

ECF 65

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 CIVIL MINUTES—GENERAL

Case No. **SACV 20-835 JGB (SHKx)** Date May 26, 2020

Title **Melissa Ahlman, et al. v. Don Barnes, et al.**

Present: The Honorable JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ/NOE U. PONCE

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

Proceedings: Order (1) GRANTING-IN-PART and DENYING-IN-PART Plaintiffs’ Application for Temporary Restraining Order or Preliminary Injunction (Dkt. No. 41); and (2) GRANTING Plaintiffs’ Motion for Provisional Class Certification (Dkt. No. 42) (IN CHAMBERS)

Before the Court are (1) Plaintiffs’ Application for Temporary Restraining Order or Preliminary Injunction and (2) Plaintiffs’ Motion for Provisional Class Certification. (“Application,” Dkt. No. 41; “Motion,” Dkt. No. 42.) The Court held a hearing on May 19, 2020. After considering the papers filed in support of and in opposition to the Motion and Application, the Court GRANTS the Motion and GRANTS-IN-PART and DENIES-IN-PART the Application.

I. BACKGROUND

On April 30, 2020, Plaintiffs filed their complaint against Defendants Don Barnes and Orange County. (“Complaint,” Dkt. No. 1.) The Complaint alleges five causes of action: (1) Unconstitutional Conditions of Confinement in Violation of the Fourteenth Amendment to the U.S. Constitution; (2) Unconstitutional Punishment in Violation of the Fourteenth Amendment to the U.S. Constitution; (3) Unconstitutional Conditions of Confinement in Violation of the Eighth Amendment to the U.S. Constitution; (4) Discrimination on the Basis of Disability in Violation of Title II of the ADA; and (5) Discrimination on the Basis of Disability in Violation of Section 504 of the Rehabilitation Act. (Id.)

Plaintiffs filed the Motion and the Application on May 11, 2020. (Motion; Application.) In support of the Application, Plaintiffs filed:

- Exhibit A (“Takei Declaration,” Dkt. No. 41-3);
- Exhibit B (“Wagner Declaration,” Dkt. No. 41-4);
- Exhibit C (“Parker Declaration,” Dkt. No. 41-5);
- Exhibit D (“Goldenson Declaration,” Dkt. No. 41-6);
- Exhibit H (“Ramirez Declaration,” Dkt. No. 41-10);
- Exhibit I (“Trace Declaration,” Dkt. No. 41-11);
- Exhibit J (“Second Wagner Declaration,” Dkt. No. 41-12);
- Exhibit K (“Seif Declaration,” Dkt. No. 41-13);
- Exhibit L (“Miranda Declaration,” Dkt. No. 41-14);
- Exhibit M (“Esparza Declaration,” Dkt. No. 41-15);
- Exhibit N (“Godinez Declaration,” Dkt. No. 41-16);
- Exhibit O (“Farias Declaration,” Dkt. No. 41-17);
- Exhibit P (“Lentz Declaration,” Dkt. No. 41-18);
- Exhibit Q (“Ahlman Declaration,” Dkt. No. 41-19);
- Exhibit R (“Bonilla Declaration,” Dkt. No. 41-20);
- Exhibit S (“Ortiz Declaration,” Dkt. No. 41-21);
- Exhibit T (“Hernandez Declaration,” Dkt. No. 41-22);
- Exhibit U (“Herrera Declaration,” Dkt. No. 41-23);
- Exhibit V (“Trace Declaration,” Dkt. No. 41-24);
- Exhibit W (“Cardone Declaration,” Dkt. No. 41-25);
- Exhibit X (“Baguiao Declaration,” Dkt. No. 41-26);
- Exhibit Y (“Castillo Declaration,” Dkt. No. 41-27);
- Exhibit Z (“Kauwe Declaration,” Dkt. No. 41-28);
- Exhibit AA (“Saem Declaration,” Dkt. No. 41-29);
- Exhibit BB (“Campbell Declaration,” Dkt. No. 41-30);
- Exhibit CC–NN (“Grievance Declarations,” Dkt. Nos. 41-31–41-42.)

Defendants opposed both the Motion and the Application on May 12, 2020. (“Application Opposition,” Dkt. No. 44; “Motion Opposition,” Dkt. No. 47.) In support of the Motion Opposition, Defendants filed Evidentiary Objections.¹ (“Motion Objections,” Dkt. No 48.) In support of the Application Opposition, Defendants filed:

¹ To the extent that the Court relies on objected-to evidence, the objections are overruled. Capitol Records, LLC v. BlueBeat, Inc., 765 F. Supp. 2d 1198 n.1 (C.D. Cal. 2010). “District courts, though, ‘may give . . . inadmissible evidence some weight . . . [to] prevent[] irreparable harm before trial.’” Weride Corp. v. Kun Huang, 379 F. Supp. 3d 834, 845 (N.D. Cal. 2019) (quoting Johnson v. Couturier, 572 F.3d 1067, 1083 (9th Cir. 2009)). For the purposes of the preliminary injunction, “evidentiary issues ‘properly go to weight rather than admissibility.’” Id. (quoting Go Daddy Operating Co., LLC v. Ghaznavi, 2018 WL 1091257, at *14 (N.D. Cal. Feb. 28, 2018)). Thus, the Court takes the objections under advisement in considering the Motion and Application.

- Declaration of Martin Ramirez (“M. Ramirez Declaration,” Dkt. No. 44-2);
- Declaration of Joseph Balicki (“Balicki Declaration,” Dkt. No. 44-10);
- Declaration of C. Hsien Chian (“Chian Declaration,” Dkt. No. 44-15);
- Declaration of D. Kevin Dunn (“Dunn Declaration,” Dkt. No. 44-22);
- Request for Judicial Notice (“Defendants’ RJN,” Dkt. No. 45);
- Evidentiary Objections (“Application Objections,” Dkt. No. 46).

On May 13, 2020, Plaintiffs replied in support of the Application. (“Application Reply,” Dkt. No. 49.) On May 14, 2020, Plaintiffs replied in support of the Motion. (“Motion Reply,” Dkt. No. 50.) On May 18, 2020, Plaintiffs submitted several supplemental declarations. The Court held a telephonic hearing on May 19, 2020.

II. FACTS

On December 31, 2019, China reported incidents of a pneumonia of unknown cause to the World Health Organization. Since then, that infectious disease, which came to be known as coronavirus disease 2019 (COVID-19), has swept the globe, infecting millions and killing over three hundred thousand people. COVID-19 is particularly dangerous to people who are older or have certain health conditions and disabilities, including diabetes, lung disease, heart disease, and compromised immune systems. (Goldenson Declaration ¶ 27; Parker Declaration ¶ 19.)

COVID-19 has proven to be extremely contagious: it is airborne and survives on surfaces for days.² To limit the spread of this potentially fatal disease, the governor of California—along with leaders around the globe—ordered residents to stay home, avoid non-essential contacts, and to keep six feet away from others wherever possible.

At least 369 inmates at the Orange County Jail (“Jail”) have been infected with COVID-19.³ COVID-19 is particularly dangerous in jails and prisons, where inmates are often unable to practice the recommended social distancing, lack access to basic hygienic necessities, and are regularly exposed to correctional officers and staff who move in and out of the Jail. (Goldenson Declaration ¶¶ 17–19.) The Centers for Disease Control (“CDC”) has issued special guidance that offer strategies to help prevent COVID-19 infection in prisons and jails (“CDC Guidelines”).⁴

² See Neeltje van Doremalen, Ph.D., et al., Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1, *N. England J. Med.* 2020; 382:1564-1567 <https://www.nejm.org/doi/full/10.1056/NEJMc2004973> (last accessed May 15, 2020.)

³ Orange County Sheriff’s Department, COVID-19 in OC Jails (May 18, 2020), https://www.ocsd.org/about_ocsd/covid_19.

⁴ Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, Centers for Disease Control and Prevention (March 23,

The CDC Guidelines recommend “placing cases and individuals with symptoms under medical isolation, quarantining their close contacts, and facilitating necessary medical care, while observing relevant infection control and environmental disinfection protocols and wearing recommended [personal protective equipment].”

A. Jail Facilities & Housing

The Jail houses inmates across four facilities:

- **Theo Lacy** has a rated capacity of 2,080 occupants.⁵ It is composed of a large number of barrack style dorms, seven module units where people are housed in two-person cells that share common day rooms and shower facilities, and two module units where people are housed in single-person cells that share common day rooms and shower facilities.
- **The Men’s Central Jail** has a rated capacity of 1,219 occupants. It is composed primarily of module units where people are housed in cells that vary in size from four to eight occupants; occupants share toilet and shower facilities. There are also dormitory style units where occupants share common day rooms, shower, and toilet facilities.
- **The Women’s Central Jail** has a rated capacity of 274 occupants. It is composed primarily of dormitory style units which sleep up to 30 occupants in one unit, where occupants share toilet and shower facilities. There is also one unit where people are housed in single cells and share shower facilities.
- **The Intake and Release Center** has a rated capacity of 407 occupants. It is composed primarily of module units where people are housed in single-person cells that share common day rooms and shower facilities.

(Complaint ¶ 49.) Collectively, the Orange County Jail has a total of 51 medical isolation cells. (Id.)

B. Response to COVID-19

2020) <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

⁵ The rated capacity of a facility means the maximum number of incarcerated occupants that a facility’s cells and dormitories were designed to hold in conformity with Title 15 regulations (maintained by BSCC) and Title 24 regulations (maintained by the California Building Standards Commission). (Complaint ¶ 49.) The rated capacity does not include housing dedicated for health care or disciplinary separation housing. (Id.) The actual capacity of the facilities as identified by Defendants is significantly larger than the rated capacity. (Compare Complaint ¶ 49 with Balicki Declaration, Exhibit A.)

1. Population Reduction Efforts

Since the outbreak, Defendants have reduced the Jail's population. (Balicki Declaration ¶ 6.) However, they have failed to meet the 50% target reduction rate set by Defendants' own Correctional Health Services. (Id.) Early release is available for vulnerable individuals, but only if those individuals have less than sixty days remaining on their sentence. (M. Ramirez Declaration ¶ 9.) Early release is not available for pre-trial detainees. (Id.) Additionally, the California Judicial Council reduced bail to \$0 for many offenses, allowing some pretrial detainees to await trial on bail. (Id. ¶ 9.)

Despite these population reduction measures, 2,826 individuals remain in the Jail. (Balicki Declaration ¶ 6, Exhibit A.) As of May 12, 2020, the actual capacity of each facility was:

- Central Men's Jail: 500
- Central Women's Jail: 106
- IRC: 411
- Theo Lacy: 1746

(Id., Exhibit A.) Of the individuals remaining in the Jail, Defendants have identified 488 detainees who are medically vulnerable and at heightened risk of serious infection and death. (Complaint ¶ 7; Application at 5.) However, it is not clear where the medically vulnerable individuals are currently housed.

2. Quarantine Efforts

Joseph Balicki, a Commander in the Orange County Sheriff's Department ("OCSD") assigned to the Custody Operations Command, submits that the Jail uniformly quarantines new arrivals at the Jail for 14 days and tests them before release into the jail generally. (Balicki Declaration ¶ 7.) However, it appears that the quarantine is only a partial one, as "[i]nmates who are quarantined or in isolation continue to have access to the dayroom where they can shower and use the telephones." (Id. ¶ 14.) Additionally, groups of quarantined individuals are mixed together. (Miranda Declaration ¶¶ 22, 25; Esparza Declaration ¶ 7; Godinez Declaration ¶ 11.)

The testimony of many inmates, who submit that new arrivals and individuals with known exposure are not always quarantined contradicts Officer Balicki's testimony. (See, e.g., Seif Declaration ¶ 10; Wagner Declaration ¶ 14.) For example, one new arrival, whose father had COVID-19, was not quarantined before he was moved into the general population. (Wagner Declaration ¶ 14.) Another inmate was not quarantined after a trip to the emergency room. (Ortiz Declaration ¶¶ 18–19.) These inconsistent quarantine practices have led to a cluster of new infections in at least one instance. (See Miranda Declaration ¶¶ 8, 25; Godinez Declaration ¶¶ 8–9; Goldenson Declaration ¶ 45; Farias Declaration ¶¶ 6–10; Lentz Declaration ¶¶ 5–11.)

3. Facility-Wide Social Distancing Opportunities

The Jail has implemented procedures to allow inmates to socially distance. (Balicki Declaration ¶ 9.) However, limits of the Jail's design and capacity precludes full social distancing for the current inmate population. Multiple inmates sleep in the same room, with beds less than six feet apart. (Ahlman Declaration ¶¶ 7–8, 11–14; Bonilla Declaration ¶¶ 6–7; Ramirez Declaration ¶ 19; Lentz Declaration ¶ 12.) Inmates share the common spaces and phones, where it is impossible to remain six feet apart. (Ramirez Declaration ¶¶ 18, 19; Bonilla Declaration ¶¶ 6–7; Ortiz Declaration ¶¶ 5–7.) Some have been placed in overcrowded holding units. (Ahlman Declaration ¶ 5.)

The Jail allows symptomatic individuals to mingle in common areas with asymptomatic ones. (Hernandez Declaration ¶¶ 6– 10, 30; Ramirez Declaration ¶¶ 21.) Inmates are also transferred within the Jail, increasing the risk of exposure. (Miranda Declaration ¶¶ 4, 6, 9–12; Godinez Declaration ¶¶ 7, 10–13.)

4. Availability of Cleaning Supplies, Personal Hygiene Supplies, and Personal Protective Equipment

Inmates receive cleaning supplies including soap, disinfectant and towels. (Balicki Declaration ¶ 10.) However, they do not receive sufficient cleaning supplies to keep their living areas clean and disinfected. (See, e.g., Ahlman Declaration ¶¶ 18–20; Bonilla Declaration ¶ 12, 16; Baguiao Declaration ¶¶ 14–15; Campbell Declaration ¶ 20; Castillo Declaration ¶ 19; Esparza Declaration ¶ 12; Godinez Declaration ¶ 17; Hernandez Declaration ¶¶ 11–12; Miranda Declaration ¶¶ 17, 24–25; Trace Declaration ¶ 18; Wagner Declaration ¶ 15; Farias Declaration ¶ 13.) Some inmates report requesting soap but not receiving any for days. (See, e.g., Trace Declaration ¶ 2.) Others report that multiple housing sectors must share a single bottle of cleaning solution. (Ramirez Declaration ¶ 14.) Inmates also receive facial coverings. (Balicki Declaration ¶ 11.) Some inmates report that the cloth masks provided are not replaced for weeks or are made from blood- and feces-stained sheets. (See Ramirez Declaration ¶¶ 10–11 & 14–15, 17.)

5. Testing

The Jail has a policy to test individuals with COVID-19 symptoms as well as asymptomatic individuals before they are released from quarantine. (Chiang Declaration ¶¶ 12, 13.) On many occasions, however, inmates were not tested after exposure to an individual with a confirmed case of COVID-19. (Seif Declaration ¶ 9; Herrera Declaration ¶¶ 6,10; Wagner Declaration ¶ 14.) The Jail does not test the cellmates of symptomatic individuals or entire units when there are multiple confirmed cases. (Ramirez Declaration ¶¶ 20–23.) Inmates awaiting the outcome of a COVID-19 test have been allowed to return to the general population. (Id.)

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C. State of the Outbreak

To date, there have been 369 positive tests for COVID-19.⁶ As of May 12, 2020, all but one of the confirmed COVID-19 tests had come from the Central Men’s Jail.⁷ (Balicki Declaration ¶ 8.)

III. LEGAL STANDARDS

A. Provisional Class Certification

Courts in the Ninth Circuit “routinely grant provisional class certification for purposes of entering injunctive relief.” Carrillo v. Schneider Logistics, Inc., 2012 WL 556309, at *9 (C.D. Cal. Jan. 31, 2012) (citing Baharona-Gomez v. Reno, 167 F.3d 1228, 1233 (9th Cir. 1999)). Federal Rule of Civil Procedure 23 (“Rule 23”) governs the litigation of class actions. A party seeking class certification must establish the following prerequisites:

(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). After satisfying the four prerequisites of numerosity, commonality, typicality, and adequacy, a party must also demonstrate one of the following: (1) a risk that separate actions would create incompatible standards of conduct for the defendant or prejudice individual class members not parties to the action; (2) the defendant has treated the members of the class as a class, making appropriate injunctive or declaratory relief with respect to the class as a whole; or (3) common questions of law or fact predominate over questions affecting individual members and that a class action is a superior method for fairly and efficiently adjudicating the action. See Fed. R. Civ. P. 23(b)(1)–(3).⁸

⁶ Orange County Sheriff’s Department, COVID-19 in OC Jails (May 26, 2020), https://www.ocsd.org/about_ocsd/covid_19.

⁷ While the Orange County Sherriff’s Department releases information every week day regarding the number of Jail-wide positive tests, it does not break those numbers down by facility. The Court must therefore rely upon the break down provided in the Balicki Declaration, which accounts for only 322 of the 369 positive tests. It is possible, therefore, that the other facilities may now have more confirmed COVID-19 tests.

⁸ While some circuits have adopted an “ascertainability” prerequisite to certification, the Ninth Circuit has not. Briseno v. ConAgra Foods, Inc., 844 F.3d 1121, 1124 n.4 (9th Cir. 2017) (“ConAgra cites no other precedent to support the notion that our court has adopted an ‘ascertainability’ requirement. This is not surprising because we have not. Instead, we have addressed the types of alleged definitional deficiencies other courts have referred to as ‘ascertainability’ issues . . . through analysis of Rule 23’s enumerated requirements.”).

A trial court has broad discretion regarding whether to grant a motion for class certification. See Bateman v. Am. Multi-Cinema, Inc., 623 F.3d 708, 712 (9th Cir. 2010). However, “[a] party seeking class certification must affirmatively demonstrate compliance with [Rule 23]—that is, the party must be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or fact, etc.” Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011). A district court must conduct a “rigorous analysis” that frequently “will entail some overlap with the merits of the plaintiff’s underlying claim.” Id. at 351. “Courts typically proceed claim-by-claim in determining whether the Rule 23 requirements have been met, particularly as to the Rule 23(a)(2) and (b)(3) requirements of common questions and predominance.” Allen v. Verizon California, Inc., 2010 WL 11583099, at *2 (C.D. Cal. Aug. 12, 2010).

Rule 23 further provides that “[w]hen appropriate, an action may be brought or maintained as a class action with respect to particular issues,” Fed. R. Civ. P. 23(c)(4), or the “class may be divided into subclasses that are each treated as a class under this rule,” Fed. R. Civ. P. 23(c)(5). “This means that each subclass must independently meet the requirements of Rule 23 for the maintenance of a class action.” Betts v. Reliable Collection Agency, Ltd., 659 F.2d 1000, 1005 (9th Cir. 1981).

B. Preliminary Injunction

“A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right.” Munaf v. Geren, 553 U.S. 674, 690 (2008) (citations omitted). An injunction is binding only on parties to the action, their officers, agents, servants, employees and attorneys and those “in active concert or participation” with them. Fed. R. Civ. P. 65(d).

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). The Ninth Circuit employs the “serious questions” test, which states “‘serious questions going to the merits’ and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011). “A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right.” Munaf v. Geren, 553 U.S. 674, 690 (2008) (citations omitted).

IV. DISCUSSION

A. Class Certification

For purposes of the emergency injunctive relief, Plaintiffs seek provisional certification of the following classes:

- **The Pre-Trial Class:** “[A]ll current and future pre-trial detainees incarcerated at the Orange County Jail”
- **Post-Conviction Class:** “[A]ll current and future post-conviction prisoners incarcerated at the Orange County Jail from the present until the COVID-19 pandemic has abated”

(Motion at 2.) For both the pre-trial and post-conviction classes, Plaintiffs additionally seek provisional certification of the following sub-classes

- **Medically-Vulnerable Subclass:** “[A] subclass of all persons who, by reason of age or medical condition, the CDC has identified as particularly vulnerable to injury or death if they were to contract COVID-19”
- **Disability Subclass:** “[A] subclass of all persons within the Medically Vulnerable Subclasses who are vulnerable because of a disability as defined in federal law”

(Id.) Federal judges around the country have provisionally certified similar classes of detainees bringing claims arising from the COVID-19 pandemic. See, e.g., Roman v. Wolf, No. 5:20-cv-768, (TJH) (PHV) (C.D. Cal. Apr. 23, 2020), Dkt. No. 52; Zepeda Rivas v. Jennings, 2020 WL 2059848, at *1 (N.D. Cal. Apr. 29, 2020); Mays v. Dart, 2020 WL 1812381, at * 4 (N.D. Ill. Apr. 9, 2020); Wilson v. Williams, 2020 WL 1940882, at *8 (N.D. Ohio Apr. 22, 2020). In a sparse Opposition, Defendants argue with minimal citation to the law that the proposed classes and subclasses fail to meet the requirements of Rule 23. (See generally Motion Opposition.) Defendants are mistaken.

1. Numerosity

A class satisfies the prerequisite of numerosity if it is so large that joinder of all class members is impracticable. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). To be impracticable, joinder must be difficult or inconvenient but need not be impossible. Keegan v. American Honda Motor Co., 284 F.R.D. 504, 522 (C.D. Cal. 2012). There is no numerical cutoff for sufficient numerosity. Id. However, forty or more members will generally satisfy the numerosity requirement. Id.

In their Motion, Plaintiffs estimate that there 3,047 individuals incarcerated in the Jail. (Motion at 13.) Relying on the most recent data collected by the California Board of State and Community Corrections, they further estimate that approximately 57% of Jail population is being held pretrial and 43% of the population is serving a sentence of incarceration. (Id.) Based on these estimates both the Pre-Trial and Post-Conviction classes likely have over 1,000 individuals. Additionally, Plaintiffs estimate that “40% of the Pre-trial and Post-conviction Classes are expected to be members of the Disability Subclasses, with an even greater number being a part of each Medically-Vulnerable Subclass.” (Motion at 13.) Based on that figure about 1,200 inmates will be members of the Disability Subclass and at least 1,200 will be members of the Medically-Vulnerable Subclass.

Defendants cryptically respond that numerosity is not satisfied because “[t]here is no issue that the class is so numerous that joinder of members is impracticable.” (Motion Opposition at 4.) But despite their contention that “the Orange County Sheriff’s Department can provide a specific number as to the inmates in custody on a particular day,” they fail to provide any number—even an estimate—that the Court can use to assess numerosity. (See id.) The Court therefore relies on the figures provided by Plaintiffs and finds the class is sufficiently numerous that joinder of all class members would be impracticable for both classes and both subclasses.

2. Commonality

The commonality requirement is satisfied when plaintiffs assert claims that “depend upon a common contention . . . capable of classwide resolution—which means that a determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” Wal-Mart, 564 U.S. at 350; see also id. (“What matters to class certification . . . is not the raising of common questions . . . but, rather, the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation.”) (internal quotation marks and citations omitted). Differences among putative class members can impede the generation of such common answers. Id. In the Ninth Circuit, “Rule 23(a)(2) has been construed permissively. . . . The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class.” Staton v. Boeing Co., 327 F.3d 938, 953 (9th Cir. 2003).

Plaintiffs argue that commonality is satisfied because all class members are incarcerated in Defendants’ Jail during the COVID-19 pandemic and all are subject to the same policies that they now argue are unconstitutional. (Motion at 15–16.) Defendants argue that commonality is not satisfied because “[e]ach individual has a specific medical profile.” (Motion Opposition at 4.) While that may be the case, Plaintiffs challenge Defendants’ institution-wide response and seek institution-wide injunctive relief. Accordingly, the relevant questions such as deliberate indifference will be decided on a classwide, rather than individual, basis. See Armstrong v. Davis, 275 F.3d 849, 868 (9th Cir. 2001) (“Commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.”). The Court therefore finds Plaintiffs have established commonality for both classes and both subclasses.

