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12
13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15
16 CARLOS MURILLO VEGA,
17 Plaintiff,
18 v.
19 MANAGEMENT & TRAINING
20 CORPORATION,
21 Defendant.

Case No. 3:21-cv-01770-GPC-LR
**PLAINTIFF CARLOS MURILLO
VEGA'S OPPOSITION TO
DEFENDANT MANAGEMENT &
TRAINING CORPORATION'S
PARTIAL MOTION FOR
SUMMARY JUDGMENT**

Date: April 21, 2023
Time: 1:30 p.m.
Judge: Hon. Gonzalo P. Curiel
Ctrm: 2D

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1 Plaintiff Carlos Murillo Vega respectfully submits this opposition to
2 Defendant Management & Training Corporation's ("MTC") Partial Motion for
3 Summary Judgment (the "Motion") (ECF 76).

4 **INTRODUCTION**

5 Defendant improperly isolated Mr. Murillo in restricted custody in the special
6 management unit ("SMU") for more than 14 months, inflicting severe emotional
7 distress. Defendant now attempts to escape accountability for its wrongdoing by
8 arguing that Mr. Murillo's claim for intentional infliction of emotional distress
9 ("IIED") fails and that Defendant cannot be responsible for punitive damages. Both
10 arguments fail, and Mr. Murillo should have the opportunity to present the
11 overwhelming evidence in support of his claims at trial.

12 First, Defendant attempts to dismiss Mr. Murillo's IIED claim arguing that its
13 conduct was not "extreme or outrageous" and that it did not act "recklessly." (Mot.
14 9-11.) The evidence shows otherwise. Mr. Murillo was improperly placed in the
15 SMU and then kept there without meaningful periodic review concerning his
16 classification or a pathway to return to general population for more than 14 months.
17 His improper confinement was then exacerbated by Defendant's failure to provide
18 Mr. Murillo with access to programs and services comparable to those available in
19 general population or with sufficient recreation and out-of-cell times.

20 This improper treatment was not just a technical violation—Bradford E.
21 Hansen, a retired prison warden with more than 40 years of experience, will testify at
22 trial that the conditions at MTC were in gross violation of Performance-Based
23 National Detention Standards ("PBNDS") with which MTC was required to comply.
24 The evidence shows, *inter alia*, that Defendant's use of administrative segregation as
25 a default, long-term solution for protective custody does not comply with PBNDS;
26 that Defendant violated PBNDS in making its initial and continued placement of Mr.
27 Murillo in protective custody; that Defendant violated PBNDS by failing to provide
28 detainees in protective custody with programs and services available to those in

1 general population; and that Defendant violated PBNDS when it allowed
2 commingling between protective custody detainees (like Mr. Murillo) and detainees
3 on disciplinary segregation, and then used its own practice of allowing commingling
4 as an excuse to further isolate Mr. Murillo. Mr. Murillo made repeated complaints
5 about Defendant's practices during this period, yet Defendant failed to remedy the
6 situation. And there should be no dispute that Defendant was well aware of the
7 widely-documented mental health consequences of the extended isolation it
8 subjected Mr. Murillo to. Any one of these is an extreme or outrageous policy that
9 was allowed to occur only because of Defendant's intentional and reckless actions.

10 Second, Defendant's effort to escape punitive damages cannot succeed.
11 Defendant acted deliberately and maliciously in implementing policies that were
12 designed to protect its own profits at the expense of appropriate safeguards for
13 protective custody detainees like Mr. Murillo. MTC's most senior leaders either
14 knew—or deliberately stuck their head in the sand in the face of evidence showing—
15 that the Imperial Regional Detention Facility ("IRDF") where Mr. Murillo was
16 detained implemented policies that improperly placed detainees in isolation and then
17 left them there without meaningful review of their status or opportunities to return to
18 the general population. Indeed, Edward Ruiz, the Deputy Warden at IRDF testified
19 that the facility *always* placed protective custody housing detainees in the restricted
20 SMU, where they were subject to extraordinary isolation, even though PBNDS limit
21 the use of SMU for protective custody as a last resort. IRDF's Warden, Deputy
22 Warden, and Compliance Manager were all aware of the harmful psychological
23 effects of prolonged isolation—but they consciously disregarded those severe harms
24 when they assigned Mr. Murillo to protective custody without basis, insisted that all
25 protective custody detainees are housed in the SMU, and forced Mr. Murillo to
26 remain isolated in the SMU when he repeatedly requested to be placed in general
27 population. The predictable outcome to these violations was that Mr. Murillo
28 suffered extraordinary psychological harm. Punitive damages are appropriate so that

1 MTC is held accountable for its malicious conduct and takes corrective action to
 2 remedy its defectives policies and procedures. At the very least, there are genuine
 3 questions of material fact concerning IRDF’s Warden, Deputy Warden, and
 4 Compliance Manager’s state of mind that should be addressed at trial.

5 Defendant’s attempt to short-circuit Mr. Murillo’s rights should be rejected.
 6 Overwhelming evidence supports Mr. Murillo’s claims and request for punitive
 7 damages, and he should be permitted to present that evidence at trial.

8 STATEMENT OF FACTS

9 **A. Mr. Murillo’s Initial Assignment at IRDF**

10 Mr. Murillo arrived at IRDF, a detention center operated by MTC, on
 11 December 13, 2019. (UMF¹ Nos. 1, 3.) MTC is a for profit prison that contracts with
 12 ICE. MTC is required to comply with PBNDS. (AMF No. 1.²)

13 MTC completed an ICE Custody Classification Worksheet for Mr. Murillo,
 14 assigning him to a High-level housing unit. (AMF No. 4; Ex. 23 (ICE Custody
 15 Classification Worksheet).³) The classification worksheet indicated that there were
 16 “no” “Special Vulnerabilities and Management Concerns” impacting Mr. Murillo.
 17 (*Id.*) Nonetheless, IRDF staff advised Mr. Murillo that he would need to be placed in
 18 protective custody because he had been assigned to a “sensitive needs yard” at a
 19 previous facility. (AMF No. 5; Ex. 1 (Rodriguez Tr.) at 74:19-76:8.) IRDF staff told
 20 him that general population was dangerous and that he would be safer in protective
 21 custody; relying on this information, Mr. Murillo requested a protective custody
 22 placement.⁴ (AMF Nos. 5 & 6; Ex. 2 (Murillo Tr.) at 199:15-22; Ex. 1 (Rodriguez

23 _____
 24 ¹ UMF Nos. correspond to those in Defendant’s Statement of “Uncontroverted
 Material Facts.”

25 ² AMF Nos. correspond to those in Plaintiff’s Statement of “Additional Material
 Facts.”

26 ³ All exhibits cited herein are to the Declaration of Lily Kim.

27 ⁴ General population refers to housing in large dormitories. (Hansen Rep. ¶ 27).
 28 Protective custody is a housing status for detainee who “requires protection.” (Ex. 22
 (PBNDS) at § 2.12 (V)(A)(1)(c).) Protective custody housing can take several

1 Tr.) at 74:19-76:8.) Mr. Murillo was placed in isolation in administrative segregation
 2 in the SMU, a restricted housing unit where he would remain alone in his cell for
 3 approximately 22 hours per day. (AMF No. 13; Ex. 20 (Ruiz Tr.) at 148:5-148:23;
 4 Ex. 24 (SMU Housing Records); Ex. 25 (Cell Inspection Sheets); Hansen Report ¶
 5 25.)

