp.*, 303 F. Supp. 3d 1010, 1029 (C.D. Cal. 2018).

exposure to petroleum products was limited to during and after an oil spill, and such "short-term exposure to petroleum products ha[d] known outcomes" that manifested within 24-72 hours of exposure); *Scott v. Quay*, 338 F.R.D. 178, 190 (E.D.N.Y. 2021) (finding predominance in class challenge to conditions of confinement as "many of the injuries allegedly flowing from the breach—e.g. loss of light and heat, exposure to near-freezing temperatures, long-term confinement in cells, and deprivation of communication with families and lawyers—impacted class members generally").

For example, Plaintiffs' expert toxicologist, Dr. Dourson, explained that EPA studies and a growing body of peer-reviewed literature "make[] clear that human inhalation, dermal, or ingestion exposure to certain levels of QACs will result in an inflammatory response and those responses may include a range of damage or reactions in the skin or eyes, damage to the upper respiratory systems (nose bleeds, repeated coughs) and lower respiratory systems (shortness of breath, occupational asthma) as well as damage to the digestive tract resulting in vomiting or severe nausea)." Ex. 82 at 4. Dr. Batterman, an epidemiological expert, opined that as a result of the Adelanto Spray Policy, the levels of QACs in the Adelanto housing units reached levels of toxic inhalation exposure. Ex. 76 at 29, Table 10. Consistent with the relevant scientific literature, Dr. Rangan opined that Plaintiffs experienced acute and chronic symptoms of exposure that "are consistent with continual exposure to HDQ Neutral," specifically the "continual and significant exposure to HDQ Neutral at unsafe levels and without appropriate PPE." Ex. 79 at 13–23. And Dr. Rangan further opined that GEO's application of HDQ Neutral "would create a continual opportunity for detainees to be exposed to HDQ Neutral in their housing units." *Id.* at 11. Thus, like in *Deepwater Horizon*, "the time between exposure and manifestation of [the alleged exposure-caused injuries] is tightly confined, and causation is therefore 'straightforward' and common to the class." 295 F.R.D. at 141.

Battery. Common proof of the Adelanto Spray Policy will also drive common resolution of the four elements of battery: "'(1) defendant touched plaintiff, or caused

plaintiff to be touched, with the intent to harm or offend plaintiff; (2) plaintiff did not consent to the touching; (3) plaintiff was harmed or offended by defendant's conduct; and (4) a reasonable person in plaintiff's position would have been offended by the touching.'" *Amini v. Cnty. of Ventura*, 2024 WL 5217926, at *9–10 (C.D. Cal. Aug. 12, 2024) (quoting *So v. Shin*, 212 Cal. App. 4th 652, 669 (2013)); *see also Powell v. Tosh*, 2012 WL 2601946, at *2 (W.D. Ky. July 5, 2012) (certifying class as to battery claim based on odors emanating from defendants' swine waste facilities).

First, common evidence will resolve whether GEO intended to spray HDQ Neutral every thirty minutes throughout the class members' living spaces while denying them access to the required PPE or other protection. Such common evidence will include then-Facility Administrator Janecka's testimony that "I made the decision, officers made their rounds every 30 minutes, let's just make [spraying HDQ Neutral] part of their rounds." Ex. 1 at 86:2–21; *see id.* at 239:20–24 (testifying that decision was made in early March 2020). It will also include documentary evidence that GEO implemented the Adelanto Spray Policy for over six months despite the Detained Class's almost immediate complaints of negative health consequences from exposure to the HDQ Neutral spray. *See* Section II.I (collecting evidence).

Second, common questions will predominate whether the Detained Class consented to their exposure to HDQ Neutral as applied under the Adelanto Spray Policy. Consent involves a common question of law—could the Detained Class consent if the hazards of HDQ Neutral were concealed or misrepresented by GEO?[10]—as well as a common question of fact as to whether the Detained Class had the ability to consent when the Adelanto Spray Policy did not require GEO staff to give class members notice before spraying HDQ Neutral and did not allow detainees to leave the areas being sprayed.

[10] *See Rains v. Superior Court*, 150 Cal. App. 3d 933, 938–40 (1984) (discussing principles of fraud that vitiate consent to battery).

Third, whether the Adelanto Spray Policy resulted in harmful or offensive contact with the Detained Class involves a common legal question: whether contact with sprayed HDQ Neutral constitutes battery under California law (it does). *See Mount Vernon Fire Ins. Corp. v. Oxnard Hosp. Enter., Inc.*, 219 Cal. App. 4th 876, 881 (2013). It will also involve a common factual question of whether the Detained Class was harmed or offended by their exposure to overconcentrated HDQ Neutral every 30 minutes without adequate PPE. *See Amini*, 2024 WL 5217926, at *9–10 ("A reasonable fact finder could infer that Amini's colleagues intended to harm her by wearing perfumes close enough to endanger her knowing that it would cause a severe allergic reaction."). Relevant common evidence will include product labels and warning sheets, such as the Safety Data Sheet that describes HDQ Neutral as a caustic chemical that causes "[n]asal discomfort and coughing," "[i]rritation or damage to the mucus membranes of the respiratory tract," "[p]ain, redness, swelling of the conjunctiva and tissue damage," and "[p]ain, redness, blistering, and possible chemical burn" with skin contact. Ex. 5 at 202. Other common evidence will include Dr. Dourson's, Dr. Batterman's, Dr. Malmstadt's, and Dr. Rangan's expert opinions discussed above. Ex. 77 at ¶ 10; Ex. 76 at 5 and 29, Table 10; Ex. 81 at 4; Ex. 79 at 3–6; *see Deepwater Horizon*, 295 F.R.D. at 141 (finding class cohesive where class members "allege exposure to the same products for a similar duration through similar pathways with similar, known short-term effects.").