3. Typicality

“The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class.” Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992). The typicality inquiry focuses on the claims, not the specific facts underlying them. Just Film, Inc. v. Buono, 847 F.3d 1108, 1116 (9th Cir. 2017). “The requirement is permissive, such that ‘representative claims are typical if they are reasonably coextensive with those of absent class members; they need not be substantially identical.’” Id. (quoting Parsons v. Ryan, 754 F.3d 657, 685 (9th Cir. 2014)). “Measures of typicality include

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.” Id. (internal quotations and citations omitted). The applicability of different defenses to the class representative will preclude typicality if “there is a danger that absent class members will suffer if their representative is preoccupied with defenses unique to it.” Id. (quoting Hanon, 976 F.2d at 508).

Here, Plaintiffs are individuals incarcerated at Defendants’ Jail who assert that the conditions of confinement at the Jail during the COVID-19 violate their constitutional and other statutory rights. (Motion at 17.) They advance the same legal arguments for the proposed class. Defendants appear to argue that typicality is not met because “each individual Plaintiff’s claim is subject to unique defenses.” (Motion at 17.) But they fail to identify specifically what those individual defenses are—if Plaintiffs’ claims were truly subject to unique defenses that would distract them from prosecuting the class claims, presumably Defendants would be able to readily identify them. Because they cannot do so, the Court finds that Plaintiffs are typical of the proposed classes and subclasses.

4. Adequacy

In determining whether a proposed class representative will adequately protect the interests of the class, the court asks whether the proposed class representatives and their counsel have any conflicts of interest with any class members and whether the proposed class representatives and their counsel will prosecute the action vigorously on behalf of the class. Hanon, 150 F.3d at 1020.

Plaintiffs represent that they have no conflicts with the proposed classes and subclasses. (Motion at 18.) Additionally, Plaintiffs’ counsel represents that they will prosecute this action vigorously and have experience litigating similar class actions in the same area of law. (Id. at 19.) Defendants do not appear to challenge adequacy. Accordingly, the Court finds the adequacy requirement is satisfied.

5. Rule 23(b) Requirements

Plaintiffs seek to certify their proposed sub-class under Rule 23(b)(2). (Motion at 19–20.) Rule 23(b)(2) permits certification of a class seeking declaratory or injunctive relief where “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). In the Ninth Circuit, “[i]t is sufficient to meet the requirements of Rule 23(b)(2) [when] class members complain of a pattern or practice that is generally applicable to the class as a whole.” Rodriguez I, 591 F.3d at 1125 (9th Cir. 2010) (internal citation and quotation marks omitted) (finding certification under Rule 23(b)(2) proper where “proposed members of the class each challenge Respondents’ practice of prolonged detention of detainees without providing a bond hearing and seek as relief a bond hearing with the burden placed on the government”). Thus, the critical inquiry is “whether class members

seek uniform relief from a practice applicable to all of them.” Rodriguez I, 591 F.3d at 1125.

Here, Plaintiffs challenge the conditions at the Jail and Defendants’ alleged insufficient response to the COVID-19 pandemic. They allege that the conditions of confinement violate their federal constitutional and statutory rights. And they seek uniform injunctive relief: an order compelling Defendants to release members of the Disabled and Medically-Vulnerable subclasses and mitigate the dangers of COVID-19 within the Jail. See Parsons v. Ryan, 754 F.3d 657, 689 (9th Cir. 2014) (Rule 23(b)(2) satisfied where state department of corrections established policies and practices that placed “every inmate in custody in peril” and all class members sought essentially the same injunctive relief). For purposes of this inquiry, “[t]he fact that some class members may have suffered no injury or different injuries from the challenged practice does not prevent the class from meeting the requirements of Rule 23(b)(2).” Id. Here, a single injunction would provide relief to each class member. See Wal-Mart, 564 U.S. at 360. Accordingly, the Court concludes Rule 23(b)(2)’s requirements are satisfied.⁹

B. Preliminary Injunction

1. Success on the Merits or Serious Questions

Defendants argue that Plaintiffs are not likely to succeed on the merits for three reasons: (1) Plaintiffs failed to exhaust administrative remedies; (2) Plaintiffs fail to establish deliberate indifference; and (3) Plaintiffs fail to establish that Defendants discriminated against any members of the Disability Subclass.

a. Exhaustion

The Prison Litigation Reform Act of 1995 (“PLRA”) provides that, “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). Defendants argue that Plaintiffs’ section 1983 claims must fail because they have failed to exhaust their administrative remedies. Plaintiffs, however, have submitted evidence that they filed

⁹ Defendants make several additional arguments in the Motion Opposition which are wholly untethered to the law. For example, they argue about predominance and ongoing litigation by members of the class. (Motion Opposition at 4.) As considerations relevant to Rule 23(b)(3) classes, such arguments are inappropriate here—where Plaintiffs seek certification of Rule 23(b)(2) classes. Additionally, Defendants advance an obscure argument that appears to conflate ascertainability and standing. (Id. at 7.) The Ninth Circuit does not recognize an ascertainability requirement. See Briseno, 844 F.3d at 1125 n.4. Moreover, even if the proposed class included individuals without standing (and it does not, Defendant’s argument on that point is incomprehensible), the existence of putative members without standing does not defeat certification.

grievances with the Jail. (See Grievance Declarations.) The Jail refused to adjudicate some of the grievances and denied others but failed to adjudicate the appeal. (*Id.*) “When prison officials improperly fail to process a prisoner’s grievance, the prisoner is deemed to have exhausted available administrative remedies.” See Andres v. Marshall, 867 F.3d 1076, 1079 (9th Cir. 2017); see also Karas v. Marciano, 2017 WL 6816858, at *4 (C.D. Cal. Nov. 13, 2017) (“When a prisoner submits a [grievance] but never receives a response thereto, the administrative remedies are ‘rendered effectively unavailable by defendants’ actions.”). Accordingly, the Court concludes that Plaintiffs have exhausted available administrative remedies for their section 1983 claims.

b. Deliberate Indifference

Plaintiffs challenge the conditions of their confinement under both the Eighth and Fourteenth Amendments. To succeed under either amendment, Plaintiffs must establish “deliberate indifference” on the part of Defendants. Farmer v. Brennan, 511 U.S. 825, 846 (1994) (Eighth Amendment); Kingsley v. Hendrickson, 135 S.Ct. 2466, 2473–74 (2015) (Fourteenth Amendment). As the Ninth Circuit has explained, “[d]eliberate indifference is the conscious or reckless disregard of the consequences of one’s acts or omissions. It entails something more than negligence but is satisfied by something less than acts or omission for the very purpose of causing harm or with knowledge that harm will result.” Gantt v. City of Los Angeles, 717 F.3d 702, 708 (9th Cir. 2013).

To succeed on their Eighth Amendment claim, Plaintiffs need to prove both objective and subjective deliberate indifference. Farmer, 511 U.S. at 842. Their Fourteenth Amendment claim, however, requires only that they prove objective deliberate indifference. Gordon v. Cty. of Orange, 888 F.3d 1118, 1124–25 (9th Cir. 2018) (“[C]laims for violations of the right to adequate medical care brought by pretrial detainees against individual defendants under the Fourteenth Amendment must be evaluated under an objective deliberate indifference standard”) (internal quotations omitted).

i. Objective Deliberate Indifference

To satisfy the objective prong, Plaintiffs must show an “objectively intolerable risk of harm.” Farmer, 511 U.S. at 842. The Ninth Circuit has established a four-part test to determine objective deliberate indifference:

- (i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant’s conduct obvious; and (iv) by not taking such measures, the defendant caused the plaintiff’s injuries.

Gordon, 888 F.3d at 1125. Plaintiffs have satisfied all four elements.

The risk of harm within the Jail is undeniably high: at least 369 inmates have contracted COVID-19 and the Jail lacks the ability to contain the infection. Because the virus is contagious, absent some dramatic change in course, the uninfected inmates are likely to contract the disease if they remain in the Jail. And the 488 medically vulnerable inmates are likely to get very sick and possibly die.

The parties vigorously debate whether Defendants have complied with the CDC Guidelines. A review of the evidence submitted suggests that although Defendants may have a policy to comply with the CDC Guidelines, actual compliance has been piecemeal and inadequate.¹⁰ Defendants claim to give inmates soap and other personal hygiene supplies, but inmates report that they have not been given enough soap to frequently wash or clean their living spaces. (Compare Balicki Declaration ¶ 10 with Trace Declaration ¶ 2.) Defendants claim to quarantine new arrivals and those with a known exposure, but inmates declare that Defendants allow quarantined individuals to use the same common spaces as the general population. (Compare Balicki Declaration ¶ 7 with ¶ 14.) Defendants claim to be testing inmates, but inmates report that Defendants are not testing all suspected cases. (Compare Chiang Declaration ¶¶ 12, 13 with Seif Declaration ¶ 9; Herrera Declaration ¶¶ 6,10; Wagner Declaration ¶ 14.) Defendants claim that they have a policy to allow inmates to social distance, but inmates report that their bunks are not six feet apart and that social distancing is impossible in the common areas given the number of people. (Compare Balicki Declaration ¶ 9 with Ahlman Declaration ¶¶ 7–8, 11–14; Bonilla Declaration ¶¶ 6–7; Ramirez Declaration ¶ 19; Lentz Declaration ¶ 12.)

At the May 19, 2020 hearing Defendants insisted that the Court should ignore these inmate accounts because they are stale—compliance with the CDC Guidelines is evolving at the CDC Guidelines themselves are evolving. However, the current version of the relevant CDC Guidelines was issued March 23, 2020. If the Defendants were not in compliance with the CDC Guidelines over a month after the Guidelines were issued (when most of the inmate declarations were signed) there is no reason to expect that they have since come into compliance. Moreover, Plaintiffs have submitted recent supplemental declarations demonstrating that the noncompliance is ongoing. For example, on May 13, 2020, an inmate was tested for COVID-19 after exhibiting symptoms but left in the tank with others who had not

¹⁰ To the extent that the OCSO officer testimony submitted by Defendants conflicts with the inmate testimony submitted by Plaintiffs, the Court finds the inmate testimony more credible. The officer testimony is general, brief, and only broadly describes the Jail's policies—it fails to explain with specificity how the policies have been implemented and enforced and the degree of compliance. Conversely, the inmate testimony describes repeatedly and in exacting detail Defendants' failures to implement the CDC Guidelines. Inmate testimony is replete with examples; officer testimony is devoid of it. Moreover, dozens of inmates submit corroborating declarations; while only three OCSO representatives submit declarations.

been infected. (Ahlman Supplemental Declaration ¶ 3.) These continuing compliance failures are not isolated incidents that effect a single Plaintiff. When Defendants fail to quarantine symptomatic individuals or provide sufficient cleaning supplies, all inmates are at risk. Finally, Defendants have submitted no persuasive evidence contradicting the accounts of the inmates. While they submit testimony from three OCSD officers stating broadly that OCSD has policies to provide cleaning supplies, to quarantine individuals, and to test those with symptoms, Defendants fail to provide any specific examples of actual compliance with these policies (e.g., detailed explanations of quarantine practices, numbers of cleaning supplies distributed, etc.).

As Plaintiffs argued at the hearing, the numbers speak for themselves. Defendants' broad and unsupported claim of compliance is belied by the fact that there are 369 confirmed COVID-19 cases in the Jail—up from only 26 confirmed cases less than a month ago on April 22, 2020.¹¹ Assuming a current Jail population of 2,826, the rate of COVID-19 infection at the Jail is 12.4%. That number is astronomical compared to the rate of infection in the Orange County general population, which is about 0.14%.¹² An individual incarcerated at the Jail is nearly one hundred times more likely to get COVID-19 than the average resident of Orange County.¹³

At the hearing, Defendants argued that the number of confirmed COVID-19 cases is skyrocketing due to the increased availability of testing. The below chart maps the OCSD's reported testing results from April 22, 2020 through May 18, 2020. It reveals there has been no recent dramatic surge in testing. Indeed, the rate of testing has remained relatively consistent since April 22, 2020, with the largest number of tests given on May 5, 2020—three weeks ago. Defendants, therefore, cannot simply explain away the soaring number of confirmed cases with a claim of increased testing. Moreover, of the 369 confirmed COVID-19 cases in the Jail, only 302 have recovered to date, meaning that are 57 inmates who likely contracted the virus within the past two weeks.

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¹¹ <https://www.ocsd.org/documents/sheriff/COVIDStats4.22.20.pdf>

¹² Johns Hopkins University, COVID-19 Status Report, Orange County <https://bao.arcgis.com/covid-19/jhu/county/06059.html>

¹³ Given the dramatic disparity between the rates of infection at the Jail and in the general population, Defendants argument that Plaintiffs may be safer in the Jail than they would out of it is statistically absurd. (See Application Opposition at 21-22.)

Jail COVID-19 Testing Results
April 22, 2020 - May 18, 2020¹⁴

Date	Total Tests¹⁵	New Tests¹⁶	Positive Tests	Negative Tests	Recovered
April 22, 2020	63	N/A	26	35	10
April 23, 2020	68	5	23	27	12
April 24, 2020	147	79	82	56	14
April 27, 2020	182	35	93	42	17
April 28, 2020	226	44	96	63	20
April 29, 2020	227	1	117	89	22
April 30, 2020	331	4	122	189	22
May 1, 2020	387	56	168	199	23
May 4, 2020	459	72	219	220	27
May 5, 2020	649	190	227	258	31
May 6, 2020	673	24	241	279	33
May 7, 2020	708	35	251	305	41
May 8, 2020	738	30	259	320	54
May 11, 2020	762	24	289	363	100
May 12, 2020	793	31	322	398	117
May 13, 2020	848	85	331	427	126
May 14, 2020	886	38	335	498	135
May 15, 2020	907	21	335	495	135
May 18, 2020	979	72	350	543	196
May 19, 2020	990	11	360	596	199
May 20, 2020	1,013	23	364	609	235
May 21, 2020	1,031	18	364	627	252
May 22, 2020	1,050	19	365	645	261
May 26, 2020	1,118	68	369	702	302

Based on all the evidence submitted, the Court concludes that Defendants are not complying meaningfully with the CDC Guidelines. Defendants are correct that the CDC Guidance “is not a statute, nor is it a mandate.” (See Application Opposition at 5.) What Defendants fail to appreciate with this argument, however, is that the CDC Guidance provide

¹⁴ Data pulled from daily .pdfs published on Orange County Sheriff’s Department, COVID-19 in OC Jails at https://www.ocsd.org/about_ocsd/covid_19.

¹⁵ This figure also includes tests with pending results. The daily pending results figure has not been included in the chart.

¹⁶ The Court calculated the number of new tests given each day by taking the total test figure for each day and subtracting the total test figure from the day before.

guidance regarding the appropriate response to the risk presented by COVID-19. The suggestions laid out in the CDC Guidelines represent expert medical advice regarding measures needed to limit the spread of COVID-19. An institution that is aware of the CDC Guidelines and able to implement them but fails to do so demonstrates that it is unwilling to do what it can to abate the risk of the spread of infection. In other words, failure to comply demonstrates deliberate indifference toward the health and safety of the inmates. See Wilson v. Williams, 2020 WL 1940882, at *1 (N.D. Ohio April 22, 2020) (finding Defendants acted with deliberate indifference, where despite some proactive measures by Defendants, the prisoners were unable to socially distance and where the prison had “shockingly limited available testing . . .”). It is not enough for Defendants to nominally comply with some portions of the Guidelines sometimes so that they can claim “we are testing” and “we are providing soap”—they must fully and consistently comply so that the compliance is an effective tool to abate the spread of infection.

Moreover, the CDC Guidelines focus their advice on prevention and management of single suspected cases. They do not contemplate hundreds of infections within the population. Accordingly, the CDC Guidelines represent the floor, not the ceiling, of an adequate response to COVID-19 at the Jail, with at least 369 COVID-19 cases. As the rate of infection rises, so must the required response. The amount of care required in a prison with no suspected cases is far different than the amount of care required in an institution with hundreds of cases: one bar of soap a week may not be deliberately indifferent where there are no infections but it certainly is where—as here—there are hundreds of infected individuals with new cases daily. See Hernandez v. Cty. Of Monterey, 110 F. Supp. 3d 929, 942–45 (N.D. Cal. 2015) (finding that “known noncompliance” with CDC tuberculosis guidelines “strongly indicates deliberate indifference to a substantial risk of serious harm” and ordering officials to implement tuberculosis prevention policies). Rates of COVID-19 infection at the Jail are skyrocketing, and Plaintiffs have demonstrated a likelihood of establishing that Defendants are deliberately indifferent to that fact.

ii. Subjective Deliberate Indifference

To succeed on their Eight Amendment claim, Plaintiffs must also prove subjective deliberate indifference. In other words, they must show that Defendants “knew[] of and disregard[ed] an excessive risk to inmate health or safety.” Estate of Ford v. Ramirez-Palmer, 301 F.3d 1043, 1050 (9th Cir. 2002) (quoting Farmer, 511 U.S. at 834 (1994)). Defendants undoubtedly know of the risks posed by COVID-19 infections. Indeed, Defendant Barnes has been repeatedly warned by several organizations—including a group of Orange County Sherriff deputies—of the dangers from COVID-19 in the Jail.¹⁷ Defendants also knew, by way of the CDC

¹⁷ See, e.g., Letter from Jacob Reisberg and Daisy Ramirez, ACLU of Southern California, to Sheriff-Coroner Donald Barnes, Re: COVID-19 Policy in Orange County Jails (Mar. 12, 2020) (ACLU So Cal warning sheriff of risks); Letter from Transforming Justice, et al., to Sheriff Don Barnes, et al., Re: COVID-19 Containment in Orange County Jails and Courthouses (Mar. 17,

Guidelines, that failure to take certain precautionary measures would result in an increase in the spread of infections. The Court concludes that Plaintiffs have established the likelihood of subjective deliberate indifference. Accordingly, Plaintiffs have shown a likelihood of success on their Eight Amendment claim.

c. Disability Claims

Defendants argue that Plaintiffs have not established a likelihood of success on their ADA and Unruh Act claims because they “do not allege, and cannot show, that Defendants discriminated against them because of their medical condition or other disability.” (Application Opposition at 21.) In response, Plaintiffs assert that they do not need to show intentional discrimination, the law only requires that they demonstrate that Defendants likely failed to provide reasonable accommodation. (Application Reply at 9.) Indeed, the Ninth Circuit has held a defendant’s failure to provide reasonable accommodations is “sufficient to demonstrate discrimination ‘by reason of’ disability.” McGary v. City of Portland, 386 F.3d 1259, 1265-66 (9th Cir. 2004). Because Plaintiffs have demonstrated that the Jail has failed to make reasonable accommodations to allow members of the Disabled Class to participate safely in the programs of the Jail, Plaintiffs have demonstrated a likelihood of success on their disability claim.

2. Likelihood of Irreparable Harm

A plaintiff must demonstrate she is likely to suffer irreparable harm in the absence of a preliminary injunction. See Winter, 555 U.S. at 20. The Ninth Circuit cautions that “[s]peculative injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction.” Caribbean Marine Servs. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988). A plaintiff seeking injunctive relief must demonstrate that “remedies available at law, such as monetary damages, are inadequate to compensate” for the injury. Herb Reed Enters., LLC v. Fla. Entm’t Mgmt., 736 F.3d 1239, 1249 (9th Cir. 2013). “It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting Elrod v. Burns, 427 U.S. 347, 373 (1976)).

Plaintiffs have established a likelihood of irreparable harm. There are at least 369 cases of COVID-19 in the Jail. Without additional measures to abate the spread, more inmates will contract the disease. Undoubtedly some will die. Certainly, there is no greater irreparable harm than death. Helling v. McKinney, 509 U.S. 25, 33 (1993) (holding that the Constitution protects those in detention against “a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year.”); see also

2020) (multiple community organizations); Letter from Tom Dominguez, Ass’n of Orange County Deputy Sheriffs, to Sheriff Don Barnes (Mar. 25, 2020) (deputies); Letter from Transforming Justice Orange County, et al., to Sheriff Don Barnes, et al., Re: COVID-19 in Orange County Jails (Apr. 6, 2020) (multiple community organizations)

Unknown Parties v. Johnson, 2016 WL 8188563, at *15 (D. Ariz. No. 18, 2016), (finding evidence of “medical risks associated with . . . being exposed to communicable diseases” adequate to establish irreparable harm).

3. Balance of the Equities and Public Interest

Where the government is the opposing party, balancing of the harm and the public interest merge. See Nken v. Holder, 556 U.S. 418, 435 (2009). Thus, the Court asks whether any significant “public consequences” would result from issuing the preliminary injunction. Winter, 555 U.S. at 24.

Plaintiffs request extensive and explicit injunctive relief, which falls broadly into two categories. First, seek an order requiring Defendants to “[r]elease [members of the Medically-Vulnerable and Disability Subclasses] within twenty-four hours.” (Complaint at 61.) Second, they seek several remedial measures aimed at reducing the risk at the Jail, including an order requiring Defendants to “[i]mmediately adopt mitigation efforts to protect all Class Members not immediately released.” (Complaint at 61–64.) Because the public consequences of the two categories of injunctions are different, the Court will assess them separately.

i. Mandating Compliance with CDC Guidelines

The balance of equities and public interest tilt heavily Plaintiffs’ favor when contemplating compliance with the CDC Guidelines. “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” Melendres, 695 F.3d at 1002 (quotation omitted). Moreover, there can be no public interest in exposing vulnerable persons to increased risks of severe illness and death. “Faced with . . . preventable human suffering, [the Ninth Circuit] ha[s] little difficulty concluding that the balance of hardships tips decidedly in plaintiffs’ favor.” Hernandez v. Sessions, 872 F.3d 976, 996 (9th Cir. 2017) (quoting Lopez v. Heckler, 713 F.2d 1432, 1437 (9th Cir. 1983)).

Defendants argue that the balance of equities tilts in their favor because their “weighty interests are those of the general public in the orderly administration of the jails and in maintaining public safety.” (Application Opposition at 22.) This argument fails for two reasons. First, it inappropriately relies on a decision in which the Fifth Circuit found that enjoining a prison from following state law represented irreparable injury to the prison. See Valentine v. Collier, 956 F.3d 797, 803 (5th Cir. 2020) (“The district court’s injunction prevents the State from effectuating the Legislature’s choice and hence imposes irreparable injury.”) Here, Plaintiffs do not attempt to enjoin Defendants from following state law but to comply with guidelines issued by a federal agency. Second, compliance with CDC guidelines promotes the orderly administration of jails—an inmate population with a skyrocketing rate of infection is far from orderly. Accordingly, mandating compliance with the CDC Guidelines in the Jail serves the public interest.

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ii. Release of Medically Vulnerable and Disabled Subclasses

Plaintiffs, however, have not met their burden to prove that the balance of equities tilts in favor of releasing all medically vulnerable and disabled inmates. There are myriad risks of releasing incarcerated individuals without any consideration of crime committed, propensity to violence, or flight risk. Concerns that released inmates would commit crimes is far from “speculative”—many of the individuals in the proposed class have committed or are charged with violent crimes. Moreover, some pre-trial inmates may pose a flight risk. Such a haphazard release of inmates could present a threat to public safety. Because it is plausible that the Jail could mitigate many of the risks presented by COVID-19 with better compliance with the CDC Guidelines, Plaintiffs have not met their burden to demonstrate that the need for release outweighs the risks of releasing of 488 inmates without individualized assessments.¹⁸

V. CONCLUSION

The Court GRANTS Plaintiffs’ Motion. The Court further GRANTS-IN-PART and DENIES-IN-PART Plaintiffs’ Application as follows:

- Defendants shall provide adequate spacing of six feet or more between incarcerated people so that social distancing can be accomplished in accordance with CDC guidelines;
- Defendants shall effectively communicate to all incarcerated people, including low literacy and non-English-speaking people, sufficient information about COVID-19, measures taken to reduce the risk of transmission, and any changes in policies or practices to reasonably ensure that individuals are able to take precautions to prevent infection;
- Defendants shall ensure that each incarcerated person receives, free of charge, an individual supply of hand soap and paper towels sufficient to allow frequent hand washing and drying each day; an adequate supply of clean implements for cleaning such as sponges and brushes and disinfectant hand wipes or disinfectant products effective against the virus that causes COVID-19 for daily cleanings;
- Defendants shall ensure that all incarcerated people have access to hand sanitizer containing at least 60% alcohol;
- Defendants shall provide access to daily showers and daily access to clean laundry, including clean personal towels and washrags after each shower;

¹⁸ Because the Court denies Plaintiffs’ request to release the Medically-Vulnerable class, it need not decide several issues raised in the Application Opposition, including whether Plaintiffs are entitled to pursue section 2241 habeas relief.