6 In presenting Mr. Murillo with the false “choice” between a “dangerous”
 7 general population dorm and a “safe” protective custody placement, IRDF staff:

- 8 • Failed to inform Mr. Murillo that a protective custody placement meant he
 9 would be restricted to a single cell and placed in isolation (AMF No. 7; Ex. 1
 10 (Rodriguez Tr.) at 76:12-77:11 (He did not “describe what ad[ministrative]
 11 seg[regation] looks like at IRDF.”))⁵;
- 12 • Failed to inform Mr. Murillo that there were other safe housing options for
 13 him, such as being assigned to a bed near the officer’s station in the general
 14 population dorm for extra protection. (AMF No. 9; Ex. 2 (Murillo Tr.) at
 15 199:15-22; Ex. 4 (9/7/22 Veloz Tr.) at 155:16-159:23);
- 16 • Failed to inform Mr. Murillo that if he chose protective custody, he would be
 17 required to remain in protective custody for the duration of his detention
 18 (AMF No. 10; Ex. 4 (9/7/22 Veloz Tr.) at 276:4-276:10; Ex. 9 (11/19/20
 19 Grievance (MTC staff rejecting Mr. Murillo’s request to leave protective
 20 custody based on “the length of time [he] ha[d] spent under [protective
 21 custody] status.”)); and
- 22 • Failed to conduct any investigation to assess whether a specific or credible

23 _____
 24 different forms, and detainees should be placed in an administrative segregation unit
 25 “only when there is documentation and supervisory approval that it is necessary to
 26 protect a detainee from harm and that no reasonable alternatives are available.” (*Id.*
 27 at § 2.12 (II)(4).)

28 ⁵ Mr. Murillo’s prior experience with protective custody at his previous placement
 was very different; there, he was placed in a 50-50 SNY, which was a dorm-style
 unit in which he had access to significant amounts of out-of-cell time and social
 interaction. (AMF No. 8; Ex. 2 (Murillo Tr.) at 206:25-207:9.)

1 threat actually existed that prevented Mr. Murillo from being safely placed in
2 general population (AMF No. 12; Ex. 4 (9/7/22 Veloz Tr.) at 206:13-25;
3 261:25-263:6; 269:14-270:12; 280:14-281:22).

4 Mr. Murillo was thus improperly placed in a restricted protective custody
5 dorm, in gross violation of PBNDS. (Hansen Rep. ¶¶ 66-68.) For the next 14
6 months, Mr. Murillo was isolated in a small cell measuring approximately 7 feet by
7 12 feet. (AMF No. 13; Hansen Rep. ¶ 25.) He was in his cell for approximately 22
8 hours per day and even when he was allowed out of his cell, he was often alone.
9 (AMF No. 14; Ex. 26 (Cortez Tr.) at 70:21-71:7; Hansen Rep. ¶ 25.) Even the
10 limited “outdoors” time that Mr. Murillo received was often spent in a 9 feet by 15
11 feet fenced in exercise cage. (AMF No. 15; Hansen Rep. ¶ 26.) At no time during
12 these 14 months did MTC determine whether a current, specific, credible threat
13 existed. (AMF No. 16; Ex. 4 (9/7/22 Veloz Tr.) at 206:13-25; 261:25-263:6; 269:14-
14 270:12; 280:14-281:22; Ex. 27 (11/10/20 Information Report).) Indeed, MTC’s
15 Classification Supervisor, Ramon Veloz, testified did not know of *any* factual basis
16 requiring Mr. Murillo to be placed in protective custody. (AMF No. 17; Ex. 4
17 (9/7/22 Veloz Tr.) at 281:12-22.) Nor is there any indication in the record that MTC
18 ever considered long-term, alternative housing options for Mr. Murillo. (AMF No.
19 22; Hansen Rep. ¶ 61.)

20 **B. Mr. Murillo’s Requests to Leave Isolation Are Ignored**

21 Because he had been told by MTC that his only other option was a dangerous
22 general population dorm (AMF Nos. 5 & 6; Ex. 2 (Murillo Tr.) at 199:15-22; Ex. 1
23 (Rodriguez Tr.) at 74:19-76:81), and because he believed that his detention at IRDF
24 would be short (AMF No. 11; Ex. 13 (11/20/20 Request)), Mr. Murillo did not
25 specifically request to be transferred to a general population dorm in writing at first.
26 He did, however, make repeated verbal requests to be housed in dorm-style unit with
27 other protective custody detainees. (AMF No. 23; Ex. 12 (11/20/20 Grievance (“We
28 had been asking for an open unit for a long time and there[sic] answer was that ice

1 would never allow it well that’s not true”).) He also submitted numerous grievances
 2 and requests about the conditions of the SMU⁶ and complained about the conditions
 3 of the SMU directly to the mental health staff at IRDF. (AMF Nos. 24 & 25; Ex. 18
 4 (8/21/20 Mental Health Progress Note (stating that Mr. Murillo said that it is
 5 “difficult not having someone that shares his faith to speak with in the dorm. Pt goes
 6 to services led by the Chaplain but having a peer is different.”).)

7 Additionally, Mr. Murillo repeatedly disclosed feelings of negativity,
 8 frustration, and stress to mental health staff at IRDF during his time in the SMU.⁷
 9 Notably, these are the mental health symptoms Mr. Murillo disclosed to MTC’s
 10 social worker, Brenda Casteau, who admitted she had challenges “building a trust
 11 relationship” with detainees. (AMF No. 28; Ex. 5 (Casteau Tr.) at 70:8-20, 36:17-19;
 12 *see also* AMF No. 29; Ex. 2 (Murillo Tr.) at 50:18-51:13 (“[Casteau] hadn’t gained
 13 that trust where I could tell her all the issue that I was going through.”).) Further
 14 because Casteau had no control over housing placement decisions (AMF No 27; Ex.
 15 5 (Casteau Tr.) at 90:10-91:14), she looked “only for very serious mental disturbance
 16 . . . that would trigger psychiatric hospitalization, as possible indications that
 17 someone should not be in SMU,” and lacked the training and “did not even notice”
 18

19 ⁶ *See, e.g.*, Resp. to UMF No. 10; Resp. to UMF No. 27; Ex. 28 (1/22/20 Request);
 20 Ex. 6 (3/8/20 Grievance (“I don’t have any access to socialise with anyone . . . I’m
 21 not on disciplinary action, but yet I am being treated like if I was.”)); Ex. 31 (5/1/20
 22 Request); Ex. 32 (5/19/20 Grievance (stating that “for over a month” two of the four
 23 phones in the SMU were not working); Ex. 33 (12/12/20 Grievance (asking staff to
 24 move a shade structure so that they weren’t forced to sit on the ground to avoid the
 sun “for over 3 months”)); Exs. 34 & 35 (8/20/20 & 10/20/20 Requests (indicating
 that the television in the SMU was broken and was not fixed for months).