Fourth, whether "a reasonable person in [the Detained Class's] position would have been offended by the touching" is necessarily a common question. It turns on objective reasonableness under the circumstances and thus involves no individualized questions. *See Austin B. v. Escondido Union Sch. Dist.*, 149 Cal. App. 4th 860, 873 (2007) (discussing objective reasonableness of touching for battery claim).

Fraud-Based Claims. Lastly, common questions predominate for the Detained Class's claims for concealment, intentional misrepresentation, and negligent misrepresentation, which share the elements of: (1) a misrepresentation (false

representation, concealment, or nondisclosure); (2) with knowledge of its falsity; (3) intent to defraud or induce reliance; (4) justifiable reliance; and (5) resulting damage.[11] *See Lazar v. Superior Ct.*, 12 Cal. 4th 631, 638 (1996); *Roddenberry v. Roddenberry*, 44 Cal. App. 4th 634, 665–66 (1996); *Borman*, 59 Cal. App. 5th at 1060. "Class action fraud claims often involve similar misrepresentations that cause a large number of victims to each suffer [and injury]," and so "[f]raud claims are thus particularly well suited to class treatment under Rule 23(b)(3)." *DZ Rsrv.*, 96 F.4th at 1234. Such is the case here.

First, the Detained Class brings its fraud claims against a single actor, GEO, based on its concealment and misrepresentation of the harmfulness of HDQ Neutral as used under the Adelanto Spray Policy. [redacted] to prevent COVID-19. Ex. 58 at 3; *see* Ex. 57 at 2. Whether those representations were false is a common question—and the only question—for the first element of these claims.

Second, GEO's intent to defraud the Detained Class presents a common question. This element turns on GEO's motives and is thus fundamentally not an individualized inquiry. Resolution of this element will turn on common evidence such as GEO's attestations to the EPA and Congresspersons that, among other things, "the Adelanto Facility uses a diluted form of HDQ Neutral that does not pose [hazards identified in the Safety Data Sheet],"—even though GEO used an overconcentrated, and sometimes pure concentrate, solution of HDQ Neutral.[12] *See Hall v. Marriott Int'l,*

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[11] Negligent misrepresentation does not require intent to deceive or knowing misrepresentation. *See Borman v. Brown*, 59 Cal. App. 5th 1048 (2021).

[12] *See* Ex. 45 (L. Meza email to staff (3/24/2020): [redacted] Ex. 46 (L. Meza email to staff (4/7/2020): [redacted]).

Inc., 344 F.R.D. 247, 275 (S.D. Cal. 2023) (finding commonality for intent element where plaintiffs identified discrete documents that conveyed misrepresentations).

Third, common proof will establish that the Detained Class relied on GEO's omissions. "[C]ourts have recognized that this element . . . may be presumed in the case of a material fraudulent omission." *Plascencia v. Lending 1st Mortg.*, 259 F.R.D. 437, 447 (N.D. Cal. 2009), *order clarified*, 2011 WL 5914278 (Nov. 28, 2011). "'All that is necessary is that the facts withheld be material,' in the sense that a reasonable person 'might have considered them important' in making his or her decision." *Id.* (citation omitted). "[I]mportantly, proof of materiality 'is not a prerequisite to class certification.'" *DZ Rsrv.*, 96 F.4th at 1235 (citation omitted). But, "[b]ecause materiality is judged according to an objective standard, the materiality of [defendant's] alleged misrepresentations and omissions is a question common to all members of the class [named plaintiffs] would represent . . . ." *Id.* (citation omitted). "As to materiality, therefore, the class is entirely cohesive: It will prevail or fail in unison." *Id.* (citation omitted); *see Hall*, 344 F.R.D. at 275 (reaching the same conclusion because question would turn on "the hypothetical reasonable consumer").

Fourth, common proof will answer the question of whether, with accurate knowledge of the health and safety hazards posed by GEO's use of HDQ Neutral, the Detained Class would have taken steps to protect themselves, including demanding the PPE required per the product label or seeking independent medical care or legal advice. *See* Phaymany Decl. ¶ 17; Castillo Decl. ¶ 19; Ronduen Decl. ¶ 31; Mendoza Decl. ¶ 18; Scheetz Decl. ¶ 20; Gonzalez Mena Decl. ¶ 23; Dkt. 32 at 15.

b) Common Questions Predominate in the Proposed Class Claims Against Spartan

Plaintiffs assert four claims against Spartan: (1) negligence; (2) design defect – strict liability; (3) failure to warn – strict liability; and (4) failure to warn –

negligence. *See* FAC at ¶¶ 259–74, 326–44.[13] The Detained Class's **design defect claim** has two elements: (1) the product's design proximately caused the Detained Class's injuries; and (2) Defendant fails to "establish, in light of the relevant factors, that, on balance, the benefits of the challenged design outweigh the risk of danger inherent in such design." *Barker v. Lull Eng'g Co.*, 20 Cal. 3d 413, 432 (1978). The **failure to warn – strict liability claim** requires that: (1) "the defendant manufactured, distributed, or sold the product"; (2) "the product had potential risks that were known or knowable at the time of manufacture or distribution, or sale"; (3) "the potential risks presented a substantial danger to users of the product"; (4) "ordinary consumers would not have recognized the potential risks"; (5) "the defendant failed to adequately warn of the potential risks"; (6) "the plaintiff was harmed while using the product in a reasonably foreseeable way"; and (7) "that the lack of sufficient warnings was a substantial factor in causing the plaintiff's harm." *Rosa v. City of Seaside*, 675 F. Supp. 2d 1006, 1011 (N.D. Cal. 2009).

