IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TOPAZ JOHNSON, *Plaintiff-Appellant*, v. HIGH DESERT STATE PRISON, et al., *Defendants-Appellees*.	Case No. 23-15299 On Appeal from the U.S. District Court for the Eastern District of California Case No. 2:22-cv-01235 Honorable Troy L. Nunley
IAN HENDERSON, *Plaintiff-Appellant*, v. HIGH DESERT STATE PRISON, et al., *Defendants-Appellees*.	Case No. 23-15396 On Appeal from the U.S. District Court for the Eastern District of California Case No. 2:22-cv-01235 Honorable Troy L. Nunley

PLAINTIFFS-APPELLANTS' REPLY BRIEF

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INTRODUCTION

The magistrate judge misread the Prison Litigation Reform Act as adopting a blanket rule against prisoner joinder. Defendant agrees that the PLRA does not bar joinder, but he argues that the PLRA requires each litigant in a multi-plaintiff action to pay a full filing fee. It does not. The PLRA's text, history, and statutory context confirm that the PLRA requires one filing fee per action, even if multiple prisoners file the action jointly.

Despite agreeing that the PLRA imposes no blanket rule against prisoner joinder, Defendant contends that a district court can adopt a "no prisoner joinder" rule of its own accord. Defendant is wrong. District courts must conduct a case-specific analysis, in accordance with the Federal Rules of Civil Procedure, when making joinder and severance decisions. Because nothing in the magistrate judge's opinion suggests any such analysis, this Court should reverse the severance order and remand for further proceedings.

ARGUMENT

I. Plaintiffs Can Proceed Jointly And Split The Cost Of The Filing Fee.

A. Defendant Concedes The PLRA Does Not Foreclose Joinder.

Defendant agrees that the usual joinder standard under Federal Rule of Civil Procedure 20 applies to incarcerated plaintiffs. Appellee's Answering Brief (AAB) 12-14; Appellants' Opening Br. (AOB) 14-20. The PLRA's silence as to joinder mandates this conclusion. *See Jones v. Bock*, 549 U.S. 199, 212 (2007) (explaining when the PLRA is "silent" on a procedural issue, that is "strong evidence that the usual practice should be followed").

The magistrate judge erred on this point. He imagined tension between "the interplay of the filing fee provisions" in the PLRA and Rule 20. ER-13. But, as the great weight of authority confirms, the PLRA's statutory silence cannot displace Federal Rule of Civil Procedure 20. *See*, *e.g.*, *Hagan v. Rogers*, 570 F.3d 146, 154-56 (3d Cir 2009); *In re Prison Litig. Reform Act*, 105 F.3d 1131, 1137-38 (6th Cir. 1997); *Boriboune v. Berge*, 391 F.3d 852, 854 (7th Cir. 2004); *but see Hubbard v. Haley*, 262 F.3d 1194, 1196-98 (11th Cir. 2001) (passing on the issue prior to *Jones*). To use Defendant's words, "the reasoning of those courts is sound"

because "the PLRA does not categorically prohibit prisoner-plaintiffs from proceeding in a joint action under Rule 20." AAB 13-14. This Court should also reject the magistrate judge's flawed PLRA interpretation.

B. Section 1915(b) Requires One Full Filing Fee For An Action, Whether Brought By One Plaintiff Or Multiple Plaintiffs.

Section 1915(b)(3) of the PLRA is clear: "In no event shall the filing fee collected" in a prisoner suit "exceed the amount of fees permitted by statute for the commencement of a civil action." 28 U.S.C. § 1915(b)(3). The "amount of fees permitted by statute for the commencement of a civil action" is $350. 28 U.S.C. § 1914(a). When multiple prisoners file a single action in forma pauperis, then, the total "filing fee collected" cannot exceed $350.[1]

Defendant protests that § 1915(b)(1) requires the opposite result—a full filing fee from each plaintiff, even if the plaintiffs are filing only one suit. *See* AAB 32-42. Section 1915(b)(1) mandates that "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee." 28 U.S.C.