25 ⁷ *See, e.g.*, Ex. 36 (4/1/20 Mental Health Progress Note (“focusing on what is
 26 important helps [Mr. Murillo] process stress”)); Ex. 37 (10/15/20 Mental Health
 27 Progress Note (Mr. Murillo relies on his faith “to help with feelings of negativity.”));
 28 Ex. 38 (11/19/20 Mental Health Progress Note (Mr. Murillo’s “speech is pressured
 due to expressing frustration.”)); Def’s. NOL, Ex. 26 (Dkt. 76-30) (1/14/21 Mental
 Health Progress Note (Mr. Murillo “expressed frustration.”)); AMF No. 26.

1 the “signs that certain detained persons would suffer great harm if they remained in
2 solitary confinement,” as Plaintiff’s Expert on mental health, Dr. Terry Kupers has
3 found. (AMF No. 31; Kupers Report at 15-16.)

4 After 11 months of solitary confinement, MTC briefly placed Mr. Murillo in a
5 general population dorm with other protective custody detainees for two weeks.
6 (AMF No. 32; Ex. 27 (11/10/20 Information Report).) Mr. Murillo learned that MTC
7 was capable of providing housing other than solitary confinement or a general
8 population dorm, despite its assertions to the contrary. (*See* Ex. 12 (11/20/20
9 Grievance (“We had been asking for an open unit for a long time and there [sic]
10 answer was that ice would never allow it well that’s not true”).) With this
11 understanding, Mr. Murillo immediately submitted a written request asking to leave
12 solitary confinement, which he then followed up with consistent, repeated written
13 requests on November 16, November 19, November 20, November 23, December 3
14 and December 11 of 2020. (AMF No. 33; Exs. 7-17 (Requests and Grievances).)

15 MTC continued to subject Mr. Murillo to isolation and solitary confinement
16 until he was released in February 2021. Mr. Murillo’s repeated requests were denied
17 for purported “safety and security” reasons, despite the fact that MTC never *once*
18 identified a specific risk to Mr. Murillo’s safety or the security of the facility.
19 (Hansen Rep. ¶ 72; AMF No. 16.) Rather, MTC continued to list his initial
20 (uninformed and explicitly rescinded) request for protective custody and the “length
21 of time [he] ha[s] spent under the [protective custody] status” as the reasons for Mr.
22 Murillo’s continued placement in solitary confinement. (AMF No. 34.)

23 During the 14 months Mr. Murillo was in solitary confinement, MTC
24 consistently failed to conduct the required individualized assessments to determine
25 whether he needed to remain in protective custody. (AMF No. 37; Hansen Rep. ¶¶
26 69-73.) MTC’s SMU committee was required to conduct weekly review of detainees
27 in protective custody and evaluate whether detainees in protective custody could be
28 released to general population. (AMF No. 38; Ex. 22 (PBNDS) §§ 2.2(III)(4),

1 2.2.(V)(E).) MTC’s records, however, make clear that no such assessment was ever
2 completed. (AMF No. 39; Ex. 41 (12/18/19 SMU Meeting Minutes); Ex. 42
3 (1/27/21 Administrative Segregation Review).) Even after Mr. Murillo rescinded his
4 initial request to be placed in protective custody, MTC continued to robotically
5 check the box indicating that he requested protective custody. (AMF No. 39; Ex. 42
6 (1/27/21 Administrative Segregation Review).) This is perhaps no surprise, as IRDF
7 staff spent just over a minute on the “assessment” for each detainee during the
8 weekly SMU committee meetings. (AMF No. 40; Ex. 20 (Ruiz Tr.) at 98:18-20.)

9 **C. Mr. Murillo’s Isolation Is a Direct Result of IRDF’s Defective**
10 **Policies**

11 Mr. Murillo’s experience is not an aberration. Rather, Bradford E. Hansen, a
12 retired prison warden with more than 40 years of experience, concluded after
13 reviewing record materials and visiting IRDF that Defendant’s policies and practices
14 are in gross violation of PBNDS. Detention facilities have a “broad and critical duty
15 . . . to protect the individuals detained in the facility,” because “one’s ability to
16 protect oneself is severely limited when detained.” (Hansen Rep. ¶ 46.) Such duty
17 includes protection from harm of “undue psychological effects of long-term
18 segregation.” (Hansen Rep. ¶ 47.) MTC’s use of administrative segregation as a
19 default, long-term solution for protective custody violates the PBNDS, which
20 requires the use of segregation as a last resort and only when “no reasonable
21 alternatives are available.” (*Id.* ¶¶ 51-65; *see* AMF No. 19; Ex. 20 (Ruiz. Tr.) at
22 139:10-19, 134:10-23 (testifying that it was “MTC’s policy” to “always” “house
23 protective housing detainees at SMU”).) MTC violated PBNDS in multiple ways,
24 including by placing individuals in protective custody without conducting the
25 required individualized assessments and based on unconfirmed and unverified
26 information (Hansen Rep. ¶¶ 66-68), keeping Mr. Murillo in restrictive protective
27 custody based on pro forma weekly reviews lasting just over a minute per detainee
28 that did not constitute a meaningful assessment (*id.* ¶¶ 69-72; AMF Nos. 37 & 40),

1 and concluding that Mr. Murillo could not be transferred to general population
2 because he stayed in protective custody for too long, an institutional policy that is
3 “plainly inconsistent” with PBNDS (*id.* ¶ 73; AMF No. 35).

4 Reports from the Department of Homeland Security Office of Inspector
5 General (“OIG”) and the California Department of Justice (“Cal. DOJ”) confirm that
6 Mr. Murillo’s experience was part of Defendant’s defective system. The OIG Report
7 issued in December 2020 was based on an unannounced visit to IRDF in February
8 2020—while Mr. Murillo was in custody. (AMF No. 42; Ex. 43.) The OIG Report
9 identified multiple “serious [PBNDS] violations regarding the administrative
10 segregation” including:

- 11 • “[U]sing administrative segregation as a long-term solution for detainees in
12 protective custody”;
- 13 • “[O]verly restrict[ing] detainees by not offering privileges similar to those
14 offered to detainees in general housing units”;
- 15 • “Restrict[ing] [detainees in administrative segregation] to their individual cells
16 for approximately 22 to 23 hours a day without access to the same group
17 activities or opportunities as those in general population.”
- 18 • “[C]onducting inadequate medical checks — conducting visits when
19 administratively segregated detainees were sleeping — and not physically
20 observing and speaking with each detainee”;
- 21 • Failing to “re-establish the need for prolonged segregation placement,”
22 including for people who had been segregated for over 300 days; and
- 23 • Failing to “document substantive reviews of the validity of continued
24 segregation placement.” (*Id.* at 4-5.)

25 (AMF No. 43.)