Finally, the **failure to warn – negligence claim** requires that "'(1) the defendant manufactured, distributed, or sold the product; (2) the defendant knew or reasonably should have known that the product was dangerous or was likely to be dangerous when used in a reasonably foreseeable manner; (3) the defendant knew or reasonably should have known that users would not realize the danger; (4) the defendant failed to adequately warn of the danger or instruct on the safe use of the product; (5) a reasonable manufacturer, distributor, or seller under the same or similar circumstances would have warned of the danger or instructed on the safe use of the product; (6) the plaintiff was harmed; and (7) the defendant's failure to warn or instruct was a substantial factor in causing the plaintiff's harm.'" *Mariscal v. Graco, Inc.*, 52 F. Supp. 3d 973, 991 (N.D. Cal. 2014).

[13] Plaintiffs discuss the elements of negligence *supra*, in Section IV.2.

As with GEO, Plaintiffs' four claims against Spartan are predicated on a common course of facility-wide actions and inactions that impacted Plaintiffs and the Detained Class for nearly seven months. The temporal and geographic limitations fundamental to this case—i.e., exposure to HDQ Neutral that was supplied solely by Spartan and used pursuant to a consistent policy that applied to the entire class—brings these claims squarely within the purview of cases that have certified class challenges to a single defendant's "common course of conduct." For instance, in the class action challenge arising from the Deepwater Horizon oil rig explosion in Louisiana, the Court found the class satisfied Rule 23(a) and (b) because it challenged a single defendant's acts leading up to and after an oil rig blowout that exposed persons within a confined geographic area to a threshold level of oil and/or dispersants. *See generally Deepwater Horizon*, 295 F.R.D. at 134–43. As the court there explained, "[p]redominance is more easily satisfied in a single-event, single-location mass tort actions … because the defendant allegedly caused all of the plaintiffs' harms through a course of conduct common to all class members." *Id.* at 141; *see also Turner*, 234 F.R.D. at 607. That principle applies here, where the Detained Class was physically confined to the Adelanto Detention Facility while they were exposed to HDQ Neutral, a pesticide that Spartan not only manufactured and sold to GEO but was responsible for inspecting the use of at Adelanto. Under the common-course-of-conduct and related jurisprudence, the resolution of each claim will turn on Plaintiffs' ability to prove to a jury that: Spartan knew or should have known the health hazards of HDQ Neutral; Spartan knew or should have known that GEO was using HDQ Neutral around detainees; Spartan knew or should have known that GEO was spraying HDQ Neutral too frequently at Adelanto; 700–900 PPMs of HDQ Neutral reflects a concentrate exceeding one ounce per gallon of HDQ Neutral; available metering tips that would have dispensed HDQ Neutral at one ounce per gallon of water were available; Spartan provided GEO ineffective

warnings and inadequate labels; and the compounds in HDQ Neutral corrode and inflame the body systems exposed to the pesticide and thus cause common injury.

Common evidence will predominate in the claims against Spartan, including evidence that Spartan: (i) deliberately overconcentrated the HDQ Neutral dispensed at Adelanto, *see* Ex. 25, Ex. 10; (ii) [redacted] *see* Ex. 26; (iii) failed to replace the nozzles in use at Adelanto with nozzles that would properly dispense HDQ Neutral at one ounce per gallon of water, *see* Ex. 27 [Schauff 30(b)(6) Dep.] at 182:23–183:8, 305:20–313:7, Ex. 28; and (iv) knew or should have known that GEO was overusing HDQ Neutral at Adelanto despite detainee health consequences, *see* Ex. 62. Additionally, Plaintiffs' experts will present common evidence of causation, determining whether the Detained Class's frequent exposure to overconcentrated HDQ Neutral during the class period—which Spartan enabled through its conduct—caused a common injury of inflammatory responses. Accordingly, like in *Deepwater Horizon*, common questions of fact will predominate for causation because the Detained Class is "cohesive—Class Members allege exposure to the same products for a similar duration through similar pathways with similar, known short-term effects." *Deepwater Horizon*, 295 F.R.D. at 141.

c) Damages are Calculable on a Class-Wide Basis

The Detained Class's damages are calculable on a class-wide basis because "the whole class suffered damages traceable to the same injurious course of conduct underlying the plaintiffs' legal theory." *Just Film*, 847 F.3d at 1120. Plaintiffs' damages expert proffers a model that measures damages attributable to the legal theories at issue, even if, as applied, the model awards different amounts in compensation. *See id.* ("To gain class certification, Plaintiffs need to be able to allege that their damages arise from a course of conduct that impacted the class. But they need not show that each member['s] damages from that conduct are identical.");

Vaquero v. Ashley Furniture Indus., Inc., 824 F.3d 1150, 1155 (9th Cir. 2016) ("[T]he need for individualized findings as to the amount of damages does not defeat class certification."); *In re Delta Airlines, Inc.*, 2023 WL 2347074 (C.D. Cal. Feb. 8, 2023) (reasoning that the proffer of common methods for calculating damages satisfied predominance in damages analysis). Plaintiffs' expert Scott Bosworth—a CFA charter holder and economist who has provided expert analysis on damages in numerous class action lawsuits—proposes three methodologies for calculating damages that align with Plaintiffs' theories of liability and can be applied on a class-wide basis. *See generally* Ex. 78. Plaintiffs intend to ask the jury to award noneconomic damages on both a "per diem" and a "per injury" basis.