- Defendants shall require that all Jail staff wear personal protective equipment, including CDC-recommended surgical masks, when interacting with any person or when touching surfaces in cells or common areas;
- Defendants shall require that all Jail staff wash their hands, apply hand sanitizer containing at least 60% alcohol, or change their gloves both before and after interacting with any person or touching surfaces in cells or common areas;
- Defendants shall take the temperature of all class members, Jail staff, and visitors daily (with a functioning and properly operated and sanitized thermometer) to identify potential COVID-19 infections;
- Defendants shall assess (through questioning) each incarcerated person daily to identify potential COVID-19 infections.
- Defendants shall conduct immediate testing for anyone (class members, Jail staff and visitors) displaying known symptoms of COVID-19;
- Defendants shall ensure that individuals identified as having COVID-19 or having been exposed to COVID-19 receive adequate medical care and are properly quarantined (without resorting to cohorting, if possible), in a nonpunitive setting, with continued access to showers, recreation, mental health services, reading materials, phone and video visitation with loved ones, communications with counsel, and personal property;
- Defendants shall respond to all emergency (as defined by the medical community) requests for medical attention within an hour;
- Defendants shall provide sufficient disinfecting supplies, free of charge, so incarcerated people can clean high-touch areas or items (including, but not limited to, phones and headphones) between each use;
- Defendants shall waive all medical co-pays for those experiencing COVID-19-related symptoms.

All other requests for relief in the Application are DENIED.

IT IS SO ORDERED.

ECF 68

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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **SOUTHERN DIVISION**

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17 PEDRO BONILLA, CYNTHIA
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19 MARK TRACE, CECIBEL CARIDAD
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21 themselves and all others similarly situated,
22 *et al.*,

23 Plaintiffs/Petitioners,

24 v.

25 DON BARNES, in his official capacity as
26 Sheriff of Orange County, California; and
27 ORANGE COUNTY, CALIFORNIA.

28 Defendants/Respondents.

Case No. 8:20-cv-00835-JGB-SHK

Assigned to the Honorable Jesus G. Bernal

DEFENDANTS' NOTICE OF APPEAL

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1 Defendants Don Barnes, in his official capacity as Sheriff of Orange County,
2 California and the County of Orange, (“Defendants”) hereby appeal U.S. District Judge
3 Jesus G. Bernal’s May 26, 2020 preliminary injunction Order [ECF 65] to the United States
4 Court of Appeals for the Ninth Circuit.

5 Respectfully submitted,

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11 DATED: May 27, 2020

12 By: /S/
13 Kayla N. Watson, Deputy

14 Attorneys for Defendants DON BARNES
15 and COUNTY OF ORANGE

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17 COUNTY OF ORANGE
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PRELIMINARY INJUNCTION APPEAL

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 1. Notice of Appeal from a Judgment or Order of a
United States District Court

Name of U.S. District Court: Central District of California, Southern Division

U.S. District Court case number: 8:20-cv-00835-JGB-SHK

Date case was first filed in U.S. District Court: April 30, 2020

Date of judgment or order you are appealing: May 26, 2020

Fee paid for appeal? (appeal fees are paid at the U.S. District Court)

Yes No IFP was granted by U.S. District Court

List all Appellants (List each party filing the appeal. Do not use "et al." or other abbreviations.)

DON BARNES, in his official capacity as Sheriff of Orange County, California; and ORANGE COUNTY, CALIFORNIA.

Is this a cross-appeal? Yes No

If Yes, what is the first appeal case number?

Was there a previous appeal in this case? Yes No

If Yes, what is the prior appeal case number?

Your mailing address:

333 West Santa Ana Boulevard, Suite 407

City: Santa Ana State: CA Zip Code: 92701-4017

Prisoner Inmate or A Number (if applicable):

Signature *Kyle Watson* Date 5/28/20

Complete and file with the attached representation statement in the U.S. District Court

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 6. Representation Statement

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>

Appellant(s) (List each party filing the appeal, do not use "et al." or other abbreviations.)

Name(s) of party/parties:

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To list additional parties and/or counsel, use next page.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Continued list of parties and counsel: *(attach additional pages as necessary)*

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CERTIFICATE OF SERVICE

I do hereby declare that I am a citizen of the United States employed in the County of Orange, over 18 years old and that my business address is 333 W. Santa Ana Blvd., Ste. 407, Santa Ana, California 92701; and my e-mail address is simon.perng@coco.ocgov.com. I am not a party to the within action.

[] (BY U.S. MAIL) On _____, I caused the document, **DEFENDANTS' NOTICE OF APPEAL**, to be placed in an envelope(s) addressed as shown below (last known addresses) for collection and mailing at Santa Ana, California, following our ordinary business practices. I am readily familiar with this office's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

[X] (BY CM/ECF) On **May 27, 2020**, I caused the aforementioned document to be served upon all counsel of record in this action who are registered with the United States District Court's CM/ECF system and listed below by utilizing the United States District Court's CM/ECF system:

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ECF 86

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16 and COUNTY OF ORANGE (erroneously named
17 as ORANGE COUNTY, CALIFORNIA

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

14 MELISSA AHLMAN, DANIEL KAUWE,
15 MICHAEL SEIF, JAVIER ESPARZA,
16 PEDRO BONILLA, CYNTHIA
17 CAMPBELL, MONIQUE CASTILLO,
18 MARK TRACE, CECIBEL CARIDAD
19 ORTIZ, and DON WAGNER, on behalf of
20 themselves and all others similarly situated,
21 *et al.*,

22 Plaintiffs/Petitioners,

23 v.

24 DON BARNES, in his official capacity as
25 Sheriff of Orange County, California; and
26 ORANGE COUNTY, CALIFORNIA.

27 Defendants/Respondents.

Case No. 8:20-cv-00835-JGB-SHK

**DEFENDANTS' EX PARTE
APPLICATION TO IMMEDIATELY
DISSOLVE MAY 26, 2020
PRELIMINARY INJUNCTION; OR IN
THE ALTERNATIVE, SET
EXPEDITED HEARING TO
DISSOLVE PRELIMINARY
INJUNCTION**

**[Memorandum of Points and Authorities
in Support Thereof, Declarations in
Support & [Proposed] Order
concurrently filed herewith]**

TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

Pursuant to Local Rule 7-19, the above-captioned Defendants, by and through undersigned counsel, hereby apply ex parte to dissolve the Preliminary Injunction issued on

//

//

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

1 May 26, 2020 [ECF 65¹] (the “Order”) or in the alternative, grant Defendants an evidentiary
2 hearing on an expedited basis to further establish the facts supporting dissolving the Order.
3 It is further requested that this Court give scheduling priority to this Ex Parte Application
4 and the requests herein and in the supporting Memorandum of Points and Authorities filed
5 concurrently herewith as this issue will better determine the scope of the discovery
6 Plaintiffs are entitled to. Specifically, Defendants will and hereby do move the Court for:

- 7 (1) An Order dissolving the Order upon the showing of changed circumstances by
- 8 Defendants in these papers; or
- 9 (2) *Alternatively*, if the Court does not dissolve the PI Order outright, for an Order
- 10 granting Defendants an evidentiary hearing on an expedited basis to further
- 11 establish the facts supporting dissolving the Order.

12 Defendants make this request ex parte to protect Defendants’ rights and maintain the
13 *status quo* of conditions at the Orange County Jail (“Jail”), which have significantly
14 improved since this Court issued the Order. *As of today*, there are only 6 COVID positive
15 inmates in the Jail, and *all are new arrestees*. This is significant new evidence because it
16 demonstrates that there is currently *zero* intra-facility COVID-19 spread among the inmate
17 population and the current positive cases are a result of new arrestees becoming infected
18 through community transmission, and not from becoming infected in the Jail. As such,
19 Defendants request to immediately dissolve the Order on the grounds that the Order is not
20 factually or legally supported for it to remain.

21 As set forth in further detail in the Memorandum of Points and Authorities filed
22 concurrently herewith and the Declarations submitted in support thereof, Defendants submit
23 that good cause exists to grant the relief requested herein. The Court of Appeals “*sua*
24 *sponte* remand[ed] this case to [this Court] for the limited purpose of allowing the parties to
25 present any evidence of changed circumstances that might merit modification or dissolution
26 of the preliminary injunction.” Dkt. 16, 19. Accordingly, Defendants submit this ex parte
27

28

¹ All references to ECF are to filings in the District Court case, while references to Dkt. are to filings in the Court of Appeals case.

OFFICE OF THE COUNTY COUNSEL
 COUNTY OF ORANGE

1 application seeking immediate relief from this Court as Defendants have significant new
 2 evidence to present to this Court that warrant dissolving the preliminary injunction.

3 In the alternative, Defendants respectfully request that this Court grant Defendants an
 4 evidentiary hearing on an expedited basis to further establish the facts supporting dissolving
 5 the Order.

6 Pursuant to Local Rule 7-19.1, on June 15, 2020, Defendants’ undersigned counsel
 7 provided notice of its intent to file this ex parte application to Plaintiffs’ counsel by
 8 electronic mail, and inquired as to Plaintiffs’ position. See Declaration of Kayla Watson.
 9 On June 17, counsel for both parties met and conferred over the phone regarding *inter alia*,
 10 the grounds for Defendants seeking ex parte relief, which Plaintiffs’ counsel disagreed with.
 11 *Id.* Plaintiffs’ counsel’s name, address, and telephone number are as follows:

12 Stacey K. Grigsby
 13 sgrigsby@cov.com
 14 Covington & Burling LLP
 15 One City Center, 850 Tenth Street, NW
 16 Washington, DC 200001-4956
 17 (202) 662-5238

18 Defendants’ application is based on this Notice of Ex Parte Application, the
 19 accompanying Memorandum of Points and Authorities, the Declarations filed concurrently
 20 herewith, the pleadings, transcripts, records and papers filed herein, and such other and
 21 further oral and documentary evidence and legal memoranda as may be presented at or by
 22 hearing on this application. A proposed order is lodged herewith.

23 DATED: June 19, 2020

Respectfully submitted,

24 LEON J. PAGE, COUNTY COUNSEL
 25 KAYLA N. WATSON, DEPUTY

26 By: /s/
 27 Kayla N. Watson, Deputy

28 Attorneys for Defendants,
 Don Barnes and County of Orange

CERTIFICATE OF SERVICE

I declare that I am a citizen of the United States employed in the County of Orange, over 18 years old and that my business address is 333 W. Santa Ana Blvd., Ste. 407, Santa Ana, California 92701; and my e-mail address is Marzette.lair@ coco.ocgov.com. I am not a party to the within action.

BY CM/ECF: On June 19, 2020, I caused the document DEFENDANTS' EX PARTE APPLICATION TO DISSOLVE MAY 26, 2020 PRELIMINARY INJUNCTION; OR IN THE ALTERNATIVE, SET EXPEDITED HEARING TO DISSOLVE PRELIMINARY INJUNCTION to be served upon all counsel of record in this action who are registered with the United States District Court's CM/ECF system and listed below by utilizing the United States District Court's CM/ECF system:

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---	--

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed in Santa Ana, California this 19th day of June, 2020

s/Marzette L. Lair

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8 Attorneys for Defendants DON BARNES
9 and ORANGE COUNTY, CALIFORNIA

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **EASTERN DIVISION**

14 MELISSA AHLMAN, DANIEL KAUWE,
MICHAEL SEIF, JAVIER ESPARZA,
15 PEDRO BONILLA, CYNTHIA
CAMPBELL, MONIQUE CASTILLO,
16 MARK TRACE, CECIBEL CARIDAD
ORTIZ, and DON WAGNER, on behalf of
17 themselves and all others similarly situated,
et al.,

18 Plaintiffs/Petitioners,

19 v.

20 DON BARNES, in his official capacity as
21 Sheriff of Orange County, California; and
ORANGE COUNTY, CALIFORNIA.

22 Defendants/Respondents.
23

Case No. 8:20-cv-00835-JGB-SHK

**DEFENDANTS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF APPLICATION TO
IMMEDIATELY DISSOLVE
PRELIMINARY INJUNCTION OR
ALTERNATIVELY SET EXPEDITED
HEARING TO DISSOLVE
PRELIMINARY INJUNCTION**

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OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

TABLE OF CONTENTS

Page No.

1

2

3 TABLE OF AUTHORITIES 3

4 I. INTRODUCTION 4

5 II. FACTUAL AND PROCEDURAL BACKGROUND 6

6 III. ARGUMENT..... 8

7 A. THE PRELIMINARY INJUNCTION IS NO LONGER

8 “NECESSARY” TO CORRECT A VIOLATION OF ANY

9 FEDERAL RIGHT 8

10 B. NEW FACTS AND SIGNIFICANT CHANGED

11 CIRCUMSTANCES WARRANT DISSOLVING THE

12 PRELIMINARY INJUNCTION..... 10

13 C. NEW EVIDENCE WARRANTS THIS COURT DISSOLVING

14 THE INJUNCTION OR SETTING A HEARING TO DO SO..... 11

15 1. The Information in Support of the Order is No Longer

16 Reflective of Current Circumstances in a Rapidly

17 Improving Environment..... 11

18 2. Plaintiffs No Longer Face Any Prospect of

19 Irreparable Harm 14

20 3. Comity Counsels Restraint Here and Warrants Presently

21 Dissolving the Injunction..... 15

22 D. DISSOLVING THE INJUNCTION WILL PRESERVE THE

23 STATUS QUO AND NOT HARM PLAINTIFFS 16

24 IV. CONCLUSION..... 17

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TABLE OF AUTHORITIES

Page No.

Cases

A&M Records, Inc. v. Napster, Inc.
284 F.3d 1091, 1098 (9th Cir. 2002) 10

Farmer v. Brennan
511 U.S. 825, 834 (1994) 15

Flores v. Huppenthal
789 F.3d 994, 1001 (9th Cir. 2015) 10

Gon v. First State Ins. Co.
871 F.2d 863, 866-67 (9th Cir. 1989)..... 10

Gordon v. County of Orange
888 F.3d 1118, 1124 (9th Cir. 2018) 14

Levin v. Commerce Energy, Inc.
560 U.S. 413, 421 (2010) 15

South Bay Pentecostal Church v. Newsom
No. 19A1044, 2020 WL 2813056 (U.S. May 29, 2020)..... 15

State v. Trump
871 F.3d 646, 654 (9th Cir. 2017) 10

Swain
2020 WL 3167628, at *5 15

U.S. ex rel. F.T.C. v. Bus. Recovery Servs. LLC
488 F. App'x 188, 189-90 (9th Cir. 2012) 10

Statutes

18 U.S.C. § 3626(a)(1)..... 9

18 U.S.C. § 3626(a)(1)(B) 9

18 U.S.C. § 3626(d)(4).....9-10

18 U.S.C. § 3626(g)(7)..... 8

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

1 **I. INTRODUCTION**

2 Defendants earnestly and respectfully implore this Court to lift its May 26, 2020
3 Preliminary Injunction Order due to significant changed circumstances and new facts.
4 There are presently only 6 COVID cases in the entire Orange County Jail (the “Jail”) (*all*
5 *institutions*) and all those cases are from new arrestees, (who have immediately been placed
6 into quarantine) not from becoming infected in the Jail. *See* Declaration of Dr. Chiang ¶ 5-
7 6. New arrestees who test positive at booking are quarantined for a minimum of 14 days
8 pursuant to CDC recommendations and are tested prior to joining the general population.
9 As a result of these prompt and critical protocols implemented well before the Court’s May
10 26th Order, the existing inmate population is at *very low risk* of contracting COVID.
11 Because of this minimal risk, six feet social distancing at all times among inmates is not
12 necessary, especially, for example, between cellmates, both of whom are COVID-free and
13 interact only with each other—akin to a family unit or roommate—and especially when all
14 inmates have been provided facial coverings/masks and can exchange the face mask on a
15 daily basis. Further, inmates have ample toilet paper, cleaning supplies, and hand sanitizer
16 at their constant disposal. *See* photographs attached to Declarations of Captain Rich,
17 Captain Von Nordheim, and Captain Ramirez filed concurrently herewith. In addition, Jail
18 staff deputies use electromagnetic spray sanitizer to disinfect high touch surfaces twice
19 daily. *See* Rich Decl., Exh. F. The Orange County Sheriff’s Department’s (the “Sheriff”)
20 efforts in combatting COVID in the Jail is nothing short of astounding. There may be
21 institutions under this Court’s jurisdiction that have been lax in responding to this
22 pandemic. The Orange County Sheriff’s Department is not one of them. It is a model in
23 successful management and mitigation of a deadly contagion in difficult circumstances for
24 the benefit of all inmates, staff and the public. The Sheriff’s efforts should be commended.
25 Were the facts regarding hygiene, distancing, personal protective equipment and cleaning
26 anything other than those presented by Defendants to this Court, the results here would not

27 //

28 //

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COUNTY OF ORANGE

1 be as dramatically positive for the inmates.¹ Plaintiffs have no competing evidence that
2 COVID continues in the jails (other than as described regarding new arrestees).

3 We are respectfully and earnestly pleading to this Court to examine the stark
4 evidence of: (1) a dramatic decline in COVID at the Jail (before, during, and after this
5 Court’s May 26 Order); (2) the fact that there are **only 6** remaining cases in the entire Jail;
6 (3) that those remaining cases are from new arrestees from the community and not from
7 transmission in the Jail; and finally, (4) that the Sheriff’s robust mitigation measures and
8 verifiable outcomes no longer require this Court’s Preliminary Injunction (“Order”).

9 We are respectfully requesting that this Court either: (a) dissolve the Preliminary
10 Injunction upon the showing of changed circumstances by Defendants in these papers, or
11 alternatively, (b) grant Defendants an evidentiary hearing on an expedited basis to further
12 establish the facts supporting dissolving the Preliminary Injunction.

13 This matter requires examination of current, diminishing numbers for an accurate
14 legal determination. While COVID cases were already in sharp decline at the Jail on May
15 26, 2020, the current numbers showing complete eradication of COVID transmission
16 among the inmates at the Jail—a fact that did not exist at the time of this Court’s Order, and
17 consequently, could not have been considered by the District Court. Given this new
18 evidence of **current** COVID cases in the Jail, the Order is not factually or legally supported
19 for it to remain. Moreover, many of Plaintiffs factual assertions in the Declarations that
20 supported the Order are no longer relevant or were never accurate. *See* Declaration of
21

22
23 ¹ Plaintiffs appear to refuse to believe the COVID numbers provided, as if the Sheriff
24 were somewhere hiding additional COVID positive inmates. Plaintiffs seek unreasonable,
25 unnecessary and promiscuous jail inspections, depositions, and vast and overly burdensome
26 discovery in order (already served) for Defendants to extricate themselves here. ***It is
27 unclear what else the Sheriff could do beyond reduce jail transmission to ZERO and
28 properly quarantine, test and protect new arrestees who are positive or symptomatic.***
Tellingly, Plaintiffs have not proposed ***anything*** other than sweeping discovery and
invasive inspections and examinations that Defendants could do to satisfy them. The
injunction has been weaponized by Plaintiffs here, and it is solely punitive to Defendants at
this point. It is dubious that even complete inmate population inoculation with a 100%
effective vaccine (if one existed) would result in any movement of Plaintiffs’ position in
this matter. We respectfully seek the Court’s assistance.

1 Sergeant Hennessey and Declaration of Erin Winger filed concurrently herewith. As such,
2 taking all of this current information into consideration, the Order should be dissolved as
3 there are no current facts to support it. Defendants’ new evidence is directly relevant to the
4 balancing of the harms and thoroughly demonstrates why dissolving the Order, or in the
5 alternative, why shortening time to hear the Defendants’ Motion to Dissolve the Order, is
6 necessary.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 On April 30, 2020, ten inmates at the Orange County Jails (“OCJ”) filed a class
9 action habeas corpus case seeking emergency injunctive relief against Defendants. ECF 1².
10 Plaintiffs claim that the Sheriff has failed to implement the Center for Disease Control
11 Guidelines (“CDC Guidelines”) for custodial facilities and, as a result, Plaintiffs’ conditions
12 of incarceration have put them all at imminent risk of serious illness or death from COVID-
13 19. *Id.*

14 On May 11, 2020, Plaintiffs filed an ex parte application and motion for temporary
15 restraining order and preliminary injunction seeking (1) mandated compliance with CDC
16 Guidelines for COVID-19 in the OCJ, and (2) the immediate release of all “medically
17 vulnerable” jail inmates. ECF 41-1. This Court set the matter for telephonic hearing on
18 May 19, 2020. ECF 51, 55. On May 26, 2020, the Court issued its 21-page ruling, granting
19 the Plaintiffs class-wide injunctive relief and making findings. ECF 65. Because
20 circumstances have dramatically changed since the Court issued its Order, these are the
21 subject of this Motion to Dissolve.

22 On May 27, 2020, Defendants filed an ex parte application to stay all proceedings
23 pending appeal. ECF 66. The Court denied Defendants’ Stay Application on June 2, 2020.
24 ECF 72. Defendants then filed an Appeal in the United States Court of Appeals for the
25 Ninth Circuit (“COA”) and moved for both an Emergency Stay and Stay Pending Appeal.
26

27
28 ² All references to ECF are to filings in the District Court case, while references to
Dkt. are to filings in the Court of Appeals case.

1 ECF 68; Dkt. 1, 8. On June 4, 2020, the COA declined an Emergency Stay. Dkt. 10. On
2 June 8, 2020, Plaintiffs filed a response opposing Defendants’ request for stay. Dkt. 13.
3 On June 10, Defendants filed a Reply in support of Stay Pending Appeal (Dkt. 14) and an
4 Emergency Motion to Supplement the Record on Appeal. Dkt. 15. On June 12, the COA
5 denied Defendants stay application, however *sua sponte* remanded the case to this Court for
6 the “limited purpose of allowing the parties to present any evidence of changed
7 circumstances that might merit modification or dissolution of the preliminary injunction.”
8 Dkt. 16, Dkt. 19-1.

9 Meanwhile, in this Court, on June 4th Defendants filed a motion to dismiss Plaintiffs’
10 Complaint under FRCP Rule 12(b)(6). ECF 73. On June 12, Plaintiffs filed a First
11 Amended Complaint. ECF 79. On June 15, Plaintiffs oddly filed an opposition to
12 Defendants’ motion to dismiss, even though their First Amended Complaint mooted the
13 motion to dismiss. On June 16, prior to meeting and conferring with Defendants, Plaintiffs
14 served Defendants with Plaintiffs' First Set of Interrogatories, Requests for Production of
15 Documents, Notice of Inspection, and Deposition Notices for Commander Balicki, Dr.
16 Chiang, and Ms. Winger. Thereafter, on June 18, Plaintiffs filed a Motion for Expedited
17 Discovery alleging it is “limited in scope” when in fact the requests are premature, invasive,
18 harassing and contrary to the spirit and letter of FRCP Rule 26. Nevertheless, this Court
19 should give priority to this Motion to dissolve the preliminary injunction as suggested by
20 the Court of Appeals. Dkt. 19.