26 Similarly, the California DOJ issued a report in January 2021, criticizing
27 IRDF for imposing “extremely restrictive” conditions on people in administrative
28 segregation and inadequate mental health services. (AMF No. 44; Ex. 44 (“Cal. DOJ

1 Report”)). The Cal. DOJ Report found that “[RDF] treats detainees in
2 administrative segregation as restrictively as those in disciplinary segregation,
3 submitting detainees in protective custody to harsh and isolating conditions.” (Ex. 44
4 at 70; AMF No. 45.) The report critiqued IRDF for keeping detainees in protective
5 custody in SMU “indefinitely,” including by refusing “to return a detainee who
6 chose protective custody to general population upon the detainee’s request.” (*Id.*)
7 The Cal. DOJ report also noted that detainees in administrative segregation were
8 denied access to programming in violation of PBNDS, and that the “weekly [SMU]
9 meetings . . . did not include a meaningful discussion of each detainee’s status or
10 plan for release.” (Ex. 44 at 71; AMF No. 45.)

11 Defendant ignored these reports. Edward Ruiz, Deputy Warden at IRDF,
12 received the OIG and the Cal. DOJ reports, but did not take “any corrective action”
13 or “make any changes to their policies” in response. (AMF No. 46; Ex. 20 (Ruiz Tr.)
14 at 174:22-177:5.) Similarly, Brian Robinson, Compliance Manager at IRDF, “read
15 th[e OIG] report,” but IRDF still refused to change its policies. (AMF No. 47; Ex. 45
16 (9/19/22 Robinson Tr.) at 118:10-14, 140:20-22, 172:11-14). As a result, Mr.
17 Murillo, along with numerous past and present detainees under protective custody at
18 IRDF, was subject to long-term solitary confinement and has suffered extraordinary
19 distress. (AMF No. 48; Kupers Rep. at pp. 12-26 (describing symptoms).)

20 ARGUMENT

21 Summary judgment must be denied if “a rational trier of fact could resolve a
22 genuine issue of material fact in the nonmoving party’s favor.” *Bravo v. City of*
23 *Santa Maria*, 665 F.3d 1076, 1083 (9th Cir. 2011).

24 Summary judgment is particularly inappropriate on the claims at issue in this
25 motion, which involve fact-dependent inquiries concerning whether conduct is, for
26 example, “outrageous” or “malicious.” *See, e.g., Michel v. United States*, 2017 WL
27 5067608, *16 (S.D. Cal. Oct. 31, 2017) (J. Curiel) (“Under California law, where
28 reasonable persons may differ as to whether “the conduct has been sufficiently

1 extreme and outrageous to result in liability,” the issue is a question for the trier of
2 fact.”); *Blankenhorn v. City of Orange*, 485 F.3d 463, 487 at n.17 (9th Cir. 2007)
3 (denying summary judgment on IIED claim because whether use of excessive force
4 was an “outrageous” conduct remains a factual question that cannot be “ruled at this
5 stage of the litigation”); *So v. Shin*, 212 Cal. App. 4th 652, 672-73 (2013) (deciding
6 “whether conduct is ‘outrageous’ is usually a question of fact.”).

7 Summary judgment is also inappropriate here where there are questions of fact
8 implicated by expert testimony. “As a general rule, summary judgment is
9 inappropriate where an expert’s testimony supports the non-moving party’s case.”
10 *Provenz v. Miller*, 102 F.3d 1478, 1490 (9th Cir. 1996). “Expert affidavits from both
11 parties can create a genuine issue of fact that defeats summary judgment and the
12 Ninth Circuit has cautioned against granting summary judgment where expert
13 guidance is needed and where there are competing expert declarations.” *Romero by*
14 *& through Ramos v. Macy’s, Inc.*, No. 15CV815-GPC(MDD), 2016 WL 11621642,
15 at *4 (S.D. Cal. Sept. 19, 2016); *accord DeLew v. Adamson*, 293 F. App’x 504, 506
16 (9th Cir. Sept. 17, 2008) (“The existence of conflicting expert assessments suggests
17 that neither party is entitled to summary judgment.”).

18 **I. MR. MURILLO’S INTENTIONAL INFLICTION OF EMOTIONAL**
19 **DISTRESS CLAIMS SHOULD BE DECIDED AT TRIAL**

20 “To state a cause of action for intentional infliction of emotional distress a
21 plaintiff must show: (1) outrageous conduct by the defendant; (2) the defendant’s
22 intention of causing or reckless disregard of the probability of causing emotional
23 distress; (3) the plaintiff’s suffering severe or extreme emotional distress; and (4)
24 actual and proximate causation of the emotional distress by the defendant’s
25 outrageous conduct.” *Huntingdon Life Sci., Inc. v. Stop Huntingdon Animal Cruelty*
26 *USA, Inc.*, 129 Cal. App. 4th 1228, 1259 (2005). Defendant challenges two of these
27 elements, asserting first that its conduct was not “extreme or outrageous” and
28 second, that it did not act “recklessly.” Both arguments fail.

A. Defendant’s Outrageous Conduct Harmed Mr. Murillo

1 Conduct is extreme and outrageous when it “exceed[s] all bounds of that
 2 usually tolerated in a civilized society.” *Huntingdon Life Sci.*, 129 Cal. App. 4th at
 3 1259. “Behavior may be considered ‘outrageous’ if a defendant (1) abuses a relation
 4 or position which gives him power to damage the plaintiff’s interest; (2) knows the
 5 plaintiff is susceptible to injuries through mental distress; or (3) acts intentionally or
 6 unreasonably with the recognition that the acts are likely to result in illness through
 7 mental distress.” *Agarwal v. Johnson*, 25 Cal. 3d 932, 946 (1979), *disapproved of on*
 8 *other grounds by White v. Ultramar, Inc.*, 21 Cal. 4th 563 (1999). In cases involving
 9 detention facilities, courts have found that placing plaintiff in solitary confinement
 10 for almost a year is “extreme and outrageous conduct.” *Rivera v. Bogden*, 2018 WL
 11 4258501, at *3 (D. Nev. Sept. 6, 2018).

12 Defendant committed multiple extreme and outrageous acts—any one of
 13 which is sufficient to support Mr. Murillo’s IIED claim (and together which
 14 demonstrate a pattern of outrageous behavior). For example:

- 15 • Defendant subjected Mr. Murillo to 14 months of isolation without *ever*
 16 identifying a specific threat to his safety in general population. (*See supra* at
 17 7; AMF No. 16; Hansen Rep. ¶¶ 66-68.)
- 18 • Defendant implemented an ad hoc policy of using administrative segregation
 19 unit as a default, long-term solution for protective custody detainees, even
 20 though its written policy only allows it as a last resort. (*See supra* at 8; AMF
 21 Nos. 19 & 20; Hansen Rep. ¶¶ 59-65.)
- 22 • Defendant failed to provide Mr. Murillo with accurate information about the
 23 isolating nature of protective custody at IRDF. (*See supra* at 4; AMF Nos. 7,
 24 10, 13-15; Hansen Rep. ¶ 25.)
- 25 • Defendant failed to offer safe housing options for Mr. Murillo other than the
 26 extraordinary isolation of SMU. (*See supra* at 4; AMF No. 9; Hansen Rep. ¶
 27 61.)
 28

- 1 • Defendant failed to conduct the required individualized assessment of the need
2 for and validity of Mr. Murillo’s continued placement in SMU. (*See supra* at
3 7; AMF Nos. 37-45; Hansen Rep. ¶¶ 69-72.)
- 4 • Defendant ignored and/or improperly denied Mr. Murillo’s repeated requests
5 to leave SMU. (*See supra* at 7; AMF Nos. 23-26, 33, 34.)
- 6 • Defendant implemented a *de facto* policy that once a detainee spends time in
7 protective custody, he cannot return to general population. (*See supra* at 4, 7;
8 AMF No. 34; Hansen Rep. ¶ 73.)
- 9 • Defendant implemented a defective system of policies and procedures that
10 prioritized corporate profits over safe, integrated housing options with
11 appropriate staff to conduct meaningful periodic reviews of detainees’ housing
12 assignments. (*See supra* at 8, 10; AMF Nos. 37-45; Hansen Rep. ¶¶ 69-70.)
13 Defendant’s *ipse dixit* assertion that this conduct is not outrageous falls flat.