First, the jury may award class members a "per diem" amount to remedy the pain and suffering for each day the class member was in the facility while the Adelanto Spray Policy was in effect. *See* Ex. 78 ¶ 15. With this per diem figure, Mr. Bosworth can use existing records of class members' time at Adelanto to calculate noneconomic damages on a class-wide basis without any individualized evidence. *See id.*; *Owino*, 60 F.4th at 447 (finding evidence "of 'typical' shift lengths, the days worked by ICE detainees, the wages paid, and the job assignments" together with "testimony and CoreCivic records," sufficient to show damages measurable on a class-wide basis).

Second, Mr. Bosworth proposes a model for measuring a "per injury" award, by which the jury may award a lump sum amount of damages for each type of common injury experienced (e.g. nosebleeds, dizziness, headaches, persistent cough, nausea, etc.). These lump sum awards can be added to the per diem award to fairly account "for both the length of exposure and the type of injury experienced, while only requiring the class member to complete and verify a form declaration to establish the fact of their injuries." Ex. 78 ¶ 16.

Third, Mr. Bosworth offers a model for calculating medical-monitoring damages for class members who developed occupational asthma and/or COPD based on the medical monitoring plan proposed by Plaintiffs' expert Dr. Peter DeLong, MD,

FCCP. *See* Comstock Decl. Ex. 78 ¶¶ 26–28; Ex. 77 ¶ 39. Mr. Bosworth has identified a formulaic methodology that will calculate each qualifying class member's damages using common proof—expert testimony of Mr. Bosworth and Dr. DeLong, and existing GEO records containing the age and sex of each class member—and a simple class member or physician declaration establishing a class member's diagnosis. *See* Ex. 78 ¶¶ 26–28.

Mr. Bosworth's proposed methodologies demonstrate that damages will be largely subject to common proof. And to the extent any individual calculations are needed (e.g., to calculate medical monitoring for foreign-resident class members) such calculations "cannot defeat class certification." *Vaquero*, 824 F.3d at 1155.

3. Plaintiffs' Claims Are Typical of the Detained Class's Claims

The Detained Class satisfies Rule 23(a)(3)'s third requirement because "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The typicality requirement asks whether the class representatives can "pursue [their] claims under the same legal or remedial theories as the unrepresented class members." *In re Delta Airlines, Inc.*, 2023 WL 2347074, at *11 (cleaned up). "Under the Rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1141 (9th Cir. 2016) (cleaned up) (citation omitted).

Like commonality, the typicality requirement is regularly satisfied in challenges to facility-wide policies or when plaintiffs "endured a course of conduct . . . that the rest of the class also experienced." *Just Film*, 847 F.3d at 1118. Critically, typicality "is not primarily concerned with whether each person a proposed class suffers the same type of damages." *Id.* It instead asks "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon v. Data Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted).

Plaintiffs' claims are typical of the Detained Class's claims against GEO and Spartan. Like all class members, Plaintiffs were subjected to the Adelanto Spray Policy and experienced the same predictable and discrete set of injuries as the absent class members. *See* Ronduen Decl. ¶¶ 8–18, 32–38; Castillo Decl. ¶¶ 4–11, 21–30; Scheetz Decl. ¶¶ 4–9, 22–31; Gonzalez Mena Decl. ¶¶ 6–14, 25–32; Phaymany Decl. ¶¶ 4–9, 18–24; Mendoza Decl. ¶¶ 4–9, 19–24. The Detained Class's injuries resulted from a course of conduct that is not unique to any Plaintiff but that instead follows from Defendants' common actions and inactions.

Between and among them, Plaintiffs' experiences typify those of the class members. They were housed in different units, yet each experienced the same harmful exposure to HDQ Neutral due to the same Defendant misconduct: the dispensing of HDQ Neutral from Spartan-selected and Spartan-installed 2 oz/gallon metering tips and application of HDQ Neutral without adequate warnings of its hazardous effects nearly 50 times per day through the Adelanto Spray Policy. *See* Ronduen Decl. ¶¶ 3, 8–18; Castillo Decl. ¶¶ 3–10; Scheetz Decl. ¶¶ 3–9; Gonzalez Mena Decl. ¶¶ 3–14; Phaymany Decl. ¶¶ 3–9; Mendoza Decl. ¶¶ 3–9. Plaintiffs were also exposed to HDQ Neutral through the same exposure pathways as one another and the rest of the class: dermal, ocular, inhalation, and oral. Their symptoms "are [all] consistent with continual exposure to HDQ Neutral," Ex. 79 at 15, 16, 18, 20, 22, 23, and result from the inflammatory injury of hazardous exposure to HDQ Neutral. *Compare* Ex. 82 at 1 *with* Ronduen Decl. ¶¶ 32–37; Castillo Decl. ¶¶ 21–28; Scheetz Decl. ¶¶ 22–30; Gonzalez Mena Decl. ¶¶ 25–31; Phaymany Decl. ¶¶ 18–23; Mendoza Decl. ¶¶ 19–23.