21 Also, during this time, on June 4th, almost identical Plaintiffs filed a Petition for Writ
22 of Mandate in Orange County Superior Court, Case No. 30-2020-01141117-CU-WM-CXC,
23 seeking class-wide release of all medically vulnerable and disabled inmates in the Jail. *See*
24 Register of Actions attached as Exhibit A. On June 5th, Plaintiffs moved ex parte in the
25 Superior Court for a temporary restraining order and preliminary injunction for class-wide
26 release. Defendants opposed Plaintiffs’ ex parte application and to date, the ex parte
27 hearing has not been scheduled by the Superior Court. *Id.*

28 //

1 As of the filing of this Motion, there are only 6 COVID positive inmates and for the
2 last two weeks, all new COVID cases have come from new arrestees being booked into the
3 Jail. See Declaration of Dr. Chiang at ¶¶ 5-6. This is a *significant decrease* in COVID
4 positive cases. On May 19th, the date of the hearing there were 161 COVID positives (ECF
5 65, p. 16). On May 26th, the date the Order was issued there were 67 COVID positive
6 inmates. *Id.* Today, there are 6 COVID positive inmates and all are new arrestees. See
7 *Chaing Decl.* ¶¶5-7. This further demonstrates that Defendants did not fall “significantly
8 short of complying with the CDC Guidelines” (Dkt. 19-1, fn 8) prior to May 26, as it would
9 be *impossible* for a correctional facility the size of the Orange County Jail, with multiple
10 congregate living quarters, to make this type of significant progress as Defendants have
11 done here.

12 **III. ARGUMENT**

13 **A. THE PRELIMINARY INJUNCTION IS NO LONGER “NECESSARY”** 14 **TO CORRECT A VIOLATION OF ANY FEDERAL RIGHT**

15 The Prison Litigation Reform Act (“PLRA”) specifically limits prospective relief to
16 that which is “necessary.” It also provides that such relief must be “narrowly drawn” and
17 be “the least intrusive means necessary” to correct a violation of a federal right. The PLRA
18 defines prospective relief to mean “all relief other than compensatory monetary damages.”
19 18 U.S.C. sec. 3626(g)(7). Specifically, the PLRA provides:

20 Prospective relief in any civil action with respect to prison
21 conditions shall extend no further than necessary to correct the
22 violation of the Federal right of a particular plaintiff or plaintiffs.
23 The court shall not grant or approve any prospective relief unless
24 the court finds that such relief is narrowly drawn, extends no
25 further than necessary to correct the violation of the Federal
26 right, and is the least intrusive means necessary to correct the
27 violation of the Federal right. The court shall give substantial
28

1 weight to any adverse impact on public safety or the operation of
2 a criminal justice system caused by the relief.

3 18 U.S.C. sec. 3626(a)(1).

4 In undertaking this analysis, a federal court must not only consider the “adverse
5 impact on public safety or the operation of a criminal justice system caused by the relief,” it
6 must give it “substantial weight” in the analysis.

7 (B) . . . The court shall give substantial weight to any adverse
8 impact on public safety or the operation of a criminal justice
9 system caused by the preliminary relief and shall respect the
10 principles of comity set out in paragraph (1)(B) in tailoring any
11 preliminary relief. Preliminary injunctive relief shall
12 automatically expire on the date that is 90 days after its entry,
13 unless the court makes the findings required under subsection
14 (a)(1) for the entry of prospective relief and makes the order final
15 before the expiration of the 90-day period.

16 18 U.S.C. sec. 3626(a)(1)(B).

17 With respect to termination of prospective relief, the PLRA provides:

18 (4) Termination or modification of relief.—

19 Nothing in this section shall prevent any party or intervener from
20 seeking modification or termination before the relief is
21 terminable under paragraph (1) or (2), to the extent that
22 modification or termination would otherwise be legally
23 permissible.

24 (e) Procedure for Motions Affecting Prospective Relief.—

25 (1) Generally.—

26 The court shall promptly rule on any motion to modify or
27 terminate prospective relief in a civil action with respect to prison
28

1 conditions. Mandamus shall lie to remedy any failure to issue a
2 prompt ruling on such a motion.

3 18 U.S.C. sec 3626(d)(4). Defendants move pursuant to 18 U.S.C. section 3626(d)(4) to
4 terminate the prospective relief issued in this case on May 26, 2020.

5 **B. NEW FACTS AND SIGNIFICANT CHANGED CIRCUMSTANCES**
6 **WARRANT DISSOLVING THE PRELIMINARY INJUNCTION**

7 In addition to the PLRA provisions cited above, the Court has *inherent* authority to
8 dissolve or modify the injunction here. “A district court has inherent authority to modify a
9 preliminary injunction in consideration of new facts.” *A&M Records, Inc. v. Napster, Inc.*,
10 284 F.3d 1091, 1098 (9th Cir. 2002). “A party seeking modification of an injunction bears
11 the burden of establishing that a significant change in facts or law warrants revision of the
12 injunction.” *State v. Trump*, 871 F.3d 646, 654 (9th Cir. 2017) (quotation marks and ellipses
13 omitted). Typically, a motion to modify or dissolve a preliminary injunction is limited to
14 new facts or law, and consequently, “[a] motion to modify or dissolve an injunction cannot
15 be used to challenge the imposition of the original injunction.” *U.S. ex rel. F.T.C. v. Bus.*
16 *Recovery Servs. LLC*, 488 F. App’x 188, 189-90 (9th Cir. 2012). “On the other hand, a
17 modification may be so fundamental to the original injunction, or may otherwise present
18 issues so inextricable from the validity of the original injunction, that review must include
19 the whole package.” *Gon v. First State Ins. Co.*, 871 F.2d 863, 866-67 (9th Cir. 1989). “A
20 court abuses its discretion when it refuses to modify an injunction or consent decree in light
21 of a significant change either in factual conditions or in law that renders continued
22 enforcement detrimental to the public interest.” *Flores v. Huppenthal*, 789 F.3d 994, 1001
23 (9th Cir. 2015) (quotation marks omitted).

24 When the preliminary injunction is with respect to jail conditions, the Prison
25 Litigation Reform Act (“PLRA”) specifically limits prospective relief to that which is
26 “necessary.” It provides:

27 Prospective relief in any civil action with respect to prison
28 conditions shall extend no further than necessary to correct the

1 violation of the Federal right of a particular plaintiff or plaintiffs.
2 The court shall not grant or approve any prospective relief unless
3 the court finds that such relief is narrowly drawn, extends no
4 further than necessary to correct the violation of the Federal
5 right, and is the least intrusive means necessary to correct the
6 violation of the Federal right. The court shall give substantial
7 weight to any adverse impact on public safety or the operation of
8 a criminal justice system caused by the relief.

9 Moreover, the PLRA provides that the court shall promptly rule on any motion to
10 modify or terminate prospective relief in a civil action with respect to prison conditions.
11 Mandamus shall lie to remedy any failure to issue a prompt ruling on such a motion.
12 Pursuant to these provisions, Defendants here are moving to dissolve the preliminary
13 injunction immediately on the facts shown in this application, or alternatively, to facilitate a
14 prompt ruling on the matter, Defendants alternatively request an expedited evidentiary
15 hearing to further establish the facts supporting dissolving the Preliminary Injunction.

16 **C. NEW EVIDENCE WARRANTS THIS COURT DISSOLVING THE**
17 **INJUNCTION OR SETTING A HEARING TO DO SO**

18 *1. The Information in Support of the Order is No Longer Reflective of*
19 *Current Circumstances in a Rapidly Improving Environment*

20 “Lies, damned lies, and statistics” is a quote often attributed to Mark Twain. It stands
21 for the foibles sometimes at play in statistical analysis. In this case, it appears there may
22 have been some misunderstanding underlying the Sheriff’s COVID numbers. Defendants
23 seek to rectify this discrepancy in order to shed light on the current evidence.

24 At the time of this Court’s May 26, Order, the following was asserted and found true
25 by the Court: “soaring number of confirmed cases”(ECF 65 at 15); “hundreds of infected
26 individuals” (*Id.* at 17); “rates of COVID-19 infections at the Jail are skyrocketing” (*Id.*);
27 “more must be done when there are nearly four hundred confirmed cases in a facility.”
28 (ECF 72, p.2.) These findings are accurate in one regard and Defendants are not seeking to

1 re-litigate that issue presently. However, it is crucial to point out a statistical anomaly so
2 that the Court may have a sound grasp of the current situation at the jails. The number
3 regarding “hundreds,” was at all times a *cumulative* number, meaning the number of all
4 known cases that had passed through the jails—*at any time*—during the pandemic. That
5 number will always go up; it can never go down. New arrestees—who are the source of *all*
6 current COVID cases at the Jails—are increasing the Sheriff’s *cumulative* COVID
7 numbers. However, when viewed *only* in this context, it leads to confusion.³

8 At no point were there ever more than 219 COVID cases in the Jail (on any one day)
9 (the “daily rate”). That date was May 5, 2020. Now, with a clear view of the number as the
10 *daily rate* existing at the Jail, we can get a better understanding of what is going on, and
11 why the Sheriff’s response to COVID has been so remarkable. By May 26, 2020, that
12 relevant number—the daily rate, had already dove to 67. Today that number is only 6. The
13 chart attached to the Declaration of Dr. Chiang at Exhibit A, shows the dramatic *decreases*
14 in daily COVID cases at the Orange County Jails and the shift from intra-facility spread to
15 new arrestees being the cause of the positive cases via community spread.

16 Because confusion can ensue by mingling the cumulative number and the daily rate,
17 it bears repeating that even while the Sheriff eradicates COVID transmission from the Jails,
18 the *new arrestees* that are positive or symptomatic are still increasing the *cumulative*
19 numbers at the Jails. No matter what happens, Plaintiffs can always allege that there are
20 “hundreds” of COVID cases at the jails, that the number is “soaring,” when looked at in one
21 specific manner—*cumulatively*.

22 Defendants submit that the dramatic decrease in the *daily rate* at the jails—
23 continuing from the onset of COVID, through this Court’s Order and continuing to
24 present—is a significant change in circumstances and new evidence supporting dissolving
25 the injunction. Continuation of the injunction now is against the public interest because
26

27 ³ In retrospect, Defendants, and this Court, would have been well-served by
28 Defendants having provided additional statistical information at the front end of this matter,
and seek to rectify that now.

1 local officials, like the Sheriff, need the flexibility on the ground to adapt to the rapidly
2 changing public health emergency without the external limitations of a federal court
3 injunction. And the Sheriff has demonstrated here the success that can have.

4 In addition to COVID almost being eliminated from the current Jail population,
5 additional facts have arisen - new positive cases are coming *only from new bookings*. Any
6 remaining COVID cases at the jails are due to *community* spread before arriving at the jail,
7 and not from being infected in the Jail. *See* Chiang Decl. ¶¶ 5-7. The Sheriff, of course,
8 has no control over the health status of anyone arrested by the Sheriff's department or the
9 numerous other arresting agencies that utilize the Jail. This significant change of
10 circumstances can, we hope, show this Court that the Sheriff is not deliberately indifferent
11 to the inmates in his charge, but rather, has provided extraordinary care, management and
12 mitigation of this pandemic.

13 In addition, the Sheriff has submitted numerous photographs and declarations
14 demonstrating, *inter alia*:

- 15 (1) The free commissary packages provided to all inmates beginning April 9 due
16 to the COVID pandemic (*See* Cpt. Von Nordheim Decl. ¶ 4(i), Exh. I);
- 17 (2) The amount of toilet paper, soap, and disinfectant available to inmates (*See*
18 Cpt. Rich Decl. ¶ 4(c)-(g), Exh. C – G; *See* Cpt. Ramirez Decl. ¶ 4(c)-(g), Exh.
19 C – G);
- 20 (3) The social distancing measures put in place to implement as much social
21 distancing as practicable (*See* Cpt. Rich Decl. ¶ 4 (a)-(b), Exh. A-B);
- 22 (4) The limited number of people in dayrooms and facial coverings provided to
23 allow for safe social distancing measures (*See* Sgt. Hennessey Decl. ¶¶ 4(b)(ii),
24 (d)(ii), (g)(iii), (n)(ii), (n)(viii).

25 This entire matter turns on current conditions at the Jail to determine if prospective
26 relief is “necessary” to remedy the violation of a federal right, and current conditions
27 demonstrate that the Sheriff has successfully mitigated COVID under implemented
28 protocols, without the need for court intervention. The Sheriff respectfully requests that this

1 Court consider the exceptional performance his Department has displayed in aggressively
2 combatting COVID in the Jails. Accordingly, the Court should immediately dissolve the
3 preliminary injunction because current facts and circumstances no longer support the basis
4 for the Order, or alternatively, allow Defendants the opportunity to present additional
5 evidence in a time-shortened hearing.

6 2. *Plaintiffs No Longer Face Any Prospect of Irreparable Harm*

7 As noted above, the “369 cases of COVID-19 in the Jail,” was a cumulative number
8 representing *every case ever had* at the Jails since COVID emerged. The Court found that
9 “without additional measures to abate the spread, more inmates will contract the disease.”
10 ECF 65, p. 18. Those findings have been dramatically impacted by the significant change
11 in circumstances and facts since the Court issued its Order.

12 The daily rate has continued to plunge significantly. Prior to and following this
13 Court’s order, the *daily rate* continued to plummet at the Jails (even while *cumulative*
14 numbers would continue to rise) because the Sheriff aggressively and early-on,
15 implemented the CDC Interim Guidelines. Because there is *ZERO transmission* of the
16 virus currently spreading in the Jails, Plaintiffs no longer face any prospect of irreparable
17 harm because—at least while at the Jail in the Sheriff’s care—they are isolated from
18 community transmission of the virus that we all face in the general public. While it is true
19 that two named medically vulnerable Plaintiffs contracted the virus (*over a month ago*),
20 they have now successfully recovered without any need for hospitalization. *See Decl.* of
21 Erin Winger ¶¶ 7(e)(iv), (h)(iv). Moreover, Plaintiffs submitted declarations from at least
22 30 different inmates in the Jail. Only 5, including the 2 previously mentioned medically
23 vulnerable Plaintiffs, (out of the 30) inmates who provided declarations, tested positive for
24 COVID. All of those 5 inmates tested positive over a month ago, and all have successfully
25 recovered without hospitalization. *Id.* ¶¶ 7 (k), (l), (q). There is no remaining element of
26 irreparable harm as to Plaintiffs, individually or as a class, to support the Order.

27 Just by way of one example, whether “objective deliberate indifference” is analyzed
28 under the Fourteenth Amendment’s standard outlined in *Gordon v. County of Orange*, 888

1 F.3d 1118, 1124 (9th Cir. 2018) (pretrial detainees) or the Eighth Amendment’s “objectively
2 sufficiently serious” deprivation prong (sentenced inmates), which requires a Plaintiff to
3 demonstrate they are being “incarcerated under conditions posing a substantial risk of
4 serious harm,” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994), where Defendants have
5 eliminated the transmission of COVID in the jails, and where COVID cases are represented
6 solely by new arrestees, Defendants submit that under the current circumstances, Plaintiffs
7 no longer meet either standard with respect to the risk of COVID-19 infection the inmates
8 have ceased to face. See *Swain*, 2020 WL 3167628, at *5.

9 3. *Comity Counsels Restraint Here and Warrants Presently Dissolving the*
10 *Injunction*

11 The comity doctrine counsels lower federal courts to resist engagement in certain
12 cases despite falling within their jurisdiction. The doctrine reflects:

13 [A] proper respect for state functions, a recognition of the fact
14 that the entire country is made up of a Union of separate state
15 governments, and a continuance of the belief that the National
16 Government will fare best if the States and their institutions are
17 left free to perform their separate functions in separate ways. Fair
18 Assessment, 454 U.S., at 112, 102 S.Ct. 177 (quoting *Younger v.*
19 *Harris*, 401 U.S. 37, 44, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971)).

20 *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 421 (2010) [int. quotations omitted].

21 Federal courts should resist administration of local jails without significant
22 constitutional cause. *South Bay Pentecostal Church v. Newsom*, No. 19A1044, 2020 WL
23 2813056 (U.S. May 29, 2020.) The prospect of contempt presented when a local law
24 enforcement agency is unable to take certain actions in the face of a federal injunction,
25 dramatically limits the Sheriff’s options for successfully managing the crisis. It puts the
26 Sheriff more toward managing legal exposure than maintaining laser focus on safety. For
27 instance, a requirement that the Sheriff maintain all inmates 6 feet or more apart, access to
28 daily showers and laundry, daily temperature checks and COVID assessments of every

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1 inmate⁴, daily recreation, phone and video conferencing for quarantined inmates, while
2 having to also sanitize between each use *and* ensure incompatible classifications of inmates
3 do not mix, is a near impossible task. *See* Declaration of Sergeant Hennessey at ¶¶ 5-8,
4 Exhibit A. But it is also an unnecessary one. Simply permitting two inmates who are both
5 COVID-free to share a cell and recreate/dayroom with that other inmate is *not a factor* for
6 contagion of COVID, and is no different than roommates who do not social distance 6 feet
7 from each other at all times in their shared COVID-free living situation. It allows the
8 Sheriff to effectively utilize the available physical space and to provide adequate and
9 necessary quarantine to the inmates that *do* need it, such as new arrestees and anyone who
10 might subsequently display symptoms or test positive. The Sheriff has demonstrated the
11 capacity to effectively mitigate COVID contagion in the jails without the need for federal
12 court supervision by injunction.

13 **D. DISSOLVING THE INJUNCTION WILL PRESERVE THE *STATUS***
14 ***QUO* AND NOT HARM PLAINTIFFS**

15 An order dissolving the injunction will preserve the *status quo*. The first known case
16 of COVID in the Jail occurred around March 24, 2020. ECF 1-26, p. 2. The CDC
17 Guidelines were issued a day prior, March 23, when Sheriff began implementing them. In
18 March and April, when COVID first entered the Jail, like the community, the Jail was
19 experiencing a lack of available testing. Testing for asymptomatic inmates was not readily
20 available until the end of April. On May 5, when testing had significantly increased, there
21 were 219 active COVID cases within the Jail⁵. ECF 65, p. 16. At the time of the Order
22

23
24 ⁴ Not to mention, several medically vulnerable Plaintiffs share in Defendants’
25 concerns of increased face-to-face contact among inmates and staff. *See* ECF’s 41-19 ¶ 13,
26 41-30 ¶ 10, 41-27, ¶ 8. Defendants have raised these concerns as well as several provisions
27 of the Court’s Order create more face-to-face interaction thereby increasing the risk of
28 COVID transmission from staff (who leave the Jail everyday) to inmates (who are isolated
in the Jail).

⁵ Appellants took the district court’s chart, calculated the number of *current* COVID
cases for each day by taking the Positive Tests column and subtracting the Recovered
column to get the *current number* of COVID cases for a given day.

1 (May 26), there were 67 current cases. *Id.* As of today’s date, there are 6 active cases and
2 all from new arrestees. Chiang Dec. ¶ 5-6. The daily rate has decreased from 219 at peak
3 to 6 today (and none due to transmission at the jail). This sharp trending decline in positive
4 cases is due to the Sheriff’s early and effective implementation of CDC Guidelines.⁶

5 In considering a balancing of the interests and harms, Plaintiffs will not be harmed in
6 the absence of the injunction. In truth, they would be in a less risky, healthier and safer
7 environment (and one the inmates prefer, see footnote 4) without the Order, because the
8 Order creates more face-to face contact and requires the Sheriff to compromise safety and
9 security of inmates and staff in order to comply with the letter of the Order. Any argument
10 by Plaintiffs that a dissolution of the injunction will accelerate the COVID contagion is
11 contradicted by the current data, the law, and common sense. It is also belied by the
12 Sheriff’s demonstrated effective management of this virus for the protection of the inmates
13 in his care. The inmates are not currently at *any* measurable risk of exposure to COVID at
14 the Jails at present that warrant a mandatory injunction and the Order should be dissolved.⁷

15 Dissolving the injunction will simply revert to the *status quo*, a *status quo* where
16 inmates are cared for, appropriately distanced, tested, and protected, in a clean and hygienic
17 environment.

18 **IV. CONCLUSION**

19 Defendants, Plaintiffs and this Court all want what is best for the inmates at the
20 Orange County Jails—to be free of unnecessary risk of exposure to COVID. The Sheriff
21 has met his obligation to provide a safe environment for the inmates in his care. The May
22 26, 2020 injunction was issued at a time of rapidly declining COVID numbers. The Court
23

24 ⁶ On the date of the hearing (May 19) there were 161 current cases, versus the date of
25 the Order (May 26) there were 67 current cases.

26 ⁷ Plaintiffs will predictably again assert in response to this motion that two of their
27 Plaintiffs contracted COVID. Yet, relying on that fact alone, when both individuals have
28 fully recovered without the need for hospitalization creates a no-win situation for the Sheriff
here. Even if there is currently no exposure risk to inmates in the jail, Plaintiffs reliance on
the fact that there was *at one time* is not something the Sheriff can undo, but it is also not
the current state of the facts.