14 That assertion is plainly contradicted by the evidence showing that MTC’s conduct
15 violated PBNDS (which were incorporated into MTC’s contract with ICE) and the
16 expert opinion of Mr. Hansen further confirming that MTC’s conduct was in
17 violation of PBNDS and generally accepted industry standards. (*See supra* at 8-9;
18 AMF Nos. 20-21; Hansen Report ¶ 5.) *See, e.g., Rodriguez v. United States*, 2004
19 WL 7338994, *3, *7 (C.D. Cal. Dec. 9, 2004) (awarding damages to plaintiffs on an
20 IIED claim where immigration officers acted contrary to “policies and procedures in
21 effect at the time”). At minimum, whether conduct qualifies as “outrageous” is a fact
22 question to be addressed at trial—not on a motion for summary judgment. *See, e.g.,*
23 *Michel v. United States*, 2017 WL 5067608, *16 (S.D. Cal. Oct. 31, 2017) (J.
24 Curiel); *Blankenhorn v. City of Orange*, 485 F.3d 463, 487 at n.17 (9th Cir. 2007);
25 *So v. Shin*, 212 Cal. App. 4th 652, 672-73 (2013).

26 Defendant next attempts to escape accountability for its misconduct by
27 arguing that Mr. Murillo initially requested protective custody and there was “no
28 evidence that circumstances leading to” Mr. Murillo’s “request for protective

1 custody had changed” or that “it was any safer for him to be housed in general
2 population ... than it was upon his arrival at the facility.” *See* ECF 76-1 pp. 9-10.
3 First, Defendant’s argument wrongfully assumes that its initial assignment of Mr.
4 Murillo to SMU was appropriate. That is not the case. Defendant acted outrageously
5 by violating its obligations to make a reasonable, safe housing assignment for Mr.
6 Murillo when he first arrived at IRDF *and* by refusing to transfer him to general
7 population at later dates. Second, Defendant’s argument wrongly assumes that it
8 was *ever* unsafe for Mr. Murillo to be placed in general population; the evidence
9 clearly demonstrates, however, that Defendant *never* made any finding that it would
10 be unsafe for Mr. Murillo to be housed in general population. (AMF No. 12.) Third,
11 the obligation was on Defendant—*not Mr. Murillo*—to assess whether it would be
12 safe for him to move to general population and to make efforts to transition Mr.
13 Murillo towards a more integrated general population rather than isolating him in the
14 SMU. Indeed, as Mr. Hansen explained, MTC was required to “revisit[] [the
15 decision to assign a detainee to protective custody] on a regular basis,” “to make
16 efforts to return the detainee to general population if at all possible,” and, if the
17 detainee cannot be safely returned to general population, to “document[]” “the
18 specific reasons for that decision.” (Hansen Rep. ¶ 73.) MTC failed to do so.

19 Defendant acted outrageously by implementing a defective system of policies
20 and procedures that resulted in Mr. Murillo being improperly isolated in a small cell
21 for 14 months, resulting in severe emotional distress. There is, at a very minimum, a
22 dispute of fact on these issues that Plaintiff should be allowed to address at trial.

23 **B. Defendant Acted with Reckless Disregard of the Probability of**
24 **Causing Emotional Distress**

25 A defendant acts with “reckless disregard to the probability of causing
26 emotional distress sufficient to satisfy the IIED standard” where the defendant
27 “‘devoted little or no thought’ to the probable consequences of his conduct.” *Elena*
28 *v. Reliance Standard Life Insurance Company*, 2022 WL 1174107, *5 (S.D. Cal.

1 Apr. 20, 2022) (J. Curiel); *accord Miller v. Nat'l Broad. Co.*, 187 Cal. App. 3d 1463,
2 1478-88 (1986) (“‘Little or no thought’ constitutes . . . ‘reckless disregard’ of the
3 rights and sensitivities of others.”). For IIED claims, “it is not essential to liability
4 that a trier of fact find a malicious or evil purpose. *KOVR-TV, Inc. v. Superior Ct.*,
5 31 Cal. App. 4th 1023, 1030-32 (1995).

6 The evidence establishing that prolonged periods of isolation are likely to
7 result in emotional distress is well-established and well known. These widely
8 understood damaging effects include serious and lasting psychological harm and an
9 increased risk of self-harm. (Hansen Rep. ¶ 55.) MTC admits it was aware of the
10 “deleterious effects of solitary confinement.” (*See* Dkt. 76-1; *see also* Ex. 5 (Casteau
11 Tr.) at 70:2-71:7 (testifying that solitary confinement can cause anxiety, paranoia
12 and stress, as well as trust, memory and concentration issues).) Multiple MTC staff
13 members testified that they had reviewed California DOJ and OIG Reports, which
14 also expressly warn of the harms associated with solitary confinement.⁸ (*See, e.g.*,
15 Ex. 20 (Ruiz Tr.) at 174:22-23, 176:25-177:5; Ex. 46 (1/19/23 Robinson Tr.) 118:10-
16 14, 140:20-22, 172:11-14).

17 Defendant acted in reckless disregard of the known harms of prolonged
18 isolation. Notwithstanding its knowledge, Defendant assigned Mr. Murillo to the
19 SMU without proper basis; used the segregation unit as a default housing option for
20 those seeking protective custody rather than as a last resort; failed to inform Mr.
21 Murillo about isolating nature of SMU placement; failed to offer him less-restrictive,
22 safe housing options; failed to conduct reasonable reviews to evaluate whether Mr.
23 Murillo could be transferred to general population or other less-restrictive housing
24

25 ⁸ Ex. 44 (Cal. DOJ Report) at p. 25 (stating that correctional systems are aware of the
26 negative impacts of solitary confinement and noting that such harms are specifically
27 laid out in a 2013 ICE directive focused on immigration detention); Ex. 43 (OIG
28 Report) at p. 5 (“Detainee mental health may be negatively affected by placement in
solitary cells with limited recreation and no access to group activities.”).