[1] *See* Judicial Conference Schedule of Fees, District Court Miscellaneous Fee Schedule ¶ 14 (explaining an additional $55 administrative fee does not apply to those proceeding in forma pauperis under 28 U.S.C. § 1915).

§ 1915(b)(1). To be sure, § 1915(b)(1) refers to the singular "a prisoner." But the Dictionary Act explains that "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise-- words importing the singular include and apply to several persons, parties, or things[.]" 1 U.S.C. § 1. Applied here, § 1915(b)(1) states that "if [*prisoners*] bring[] a civil action . . . in forma pauperis, [*the prisoners*] shall be required to pay the full amount of a filing fee."[2] *See* AOB 21-24.

Defendant agrees that § 1915(b) and Rule 20 can co-exist. But he differs on how precisely to harmonize § 1915(b)(1) and § 1915(b)(3). *See* AAB 33-41. Defendant claims § 1915(b) is an entirely "per litigant" scheme. On his view, each plaintiff must pay a full filing fee and *that* individual filing fee cannot exceed the "per litigant" limit set in § 1915(b)(3). Defendant is incorrect.

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[2] Congress legislates against the backdrop of the Dictionary Act. *See* Office of the Legislative Counsel, U.S. House of Representatives, House Legislative Counsel's Manual on Drafting Style 60-61 (1995), available at https://ial-online.org/wp-content/uploads/2019/11/draftstyle.pdf (last accessed, February 2, 2024). As the House Legislative Counsel's Manual on Drafting Style explains, the phrase "'An employee who . . .' works the same as 'Employees who. . .'" *Id.* Choosing the singular, "an employee," over the plural, "employees," helps avoid a potential misreading that there must be multiple *employees* for the provision to take effect. *Id.* The same principle applies here.

1. Defendant resists the Dictionary Act and contends that Congress's choice of the singular "a prisoner" in § 1915(b)(1)'s directive ("if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee") warrants "significant interpretative weight." AAB 37. But if "a prisoner" really means "a" *singular* "prisoner"—*i.e*, the Dictionary Act does not apply—then § 1915(b)(1) does not cover Plaintiffs' action *at all*. Section 1915(b)(1) would apply only "*if a* prisoner brings a civil action." "[A] prisoner" did not file this action. Three "prisoners" did. So, taken seriously, Defendant's argument leads to the conclusion that § 1915(b)(1) does not apply to Plaintiffs' action at all. Nor would the exhaustion provision in 42 U.S.C. § 1997e(a) or the three-strikes rule in 28 U.S.C. § 1915(g) apply to multi-plaintiff actions. *See* 42 U.S.C. § 1997e(a) ("No action shall be brought . . . by *a prisoner*. . .") (emphasis added); 28 U.S.C. § 1915(g) ("In no event shall *a prisoner*. . .") (emphasis added).

That, of course, is not Defendant's position. Defendant assumes § 1915(b)(1) applies to cases like this one. So Defendant must read Section 1915(b)(1) to apply not just "if *a* prisoner brings a civil action," as the statute reads, but also if "*prisoners* bring[] a civil action." But that's

just the Dictionary Act taking effect. In other words, though Defendant fights the Dictionary Act at every turn, his position *also* requires the Dictionary Act's application to § 1915(b)(1).

But though Defendant implicitly concedes that the Dictionary Act must apply to the first clause of § 1915(b)(1) ("if a prisoner brings a civil action…"), he argues the Dictionary Act does not apply to the second clause ("the prisoner shall be required to pay the full amount of a filing fee"). He would instead read the statute to say something like: "If *prisoners* bring a civil action, *each prisoner* shall be required to pay the full amount of the filing fee." AAB 38-39.

There is no principle of statutory interpretation that can achieve that result. If the Dictionary Act applies to the first clause in § 1915(b)(1), it must apply to the second. The reference to "the prisoner" in § 1915(b)(1) refers back to the indefinite "a prisoner" in the previous clause. *See Shroeder v. United States*, 793 F.3d 1080, 1084-85 (9th Cir. 2015). So, if the Dictionary Act applies to "a prisoner" in the first clause, it must also apply to "the prisoner" in the second: "If *prisoners* bring a civil action, *the prisoners* shall be required to pay the full amount of a filing fee." *See Fairchild v. Sec. of Dept. of Health and Human Services*, 138 Fed. Cl. 29,

31 (Ct. Cl. 2018) (explaining a term preceded by an indefinite article inherits plural meaning and "any subsequent reference to that term . . . inherits the same inherent plurality").