Case Id:	30-2020-01141117-CU-WM-CXC #1981
Case Title:	CYNTHIA CAMPBELL VS. DON BARNES, IN HIS OFFICIAL CAPACITY AS SHERIFF OF ORANGE COUNTY, CALIFORNIA
Case Type:	WRIT OF MANDATE
Filing Date:	06/02/2020
Category:	CIVIL - UNLIMITED

Register Of Actions:

ROA	Docket	Filing Date	Filing Party	Document	Select
1	E-FILING TRANSACTION 2914554 RECEIVED ON 06/02/2020 02:16:02 PM.	06/04/2020		NV	
2	PETITION FOR WRIT OF MANDATE FILED BY CAMPBELL, CYNTHIA; CASTILLO, MONIQUE; GONZALEZ, SANDY; ORTIZ, CECIBEL CARIDAD; TRACE, MARK; WAGNER, DON ON 06/02/2020	06/02/2020		52 pages	<input type="checkbox"/>
3	CIVIL CASE COVER SHEET FILED BY CAMPBELL, CYNTHIA; CASTILLO, MONIQUE; GONZALEZ, SANDY; ORTIZ, CECIBEL CARIDAD; TRACE, MARK; WAGNER, DON ON 06/02/2020	06/02/2020		3 pages	<input type="checkbox"/>
4	SUMMONS ISSUED AND FILED FILED BY CAMPBELL, CYNTHIA; CASTILLO, MONIQUE; GONZALEZ, SANDY; ORTIZ, CECIBEL CARIDAD; TRACE, MARK; WAGNER, DON ON 06/02/2020	06/02/2020		1 pages	<input type="checkbox"/>
5	PAYMENT RECEIVED BY LEGALCONNECT FOR 194 - COMPLAINT OR OTHER 1ST PAPER, 34 - COMPLEX CASE FEE - PLAINTIFF IN THE AMOUNT OF 1,435.00, TRANSACTION NUMBER 12735322 AND RECEIPT NUMBER 12561601.	06/04/2020		1 pages	<input type="checkbox"/>
6	CASE ASSIGNED TO JUDICIAL OFFICER WILSON, PETER ON 06/02/2020.	06/02/2020		1 pages	<input type="checkbox"/>
7	PROPOSED ORDER RECEIVED ON 06/05/2020	06/05/2020		3 pages	<input type="checkbox"/>
8	E-FILING TRANSACTION 41089974 RECEIVED ON 06/05/2020 01:32:38 PM.	06/05/2020		NV	

ROA	Docket #	Filing Date	Filing Party	Document	Select
9	EX PARTE APPLICATION - OTHER (RESTRAINING ORDER) FILED BY ORTIZ, CECIBEL CARIDAD ON 06/05/2020	06/05/2020		5 pages	<input type="checkbox"/>
10	DECLARATION - OTHER (OF CASSANDRA STUBBS) FILED BY ORTIZ, CECIBEL CARIDAD ON 06/05/2020	06/05/2020		5 pages	<input type="checkbox"/>
11	MEMORANDUM OF POINTS AND AUTHORITIES FILED BY ORTIZ, CECIBEL CARIDAD ON 06/05/2020	06/05/2020		39 pages	<input type="checkbox"/>
12	REQUEST FOR JUDICIAL NOTICE FILED BY ORTIZ, CECIBEL CARIDAD ON 06/05/2020	06/05/2020		8 pages	<input type="checkbox"/>
13	DECLARATION FOR TEMPORARY RESTRAINING ORDER FILED BY ORTIZ, CECIBEL CARIDAD ON 06/05/2020	06/05/2020		NV	
14	APPENDIX OF AUTHORITIES FILED BY ORTIZ, CECIBEL CARIDAD ON 06/05/2020	06/05/2020		224 pages	<input type="checkbox"/>
15	PAYMENT RECEIVED BY LEGALCONNECT FOR 36 - MOTION OR OTHER (NOT 1ST) PAPER REQUIRING A HEARING IN THE AMOUNT OF 60.00, TRANSACTION NUMBER 12736022 AND RECEIPT NUMBER 12562301.	06/05/2020		1 pages	<input type="checkbox"/>
16	MOTION FOR TEMPORARY RESTRAINING ORDER SCHEDULED FOR 06/08/2020 AT 01:30:00 PM IN CX102 AT CIVIL COMPLEX CENTER.	06/05/2020		NV	
17	CASE REASSIGNED TO WALTER SCHWARM EFFECTIVE 06/05/2020.	06/05/2020		NV	
18	THIS CASE IS REASSIGNED TO THE HONORABLE WALTER SCHWARM FOR ALL PURPOSES.	06/05/2020		NV	
19	MINUTES FINALIZED FOR CHAMBERS WORK 06/05/2020 01:55:00 PM.	06/05/2020		1 pages	<input type="checkbox"/>
20	CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	06/05/2020		2 pages	<input type="checkbox"/>
21	MOTION FOR TEMPORARY RESTRAINING ORDER REASSIGNED TO C19 AT CENTRAL JUSTICE CENTER ON 06/08/2020 AT 01:30:00 PM.	06/05/2020		NV	

ROA	Docket	Filing Date	Filing Party	Document	Select
22	MOTION FOR TEMPORARY RESTRAINING ORDER SCHEDULED FOR 06/08/2020 AT 01:30:00 PM IN C19 AT CENTRAL JUSTICE CENTER.	06/05/2020		NV	
23	E-FILING TRANSACTION 3912153 RECEIVED ON 06/08/2020 09:06:37 AM.	06/08/2020		NV	
24	DECLARATION IN SUPPORT FILED BY ORTIZ, CECIBEL CARIDAD ON 06/08/2020	06/08/2020		1 pages	
25	PROOF OF SERVICE BY MAIL FILED BY ORTIZ, CECIBEL CARIDAD ON 06/08/2020	06/08/2020		2 pages	
26	CASE REASSIGNED TO THOMAS DELANEY EFFECTIVE 06/08/2020.	06/08/2020		NV	
27	PEREMPTORY CHALLENGE UNDER C.C.P. 170.6 AS TO THE HONORABLE WALTER P. SCHWARM FILED.	06/08/2020		NV	
28	THIS CASE IS REASSIGNED TO THE HONORABLE THOMAS A. DELANEY FOR ALL PURPOSES.	06/08/2020		NV	
29	MINUTES FINALIZED FOR CHAMBERS WORK 06/08/2020 11:25:00 AM.	06/08/2020		1 pages	
30	CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	06/08/2020		2 pages	
31	E-FILING TRANSACTION 41090213 RECEIVED ON 06/08/2020 12:47:05 PM.	06/08/2020		NV	
32	OPPOSITION FILED BY DON BARNES, IN HIS OFFICIAL CAPACITY AS SHERIFF OF ORANGE COUNTY, CALIFORNIA ON 06/08/2020	06/08/2020		17 pages	
33	DECLARATION IN SUPPORT FILED BY DON BARNES, IN HIS OFFICIAL CAPACITY AS SHERIFF OF ORANGE COUNTY, CALIFORNIA ON 06/08/2020	06/08/2020		19 pages	
34	DECLARATION IN SUPPORT FILED BY DON BARNES, IN HIS OFFICIAL CAPACITY AS SHERIFF OF ORANGE COUNTY, CALIFORNIA ON 06/08/2020	06/08/2020		5 pages	
35	DECLARATION IN SUPPORT FILED BY DON BARNES, IN HIS OFFICIAL CAPACITY AS SHERIFF OF ORANGE COUNTY, CALIFORNIA ON 06/08/2020 EXHIBIT A	06/08/2020		17 pages	

ROA	Docket #	Filing Date	Filing Party	Document	Select
36	DECLARATION IN SUPPORT FILED BY DON BARNES, IN HIS OFFICIAL CAPACITY AS SHERIFF OF ORANGE COUNTY, CALIFORNIA ON 06/08/2020	06/08/2020		23 pages	<input type="checkbox"/>
38	EX PARTE SCHEDULED FOR 06/10/2020 AT 01:30:00 PM IN C24 AT CENTRAL JUSTICE CENTER.	06/08/2020		NV	
39	THE EX PARTE IS SCHEDULED FOR 06/10/2020 AT 01:30 PM IN DEPARTMENT C24.	06/08/2020		NV	
40	MINUTES FINALIZED FOR CHAMBERS WORK 06/08/2020 01:36:00 PM.	06/08/2020		1 pages	<input type="checkbox"/>
41	CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	06/08/2020		2 pages	<input type="checkbox"/>
42	E-FILING TRANSACTION 3912254 RECEIVED ON 06/08/2020 12:56:53 PM.	06/08/2020		NV	
43	REQUEST FOR JUDICIAL NOTICE FILED BY DON BARNES, IN HIS OFFICIAL CAPACITY AS SHERIFF OF ORANGE COUNTY, CALIFORNIA ON 06/08/2020	06/08/2020		147 pages	<input type="checkbox"/>
44	OBJECTION FILED BY DON BARNES, IN HIS OFFICIAL CAPACITY AS SHERIFF OF ORANGE COUNTY, CALIFORNIA ON 06/08/2020	06/08/2020		35 pages	<input type="checkbox"/>
45	CASE REASSIGNED TO MELISSA MCCORMICK EFFECTIVE 06/08/2020.	06/08/2020		NV	
46	EX PARTE REASSIGNED TO C13 AT CENTRAL JUSTICE CENTER ON 06/10/2020 AT 01:30:00 PM.	06/08/2020		NV	
47	EX PARTE SCHEDULED FOR 06/10/2020 AT 01:30:00 PM IN C13 AT CENTRAL JUSTICE CENTER.	06/08/2020		NV	
48	THIS CASE IS REASSIGNED TO THE HONORABLE MELISSA R. MCCORMICK FOR ALL PURPOSES.	06/08/2020		NV	
49	EX PARTE CONTINUED TO 06/10/2020 AT 01:30 PM IN DEPARTMENT .	06/08/2020		NV	
50	MINUTES FINALIZED FOR CHAMBERS WORK 06/08/2020 02:59:00 PM.	06/08/2020		1 pages	<input type="checkbox"/>
51	CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	06/08/2020		2 pages	<input type="checkbox"/>

ROA	Docket	Filing Date	Filing Party	Document	Select
53	MELISSA R. MCCORMICK RECUSED.	06/09/2020		NV	
55	MINUTES FINALIZED FOR CHAMBERS WORK 06/09/2020 09:04:00 AM.	06/09/2020		1 pages	
56	CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	06/09/2020		2 pages	
57	CASE REASSIGNED TO CHARLES MARGINES EFFECTIVE 06/10/2020.	06/10/2020		NV	
58	THE HONORABLE MELISSA R. MCCORMICK RECUSED HERSELF.	06/10/2020		NV	
59	THIS CASE IS REASSIGNED TO THE HONORABLE CHARLES MARGINES FOR ALL PURPOSES.	06/10/2020		NV	
60	MINUTES FINALIZED FOR CHAMBERS WORK 06/10/2020 03:31:00 PM.	06/10/2020		1 pages	
61	CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	06/10/2020		2 pages	

Participants:

Name	Type	Assoc	Start Date	End Date
DON WAGNER	PETITIONER		06/04/2020	
SCHONBRUN, SEPLOW, HARRIS, HOFFMAN & Z	ATTORNEY		06/04/2020	
CYNTHIA CAMPBELL	PETITIONER		06/04/2020	
MARK TRACE	PETITIONER		06/04/2020	
ORANGE COUNTY COUNSEL	ATTORNEY		06/08/2020	
CECIBEL CARIDAD ORTIZ	PETITIONER		06/04/2020	
SANDY GONZALEZ	PETITIONER		06/04/2020	
DON BARNES, IN HIS OFFICIAL CAPACITY A	RESPONDENT		06/04/2020	
MONIQUE CASTILLO	PETITIONER		06/04/2020	

Hearings:

Description	Date	Time	Department	Judge
-------------	------	------	------------	-------

Print this page

CERTIFICATE OF SERVICE

I declare that I am a citizen of the United States employed in the County of Orange, over 18 years old and that my business address is 333 W. Santa Ana Blvd., Ste. 407, Santa Ana, California 92701; and my e-mail address is Marzette.lair@coco.ocgov.com. I am not a party to the within action.

BY CM/ECF: On June 19, 2020, I caused the document DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION TO IMMEDIATELY DISSOLVE PRELIMINARY INJUNCTION OR ALTERNATIVELY SET EXPEDITED HEARING TO DISSOLVE PRELIMINARY INJUNCTION to be served upon all counsel of record in this action who are registered with the United States District Court's CM/ECF system and listed below by utilizing the United States District Court's CM/ECF system:

<p><u>MITCHELL KAMIN, ESQ</u> mkamin@cov.com <u>AARON LEWIS, ESQ.</u> alewis@cov.com <u>BRITTANY BENJAMIN, ESQ.</u> bbenjamin@cov.com <u>COVINGTON & BURLING LLP</u></p> <p><u>CASSANDRA STUBBS, ESQ.</u> cstubbs@aclu.org <u>AMERICAN CIVIL LIBERTIES UNION FOUNDATION</u></p> <p><u>STACEY GRIGSBY, ESQ.</u> sgrigsby@cov.com <u>AMIA TRIGG, ESQ.</u> atrigg@cov.com <u>COVINGTON & BURLING LLP</u></p> <p><u>OLIVIA ENSIGN, ESQ.</u> oensign@aclu.org <u>CRISTINA BECKER, ESQ.</u> cbecker@aclu.org <u>AMERICAN CIVIL LIBERTIES UNION FOUNDATION</u></p>	<p><u>JOHN WASHINGTON, ESQ.</u> jwashington@sshhlaw.com <u>SCHONBRUN, SEPLOW, HARRIS, HOFFMAN & ZELDES LLP</u></p> <p><u>PETER ELIASBERG, ESQ.</u> peliasberg@aclu.org <u>AMERICAN CIVIL LIBERTIES FUND OF SOUTHERN CALIFORNIA</u></p> <p><u>PAUL HOFFMAN, ESQ.</u> hoffpaul@aol.com <u>UNIVERSITY OF CALIFORNIA, IRVINE SCHOOL OF LAW CIVIL RIGHTS LITIGATION CLINIC</u></p> <p><u>CARL TAKEI, ESQ.</u> ctakei@aclu.org <u>SOMIL TRIVEDI, ESQ.</u> strivedi@aclu.org <u>CLARA SPERA, ESQ.</u> cspera@aclu.org <u>AMERICAN CIVIL LIBERTIES UNION FOUNDATION</u></p> <p><u>ZOE BRENNAN-KROHN, ESQ.</u> zbrennan-krohn@aclu.org <u>AMERICAN CIVIL LIBERTIES UNION FOUNDATION</u></p>
---	--

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed in Santa Ana, California this 19th day of June, 2020

s/Marzette L. Lair

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

1 LEON J. PAGE, COUNTY COUNSEL
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D. KEVIN DUNN, SENIOR DEPUTY (CA SBN 194604)
3 kevin.dunn@coco.ocgov.com
REBECCA S. LEEDS, SENIOR DEPUTY (CA SBN 221930)
4 rebecca.leeds@coco.ocgov.com
KAYLA N. WATSON, DEPUTY (CA SBN 286423)
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6 Post Office Box 1379
Santa Ana, California 92702-1379
7 Telephone: (714) 834-3300
Facsimile: (714) 834-2359

8 Attorneys for Defendants DON BARNES
9 and COUNTY OF ORANGE (erroneously named
as ORANGE COUNTY, CALIFORNIA)

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **EASTERN DIVISION**

14 MELISSA AHLMAN, DANIEL KAUWE,
MICHAEL SEIF, JAVIER ESPARZA,
15 PEDRO BONILLA, CYNTHIA
CAMPBELL, MONIQUE CASTILLO,
16 MARK TRACE, CECIBEL CARIDAD
ORTIZ, and DON WAGNER, on behalf of
17 themselves and all others similarly situated,
et al.,

18 Plaintiffs/Petitioners,

19 v.

20 DON BARNES, in his official capacity as
21 Sheriff of Orange County, California; and
ORANGE COUNTY, CALIFORNIA.

22
23 Defendants/Respondents.

Case No. 8:20-cv-00835-JGB-SHK

**DECLARATION OF KAYLA N.
WATSON IN SUPPORT OF
DEFENDANTS' EX PARTE
APPLICATION TO DISSOLVE MAY
26, 2020 PRELIMINARY INJUNCTION;
OR IN THE ALTERNATIVE, SET
EXPEDITED HEARING TO DISSOLVE
PRELIMINARY INJUNCTION**

24 **DECLARATION OF KAYLA N. WATSON**

25 I, Kayla N. Watson, declare as follows:

26 1. I have personal knowledge of the facts contained in this declaration unless
27 such facts are stated on information and belief, in which case I believe them to be true. If
28 called upon to testify, I could and would do so competently.

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COUNTY OF ORANGE

1 2. I am a licensed California attorney and currently employed by the Orange
2 County Counsel’s Office as a Deputy County Counsel.

3 3. On June 12, 2020, the Court of Appeals issued an order denying the
4 Defendants’ motion for stay but remanded for the limited purpose of allowing this Court
5 to consider whether changed circumstances justify modifying or dissolving the
6 injunction.

7 4. On June 15, 2020, I emailed Plaintiffs’ counsel notifying them of
8 Defendants’ intent to file an ex parte application to dissolve the preliminary injunction or
9 the alternative for an order shortening time to hear the motion to dissolve preliminary
10 injunction.

11 5. On June 17, 2020, counsel for both parties met and conferred over the phone
12 regarding Defendants’ intent to file an ex parte application, and the grounds for such
13 relief, which Plaintiffs’ counsel disagreed with.

14 I declare under penalty of perjury under the laws of the United States that the
15 foregoing is true and correct.

16 Executed June 19, 2020, at Santa Ana, California.

17

18

_____/s/_____
Kayla N. Watson

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OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

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LEON J. PAGE, COUNTY COUNSEL
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Telephone: (714) 834-3300
Facsimile: (714) 834-2359

Attorneys for Defendants DON BARNES
and COUNTY OF ORANGE (erroneously named
as ORANGE COUNTY, CALIFORNIA)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

MELISSA AHLMAN, DANIEL KAUWE,
MICHAEL SEIF, JAVIER ESPARZA,
PEDRO BONILLA, CYNTHIA
CAMPBELL, MONIQUE CASTILLO,
MARK TRACE, CECIBEL CARIDAD
ORTIZ, and DON WAGNER, on behalf of
themselves and all others similarly situated,
et al.,

Plaintiffs/Petitioners,

v.

DON BARNES, in his official capacity as
Sheriff of Orange County, California; and
ORANGE COUNTY, CALIFORNIA.

Defendants/Respondents.

Case No. 8:20-cv-00835-JGB-SHK

**DECLARATION OF C. HSIEN
CHIANG, M.D. IN SUPPORT OF
DEFENDANTS' EX PARTE
APPLICATION TO DISSOLVE MAY
26, 2020 PRELIMINARY INJUNCTION;
OR IN THE ALTERNATIVE, SET
EXPEDITED HEARING TO DISSOLVE
PRELIMINARY INJUNCTION**

DECLARATION OF C. HSIEN CHIANG, M.D.

I, C. Hsien Chiang, M.D., declare as follows:

1. I have personal knowledge of the facts contained in this declaration unless such facts are stated on information and belief, in which case I believe them to be true. If called upon to testify, I could and would do so competently.

2. I am currently employed by the Orange County Health Care Agency (“HCA”) as an Administrative Manager III for Correctional Health Services (“CHS”). My current assignment since 2011 is Medical Director of Correctional Health Services (“CHS”). I obtained my medical license in 2001. I have been employed by HCA and working as a Medical Doctor in the Orange County jails since 2006. I have been the Medical Director for CHS for approximately nine years. Prior to being appointed the Medical Director, I was a staff physician for CHS. As the Medical Director, I oversee the medical care of the inmates in the Orange County jails. In addition to providing direct medical care to some inmates, I have several physicians, nurse practitioners and nurses on staff whom I supervise in their direct medical care of inmates. I have ultimate authority and responsibility for the basic and emergent medical care of the inmates in the Orange County jail pursuant to Title 15 of the California Code of Regulations.

3. I have been a physician for 21 years. I am board certified in Family Medicine and Addiction Medicine. I also hold certification as a Certified Correctional Health Professional – Physician Specialist, which is a certification provided by the National Commission on Correctional Health Care, a leading organization for correctional health. I am also a fellow of the American College of Correctional Physicians.

4. In response to the COVID-19 outbreak, I have worked very closely with CHS management team and HCA’s Communicable Disease Medical Director to develop a critical plan related to preventive strategies to address the spread of COVID-19 and management of COVID-19 in the Jail; including addressing matters such as quarantine, isolation and treatment of inmates who test positive for, or have been exposed to, COVID-19. In our preparation of this plan, we have taken into consideration and used the CDC’s

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COUNTY OF ORANGE

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COUNTY OF ORANGE

1 “Interim Guidance on Management of Coronavirus Disease 2019 in Correctional and
2 Detention Facilities” (CDC Interim Guidance).

3 5. For over two weeks we have had ZERO intra-facility COVID-19 spread within
4 our inmate population. All new COVID-19 positive tests have come from new bookings.

5 6. As of today, we only have 6 COVID-19 positive inmates remain in medical
6 isolation (see attached graph as Exhibit A). No inmate has ever been on a ventilator, and all
7 but the 6 remaining positives have fully recovered and cleared from medical isolation.

8 7. All of the 6 positive inmates are asymptomatic. None of the COVID-19
9 positive inmates experienced significant symptoms. There are 4 other new booking inmates
10 in isolation, who are exhibiting mild symptoms and waiting their test results.


11 8. The COVID-19 statistics are based on testing of all inmates before placing
12 them general population, including testing of asymptomatic inmates to reduce the risk of
13 contamination throughout the jail population.

14 9. The procedures of jail administration are strictly the Sheriff’s responsibility.
15 OCSD’s consistent and vigilant response over the course of the pandemic, in line with CDC
16 Guidelines, have significantly reduced risk of harm to our inmate population and directly
17 resulted in saving inmate lives.

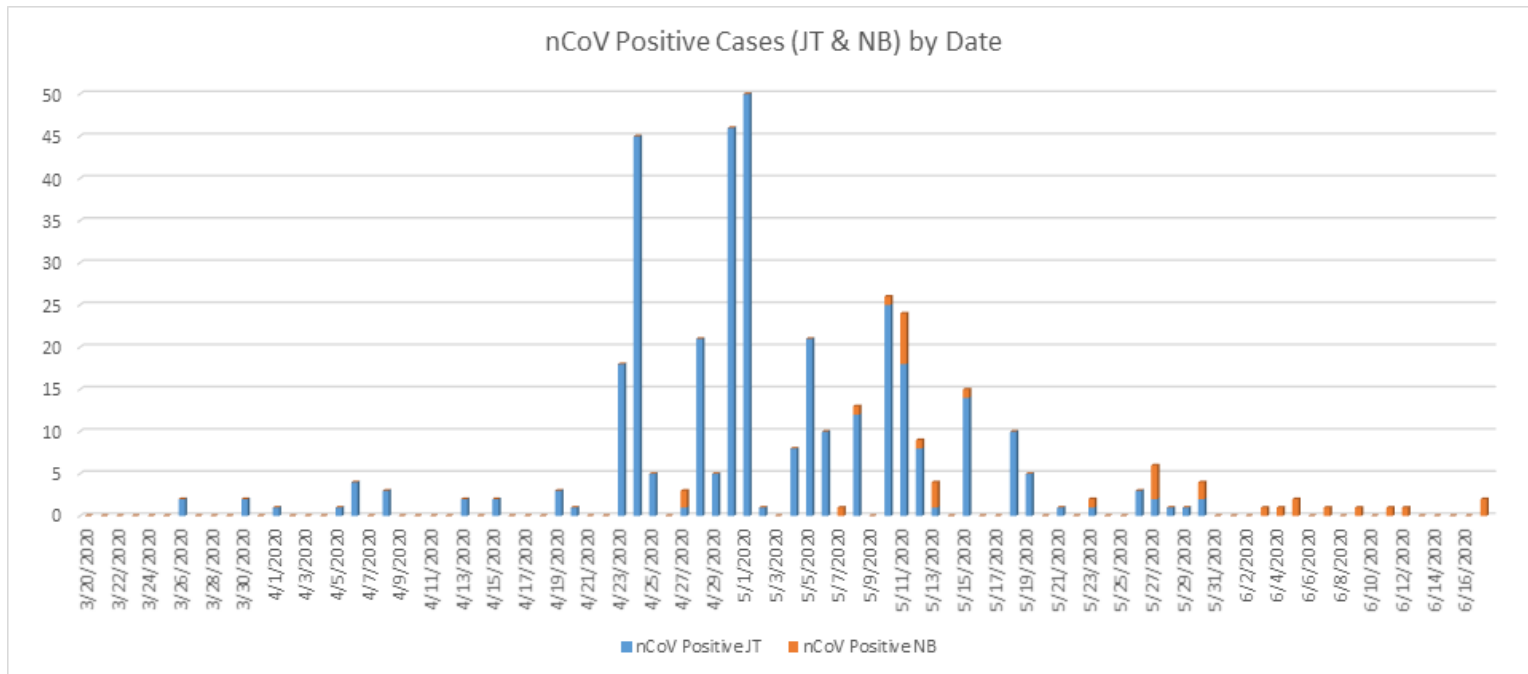
18 10. COVID-19 mitigation measures at the jail, as described in my prior
19 Declarations to this Court, continue.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22
23 Executed this 19th day of June, 2020, at Santa Ana, California.

24
25 
26 C. Hsien Chiang, M.D., Declarant

27
28



1 LEON J. PAGE, COUNTY COUNSEL
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21 DON BARNES, in his official capacity as
22 Sheriff of Orange County, California; and
ORANGE COUNTY, CALIFORNIA.

23 Defendants/Respondents.
24

Case No. 8:20-cv-00835-JGB-SHK

Assigned to the Honorable Jesus G. Bernal

**DECLARATION OF CAPTAIN
MARTIN RAMIREZ IN SUPPORT OF
DEFENDANTS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF APPLICATION TO
IMMEDIATELY DISSOLVE
PRELIMINARY INJUNCTION OR
ALTERNATIVELY SET EXPEDITED
HEARING TO DISSOLVE
PRELIMINARY INJUNCTION [ECF
65]**

Action Filed: April 30, 2020

DECLARATION OF CAPTAIN MARTIN RAMIREZ

I, Martin Ramirez, declare:

1. Unless otherwise stated, I have personal knowledge of the facts contained in this declaration unless such facts are stated on information and belief, in which case I believe them to be true. If called upon to testify, I could and would do so competently.

2. I am the Captain of the Intake Release Center & Transportation Services Division of the Orange County Sheriff-Coroner Department (“OCSD”). I oversee overall operations of the Intake Release Center (“IRC”), Orange County Jail, including inmate intake, housing and release. I have been Captain of the IRC for two years. Prior to that I was Special Enforcement Bureau Commander for OCSD. I have been employed by OCSD for approximately 30 years. I make this declaration from my personal knowledge and if called upon to testify, I could and would do so competently.