1 alternatives; and used Mr. Murillo’s prolonged stay in SMU (as a result of their own
2 improper practices) as a basis to deny Mr. Murillo’s repeated plea to leave SMU.
3 *See, e.g., Bundren v. Superior Ct.*, 145 Cal. App. 3d 785, 787, 791-92 (1983)
4 (reasonable jury could find medical center’s method of bill collection was
5 undertaken with reckless disregard); *Miller v. Nat’l Broad. Co.*, 187 Cal. App. 3d
6 1463, 1488 (1986) (camera crew videotaping paramedics’ interventions was done
7 with reckless disregard towards causing emotional distress).

8 Defendant also recklessly disregarded the evidence that Mr. Murillo was
9 suffering from particular psychological impact, providing a second independent
10 basis to find reckless disregard. Mr. Murillo filed numerous complaints regarding the
11 conditions he was subjected to in the SMU, starting the month after he arrived at
12 IRDF. Logically, Mr. Murillo directed most of these complaints to staff with direct
13 control over the conditions of his confinement rather than to mental health staff who
14 lacked control over SMU conditions or placement decisions. Mr. Murillo also
15 repeatedly disclosed feelings of negativity, frustration and stress to the mental health
16 staff at IRDF during his time in the SMU (*see supra* at 6). MTC staff failed to take
17 appropriate steps to address the significant emotional distress they inflicted upon Mr.
18 Murillo. The “monthly mental health sessions” that Defendant provided with social
19 worker Ms. Casteau do not make the underlying misconduct any less reckless;
20 monthly mental health sessions cannot be expected to remedy the severe emotional
21 distress inflicted, and Ms. Casteau was not trained to diagnose or treat the significant
22 mental health consequences of prolonged isolation (*see supra* at 7).

23 Plaintiff has established *at least* a genuine dispute of material fact that
24 Defendant recklessly disregarded the known psychological impact of isolation when
25 it improperly assigned Mr. Murillo to SMU and then kept him there for 14 months.
26 Plaintiff should be allowed to present his evidence at trial. *See, e.g., So v. Shin*, 212
27 Cal. App. 4th 652, 658, 672-73 (2013) (denying defendant’s motion to dismiss and
28 finding the process for assessing IIED claims is “usually a question of fact”).

II. MR. MURILLO'S CLAIMS FOR PUNITIVE DAMAGE ARE VALID

Defendant asserts three challenges to punitive damages, wrongly claiming that (1) punitive damages are not available for violations of California Government Code § 7320, (2) Plaintiff failed to appropriately plead punitive damages, and (3) punitive damages are unavailable unless plaintiff identifies an officer, director, or managing agent to engaged in or authorized conduct constituting malice, oppression, or fraud. Each of these arguments fails.

A. Punitive Damages Are Appropriate on Mr. Murillo's Cal. Gov. Code Section 7320 Claim

California Government Code § 7320 requires that a “private detention facility operator shall comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility’s contract for operations.” Cal. Gov. Code § 7320(a). It further provides that if a private detention facility operator (like Defendant) “commits a tortious action which violates subdivision (a)”, an individual who has been injured by that tortious action may bring a civil action for relief.” *Id.* § 7320(c). It is well-settled that punitive damages are available for tortious misconduct in California, including for violations of § 7320. *See, e.g., Boeken v. Philip Morris USA, Inc.*, 48 Cal. 4th 788, 796 (2010) (punitive damages are available for cases sounding in tort); *Miller v. National American Life Ins. Co.*, 54 Cal. App. 3d 331, 336 (1976) (“Respondents’ claim of fraud, though incident to the contract, is in tort, and will support a punitive damage award upon proper proof.”).

Defendant attempts to evade responsibility for its tortious conduct by arguing that “punitive damages are not recoverable for claims arising from contract.” (Mot. at 12.) But Mr. Murillo’s claim is *not* a breach of contract claim—rather, as the plain text of § 7320 makes clear, Defendant “commit[ed] *a tortious action*” when it violated § 7320(a) by refusing to comply with PBNDS standards. Cal. Gov. Code § 7320(c) (emphasis added). Punitive damages are appropriate here so that tortious conduct is not repeated, Defendant is held accountable for its misconduct, and Defendant and other operators of detention facilities understand that their profits are

1 not more important than the rights of the detainees whose lives safeguard.

2 **B. Mr. Murillo Adequately Pled Punitive Damages**

3 Defendant next argues that punitive damages are not appropriate because the
4 Complaint “fails to adequately allege specific facts” supporting punitive damages
5 (Mot at 13) even though Defendant never made a motion to dismiss on that basis.

6 The Complaint’s allegations are more than under the Federal Rules of Civil
7 Procedure, which “govern the punitive damages claim [under California Civil Code
8 § 3294] procedurally with respect to the adequacy of pleadings” in federal court.
9 *Clark v. Allstate Ins. Co.*, 106 F. Supp. 2d 1016, 1018 (S.D. Cal. 2000). Rule 8(a)
10 requires “a short plain statement of the claim showing that [plaintiff] is entitled to
11 relief, and . . . a demand for judgment for the relief [he] seeks.” Fed. R. Civ. P. 8(a).
12 Rule 9(b) provides that “malice, intent, knowledge, and other conditions of mind of a
13 person may be averred generally.” Fed. R. Civ. P. 9(b). “[T]his provision ‘does not
14 require any particularity in connection with an averment of intent, knowledge or
15 condition of mind.’” *Clark*, 106 F. Supp. 2d at 1018-19 (quoting *In re GlenFed, Inc.*
16 *Sec. Litig.*, 42 F.3d 1541, 1547 (9th Cir. 1994) (en banc)).

17 Defendant’s reliance on *G. D. Searle & Co. v. Superior Ct.*, 49 Cal. App. 3d
18 22 (1975) to “demand firm allegations” for punitive damages is misplaced. In fact,
19 this Court in *Clark* expressly held it “wrong” to rely on *G. D. Searle* because
20 California’s heightened pleading standard “irreconcilably conflicts with Rule 8 and 9
21 of the Federal Rules of Civil Procedure.” *Clark*, 106 F. Supp. 2d at 1018 (“Where
22 state law directly conflicts with applicable provisions of the Federal Rules of Civil
23 Procedure, federal courts must apply the Federal Rules—not state law.”).

24 The Complaint far surpasses that standard. The Complaint alleges that “MTC
25 acted with a conscious disregard of Mr. Murillo’s rights and safety, and with
26 oppression and malice”; that MTC was “well aware of the deleterious effects of
27 solitary confinement on Mr. Murillo’s mental health”, but that MTC “reckless[ly]
28 disregard[ed]” them “despite his repeated requests and cries for help”; that Mr.

1 Murillo “repeatedly asked Imperial staff to move him to general population
2 dormitory and filed grievances to explain the toll that months of solitary confinement
3 had taken on him”; and that Mr. Murillo’s experience at IRDF was not an aberration,
4 but the result of systematic “administrative segregation practices” that the OIG
5 Report and Cal. DOJ Report had already found defective. (Compl. ¶¶ 6, 17-22, 30-
6 35, & 63-66). As detailed *supra*, extensive evidence supports these claims.