To be sure, § 1915(b)(1) departs from the normal rule that *in forma pauperis* litigants need not pay *any* filing fee. But, contrary to Defendant's position, the statute "evinces" no intent to exclude typical fee sharing principles. AAB 37. Had Congress intended the per litigant approach Defendant suggests, Congress could have written that "each" prisoner or "every" prisoner must pay the full filing fee. Absent such a textual limitation, normal Dictionary Act presumptions apply. *See* Norman J. Singer & Shambie Singer, 2A Sutherland Statutes and Statutory Construction § 47:34 (7th ed.) (explaining courts "typically find that a term introduced by 'a' or 'an' applies to multiple subjects or objects, absent a contrary intent.")

2. Section 1915's structure, context, and history confirm Plaintiffs' one-fee-per-filing approach and make clear Defendant's one-fee-per-litigant approach is untenable.

Recall § 1915(b)(3). *See* AOB 25-26. Section 1915(b)(3) provides that "[i]n no event shall the filing fee collected exceed the amount of fees

permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment." Defendant protests that § 1915(b)(3) is merely a litigant-by-litigant limit on the amount collected from each plaintiff via §§ 1915(b)(1) and (2). AAB 37. But § 1915(b)(3) caps the total "fee collected" without reference to any particular litigant. 28 U.S.C. § 1915(b)(3). As Judge Jordan explained in *Hagan*, "Congress's use of the passive construction 'the fee *collected*,' indicates that § 1915(b)(3) is not to be viewed solely on a prisoner-by-prisoner basis but that the fee for the case itself, in total, ought not exceed the standard fee in any similar action." *Hagan*, 570 F.3d at 160-161 (Jordan, J., concurring in part). That prohibition is "without qualification." *Id.* "In no event" means *in no event*.

Defendant also does not explain how his per-litigant reading of § 1915(b)(3) works with other filing fee statutes. *See, e.g.,* 28 U.S.C. §§ 1913, 1914 (taking a per filing approach to fees, not a per litigant approach).

Take the fee required to file an appeal as an example. 28 U.S.C. § 1913. Under § 1915(b)(1), IFP prisoner litigants must pay "a full filing fee" to start an appeal. But the appellate fee rules require that: "For

docketing a case on appeal or review . . . parties filing a joint notice of appeal pay only one fee." Judicial Conference Schedule of Fees, *Court of Appeals Miscellaneous Fee Schedule* ¶ 1 (issued in accordance with § 1913). So, a joint appeal requires "only one fee." *Id.* Yet Defendant's approach to § 1915(b) would have each incarcerated litigant pay a full fee. How do joint litigants comply with both § 1913 and Defendant's interpretation of § 1915(b)? Defendant has no answer. Plaintiffs do: Litigants may split the joint filing fee so that the total "fee collected" does not exceed "the amount of fees permitted by statute" for the filing of an appeal. 28 U.S.C. § 1915(b)(3).

Section 1915(f)(2)'s parallel language supports this conclusion as well. *See* AOB 26-27. Like § 1915(b)(1), § 1915(f)(2) uses the "if . . . a prisoner . . . the prisoner" locution ("If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered."). Defendant admits plaintiffs may split the costs ordered under § 1915(f)(2), and concedes that his interpretation of § 1915(f)(2) requires reading § 1915(f)(2) differently from the identically worded provision four subsections up in § 1915(b). AAB 41. So, he asks this Court to give "significant interpretive

weight" to Congress's choice of the singular "a prisoner" in § 1915(b)(1). AAB 37. But, when it comes to § 1915(f)(2), Defendant claims this Court can ignore the singular noun. AAB 41. That reading violates "the established canon of construction that similar language contained within the same section of a statute must be accorded a consistent meaning." *Natl. Credit Union Admin. v. First Nat. Bank & Tr. Co.*, 522 U.S. 479, 501 (1998).