3. I took the photographs of the Intake Release Center attached here as Exhibits. The photographs fairly and accurately depict various areas in the Intake Release Center at the time the photographs were taken.

- a) **Exhibit A** is a photograph taken on June 17, 2020 of the signage in the dayroom with COVID-19 preventive measures.
- b) **Exhibit B** is a photograph taken on June 17, 2020 of the signage in the dayroom with public visit information & COVID-19 prevention measures.
- c) **Exhibit C** is a photograph taken on June 17, 2020 of hand sanitizer on a dayroom table.
- d) **Exhibit D** is a photograph taken on June 17, 2020 of cleaning supplies in the dayroom.
- e) **Exhibit E** is a photograph taken on June 17, 2020 taken on June 17, 2020 of cleaning supplies in the dayroom.
- a) **Exhibit F** is a photograph taken on June 17, 2020 of COVID-19 preventive measure information inside an inmate cell.

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COUNTY OF ORANGE

b) Exhibit G is a photograph taken on June 17, 2020 of cleaning supplies in the upper tier of inmate housing

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed June 18, 2020, at Santa Ana, California.



Martin Ramirez

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COUNTY OF ORANGE

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EXHIBIT A

INMATE EDUCATION OF COVID-19 DISEASE

What is COVID-19?

COVID-19 is caused by a virus. It most likely spreads when an infected person spends about 15 minutes close to someone else. People who are infected might have the following:

- Fever, cough, or difficulty breathing
- Sudden loss of taste or smell

How can I prevent the spread of COVID-19?

- Wash your hands with soap and water as much as you can throughout the day. You should scrub your hands for at least 20 seconds.
 - Before you eat or handle food
 - After using the bathroom
 - After blowing your nose, sneezing or coughing
 - After handling trash
 - When hands are dirty
- Wash your face with soap and water as often as possible before you eat, drink, or touch your face. If you have a mustache, beard, or long hair, comb it and wash it.
 - After eating or drinking
 - After touching your face
 - After coughing or sneezing
- Use a face mask or face shield when you are around others who have COVID-19.
 - When you cough, sneeze, or talk to others
 - When you are around others who have COVID-19
 - When you are around others who are coughing or sneezing

Remember, you can help stop the spread of COVID-19 by staying at least 6 feet away from people.

What do I do if I have the problems mentioned in this handout?

Notify CHS by filling out an inmate health message slip, also known as a "pink slip" or notify security or medical staff. If you can be contacted as soon as possible. Medical staff will check your health and might order a lab test to make sure you do not have COVID-19 or the flu.

What does it mean when medical staff say I need to be placed into quarantine or isolation?

People who have been exposed to COVID-19 or who are at risk for coming down with COVID-19 will be placed in a quarantine area of the jail for 14 days to help prevent the spread of the virus. This is similar to quarantine in a hospital or care facility. Before anyone is released from quarantine, they will be tested. If someone has COVID-19, they will be placed in medical isolation. This simply means they are kept away from others to stop the virus from spreading.

If anyone is quarantined or isolated, medical staff will monitor them closely and will follow instructions from the County Health Officer.

health CARE AGENCY

More Information - Know It a part of being an inmate

- Fighting
- Smoking
- Using tobacco
- Using alcohol
- Drinking or eating what should not be eaten
- Getting
- Being
- Drinking with a wrong drink
- Drinking from a wrong cup
- Drinking from a wrong bottle
- Drinking from a wrong container
- Drinking from a wrong container
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More Information - Know It a part of being an inmate

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LƯU Ý:

Chúng Tôi Muốn Quý Vị Duy Trì

GTY đang điều tra tất cả các trường hợp nghi ngờ bị nhiễm COVID-19. Quý vị cần tuân thủ các quy định sau đây để ngăn chặn sự lây lan của COVID-19. Chúng tôi sẽ cung cấp các tài liệu hướng dẫn chi tiết về COVID-19.

THÔNG TIN CHI TIẾT:

- Tất cả những người đang ở trong các phòng giam giữ đều phải tuân thủ các quy định này.
- Ngày 20-22 tháng 8 năm 2020
- Ngày 2-2 tháng 8 năm 2020
- Ngày 1-14 tháng 8 năm 2020
- Ngày 1-31 tháng 8 năm 2020

Quý vị sẽ không phải rời khỏi phòng giam giữ của mình nếu quý vị tuân thủ các quy định này. Chúng tôi sẽ tiếp tục cập nhật các quy định này khi có thêm thông tin về COVID-19.

Xin liên hệ với nhân viên của chúng tôi.

187

EXHIBIT B

The English version of this document is available at: www.ocsheriff.com
Số tiếng Anh của tài liệu này có thể tìm thấy tại: www.ocsheriff.com
Call us at (714) 847-4141
Liên hệ chúng tôi bằng cách gọi số (714) 847-4141

... la opción de informes independientes de terceros al (949) 831-9112
... a cualquier personal, voluntario, contratista o personal de salud mental o mental
... a cualquier familia o un amigo, o un agente de cualquier otra persona fuera
de la instalación. Pueden informarse en su nombre llamando a (714) 847-4141
... puede presentar un informe en persona o alguien en la instalación
puede informarle sobre usted utilizando las formas que se encuentran aquí

Siguiendo las recomendaciones de Centros Para El Control y la Prevencion de Enfermedades (CDC), y como parte de los esfuerzos continuos de prevencion de Covid-19, el Departamento de OCSD a temporariamente suspendido visitas para los presos en todas las cárceles del Condado De Orange mediante el Lunes. Esto es de precaucion y ya esta implementado en las prisiones estatales y las cárceles de los condados circundantes. Esto es para la salud y seguridad de los prisioneros, oficiales de el condado y visitantes a las instalaciones.

Visitas de abogados continuaran. Vamos a reevaluar la situacion la siguiente semana y mantenerlos al pursto.

Following recommendations from the Centers for Disease Control and Prevention, and as part of the department's ongoing COVID-19 prevention efforts, the Sheriff's Department has temporarily suspended inmate visitation at all Orange County Jail facilities through Monday. This is precautionary and is being done in state prisons and surrounding county jails and is for the safety of inmates, staff and visitors at our facilities.

Attorney visitation will continue. We will reassess this issue next week and keep you updated.

- You can best protect yourself and others by following these simple steps:
1. Wash your hands with soap and water throughout the day. You should scrub your hands for at least twenty seconds.
 - Before you eat or handle food
 - After using the bathroom
 - After touching your nose, sneezing, or coughing
 - After handling trash
 - Before and after caring for someone who is sick
 2. Avoid spreading germs to yourself by touching or rubbing your eyes, nose, and mouth.
 3. When you have to sneeze or cough, do it into a tissue or the crook of your elbow. If you do not have a tissue, cough or sneeze into your elbow. Avoid spreading germs to others.
 4. Maintain as much distance between yourself from others as much as possible at all times. Avoid close contact with people who are sick.
 5. Avoid frequently used surfaces - handrails, phones, door handles, etc. - when you are sick.
 6. Heavily touched or shared with others if you have a fever, cough, shortness of breath, or other flu-like symptoms.

J.G.A.T.T.
ORANGE COUNTY SHERIFF'S DEPARTMENT
JAIL OPERATIONS & TRAINING TEAM

COVID-19 Precautions

- All inmates will wear proper face protection as part of their full jail issue.
- When feasible, inmates will maintain a minimum of six (6) feet of separation from other inmates and staff when in common areas, in order to reduce the spread of the virus.
- All inmates will be instructed to sleep facing in the opposite direction of their assigned bunk partners to reduce the chances of exposure.
- All inmates have been instructed to avoid sharing, touching, and using common items such as blankets, towels, and clothing to prevent additional contact from which infections are transferred.

SOCIAL DISTANCING
STAY APART

BAIL AGENTS

CRYSTAL
BAIL BONDS
(714) 786-1311

First Time Arrested?
Call & Post
BAIL BONDS
GET OUT NOW
LARRY OSMUN, COUNTY

LOCAL FAST
BAIL BONDS
0% Payment Plans
714.538.4442

RUISO'S
BAIL BONDS
GET OUT FAST!
(714) 558-7888

HAI HUYNH
BAIL BONDS
0% SELF
BAIL BONDS
714 788.7506

ROOKIE ARREST EXPERT
ANTHONY ARNETTO
LOCAL BAIL BONDS
714 794.8355

DIGNITY
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GET OUT FAST!
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Fast Release
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714.538.4442
1% Down

Jessica Frater
BAIL BONDS
550-6050

ESPAÑOL
BAIL BONDS
714 682-1111

BAIL AGENT LISTING

EXHIBIT C



EXHIBIT D



EXHIBIT E



EXHIBIT F

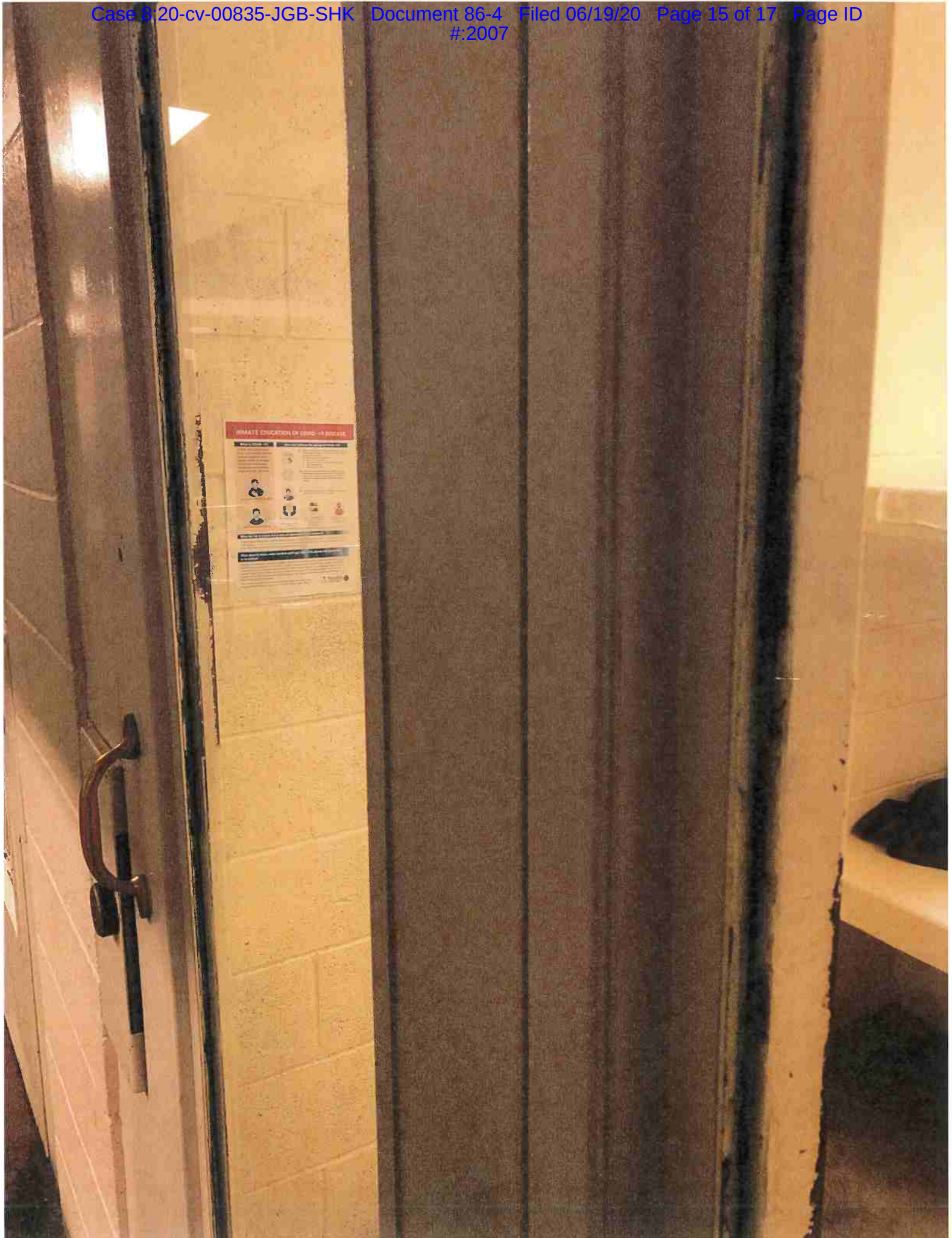
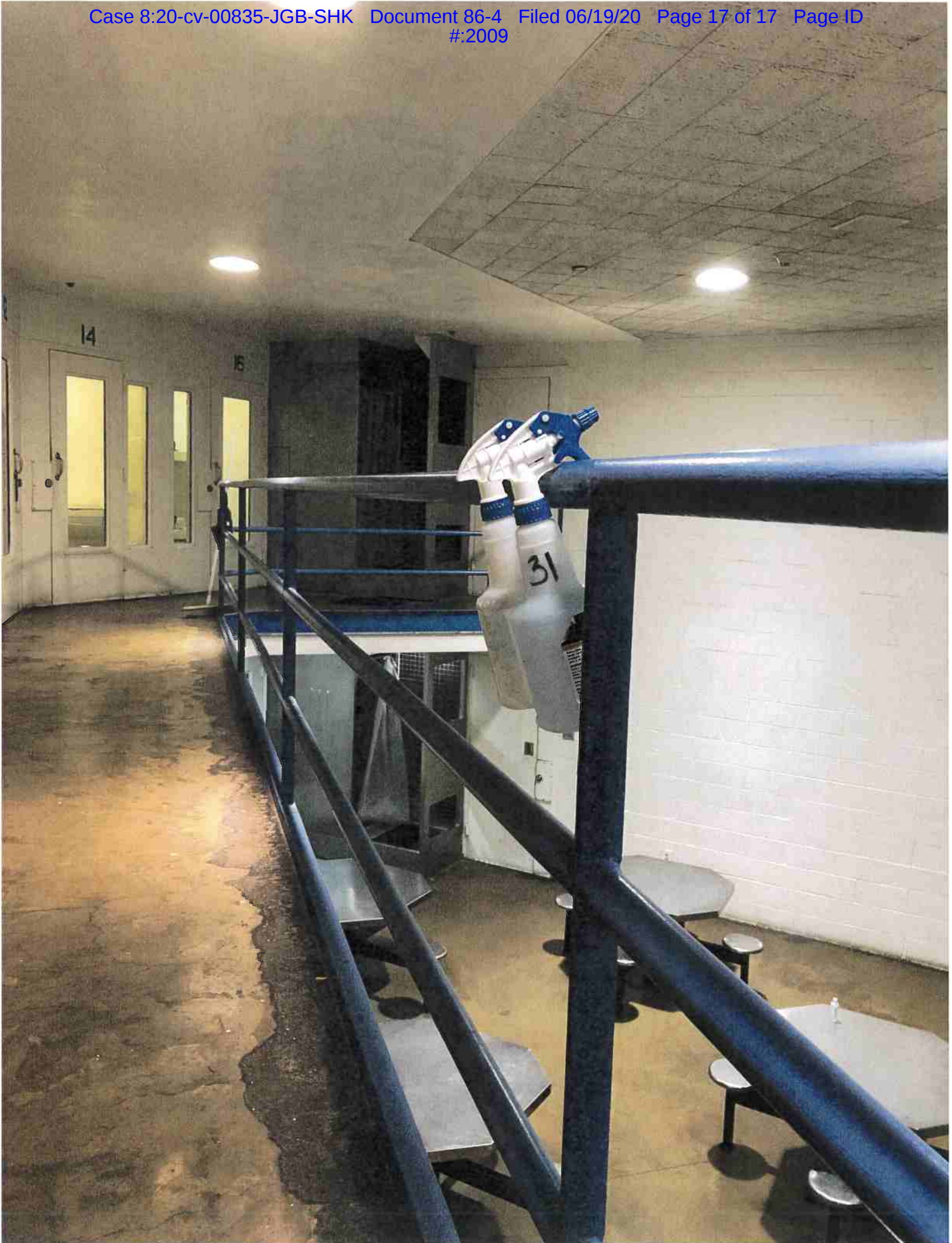


EXHIBIT G



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2 LAURA D. KNAPP, SUPERVISING DEPUTY (CA SBN 162800)
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4 D. KEVIN DUNN, SENIOR DEPUTY (CA SBN 194604)
5 kevin.dunn@coco.ocgov.com
6 REBECCA S. LEEDS, SENIOR DEPUTY (CA SBN 221930)
7 rebecca.leeds@coco.ocgov.com
8 KAYLA N. WATSON, DEPUTY (CA SBN 286423)
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15 Attorneys for Defendants DON BARNES
16 and ORANGE COUNTY, CALIFORNIA

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26 Sheriff of Orange County, California; and
27 ORANGE COUNTY, CALIFORNIA.

28 Defendants/Respondents.

Case No. 8:20-cv-00835-JGB-SHK

Assigned to the Honorable Jesus G. Bernal

**DECLARATION OF CAPTAIN LISA
VON NORDHEIM IN SUPPORT OF
DEFENDANTS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF APPLICATION TO
IMMEDIATELY DISSOLVE
PRELIMINARY INJUNCTION OR
ALTERNATIVELY SET EXPEDITED
HEARING TO DISSOLVE
PRELIMINARY INJUNCTION [ECF
65]**

Action Filed: April 30, 2020

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

DECLARATION OF CAPTAIN LISA VON NORDHEIM

I, Lisa Von Nordheim, declare as follows:

1. Unless otherwise stated, I have personal knowledge of the facts contained in this declaration unless such facts are stated on information and belief, in which case I believe them to be true. If called upon to testify, I could and would do so competently.

2. I am employed by the Orange County Sheriff's Department ("OCSD"). I have been employed by OCSD for the last 28 years. I currently hold the rank of Captain of the Central Jails Division.

3. As a Captain in this position, I oversee the Central Men's and Central Women's Jails.

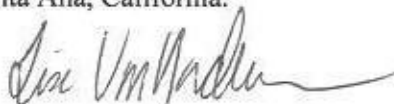
4. Jail Administration deputies took the photographs of Central Men's Jail and Central Women's Jail attached here as Exhibits. The photographs attached fairly and accurately depict various areas in the Central Men's Jail and Central Women's Jail at the time the photographs were taken.

- a) **Exhibit A** is a photograph taken on June 16, 2020 of the open restroom area of Module O, in the Central Men's Jail. The photograph shows ample amount of toilet paper, Virex one-step disinfectant and deodorant spray.
- b) **Exhibit B** is a photograph taken on June 16, 2020 of a cell in Module O, Tank 17 in the Central Men's Jail. The photograph shows hand sanitizer and toilet paper available to the inmates.
- c) **Exhibit C** is a photograph taken on June 16, 2020 of multiple spray bottles of Virex one-step disinfectant given to Module D, Tanks 17 and 18 daily at the Central Men's Jail.
- d) **Exhibit D** is a photograph taken on June 16, 2020 of stacks of toilet paper on an empty bunk located in Mule F, Tank 27 of the Central Men's Jail.
- e) **Exhibit E** is a photograph taken on June 16, 2020 of hand sanitizer left out for the inmates to use during outdoor recreation on the roof of the Central Men's Jail.

- f) **Exhibit F** is a photograph taken on June 16, 2020 of Virex one-step disinfectant cleaner and deodorant spray left out for the inmates to use during outdoor recreation on the roof of the Central Men's Jail.
- g) **Exhibit G** is a photograph taken on June 16, 2020 of stacks of toilet paper and sanitary napkins at the Central Women's Jail.
- h) **Exhibit H** is a photograph taken on June 16, 2020 of a COVID-19 sign posted as you enter the Central Women's Jail
- i) **Exhibit I** is a photograph taken on June 17, 2020 of the free commissary packages given out to inmates beginning April 9, 2020 due to the COVID pandemic impacting the Jail. These items were selected because they were the top selling commissary items by the inmates.
- j) **Exhibit J** is a photograph taken on June 16, 2020 of stacks of soap and sanitary napkins available to the inmates at the Central Women's Jail.
- k) **Exhibit K** is a photograph taken on June 16, 2020 of stacks of soap and sanitary napkins available to the inmates at the Central Women's Jail.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed June 18, 2020, at Santa Ana, California.