7 **C. Mr. Murillo Should Have An Opportunity to Prove His Punitive**
8 **Damages Claims at Trial**

9 California Civil Code § 3294 provides that punitive damages may be awarded
10 where there is clear and convincing evidence “that the defendant has been guilty of
11 oppression, fraud, or malice.” Cal. Civ. Code § 3294(a). Here, punitive damages are
12 appropriate because MTC acted with malice through its repeated violations of
13 PBNDS, which resulted in Mr. Murillo being improperly isolated for more than 14
14 months. *See Shaw v. San Joaquin County*, 2006 U.S. Dist. LEXIS 34816 at *2 (E.D.
15 Ca. 2006) (awarding punitive damages against county jail in solitary confinement
16 case). Indeed, courts have found punitive damages especially appropriate in cases
17 like this one where—absent the possibility of punitive damages—detention facilities
18 may choose to put their own profits ahead of the wellbeing of the detainees whose
19 lives are in their care. *See, e.g., Nickerson v. Stonebridge Life Ins. Co.*, 5 Cal. App.
20 5th 1, 1-2 (2016) (“An individual plaintiff can demonstrate that the conduct toward
21 the plaintiff was more blameworthy and warrants a stronger penalty to deter
22 continued or repeated conduct of the same nature.”); *Simon v. San Paolo U.S.*
23 *Holding Co., Inc.*, 35 Cal. 4th 1159, 1188-9 (2005) (punitive damages furthered
24 state’s interest in punishing unlawful conduct and deterring its repetition).

25 Defendant attempts to escape accountability for its misconduct by arguing that
26 Mr. Murillo failed to identify an “officer, director, or managing agent” who engaged
27 in or authorized conduct constituting malice, oppression, or fraud. (Mot. at 14.) That
28 argument is wrong. *First*, the evidence shows that at least three managing agents

1 (Warden Sixto Marrero, Deputy Warden Edward Ruiz, and Compliance Manager
2 Brian Robinson) engaged in, authorized, or ratified conduct constituting malice,
3 oppression, or fraud, including because they had advance knowledge of the severe
4 harms of prolonged isolation but consciously disregarded them to keep Mr. Murillo
5 in solitary confinement. *Second*, “[t]here is no requirement that the evidence
6 establish that a particular committee or officer of the corporation acted on a
7 particular date with ‘malice’” when evidence supports an inference that a corporate
8 policy itself—here, the policy of maximizing available bedspace for general
9 population detainees—disregards a known risk. *Romo v. Ford Motor Co.*, 99 Cal.
10 App. 4th 1115, 1141 (2002), vacated and remanded on other grounds, 538 U.S. 1028
11 (2003). Plaintiff should be permitted to present this evidence at trial.

12 **1. Marrero, Ruiz, and Robinson Are Defendant’s Managing Agents**

13 “Managing agents” refers to employees who “exercise[] substantial
14 discretionary authority over decisions that ultimately determine corporate policy.”
15 *Davis v. Kiewit Pac. Co.*, 220 Cal. App. 4th 358, 366 (2013). Managing agents are
16 *not* limited to a corporation’s most senior leaders. Rather, whether someone is a
17 managing agent “does not depend on the person’s level within the corporate
18 hierarchy *but instead the amount of discretion permitted in making decisions.*”
19 *Tilkey v. Allstate Ins. Co.*, 56 Cal. App. 5th 521, 554 (2020) (emphasis added); *see*
20 *Davis*, 220 Cal. App. 4th at 373 (holding that genuine issue of material fact existed
21 as to whether employer’s project manager was a managing agent).

22 Marrero, Ruiz, and Robinson—as IRDF’s Warden, Deputy Warden, and
23 Compliance Manager—“exercised substantial discretionary authority over
24 significant aspects of [Defendant]’s business”—*i.e.*, the administration and operation
25 of IRDF. (AMF Nos. 49-51.) Indeed, Dan Joslin, MTC’s Vice President of
26 Corrections, confirmed in a February 23, 2023 declaration that “[o]perational
27 decisions regarding individual detainees are made by MTC staff at the facility,”
28 (Joslin Decl. ¶ 5) “decisions regarding Plaintiff’s detentions . . . are handled by the

1 local IRDF staff,” (*id.* ¶ 6) and “staff at [IRDF] are experts in compliance with”
2 PBNDS, and that his role “does not include facility operation” (*id.* ¶ 4).

3 IRDF staff further testified concerning the “substantial discretionary
4 authority” that IRDF staff—and Marrero, Ruiz, and Robinson in particular—had
5 over the operation of the IRDF, including making decisions regarding individual
6 detainees’ housing placements and setting policies for IRDF. At IRDF, the SMU
7 Committee, which “consists of the warden, deputy warden, health crisis
8 administrator, mental health, classification representative, chief of security, and the
9 gang intelligence officer,” makes decision regarding whether detainees in protective
10 custody can be released to general population. (AMF Nos. 52-53; Ex. 47 (Builteman
11 Tr.) at 59:13-23.) “[I]f there is disagreement among staff during the SMU
12 committee meeting about whether or not the detainee should remain in protective
13 custody the warden is the ultimate decision maker.” (AMF No. 54.) In addition,
14 Compliance Manager Brian Robinson is responsible for writing and implementing
15 the standard operating procedures used to assess whether a detainee will be placed in
16 protective custody. (AMF No. 55.)

17 At the very least, “[t]he scope of a corporate employee’s discretion and
18 authority under [California’s managing agent] test is [] a question of fact for decision
19 on a case-by-case basis.” *Davis*, 220 Cal. App. 4th at 366. “[T]hat factual question
20 must be determined by the trier of fact and not the court on a motion for summary
21 adjudication.” *Id.* Indeed, other courts have recognized that senior facility staff such
22 as a warden and assistant warden are “managing agents” for purposes of assessing
23 punitive damages. In *Webb v. Geo Group, Inc.*, for example, the court denied a
24 motion for summary judgment, finding that the plaintiff presented evidence
25 establishing at least “genuine issue of fact regarding [the Warden’s] authority over
26 decisions that may determine company policy.” No. CV 16-02747-BRO, 2017 WL
27 11636422 (C.D. Cal. Mar. 22, 2017) at *22. Here, too, the evidence establishes that
28 the warden, deputy warden, and compliance manager all were granted sufficient

1 authority and discretion such that they qualify as “managing agents.”

2 **2. Marrero, Ruiz, and Robinson Engaged In, Authorized, and**
3 **Ratified Malicious Conduct**

4 There is no dispute that Warden Marrero, Deputy Warden Ruiz, and
5 Compliance Manager Robinson were aware of the significant harms likely to result
6 from prolonged isolation and solitary confinement. (AMF No. 56.) Nonetheless, they
7 consciously disregarded these harms by implementing policies that improperly
8 assigned Mr. Murillo to restricted protective custody in the first place, kept him there
9 without basis despite his repeated requests to move to general population, and
10 deprived him of the freedoms and social interactions that even detainees placed in
11 protective custody are required to receive. This blatant disregard of the harms they
12 knew their actions would impose was malicious. *See Doe 1 v. United Airlines, Inc.*,
13 2021 WL 4595766, at *6 (C.D. Cal. Apr. 22, 2021) (failure to implement procedures
14 to respond to sexual assaults on flight in light of known risk of sexual assault
15 sufficiently pled malice); *Walashek v. Air & Liquid Sys. Coproration*, 2016 WL
16 4197960, at *9 (S.D. Cal. May 16, 2016) (reasonable jury could find that failure to
17 take measures to protect safety of workers despite knowledge of potential harm from
18 asbestos exposure was malicious).