Defendant argues these provisions can still be interpreted differently because § 1915(f)(1) begins: "Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings. . ." Because litigants may be held jointly liable for costs in "other proceedings," Defendant contends the same principle applies here. *See* AAB 41. But that provision merely answers the question as to *whether* a court may award costs in prisoner suits. It has nothing to do with *how* prisoners pay costs. Moreover, like § 1915(f), 1915(b) *also* explicitly ties itself to other statutes. Section 1915(b)(1) incorporates "fees required by law" and § 1915(b)(3) limits collection to "the amount of fees permitted by statute. . .[.]" As explained above, those provisions require just one filing fee per joint action. *See*, *e.g.*, Judicial Conference Schedule of Fees,

Court of Appeals Miscellaneous Fee Schedule ¶ 1 (issued per 28 U.S.C. § 1913).

History and tradition point towards a "per filing" approach as well. Defendant has no response to Plaintiffs' argument that the phrase "a person" in § 1915 has always been understood as applying to "persons." AOB 16-17, 22. And while Defendant recites an incomplete version of the legislative history, AAB 37, he has no answer to Plaintiffs' key point: the PLRA aimed to put prisoners on the *same* footing as "normal" litigants, not on worse footing. *See* 141 Cong. Rec. S7526 (statement of Sen. Jon Kyl); 141 Cong. Rec. S14, 413–14 (statement of Sen. Bob Dole).

Defendant objects that the PLRA's deterrent purposes would be undermined because if 20 indigent prisoners litigated together, each would only have to pay $17.50 to litigate a case. AAB 39. But other mechanisms—such as Federal Rule of Civil Procedure 20—prevent 20 prisoners from joining unless they genuinely present a common question of fact or law. *See* Fed. R. Civ. P. 20(a). Since Rule 20 allows joinder only when joint litigation of common claims will be more efficient for courts, it makes perfect sense that each individual litigant pays a partial filing fee to reflect that efficiency.

Furthermore, as Defendant recognizes, his approach yields the absurd result that indigent prisoners would have to pay *more* than non-indigent prisoners. AAB 39 n.7; *see also Ellis v. Werfel*, 86 F.4th 1032, 1036 (4th Cir. 2023) (finding § 1915(b)(1) does not apply to prisoners who do not proceed IFP and split a filing fee up front). Apply Defendant's position to his 20-litigant example: there is no evidence that Congress expected 20 indigent prisoner litigants to pay a cumulative $7,000 fee that for any other litigants—including 20 non-indigent prisoner litigants—would cost $350. To the contrary, the PLRA set out to correct the perceived unfairness of indigent prisoners not being "required to pay *the fees that normally accompany* the filing of a lawsuit." 141 Cong. Rec. S14, 413–14 (statement of Sen. Bob Dole) (emphasis added).

One final point: If there is any ambiguity, the statute must be read the way Plaintiffs suggest. As Defendant admits, "§ 1915(b)(1) does not specifically address lawsuits with multiple prisoner plaintiffs[.]" AAB 33. Congress must be explicit to depart from the "usual" rules in civil practice. *Jones*, 549 U.S. at 212. The "usual" rule is that multiple litigants proceeding jointly in a single action pay only one cumulative filing fee. *See, e.g.*, 28 U.S.C. § 1914; Judicial Conference Schedule of Fees, *Court*

of Appeals Miscellaneous Fee Schedule ¶ 1 (issued in accordance with § 1913). Far from explicitly overruling such fee-splitting statutes, § 1915(b) incorporates them by reference. *See* 28 U.S.C. § 1915(b)(1) (requiring litigants pay "fees required by law"); *id.* § 1915(b)(3) (limiting collection to "the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment"). That baseline fee-sharing rule applies here.

3. Defendant falls back on the argument that the PLRA takes a person-specific, anti-litigation approach in general. AAB 35. But appeals to the PLRA's zeitgeist cannot trump its text and structure, *see Jones*, 549 U.S. at 212, and none of the provisions Defendant points to requires this Court to adopt a per-litigant approach.