Plaintiffs' symptoms also mirror those of other class members, as evidenced by grievances and reports by other detainees at Adelanto during the class period. *See* Ronduen Decl. ¶¶ 32–38; Scheetz Decl. ¶¶ 22–31; Gonzalez Mena Decl. ¶¶ 24–32; Phaymany Decl. ¶¶ 18–24; Mendoza Decl. ¶¶ 19–24; Castillo Decl. ¶¶ 20–30; *see, e.g.*, Ex. 62; Ex. 69; Ex. 70. Indeed, Plaintiffs witnessed other class members experience the same or similar symptoms in immediate response to the Adelanto Spray

Policy. *See, e.g.*, Castillo Decl. ¶ 29; Gonzalez Mena Decl. ¶ 29; Mendoza Decl. ¶ 15; Phaymany Decl. ¶ 13; Ronduen Decl. ¶¶ 15, 29; Scheetz Decl. ¶ 17.

Plaintiffs therefore "have the same essential characteristics" as the proposed class members, *Maney*, 2022 WL 986580, at *9, and their injuries are typical because each class member "alleges injury through" the same "exposure pathways," *Deepwater Horizon*, 295 F.R.D. at 136 (finding typicality where all plaintiffs "allege harm from past exposure to oil and/or dispersants" and "the exposures occurred during a relatively short period of time in a tightly defined geographic area").

4. Plaintiffs and Counsel Will Adequately Represent the Class

Plaintiffs and their counsel must satisfy Rule 23(a)(4)'s requirement that they will "fairly and adequately protect the interests of the class." This requirement is met so long "the named representatives … appear able to prosecute the action vigorously through qualified counsel" and "the representatives [do] not have antagonistic or conflicting interests with the unnamed members of the class." *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978).

First, Plaintiffs have vigorously prosecuted this action and will continue to do so, as each has stated under oath. Because Plaintiffs seek the same relief as all absent class members, there are no potential conflicting interests. *See Arroyo v. Dep't of Homeland Sec.*, 2019 WL 2912848, at *11 (C.D. Cal. June 20, 2019). Plaintiffs also understand their obligation to pursue the interests of the class and their fiduciary responsibility to represent other class members as fairly and adequately as they would represent their own interests. *See* Ronduen Decl. ¶¶ 39–41; Castillo Decl. ¶¶ 31–33; Scheetz Decl. ¶¶ 32–34; Gonzalez Mena Decl. ¶¶ 33–35; Phaymany Decl. ¶¶ 25–27; Mendoza Decl. ¶¶ 25–27.

Second, Plaintiffs' counsel will adequately represent the interests of all proposed class members. Plaintiffs have secured counsel with significant experience litigating complex, multi-party federal and state cases, including class actions, across a wide range of technical matters. *See* Haji Decl. ¶¶ 3–9; Hueston Decl. ¶¶ 3–5; Klieger Decl.

¶¶ 3–5. Counsel have sufficient resources, experience, and knowledge to litigate this matter on behalf of the proposed class and have thoroughly investigated and pursued potential claims. *See* Haji Decl. ¶¶ 3–10; Hueston Decl. ¶¶ 3–5, 7; Klieger Decl. ¶¶ 3–5, 7. Additionally, counsel are deeply familiar with the record in this case, having handled the discovery issues to date. *See* Haji Decl. ¶ 10; Hueston Decl. ¶ 7; Klieger Decl. ¶ 7. Finally, the undersigned counsel have no conflicts of interest with the putative class. *See* Haji Decl. ¶ 10; Hueston Decl. ¶ 7; Klieger Decl. ¶ 7. As a result, the adequacy requirement is satisfied.

B. The Detained Class Satisfies Rule 23(b)(3)'s Requirements

At its core, each claim on behalf of the Detained Class is rooted in the Adelanto Spray Policy and Spartan's failures at Adelanto, which applied uniformly to the Detained Class and are therefore susceptible to class-wide proof. As explained in Section IV.A.2, *supra*, this renders the Detained Class "sufficiently cohesive to warrant adjudication by representation." *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). In addition, a class action is far superior to any other manner of resolving this dispute because of the sheer volume of fact questions and the limited resources of the Detained Class to prosecute individual claims.

1. Common Issues Predominate

As described *supra* in Section IV.A.2, and summarized below, common questions of law and fact predominate in Plaintiffs' claims against both Defendants.

2. A Class Action Is Superior to Any Other Manner of Litigation

Finally, this Court should find that the instant class action is superior to any other manner of litigating the Adelanto Spray Policy and Spartan's related common course of conduct. The four guidelines in Fed. R. Civ. P. 23(b)(3)(A)–(D) strongly weigh in favor of class resolution: (1) members of the Detained Class have an interest in pursuing their claims as a class; (2) there is no pending litigation by or against class members; (3) class litigation in this forum is desirable; and (4) managing the class action will not be difficult.

a) Detained Class Members Have an Interest in Pursuing Their Claims as a Class

In this case, members of the Detained Class have an interest in maintaining a class action rather than individual litigations for at least two reasons. *First*, individual class members may be unwilling or unable to bring their own action. As noncitizens once (and for some, currently) in removal proceedings and previously detained at Adelanto, each Detained Class member is uniquely vulnerable to retaliatory immigration enforcement action were they to file suit. This fact alone establishes the value of permitting these claims to proceed as a class action. *See Novoa*, 2019 WL 7195331, at *19 ("Fear of negative immigration consequences may also deter individual claims, a fact that also weighs in favor of certification.").