Lisa Von Nordheim

EXHIBIT A



EXHIBIT B

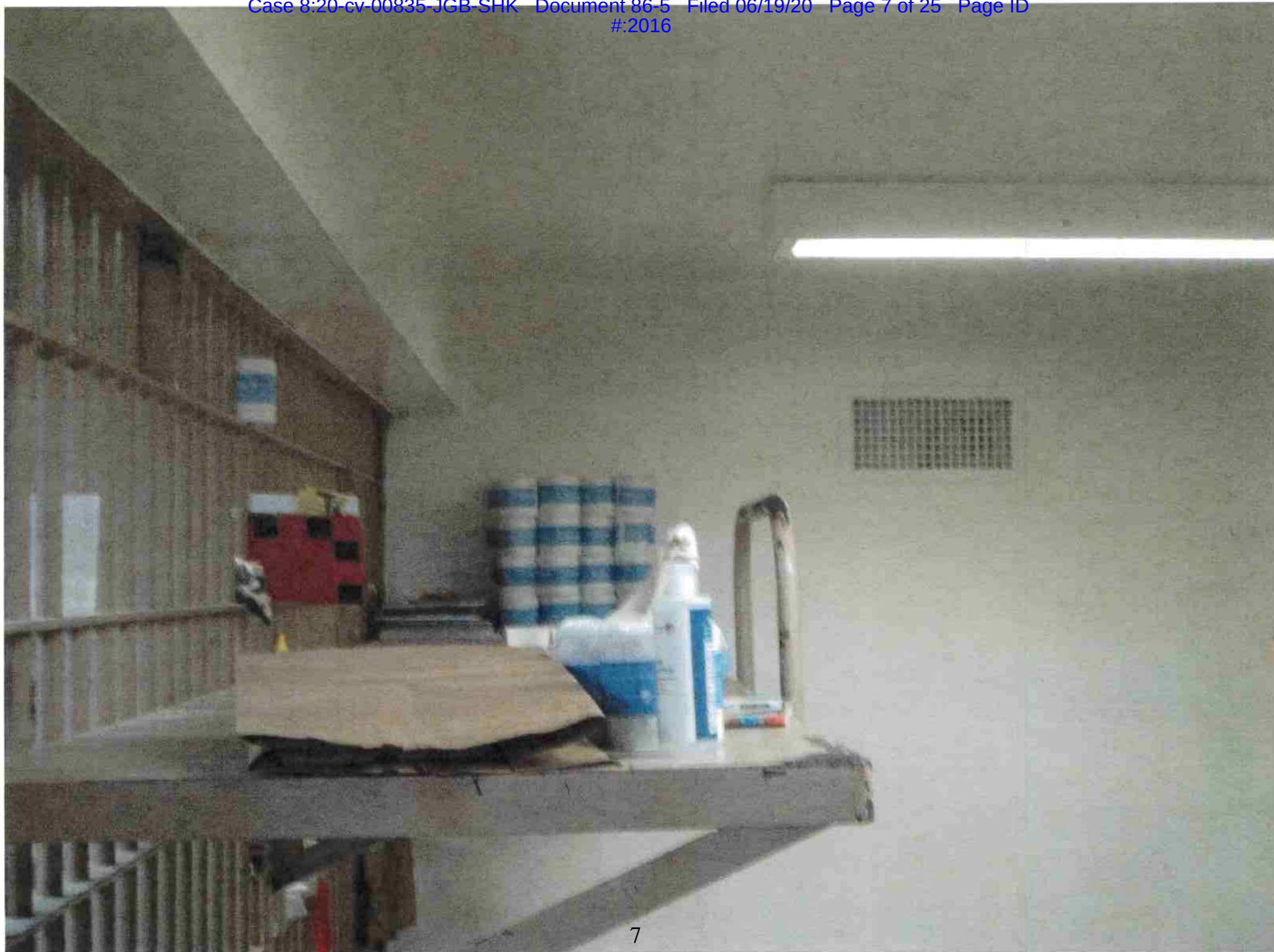


EXHIBIT C



EXHIBIT D

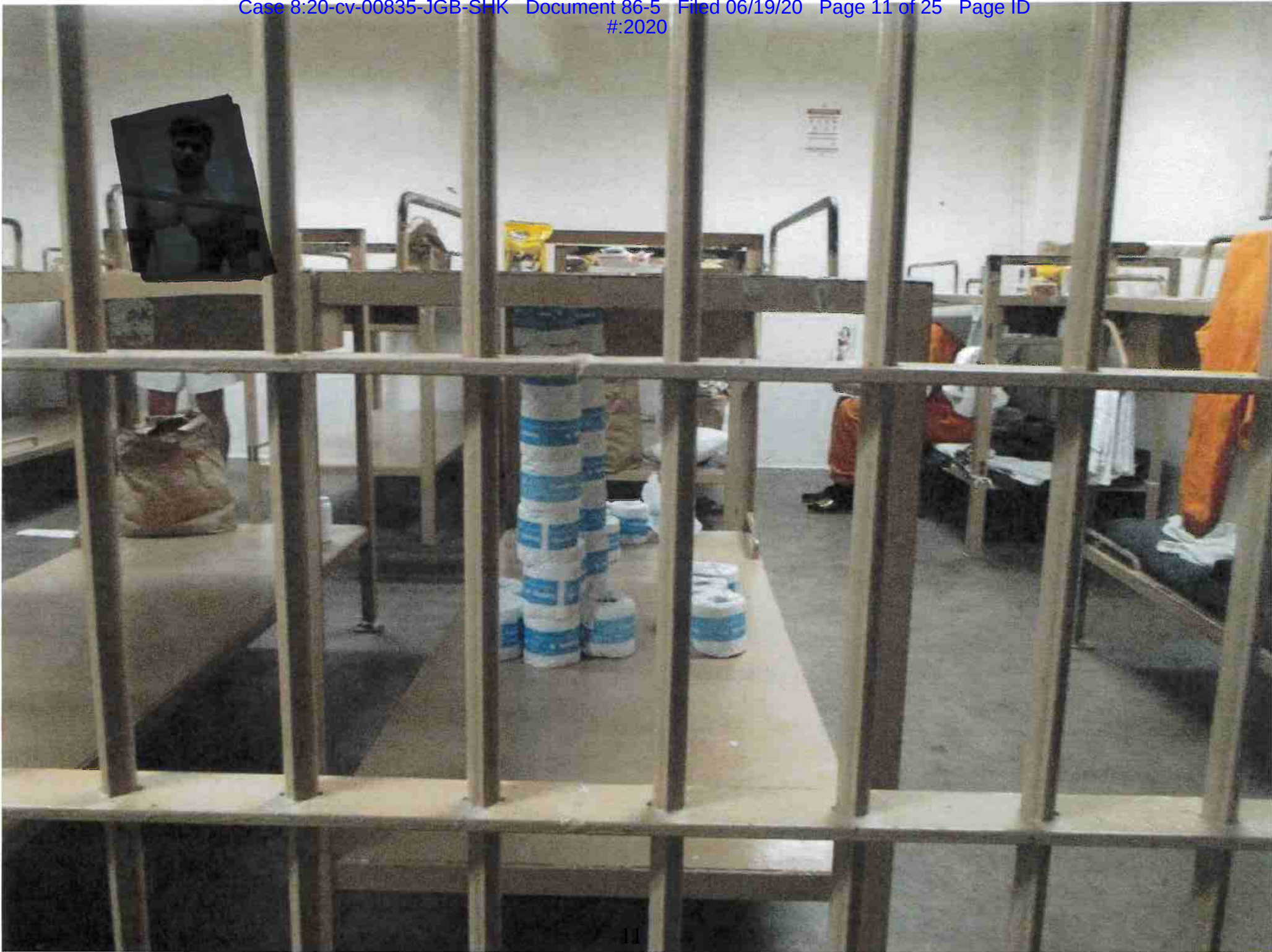


EXHIBIT E



EXHIBIT F

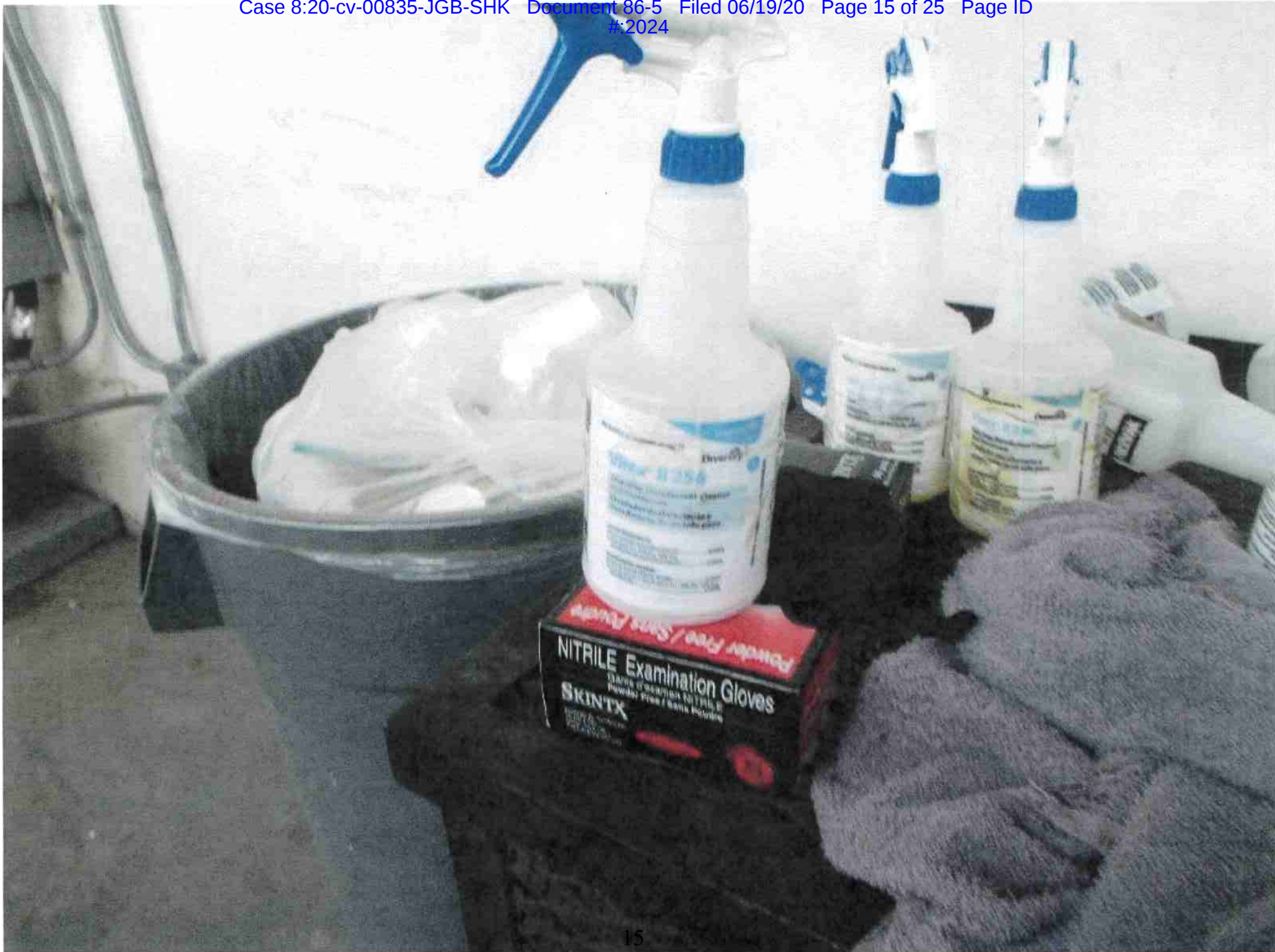


EXHIBIT G

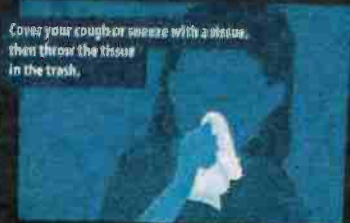


EXHIBIT H

COVID-19
CORONAVIRUS
DISEASE

STOP THE SPREAD OF GERMS

Help prevent the spread of respiratory diseases like COVID-19.



For more information: www.cdc.gov/COVID19

EXHIBIT I

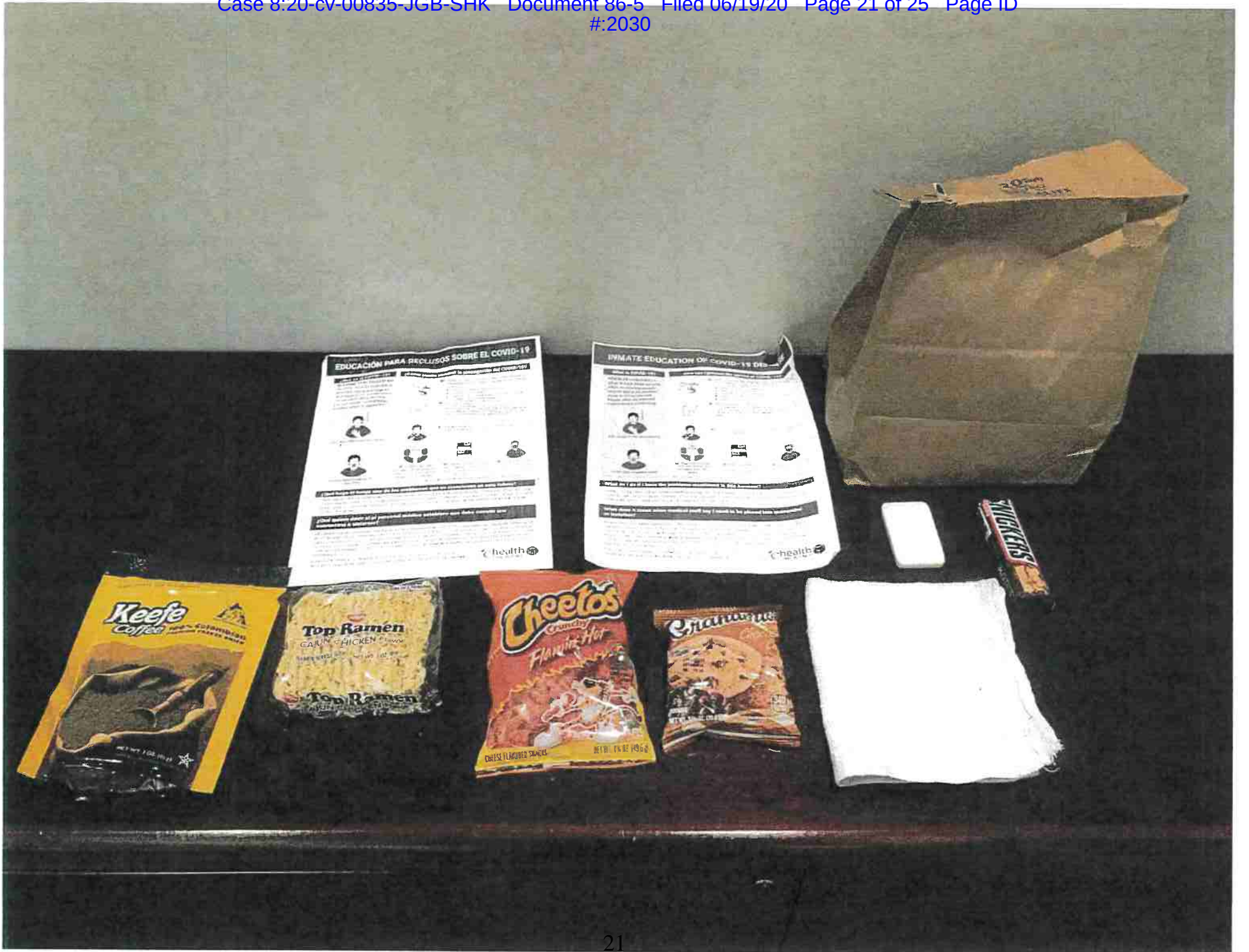


EXHIBIT J

06/14/2020 14:47

EXHIBIT K



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9 and ORANGE COUNTY, CALIFORNIA

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **SOUTHERN DIVISION**

14
15 MELISSA AHLMAN, DANIEL KAUWE,
MICHAEL SEIF, JAVIER ESPARZA,
16 PEDRO BONILLA, CYNTHIA
CAMPBELL, MONIQUE CASTILLO,
17 MARK TRACE, CECIBEL CARIDAD
ORTIZ, and DON WAGNER, on behalf of
18 themselves and all others similarly situated,
et al.,

19 Plaintiffs/Petitioners,

20 v.

21 DON BARNES, in his official capacity as
22 Sheriff of Orange County, California; and
ORANGE COUNTY, CALIFORNIA.

23 Defendants/Respondents.
24

Case No. 8:20-cv-00835-JGB-SHK

Assigned to the Honorable Jesus G. Bernal

**DECLARATION OF CAPTAIN
PATRICK RICH IN SUPPORT OF
DEFENDANTS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF APPLICATION TO
IMMEDIATELY DISSOLVE
PRELIMINARY INJUNCTION OR
ALTERNATIVELY SET EXPEDITED
HEARING TO DISSOLVE
PRELIMINARY INJUNCTION [ECF
65]**

Action Filed: April 30, 2020

DECLARATION OF CAPTAIN PATRICK RICH

I, Patrick Rich, declare as follows:

1. Unless otherwise stated, I have personal knowledge of the facts contained in this declaration unless such facts are stated on information and belief, in which case I believe them to be true. If called upon to testify, I could and would do so competently.

2. I am employed by the Orange County Sheriff's Department ("OCSD"). I have been employed by OCSD for the last 26 years. I currently hold the rank of Captain of the Theo Lacy Facility.

3. As a Captain in this position, I am the facility manager and have been delegated the responsibility of the day to day operation of the facility.

4. I took the photographs of Theo Lacy Facility ("TLF") attached here as Exhibits. The photographs attached fairly and accurately depict various areas in TLF at the time the photographs were taken, which was the morning of June 18, 2020.

- a) **Exhibit A** is a photograph of the TLF medical waiting area. The benches are marked with social distancing markers with contain blue pieces of tape so the inmates can practice social distancing while waiting to be seen by medical. In addition, the picture shows one of the inmates wearing a facial covering while waiting to be seen by medical.
- b) **Exhibit B** is a photograph of the H Barracks dayroom with social distancing markers leading from the exit door.
- c) **Exhibit C** is a photograph of the Mod M dayroom. The photograph also depicts hand sanitizer, bottle of disinfectant and paper towels on the dayroom table.
- d) **Exhibit D** is a photograph of an H Barracks cube where inmates store excess toilet paper. There are 32 cubes in each barrack.
- e) **Exhibit E** is a photograph of the Mod M "beach" where extra toilet paper is stacked and available for the inmates.


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f) **Exhibit F** is a photograph of a staff member using electromagnetic spray sanitizer to disinfect high touch surfaces, which is done twice daily. This photo shows the staff member disinfecting the tables in the H Barracks.

g) **Exhibit G** is a photograph of a two man cell in Mod K where there are stacks of toilet paper next to the cell toilet.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed June 18, 2020, at Orange, California.


Patrick Rich

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

EXHIBIT A



EXHIBIT B



EXHIBIT C

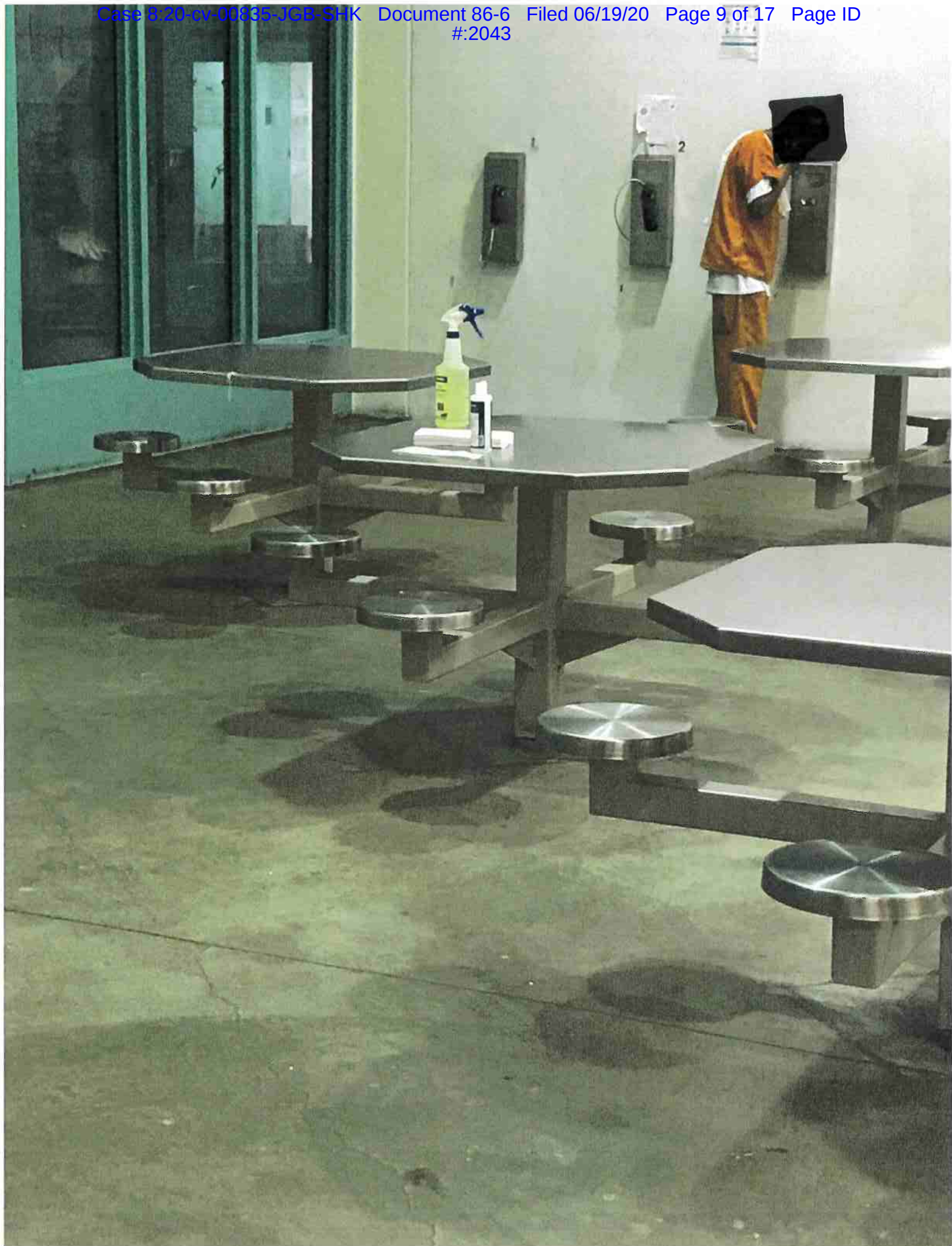


EXHIBIT D



EXHIBIT E



EXHIBIT F

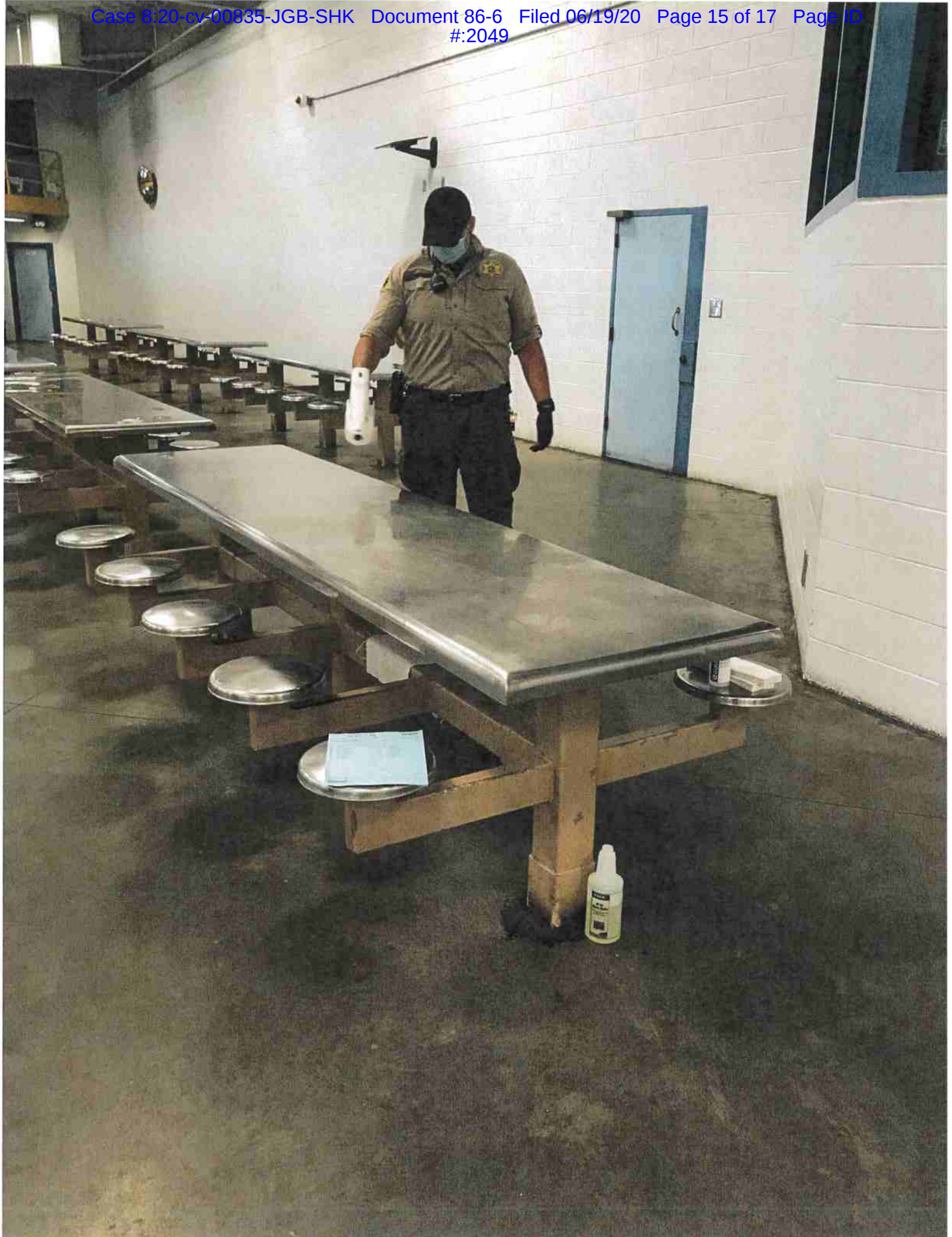


EXHIBIT G



OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

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REBECCA S. LEEDS, SENIOR DEPUTY (CA SBN 221930)
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Facsimile: (714) 834-2359

8 Attorneys for Defendants DON BARNES
9 and COUNTY OF ORANGE (erroneously named
as ORANGE COUNTY, CALIFORNIA)

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **EASTERN DIVISION**

14 MELISSA AHLMAN, DANIEL KAUWE,
MICHAEL SEIF, JAVIER ESPARZA,
15 PEDRO BONILLA, CYNTHIA
CAMPBELL, MONIQUE CASTILLO,
16 MARK TRACE, CECIBEL CARIDAD
ORTIZ, and DON WAGNER, on behalf of
17 themselves and all others similarly situated,
et al.,

18 Plaintiffs/Petitioners,

19 v.