Defendant incorrectly suggests, for example, that the three strikes provision in § 1915(g) means the PLRA also requires each plaintiff proceeding jointly to pay a full filing fee. AAB 35. Not true. If a party with three strikes files suit with other plaintiffs, that party could be severed. *See* Fed. R. Civ. P. 21. Moreover, if any plaintiff drops out of a suit or is dismissed before the full fee is paid, liability for any outstanding fees simply shifts to his or her co-plaintiffs. *See*, *e.g.*, *Berryman v. Freed*, No.

14-12593, 2015 U.S. Dist. LEXIS 71397, at *5 (E.D. Mich. June 3, 2015) (holding a litigant liable for the full filing fee once co-litigants were dismissed).

Defendant then turns to practicalities, arguing that apportioning the filing fee among litigants is too complicated. Wrong again. Courts have wide discretion when setting fees, so long as the statutory mandate (here, one full filing fee and no more) is met. In the Sixth Circuit, for example, courts regularly split the filing fee evenly among incarcerated IFP litigants. *See Nichols v. Parker*, No. 3:21-CV-00698, 2021 WL 5041291, at *1 (M.D. Tenn. Oct. 29, 2021) ("Because there are two plaintiffs in this case, each plaintiff is responsible for half of the $350 filing fee, or $175").[3] Courts can manage simple division. Alternatively, as a district court in this circuit has suggested, a court could hold the plaintiffs jointly and severally liable for a full fee until it is paid. *Alcala v. Woodford*, No. C 02-0072 TEH (PR), 2002 WL 1034080, at *1 (N.D. Cal. May 21, 2002). Either result is consistent with the statutory text.

[3] *See also Williams v. Hardin Cty. Det. Ctr.*, No. 3:16CV-P186-GNS, 2016 U.S. Dist. LEXIS 62246, at *2 (W.D. Ky. May 10, 2016) (same); *Wayne v. Parker*, No. 3:21-cv-00698, 2021 U.S. Dist. LEXIS 209325, at *2 (M.D. Tenn. Oct. 29, 2021) (same).

Finally, Defendant laments that "[i]f the filing fee were divided between co-plaintiffs, a court would need to collect multiple initial payments, then additional monthly partial payments[.]" *See* AAB 40. But, of course, that would be true whether prisoners proceed jointly or file separate suits; the only change would be the total amount collected. Moreover, that the Sixth Circuit has maintained its fee splitting practice for nearly 30 years undermines Defendant's parade of horribles. *See In re Prison Litig. Reform Act*, 105 F.3d 1131, 1137-38 (6th Cir. 1997).

At bottom, Plaintiffs' "per filing" reading better harmonizes with the PLRA's text and the overarching statutory scheme. IFP prisoners must pay one full filing fee per civil action or appeal filed. 28 U.S.C. § 1915(b)(1). But, however apportioned, the total "fee collected" for the action may not exceed the amount permitted for any other action or appeal. *Id.* § 1915(b)(3). There's a simple way to effectuate that statutory command: Split the filing fee among all the plaintiffs bringing the suit.

II. The District Court Abused Its Discretion By Denying Joinder Based On Generalized Assumptions About Prisoners, Rather Than Conducting A Rule 20 Analysis Specific To These Plaintiffs And This Case.

As explained above, Defendant concedes the heart of the magistrate judge's ruling—the PLRA analysis—was error. AAB 12-14. Defendant is left to try to alchemize the magistrate judge's throwaway language speculating on the difficulties of joint prisoner litigation into reasoned legal analysis. Because the decision below was untethered from the facts of this case, this Court should reverse the severance decision below.

1. Trial courts have wide discretion to manage their docket. But discretion demands reasoned analysis of the record before the court. Here is the sum total of the magistrate judge's analysis as to joinder:

> [A]ctions brought by multiple prisoners proceeding without counsel present unique problems not presented by ordinary civil litigation. For example, transfer of one or more plaintiffs to different institutions or release on parole, as well as the challenges to communication among plaintiffs presented by confinement, may cause delay and confusion.

ER-12-13. That's it.