Second, this class action will allow Plaintiffs to "vindicate the rights of . . . people who individually would be without effective strength to bring their opponents into court at all." *Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 863 (9th Cir. 2016). Indeed, if forced to proceed in independent actions, members of the Detained Class would face significant litigation costs and have to overcome any unfamiliarity with, or language-access barriers to, the legal process. *See Lehr v. City of Sacramento*, 259 F.R.D. 479, 484 (E.D. Cal. 2009) (concluding that "class members have no particular interest in individually controlling the prosecution of separate actions" because "it is likely that each individual class member could only pursue relatively small claims, and because they lack the resources to do so"). These difficulties are amplified for the members of the Detained Class who have been removed. *See Novoa*, 2019 WL 7195331, at *19 ("But the fact class members may otherwise be unable to bring their claims due to their tenuous situations [such as having been removed] only militates in favor of certification."); *see also Menocal v. GEO Grp., Inc.*, 320 F.R.D. 258, 270 (D. Colo. 2017), *aff'd*, 882 F.3d 905 (10th Cir. 2018) ("[M]any of the putative class members are immigrant detainees who lack English proficiency. They have limited financial resources and reside in countries around the world. It is very likely

that these claims would not be brought by individual detainees, especially considering the case's innovative nature.").

Moreover, the instant class action will "facilitate[] [the] spreading of the litigation costs among the numerous injured parties," and encourage recovery for GEO's and Spartan's unlawful activity. *In re Warfarin Sodium Antitrust Litig*., 391 F.3d 516, 534 (3rd Cir. 2004). Finally, the sheer amount of discovery taken in this case weighs heavily in favor of class certification. *See Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1176 (9th Cir. 2010) (concluding a class action was superior because, among other things, "[p]roposed class members face the option of participating in this class action, or filing hundreds of individual lawsuits that could involve duplicating discovery and costs that exceed the extent of proposed class members' individual injuries."). Over the last year and a half, Plaintiffs have engaged in significant discovery, obtaining and diligently reviewing more than 113,800 documents from Defendant GEO, 4,900 documents from Spartan, and 1,600 documents through public records requests and Freedom of Information Act requests. *See* Comstock Decl. ¶ 3. Plaintiffs have taken more than 36 depositions of Spartan employees, GEO employees, and third parties involved in the conduct at issue. *See id.* ¶ 4. The cost, time, and energy of duplicating this discovery would be difficult, if not impossible, for an individual class member, and undoubtedly frustrating and a waste of resources for Defendants. *See Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) ("Where classwide litigation of common issues will reduce litigation costs and promote greater efficiency, a class action may be superior to other methods of litigation."). "Courts have long recognized the benefits conferred by the class action mechanism over numerous individual actions." *Ms. L. v. U.S Immigr. & Customs Enf't*, 330 F.R.D. 284, 291 (S.D. Cal. 2019) (quoting *Smith*, 830 F.3d at 863). Those benefits are amplified here.

b) There Is No Pending Litigation by or Against Class Members

Plaintiffs are not aware of any pending litigation concerning GEO's use of HDQ Neutral at Adelanto or Spartan's common course of conduct relating to that use during the class period. There is therefore no risk that the outcome here would prejudice class members' interests in other cases. *See Aldapa v. Fowler Packing Co.*, 323 F.R.D. 316, 340 (E.D. Cal. 2018), *order clarified*, 2018 WL 10322910 (E.D. Cal. Feb. 16, 2018) ("There has been no showing here that any of the class members have a separate interest in individual control of the litigation, or that suits by class members are already pending on these same issues."); *Novoa*, 2019 WL 7195331, at *19 (detecting no prejudice in certifying nationwide class challenge to GEO work policy that bore resemblance to, but was not the same as, a GEO work policy at a different detention center that was subject to ongoing litigation).

c) Litigating in this Forum as a Class Is Desirable

Concentrating litigation in this forum is desirable because GEO and Spartan transact in the Central District, and "all claims arise from same location, date, and time period" within this District. *See Multi-Ethnic Immigrant Workers Org. Network v. City of Los Angeles*, 246 F.R.D. 621, 636 (C.D. Cal. 2007).

d) Managing this Class Action Will Not Be Difficult

There should be little to no manageability concerns in certifying the Detained Class. GEO maintains the necessary records for determining class membership. In fact, it has already identified all individuals detained at Adelanto between February 1, 2020, to November 1, 2020, *see* Comstock Decl. ¶ 2, and has records of where all detainees were housed, Ex. 83 [Janecka Dep. Day 2] 373:25–374:18, 375:13–376:9. In any event, there is a "well-settled presumption that courts should not refuse to certify a class merely on the basis of manageability concerns." *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1128 (9th Cir. 2017) (internal quotations and citation omitted).

Even if the Court were to determine that there are individualized inquiries that need to be resolved, "[a] number of management tools are available to address[] [them], such as bifurcating liability and damages trials, appointing a magistrate judge or special master to preside over damages proceedings, and creating subclasses as permitted under Rule 23(c)(4)." *MIWON*, 246 F.R.D. at 636.[14] For example, the Court could conduct a Phase One trial to resolve the common issues identified below (*see infra* Section V), and if there is a finding of liability in whole or in part for one or both Defendants, proceed to a Phase Two trial regarding all remaining issues to be tried on an individual basis, e.g., specific causation and/or the amount of damages. Phase Two could involve initial bellwether trials of representative plaintiffs, trying damages in large groups, or appointing special masters to make damages recommendations to be approved by the Court.