19 Marrero, Ruiz, and Robinson had significant discretion and authority with
20 respect to every stage of the process that resulted in Mr. Murillo’s unlawful isolation
21 for 14 months. Marrero, Ruiz, and Robinson developed and ran the protective
22 custody system at IRDF in which (1) IRDF staff did not articulate a specific safety
23 threat before initiating or continuing protective custody (AMF No. 16); (2) everyone
24 in protective custody was detained exclusively and indefinitely in isolated cells in
25 the SMU (AMF No. 19); (3) IRDF staff did not meaningfully assess whether
26 protective custody detainees could move to general population (AMF Nos. 40-41);
27 and (4) IRDF staff failed to create any way out of isolation, regardless of individual
28 circumstances (*see, e.g.*, AMF No. 10).

1 MTC—including Marrero, Ruiz, and Robinson specifically—also ignored and
2 consciously disregarded the conclusions of the OIG Report and the Cal. DOJ Report
3 that specifically discussed the significant harms of prolonged isolation, and the steps
4 detention facilities were required to take to avoid such harms. As discussed *supra*,
5 although both Ruiz and Robinson read the reports, they took no corrective actions to
6 remedy IRDF’s defective policies. *See, e.g., Grano v. Sodexo Mgmt., Inc.*, 2023 WL
7 125590, at *28 (S.D. Cal. Jan. 6, 2023) (company acted maliciously when it knew
8 untested recipe carried risk of undercooking and spreading bacteria, but failed to take
9 steps to test recipe for safety); *Penner v. Falk*, 153 Cal. App. 3d 858, 863-4 (1984)
10 (punitive damages claim appropriate where defendant failed to take corrective
11 measures).

12 Punitive damages are appropriate so that MTC is held accountable and does
13 not repeat this misconduct with other detainees. *See, e.g., Shaw v. San Joaquin*
14 *County*, 2006 U.S. Dist. LEXIS 34816 at *2 (E.D. Ca. 2006) (awarding punitive
15 damages against county jail in solitary confinement case). At a very minimum, there
16 is a genuine dispute of material fact as to Marrero, Ruiz, and Robinson’s state of
17 mind that should be addressed at trial. *See, e.g., Kohrs v. Argoz, Inc.*, 2018 Cal.
18 Super. LEXIS 318 at *1 (“A court can deny summary adjudication where a party’s
19 state of mind is at issue.”); *Braxton-Secret v. A.H. Robins Co.*, 769 F.2d 528, 531
20 (9th Cir. 1985) (“Where competing inferences about a person’s state of mind can be
21 drawn from a fact, summary judgment is inappropriate.”).

22 **3. Defendant’s Operational Design for IRDF Constitutes Malicious** 23 **and Despicable Conduct**

24 Defendant also errs by insisting that Plaintiff is required to identify “one
25 particular” employee, officer, director, or managing agent with “the requisite
26 malicious state of mind.” *Lannes v. CBS Corp.*, 2013 WL 12125425, at *5 (C.D. Cal.
27 July 3, 2013) (describing that assertion as a “fundamental misconception”).

28 When a “design” or policy promulgated by a corporate defendant itself

1 amounts to “despicable conduct,” a plaintiff need not present evidence of separate
2 malicious intent. *See Romo*, 99 Cal. App. 4th at 1141. For example, in *Romo*, the
3 defendant decided to not add crash protection to a car that was known to roll over,
4 then marketed and sold the car anyway. *Id.* The court rejected the narrow reading of
5 Section 3294—which Defendant parrots here—and held that “[w]hen the entire
6 organization is involved in the acts that constitute malice,” a plaintiff need not pin
7 the decision on a particular managing agent. *Id.* at 1140.

8 Courts have applied *Romo*’s reasoning when corporations structure their
9 operations to disregard an obvious risk, particularly when the evidence suggests a
10 profit motive for their decisions. For example, in *Grano v. Sodexo Management*, a
11 court in this district allowed punitive damages claims to proceed to trial where
12 Sodexo, a food service provider, never tested the hamburger recipe its customer
13 provided to ensure that the finished product would reach a safe temperature. *Grano*
14 at *27. In reaching its decision, the court cited evidence that Sodexo both declined to
15 set “minimum amount of time to cook the patties” and put cooks “under a lot of
16 pressure to get burgers done as fast as [they] could, so [they]’d be more focused on
17 getting food cooked and out to the lines.” *Id.* The court held that the plaintiffs had
18 asserted “a direct attack on Sodexo’s corporate policy” and thus met the standard for
19 corporate liability. *Id.* at *28. *See also Pizarro v. Nat’l Steel & Shipbuilding Co.*,
20 2021WL1197467, at *5–6 (N.D. Cal. Mar. 30, 2021) (applying *Romo* & denying
21 summary judgment on punitive damages claim where defendant sold asbestos-
22 containing auto parts without warnings).

23 A reasonable jury could find that MTC designed its operations at IRDF “with
24 a willful and conscious disregard for the rights or safety” of protective custody
25 detainees, or subjected them to “cruel and unjust hardship in conscious disregard” of
26 their rights in order to maximize its population and, accordingly, its profits. *See Cal.*
27 *Civ. Code* § 3294(c)(1)-(2). MTC receives a per-detainee payout for every detainee
28 it houses above a 640-person guaranteed minimum. (AMF No. 57.) Differing

1 security needs that take “certain units offline”—in other words, that make large
2 dormitory units unavailable to the general population—makes providing that
3 maximum bed space “challenging.” (AMF No. 58.) By warehousing people in
4 protective custody in single-cell isolation units, MTC keeps a small group of
5 detainees from taking other housing units “offline,” in order to maximize its
6 bedspace and therefore profits.

7 MTC does not argue that its staff lacked awareness that prolonged segregation
8 carries a risk of harm—nor could it credibly do so. A reasonable jury could find that
9 MTC was aware that prolonged segregation can cause harm, yet designed its
10 operations at IRDF in a way that made prolonged segregation inevitable for
11 detainees in protective custody by excluding any housing units outside of the SMU
12 from consideration as alternative forms of housing. This despicable policy is more
13 than sufficient to support punitive damages.⁹

14 **CONCLUSION**

15 For the foregoing reasons, Defendant’s Partial Motion for Summary Judgment
16 should be denied in its entirety.

17
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Respectfully submitted,

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20
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26 _____
27 ⁹ MTC’s adoption of policies that preclude it from meeting PBNDS requirements
28 also create a basis for punitive damages. *See Pac. Gas & Elec. Co. v. Superior Ct.*,
24 Cal. App. 5th 1150, 1170 (2018) (“acts in ... blatant violation of ... policy” can
justify punitive damages).