It appears the magistrate judge applies this same language as a template to deny joinder in multi-prisoner actions. *Compare* ER-12-13 *with Coleman v. California Dept. of Corrections*, No. 2:21-CV-0625-EFB

P, 2021 WL 2634807, at *2 (E.D. Cal. June 25, 2021); *Surrell v. Gilliard*, No. 2:19-CV-0261-EFB P, 2019 WL 916766, at *1 (E.D. Cal. Feb. 25, 2019); *Heilman v. Thumser*, No. CIV S-11-1907 EFB P, 2011 WL 5508891, at *2 (E.D. Cal. Nov. 9, 2011). Here, other than inserting Plaintiffs' names into that template language, the magistrate judge performed no analysis specific to Plaintiffs' claims, conduct, or circumstances.

That bare language fails to satisfy the magistrate judge's obligations under Rule 20. Rule 20 allows *any* "persons" to join in one action as plaintiffs if they meet the commonality requirements of that rule. Fed. R. Civ. P. 20(a)(1). Defendant argues that—even though both the PLRA and Rule 20 allow prisoners to litigate jointly—a magistrate judge can create his own personal blanket rule forbidding any prisoners from proceeding jointly. *See* AAB 18-19, 22-23.

The two circuits to consider this issue have both rejected Defendant's position. *See Hagan*, 570 F.3d at 157 n.5; *Ellis*, 86 F.4th at 1037. In *Hagan*, for example, the Third Circuit reversed a district court for denying joinder based on "generalized difficulties" prisoners face while litigating. *Hagan*, 570 F.3d at 156-157. The court emphasized that

prisoners are "persons" under Rule 20 and held that favoring hypothetical "considerations" over record evidence undermines Rule 20's "clear and unambiguous" "use of the term 'persons'" to define its scope. *Hagan*, 570 F.3d at 157. "While a judge may well identify credible reasons why joint litigation of prisoner suits might not generally be a good idea, such opinions cannot be used to defeat congressional intent by disregarding the plain language of Rule 20." *Id.* at 157 n.5.

Recently, the Fourth Circuit reached the same result in *Ellis*. 86 F.4th at 1037. Faced with similar reliance on "practical considerations" concerning incarceration, the court explained that "[t]he [district] court's 'practical considerations' were, at most, abstract observations, amounting only to speculation that was contradicted by the evidence in the record before it. Therefore, they cannot support the severance order." *Ellis*, 86 F.4th at 1037.

So too here. Each plaintiff signed the complaint. ER-30. And each signed the application to proceed IFP. ER-20. Nothing in the record the magistrate judge considered indicated that Plaintiffs were unable to

proceed together.[4] As in *Ellis* and *Hagan*, "abstract observations"—untethered from the record before the court—cannot support a severance order here. *Ellis*, 86 F.4th at 1037. Defendant claims the magistrate judge explained that "Plaintiffs' incarceration *would* affect their ability to communicate with one another." AAB 18 (emphasis added). But that's not true. The opinion says only that delays "may" occur. ER-12-13. The decision below was therefore not based on the case before the court, but on pure "speculation." *Ellis*, 86 F.4th at 1037.

Defendant protests that the magistrate judge's concerns regarding delay or confusion are often valid in the prisoner context. *See* AAB 18-19. But if a court's speculation about "delay or confusion" turns out to be founded, plaintiffs can always be severed at that junction. *See* Fed. R. Civ. P. 21. *Seely v. Baca*, which Defendant cites, serves as one possible model. No. 3:15-CV-00118-MMD-VPC, 2016 WL 829915, at *3 (D. Nev.

[4] Defendant's contrary argument relies on facts that were not before the magistrate judge when he severed Plaintiffs. AAB 19-21. On abuse of discretion review, this Court reviews lower court decisions based on the record that existed when the lower court exercised its discretion. *See Su v. Bowers*, 89 F.4th 1169, 1179 n.3 (9th Cir. 2024) (finding a district court did not abuse its discretion in finding the government's litigation position "substantially justified" at the time of trial, even though that same position later "crumbled").