Plaintiffs' and the Detained Class's claims center on the Adelanto Spray Policy and Spartan's related course of conduct at a single facility during a restricted time period. Class-wide treatment of liability or of issue classes regarding this common course of conduct would eliminate the need for more than 3,000 liability or issue determinations, resulting in a great conservation of judicial (and party) resources and more thorough presentation of each side's evidence on the expert-driven question of general causation. Class proceedings would also eliminate the risk of inconsistent verdicts. These facts all support the superiority of proceeding as a class action.

In sum, the high likelihood that class members will not pursue their own claims given the risk of retaliation and barriers to the civil legal process, the absence of related pending litigation, the desirability of litigating this matter in the Central District of

[14] Though numerous cases discuss these approaches at the class certification stage, in practice, courts rarely confront individual damage determinations. *See generally*, Newberg on Class Actions § 11:9 (6th ed.) (noting that very few cases go beyond a liability determination before resolving and, of those, some may be susceptible to class-wide determination of damages).

California, and the manageability of the class all weigh in favor of finding a class action superior here.

V. In the Alternative, The Court Should Certify Issue Classes

For the reasons detailed above, Plaintiffs and the Detained Class have satisfied Rule 23(a) and (b)(3). If this Court finds otherwise, it may nonetheless certify six issue classes under Federal Rule of Civil Procedure 23(c)(4), which provides that "[w]hen appropriate, an action may be brought or maintained as a class action with respect to particular issues." This alternative approach would be appropriate not only because the six proposed issue classes satisfy the threshold requirements of Rule 23(a) and (b)—numerosity, commonality, typicality, predominance, and superiority—but also because "'the adjudication of the certified issues would significantly advance the resolution of the underlying case, thereby achieving judicial economy and efficiency.'" *Hall*, 344 F.R.D. at 279 (quoting *Valentino*, 97 F.3d at 1229); *see also Amador v. Baca*, 2014 WL 10044904, at *9 (C.D. Cal. Dec. 18, 2014) (certifying a liability issue class and explaining that "[t]he Ninth Circuit—and respected jurists across the country—have energetically endorsed the concept," and that, even though "[t]his case may involve individualized damages calculations, … the efficiency of a single liability determination regarding the common procedures used by CRDF deputies is sufficient for Federal Rule of Civil Procedure 23(c)(4)."). Because GEO's and Spartan's affirmative actions did not vary among class members, partial certification on Defendants' liability and general causation would advance the resolution of the underlying case and conserve significant resources.

A. Negligence Liability Issue Classes Against GEO and Spartan

If the Court does not certify a class as to Plaintiffs' negligence claims against GEO and Spartan, it should nonetheless certify a negligence-liability issue class. This issue class would resolve the elements of duty and breach, both of which, as described above, are susceptible to common proof. *See Martin v. Behr Dayton Thermal Products LLC*, 896 F.3d 405, 414–15 (9th Cir. 2018) (affirming 23(c)(4) certification of

negligence issues where the issues "could be answered once because the answers apply in the same way to each plaintiff."). *See supra* Section IV.A.2(a)–(b).

B. General Causation Issue Class Against GEO and Spartan

Additionally, issue certification on general causation i.e., "whether the substance at issue had the capacity to cause the harm alleged," is appropriate where elements of causation predominate. *In re Hanford Nuclear Rsrv. Litig.*, 292 F.3d 1124, 1133 (9th Cir. 2002). Common expert evidence routinely predominates the question of whether a discrete class's exposure to, for example, a toxic substance could cause predictable injury. *See, e.g.*, *Mehl v. Canadian Pacific Railway Ltd.*, 227 F.R.D. 505, 521 (D.N.D. 2005) (finding the "general issue of whether exposure to anhydrous ammonia can cause injuries to individuals and their property can likewise be proven by common evidence"); *Mejdrech v. Met-Coil Sys. Corp.*, 319 F.3d 910, 911 (7th Cir. 2003) (affirming district court's class treatment via "the core questions, i.e., whether or not and to what extent [Met–Coil] caused contamination of the area in question"); *Slocum v. Int'l Paper Co.*, 2019 WL 2192099, at *6 (E.D. La. May 21, 2019) (finding "[w]ith respect to general causation . . . [that] the issues of: (1) whether Defendant's negligence caused the incident, (2) what the chemical composition of black liquor is, and (3) whether black liquor has the potential to cause the kinds of damages of which Plaintiffs complain do predominate").

With respect to GEO, Dr. Batterman, Dr. Dourson, Dr. DeLong, and Dr. Rangan's expert reports are separately and together shared evidence that dermal exposure to, and inhalation and ingestion of, HDQ Neutral at off-label dilutions as set Spartan and used by GEO "will result in an inflammatory response and those responses may include a range of damage or reactions in the skin or eyes, damage to the upper respiratory systems (nose bleeds, repeated coughs) and lower respiratory systems (shortness of breath, occupational asthma) as well as damage to the digestive tract resulting in vomiting or severe nausea)." Ex. 82 at 4; *see also* Ex. 77 at ¶ 10.