Mar. 1, 2016). In that case, the judge shared the concerns of the magistrate judge here. *Id.* Rather than denying joinder based on stereotypes about all prisoners, the court allowed the plaintiffs to proceed jointly, but made clear that there would be no special consideration for the prisoner co-plaintiffs—the court would not interfere with prison administration, and should that administration result in delays, the plaintiffs would be severed. *Id.* Indeed, if difficulties in prisoners communicating with each other *actually* result in missed deadlines, a trial court can even dismiss a case altogether. *See* Fed. R. Civ. P. 41(b).

So, as Defendant urges, district courts can consider whether Rule 20 joinder comports with principles of fundamental fairness in a particular case. *See* AAB 20-21. But lower courts must "carefully weigh[]" facts specific to the case before them when making such decisions. *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1297 (9th Cir. 2000). Relying on mere hypotheticals and generalizations to make a discretionary decision is not permissible. *See Hagan*, 570 F.3d at 157 n.5. Because the magistrate judge denied joinder without any case-specific analysis, the decision below was an abuse of discretion.

2. Alternatively, Defendant tries out an argument the magistrate judge never considered. He would have this court believe that "the face of [Plaintiffs'] complaint" did not satisfy Rule 20. AAB 17. That is just plain wrong.

Plaintiffs' claims arise out of the same "occurrence" or "series of . . . occurrences" and share common questions of "law or fact." Fed. R. Civ. P. 20(a)(1). Plaintiffs bring a common Eighth Amendment claim because they were held near one another in "2 ½ ft by 2 ½ ft" "dirty urine smelling holding cages in handcuffs (from behind) for (8) eight hours & (57) fifty seven minutes[.]" ER-26. Thus, Plaintiffs each bring the *same* legal claim, because they were detained in the *same* type of cell, in the *same* room, at the *same* time, for the *same* amount of time. ER-24-27. Those common allegations satisfy Rule 20(a)(1).

Defendant quibbles that Plaintiffs were brought to the holding cells for different reasons. AAB 17. But Defendant never explains why that fact matters. Regardless of why they were brought to the holding cells, each plaintiff contends that being kept in a 2 ½ foot by 2 ½ foot cage for over four hours was cruel and unusual. ER-26-27. Likewise, though Defendant argues each plaintiff may have different damages, AAB 17,

Defendant ignores Plaintiffs' common allegations as to damages. Specifically, Plaintiffs allege "blistering on the bottom of each plaintiffs feet from standing so long, the lower back pain, and the emotional pain [they] endured throughout the false imprisonment process." ER-26 (alteration in original).

Moreover, Defendant cites no case denying joinder under remotely similar circumstances. AAB 17. For example, he cites *Coughlin v. Rogers* for the proposition that "mere similarity in claims is not enough to satisfy Rule 20." AAB 17 (quoting *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997)). But take a closer look at *Coughlin*. There, 49 plaintiffs brought individualized mandamus claims, alleging an agency "unreasonably delayed" each plaintiff's separate adjudication proceeding. *Coughlin*, 130 F.3d at 1349. So, permissive joinder was inappropriate because each plaintiff's claim was "discrete, and involve[d] different legal issues, standards, and procedures." *Id.* That decision is not instructive here.

Again, Plaintiffs allege Defendant forced them to stand in phone-booth sized, urine-smelling cages for over eight hours, until their backs hurt and their feet blistered. ER-26. *Coughlin* says nothing to those facts.

And neither did the magistrate judge below. This Court should reject Defendant's alternative argument because Plaintiffs' claims easily satisfied Rule 20(a)'s liberal commonality requirements. *See Cuprite Mine Partners LLC v. Anderson*, 809 F.3d 548, 552 (9th Cir. 2015).

CONCLUSION

This Court should reverse the judgment of the district court and remand for further proceedings on Mr. Johnson's and Mr. Henderson's joint complaint.

Dated: February 5, 2024

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32 and 9th Circuit Rule 32, I certify that:

This brief complies with the type-volume limitation of 9th Circuit Rule 32-1(a) because this brief contains 4,595 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word Century Schoolbook 14-point font.

/s/ George Mills
George Mills

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ George Mills
George Mills