Moreover, adjudicating common questions regarding the general toxicity of HDQ Neutral at varying dilutions would significantly advance the litigation of Plaintiffs' claims, including: (1) whether HDQ Neutral can cause the symptoms class members experienced; (2) whether HDQ Neutral increases risk of certain future medical conditions; (3) what level of exposure to HDQ Neutral can cause those symptoms and increased risks; (4) whether Spartan's nozzles delivered concentrations of HDQ Neutral exceeding the EPA's approved label for disinfection and whether those concentrations were capable of causing the symptoms class members experienced and other lasting symptoms; and (5) whether the Adelanto Spray Policy requiring guards to frequently spray HDQ Neutral—at or above the concentration set by Spartan—on every high-touch surface, in a confined living space where detainees were not adequately protected could cause a toxic level of exposure. Plaintiffs will be able to show common proof as to each of these questions, including through testimony from GEO employees, Spartan employees, and expert witnesses.

C. Fraud Issue Class Against GEO

This Court should also certify an issue class to resolve the common liability elements of Plaintiffs' fraud-based claims—i.e., (1) whether GEO misrepresented, concealed, or failed to disclose material facts; (2) whether GEO had the requisite intent to defraud; and (3) whether the Detained Class's reliance can be inferred from their shared circumstances and GEO's uniform failure to disclose material facts. As explained *supra* in Section IV.A.2(a) these key elements of fraud, concealment, and misrepresentation all turn on common legal and factual issues that require no individualized inquiries. *See DZ Rsrv.*, 96 F.4th at 1233 (finding commonality in claims for "fraudulent concealment and fraudulent misrepresentation under California law"); *Hall*, 344 F.R.D. at 274–75, 277 (concluding that "several key elements of Plaintiffs' claims—deceptiveness, materiality, reliance, and intent—can be resolved on a classwide basis," because they ask legal questions that do not examine an individual plaintiff or class member's facts). For the reasons stated above, each of

these issues is subject to common proof and resolving them would significantly advance the resolution of Plaintiffs' claims.

D. Failure-to-Warn Issue Class Against Spartan

This Court should likewise certify an issue class on the shared liability elements of Plaintiffs' failure-to-warn claims, i.e., whether: (1) Spartan manufactured, sold, or distributed HDQ Neutral; (2) HDQ Neutral had potential risks that were known or knowable to Spartan at the time of manufacture or distribution; and (3) Spartan failed to adequately warn of those risks. Plaintiffs will establish these elements through shared evidence such as expert opinions regarding the toxicity of HDQ Neutral as known in 2020, Spartan's testimony and written discovery regarding its sale and manufacture of, and what it knew about, HDQ Neutral, and contemporaneous photographs of the product labels provided, and obscured, by Spartan. *See supra* Sections II.D, II.F. Again, these issues do not vary among the Detained Class, so this narrow failure-to-warn issue class is appropriate for certification under Rule 23(c)(4).

E. Design Defect Issue Class Against Spartan

This Court should certify an issue class on the second element of Plaintiff's design defect claim—i.e., whether Spartan can prove that "in light of the relevant factors, that, on balance, the benefits of the challenged design outweigh the risk of danger inherent in such design." *Barker*, 20 Cal. 3d at 432. As detailed *supra* in Section IV.A.2(b), the five "relevant factors" necessarily present common questions because "[s]trict products liability, unlike negligence doctrine, focuses on the nature of the product, and not the nature of the manufacturer's conduct." *Kim v. Toyota Motor Corp.*, 6 Cal. 5th 21, 33 (2018). Here, those factors will ask the common questions of whether: (a) the spray nozzle that Spartan used to overconcentrate HDQ Neutral presented a risk of "excessive preventable danger," *Barker*, 20 Cal. 3d at 430; (b) that danger was likely to occur when Spartan's spray nozzles were used; (c) feasible alternative designs existed during the class period, considering, for example, contemporaneous industry norms; (d) the cost to Spartan in 2020 of using a safer

nozzle; and (e) whether using a one-ounce nozzle would have had negative consequences to end users or dispensed an ineffective product. Those questions are common to the Detained Class because they focus on what Spartan could and should have known and done with respect to the spray nozzle in 2020.

F. Availability of Punitive Damages Issue Class

Finally, this Court should certify an issue class on whether punitive damages are available under section 3294 of the California Civil Code, which involves no individualized inquiries. *See Ellis*, 285 F.R.D. 540–44 (certifying issue class for the availability of punitive damages, reserving measurement to bifurcated damages phase). As with the other proposed issue classes, the inquiry here only asks whether Adelanto Spray Policy as applied to the entire Detained Class constitutes "acts [that] [we]re reprehensible, fraudulent, or in blatant violation of law or policy." *Pac. Gas & Elec. Co. v. Superior Court*, 24 Cal. App. 5th 1150, 1170 (2018); *Barefield v. Chevron, U.S.A., Inc.*, 1988 WL 188433, at *3 (N.D. Cal. Dec. 6, 1988). As such, an issue class to determine entitlement to punitive damages would achieve the aims of efficiency and economy and allow questions of quantum, tied more closely to compensatory damages, to be determined at a later stage. *See, e.g.*, *Ellis*, 285 F.R.D. at 544.

VI. CONCLUSION

For all these reasons, Plaintiffs respectfully request that the Court certify the proposed class, or, alternatively, certify the proposed issue classes, approve the named Plaintiffs as class representatives, and appoint the Social Justice Legal Foundation and Hueston Hennigan LLP as class counsel. Class certification is imperative to hold GEO and Spartan accountable for the unlawful use of HDQ Neutral at Adelanto to the detriment of all proposed class members.

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