20 DON BARNES, in his official capacity as
21 Sheriff of Orange County, California; and
ORANGE COUNTY, CALIFORNIA.

22
23 Defendants/Respondents.
24
25
26
27
28

Case No. 8:20-cv-00835-JGB-SHK

**DECLARATION OF DALLAS
HENNESSEY IN SUPPORT OF
DEFENDANTS' EX PARTE
APPLICATION TO DISSOLVE MAY
26, 2020 PRELIMINARY INJUNCTION;
OR IN THE ALTERNATIVE, SET
EXPEDITED HEARING TO DISSOLVE
PRELIMINARY INJUNCTION**

DECLARATION OF SERGEANT DALLAS HENNESSEY

I, Dallas Hennessey, declare as follows:

1. Unless otherwise stated, I have personal knowledge of the facts contained in this declaration unless such facts are stated on information and belief, in which case I believe them to be true. If called upon to testify, I could and would do so competently.

2. I am employed by the Orange County Sheriff’s Department (“OCSD”). I have been employed by OCSD for the last 21 years. I currently hold the rank of Sergeant of the Special Services Bureau - Population Management Unit for the Orange County Jail.

3. As a Sergeant in this position, I oversee the classification and housing of all inmates at all custodial facilities. I manage, in conjunction with CHS, I manage tracking and appropriately housing all inmates in medical quarantine and medical isolation housing due to the COVID-19 pandemic.

4. I have reviewed the declarations submitted in support of Plaintiffs pleadings in this matter and have investigated the allegations contained therein.

a) **Plaintiff Melissa Ahlman** (Declarations at Dkts. 41-19, 41-41, 57-1, 79-33, 79-34.)

i. Plaintiff Ahlman is housed in the Women’s Jail, tank P-13. Plaintiff Ahlman alleges that the sink in her bathroom has been broken for two weeks, (Dkt. 79-34 ¶ 7) does not have enough cleaning supplies, (Id. ¶ 10), hygiene supplies (Dkt. 79-33 ¶ 6; 57-1, ¶ 6), or hand sanitizer. (Dkt. 79-34, ¶ 5.)

ii. I am informed and believe that Plaintiff Ahlman has not filed a grievance for the alleged broken sink, nor filed a grievance requesting additional cleaning supplies, hygiene supplies or hand sanitizer.

iii. I am informed and believe that on April 24, Ahlman filed a grievance regarding not getting adequate protecting from the Coronavirus. The grievance was responded to with an explanation that OCSD is

1 following all CDC Guidelines and working CHS to ensure proper
2 COVID measures are in place.

3 iv. Plaintiff Ahlman alleges that when she goes to the medical unit there
4 is never enough room to keep six feet apart and that they might put
5 someone with virus symptoms on the bench with her. (Dkt. 41-19, ¶
6 14.)

7 v. I am informed and believe that when inmates leave their sector to go
8 to medical, they are instructed to wear a mask to practice safe social
9 distancing. In addition, there are blue pieces of tape on the medical
10 benches to give the inmates six feet of social distancing. There are
11 only as many inmates waiting in the medical unit as there are blue
12 tape marks.

13 **b) Plaintiff Daniel Kauwe:** (Dkt. 41-28, 41-37)

14 i. Plaintiff Kauwe is housed in Theo Lacy Facility, Mod O, sector 41.
15 Plaintiff Kauwe alleges that he goes to dayroom with 2 other
16 inmates and cannot socially distance in the dayroom. (Dkt. 41-28, ¶
17 6.) Plaintiff Kauwe alleges that “[e]ven if we try to space out at the
18 tables in the dayroom, we are likely not meeting the six foot distance
19 requirement.” (Id.)

20 ii. I am informed and believe that the dayroom in TLF, Mod O, sector
21 41 is large enough to hold 3 people and maintain more than 6 feet
22 separation. The dayroom has 4 tables that seat 4 people each, 4
23 telephones, and 2 showers. In addition, it is recommended that
24 inmates wear a mask when using the dayroom to practice safe social
25 distance measures.

26 **c) Plaintiff Javier Esparza:** (Dkts. 41-15, 41-33.)
27
28

- 1 i. Plaintiff Esparza is housed in Theo Lacy Facility, Mod P, sector 45.
2 Plaintiff Esparza alleges that he has only been given a ripped up sheet
3 to cover his face and has not been given a mask. (Dkt. 41-15, ¶ 9.)
4 i. I am informed and believe that all inmates at Theo Lacy were given
5 face coverings/face masks beginning April 5¹. Since April 5, all
6 inmates can exchange their face coverings/masks upon request or
7 during clothing exchange, which now occurs daily.

8 **d) Plaintiff Pedro Bonilla:** (Dkt. 41-20.)

- 9 ii. Plaintiff Bonilla is housed at Theo Lacy Facility in Mod K, sector 14.
10 Plaintiff Bonilla alleges that he uses the dayroom with 7 other people
11 and cannot socially distance. (Dkt. 41-20, ¶ 7.)
12 iii. I am informed and believe that when inmates leave their sector to go
13 to dayroom, they are instructed to wear a mask to practice safe social
14 distancing. The dayroom in TLF, Mod K, sector 14 is large enough to
15 hold 8 people and maintain more than 6 feet separation. The dayroom
16 has 8 tables that seat 4 people each, 4 telephones, and 2 showers. If
17 an inmate must use the phone at the same time as someone else, it is
18 recommended that they wear a face mask.
19 iv. Plaintiff Bonilla alleges that he has not been given adequate cleaning
20 supplies or soap. (Dkt. 41-20.)
21 v. I am informed and believe that Plaintiff Bonilla has never filed a
22 grievance for additional cleaning supplies or soap. See photos
23 attached to Declaration of Captain Rich showing the cleaning
24 supplies, disinfectant and soap available to the inmates.

25 **e) Plaintiff Mark Trace:** (Dkts. , 41-11, 41-13, 41-24, 41-38, 41-39.)
26

27 _____
28 ¹ The face coverings have evolved over time. In early April, due to a shortage of masks, OCSD made face coverings out of cloth for the inmates. Now OCSD has painter's masks as well as cloth face coverings available to inmates so the exact type of face covering may vary among the inmates but every inmate is provided with a face covering or face mask of some type.

- 1 i. Plaintiff Trace is housed in Central Men’s Jail in Mod D, tank 20.
2 Plaintiff Trace alleges that 2 to 3 inmates have access to the
3 dayroom at a time and that it is not possible to socially distance in
4 the dayroom. (Dkt. 41-13, ¶ 14.) Trace alleges that he must use the
5 phone and showers with 2 to 3 other inmates in the dayroom and that
6 it is not possible to spread out. (Id. ¶¶ 14-15.)
- 7 ii. I am informed and believe that since April 7, Plaintiff Trace goes to
8 dayroom alone due to his classification in the Jail. Plaintiff Trace
9 uses the phones and showers alone.
- 10 iii. Plaintiff Trace alleges that he does not have adequate cleaning
11 supplies or soap. (Id. ¶¶ 13, 16.)
- 12 i. I am informed and believe that Plaintiff Trace has never filed a
13 grievance for additional cleaning supplies or soap. See photos of
14 Central Men’s Jail attached to Declaration of Captain Von Nordheim
15 showing the cleaning supplies and soap available to all inmates in
16 the Jail.
- 17 **f) Plaintiff Don Wagner:** (Dkts. 41-4, 41-12, 41-35.)
- 18 i. Plaintiff Wagner is housed in Theo Lacy Facility, Mod P, sector 47.
19 Plaintiff Wagner alleges that he has not been given a mask, does not
20 have adequate cleaning supplies or soap. (Dkt. 41-4, ¶¶ 11, 15, 18;
21 Dkt. 41-12, ¶¶ 5, 6.)
- 22 ii. I am informed and believe that all inmates at Theo Lacy were given
23 face coverings/face masks beginning April 5. Since April 5, all
24 inmates can exchange their face coverings/masks upon request or
25 during clothing exchange, which now occurs daily.
- 26 iii. I am informed and believe that Plaintiff Wagner has never filed a
27 grievance for additional cleaning supplies or soap. (See Photos)
- 28

- 1 iv. Plaintiff Wagner alleges that he filed grievances on April 24 and May
- 2 6 regarding COVID related concerns. (See Dkt. 41-35, ¶¶ 3-4.)
- 3 v. I am informed and believe that Plaintiff Wagner has zero grievances
- 4 in the system.
- 5 vi. Plaintiff Wagner alleges that he cannot socially distance from his
- 6 cell mate that he shares a cell with 21 hours a day. (Dkt. 41-12, ¶ 3.)
- 7 Wagner alleges that he goes to dayroom with 7 other inmates and
- 8 does not know if they have tested positive for COVID. (Id. ¶ 4.)
- 9 vii. I am informed and believe that Wagner’s cellmate does not have
- 10 COVID nor has he been in contact with known COVID. In addition,
- 11 there have been no known COVID cases that originated at the Theo
- 12 Lacy Facility. All the known COVID cases originated out of Central
- 13 Men’s and Central Women’s Jail. If someone with COVID is housed
- 14 at Theo Lacy it is because they were placed there to quarantine and
- 15 isolate. Those inmates do not have any face-to-face interaction with
- 16 other inmates until they have completed quarantine and tested
- 17 negative. Further, Plaintiff Wagner has been given a mask to practice
- 18 safe social distancing measures when outside of his cell.

19 **g) Declarant Jose Armendariz:** (Dkts. 41-10, 79-21)

- 20 i. Inmate Armendariz is housed in Theo Lacy Facility, Mod O, sector
- 21 41. He is housed in a cell by himself. Inmate Armendariz alleges
- 22 that he shares a dayroom and showers with 13 to 15 other inmates.
- 23 (Dkt. 79-21, ¶¶ 18, 19.)
- 24 iii. Inmate Armendariz goes to the dayroom with 4 other inmates, (5)
- 25 total. The dayroom in TLF, Mod O, sector 41, is large enough to
- 26 hold 5 people and maintain more than 6 feet separation. The
- 27 dayroom has 4 tables that seat 4 people each, 4 telephones, and 2
- 28

- 1 showers. In addition, it is recommended that inmates wear a mask
2 when using the dayroom to practice safe social distance measures.
- 3 ii. Inmate Armendariz alleges that he filed a grievance about diluted
4 disinfectant. (Dkt. 79-21, ¶ 24.) Armendariz alleges he does not
5 have access to hand sanitizer, adequate amount of soap or cleaning
6 supplies. (Id. ¶¶ 23, 24, 26, 27.)
- 7 vi. I am informed and believe that Armendariz has zero grievances on
8 file. See photos attached to Declaration of Captain Rich showing the
9 cleaning supplies, disinfectant and soap available to the inmates.

10 **h) Declarant Enrique Hernandez:** (Dkt. 41-22.)

- 11 i. Inmate Hernandez is housed in Central Men’s Jail, Mod F, tank 32.
- 12 ii. Inmate Hernandez alleges that his mask is ripped, and no one has
13 offered him a new mask. (Id. ¶ 17.)
- 14 iii. I am informed and believe that all inmates at Central Men’s Jail
15 were given face coverings/face masks on or around April 5. Since
16 April, all inmates can exchange their face coverings/masks upon
17 request or during clothing exchange, which now occurs daily.
- 18 iv. Hernandez alleges that if he sleeps with his feet facing a cellmate’s
19 feet, their feet will touch each other’s during the night. (Id. ¶ 7.)
- 20 v. I am informed and believe that as of today’s date there are 2 empty
21 bunks in his cell and Hernandez could sleep in one of those empty
22 bunks to get more space while sleeping.
- 23 vi. Inmate Hernandez alleges that there is no way to disinfect the
24 phones during each use. (Id. ¶ 27.)
- 25 vii. I am informed and believe that there are disinfectant spray bottles
26 and paper towels in all living areas to disinfect the phones
27 before/after each use as well as to disinfect common living areas.
28 See photos of Central Men’s Jail attached to Declaration of Captain

1 Von Nordheim showing the disinfectant and cleaning supplies
2 available to all inmates in the common areas.

3 viii. Inmate Hernandez alleges that when receiving meals or during count
4 time, the inmates must line up close together. (Id. ¶¶ 21, 27.)

5 ix. I am informed and believe that the inmates do line up close together
6 at the cell bars for count, but the inmates are told to wear their face
7 coverings during count.

8 x. Inmate Hernandez alleges that when he goes to outdoor recreation
9 time, he goes with 40 to 100 people. (Id. ¶ 30.)

10 xi. I am informed and believe that roof recreation is scheduled with the
11 inmates in his living area which consists of approximately 80
12 maximum inmates. Roof recreation is an outdoor area that is
13 roughly half an acre. The outdoor area is large enough to maintain
14 social distance even with 80 inmates present at the same time. In
15 addition, it is requested that the inmates wear a face covering
16 whenever the inmates are out of their living area.

17 **i) Declarant Donald Timmons:** (Dkt. 57-5.)

18 i. Inmate Timmons is housed in Central Men's Jail, Mod C, tank 12.
19 Inmate Timmons alleges that he does not have adequate cleaning
20 supplies or soap. (Dkt. 57-5, ¶¶ 12-13.)

21 ii. I am informed and believe that Timmons has never filed a grievance
22 while being in custody. See photos of Central Men's Jail attached to
23 Declaration of Captain Von Nordheim showing the disinfectant and
24 cleaning supplies and ample amount of soap available to all inmates.

25 **j) Declarant Mitchell John Lentz:** (Dkt. 41-18.)

26 i. Inmate Lentz is housed in Central Men's Jail, Mod C, tank 16.
27 Inmate Lentz alleges that he does not have adequate cleaning
28 supplies or hygiene supplies. (Dkt. 41-18, ¶¶ 19, 22.)

1 ii. I am informed and believe that Lentz has never filed a grievance
2 while being in custody. See photos of Central Men’s Jail attached to
3 Declaration of Captain Von Nordheim showing the disinfectant and
4 cleaning supplies and ample amount of soap available to all inmates.

5 **k) Declarant Carlos Godinez Sanchez:** (Dkt. 41-16, ¶ 21.)

- 6 i. Inmate Sanchez is housed in Central Men’s Jail in Mod A, tank 5.
7 Inmate Sanchez alleges that since being moved to Mod A he has only
8 received outdoor recreation two times. (Dkt. 41-16, ¶ 21.)
9 ii. I am informed and believe that inmates in sector 5, were given (5)
10 opportunities to go to roof recreation from 3-28 to 4-24, the dates he
11 was housed in that housing area. In addition, roof recreation was
12 limited during the COVID outbreak out at the CMJ due to many
13 inmates being under quarantine.
14 iii. I am informed and believe that inmate Sanchez has never filed a
15 grievance for any issues of confinement.

16 **l) Declaration Jaime Herrera:** (Dkt. 41-23, ¶¶ 9, 11.)

- 17 i. Inmate Herrera is housed in Central Men’s Jail in Mod D, tank 19.
18 Inmate Herrera alleges that he does not have adequate hygiene
19 supplies, soap and cleaning products. (Dkt. 41-23, ¶¶ 9, 11.)
20 ii. I am informed and believe that inmate Herrera has never filed a
21 grievance for any issues of confinement. See photos of Central
22 Men’s Jail attached to Declaration of Captain Von Nordheim
23 showing the disinfectant and cleaning supplies and ample amount of
24 soap available to all inmates.

25 **m) Declarant Charles Lucious:**

- 26 i. Inmate Lucious is housed in Theo Lacy Facility, Mod O, sector 39.
27 Inmate Lucious alleges that he does not have adequate cleaning
28

1 supplies, soap, and a torn sheet to use as a mask. (Dkt. 57-2, ¶¶ 7-8,
2 16.)

3 ii. I am informed and believe that all inmates at Theo Lacy were given
4 face coverings/face masks beginning April 5. Since April, all
5 inmates are able to exchange their face coverings/masks upon request
6 or during clothing exchange, which now occurs daily.

7 iii. I am informed and believe that inmate Lucious has never filed a
8 grievance for additional soap, masks, or cleaning supplies. See
9 photos of Central Men's Jail attached to Declaration of Captain Von
10 Nordheim showing the disinfectant and cleaning supplies and ample
11 amount of soap available to all inmates.

12 **n) Declarant David Mejia Sanchez:**

13 i. Inmate Sanchez is housed in Theo Lacy, Mod P, sector 45. Inmate
14 Sanchez alleges that he shares a dayroom with 7 other inmates, that it
15 is impossible to socially distance in the dayroom, and there is no way
16 to clean the phones after each use. (Dkt. 79-30, ¶ 10.)

17 ii. Inmate Sanchez goes to the dayroom with a total of (8) inmates in his
18 dayroom group. The dayroom in TLF, Mod P, sector 45 is large
19 enough to hold 8 people and maintain more than 6 feet separation.
20 The dayroom has 8 tables that seat 4 people each, 4 telephones, and 2
21 showers. In addition, it is recommended that inmates wear a mask
22 when using the dayroom to practice safe social distance measures.

23 iii. I am informed and believe that there are disinfectant spray bottles
24 and paper towels in all living areas to disinfect the phones
25 before/after each use as well as to disinfect common living areas.
26 See photos attached to Declaration of Captain Rich showing the
27 cleaning supplies and disinfectant in all living areas.
28

- 1 iv. Inmate Sanchez alleges that he does not have adequate cleaning
2 supplies or hygiene supplies (Id. ¶¶ 11-16) and has not had clean
3 towels in 3 weeks. (Id. ¶ 18.)
- 4 v. I am informed and believe that prior to COVID, inmates were given
5 clothing exchange twice a week where they should receive clean
6 towels. Since the implementation of COVID procedures, inmates are
7 given clothing exchange every day where they should receive clean
8 towels.
- 9 vi. I am informed and believe that inmate Sanchez has never filed a
10 grievance regarding not having clean towels, inadequate cleaning
11 supplies or hygiene supplies. However, inmate Sanchez has filed one
12 grievance to inmate food services regarding his peanut allergy. See
13 photos attached to Declaration of Captain Rich showing ample
14 amount of cleaning and hygiene supplies.
- 15 vii. Inmate Sanchez alleges that he shares recreation time with 192
16 people. (Id. ¶ 17.)
- 17 viii. I am informed and believe that inmate Sanchez’s housing area
18 consists of a total of 192 inmates. However, only (32) inmates’
19 maximum, (one sector) would go to outdoor recreation at one time.
20 In addition, inmates are asked to wear a face covering when leaving
21 their cell/living area.

22 o) **Declarant Jeffrey Davis:** (Dkt. 79-32, ¶¶ 3-5.)

- 23 i. Inmate Davis is housed in Theo Lacy, Mod P, sector 45. Inmate
24 Davis alleges that his mask is a torn piece of cloth, he does not have
25 adequate cleaning supplies or enough soap. (Dkt. 79-32, ¶¶ 3-5.)
- 26 ii. I am informed and believe that all inmates at Theo Lacy were given
27 face coverings/face masks beginning April 5. Since April 5, all
28

1 inmates can exchange their face coverings/masks upon request or
2 during clothing exchange, which now occurs daily.

- 3 iii. I am informed and believe that inmate Davis has never filed a
4 grievance regarding his mask, or not having enough cleaning supplies
5 or soap.
- 6 iv. Inmate Davis is housed in a cell with one other inmate and alleges
7 that he cannot socially distance from his cellmate. (Id. ¶ 6.)
- 8 v. I am informed and believe that his cellmate does not have COVID or
9 been in contact with known COVID. In addition, Davis has been
10 given a mask to practice safe social distancing measures. If Inmate
11 Davis needs a new mask, he can request one.

12 **p) Declarant Jose Cota:** (Dkt. 41-10, ¶ 16.)

- 13 i. Inmate Cota is housed in Theo Lacy, Mod N, sector 32. Inmate Cota
14 alleges that his mask is a torn piece of cloth, he does not have
15 adequate cleaning supplies or enough soap. (Dkt. 41-10, ¶ 16.)
- 16 ii. I am informed and believe that all inmates at Theo Lacy were given
17 face coverings/face masks beginning April 5. Since April 5, all
18 inmates can exchange their face coverings/masks upon request or
19 during clothing exchange, which now occurs daily.
- 20 iii. I am informed and believe that inmate Cota has never filed a
21 grievance regarding his mask, or not having enough cleaning supplies
22 or soap.

23 **q) Declarant Korrell Cole:** (Dkt. 41-10, ¶ 24.)

- 24 i. Inmate Cole is housed in Theo Lacy, Mod N, sector 31. Inmate Cole
25 alleges that an inmate was moved to his sector in May who had
26 COVID and they all comingle in the dayroom. (Dkt. 41-10, ¶ 24.)
- 27
28

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- 1 ii. Inmate Cole is under a certain classification that requires him to be
- 2 kept separate from all other inmates. Cole goes to dayroom by
- 3 himself and not with any other inmates.
- 4 iii. Inmate Cole alleges that his cloth mask is made from soiled sheets,
- 5 with stains of feces and blood. (Id. ¶ 17.)
- 6 iv. I am informed and believe that all inmates at Theo Lacy were given
- 7 face coverings/face masks beginning April 5. Since April 5, all
- 8 inmates can exchange their face coverings/masks upon request or
- 9 during clothing exchange, which now occurs daily.
- 10 v. I am informed and believe that Inmate Cole has never filed a
- 11 grievance regarding his mask or needing additional soap or cleaning
- 12 supplies.

13 **r) The Following Declarants Have Been Released from OCSD Custody:**

- 14 i. **Dalton James Cardone:** (Dkt. 41-25, 79-13.) Released on May 22,
- 15 2020.
- 16 ii. **Leonard Farias:** (Dkt. 41-17, 79-23.) Released on April 27, 2020.
- 17 iii. **Fernando Maldonado:** (Dkt. 79-15.) Released on April 29, 2020.
- 18 iv. **Julian Miranda, Jr.:** (Dkt. 41-19, 79-19.) Released on May 6,
- 19 2020.
- 20 v. **Praney Saem:** (Dkt. 41-29, 79-5.) Released
- 21 vi. **Sean S. Wells:** (Dkt. 79-16.) Released
- 22 vii. **Plaintiff Michael Seif:** (Dkts. 41-13, 41-32, 57-4.) Released on June
- 23 2, 2020.

24 5. Attached as **Exhibit A** is a true and correct copy of the list of all medically
25 vulnerable inmates in the Orange County Jail, their criminal charges, whether they are a
26 pre-trial inmate, whether they qualify for bail, on probation or parole, etc.

27 6. This chart is significant because the inmate’s full criminal history
28 determines what classification level, he/she belongs in and how inmates are housed.

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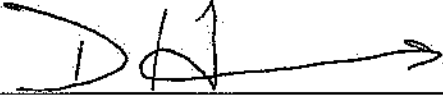
1 Inmates are housed with other compatible inmates of the same security level. There are
2 a total of seventeen classification levels. The Jail Inmate Classification system is
3 required under Title 15, current case law and Department policy.

4 7. Given the legal requirement to comply with Inmate Classification, and the
5 Order mandating, (1) six feet or more of adequate spacing between inmates, (2) access to
6 daily showers and laundry, (3) daily temperature checks of all inmates, (4) daily COVID
7 assessments of all inmates, (5) recreation, phone and video visitation for inmates under
8 quarantine, while also having to properly sanitize each area in between use, creates an
9 inherent dilemma for OCSD. Simply put, there is not enough dayrooms, staff, and hours
10 in the day to accomplish all of this without jeopardizing the safety of inmates and staff.

11 8. In order to accommodate everyone in a single day, some inmates must be
12 able to go to dayroom in groups. For those inmates who are appropriate to go to
13 dayroom with another inmate or a group of inmates, it is recommended to wear a mask.

14 I declare under penalty of perjury under the laws of the United States that the
15 foregoing is true and correct.

16 Executed June 19, 2020, at Santa Ana, California.

17  → #5427
18 _____
19 Dallas Hennessey

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CHARGES	PRE-TRIAL?	ORDER FOR BAIL?	PROBATION/ PAROLE	QUALIFY FOR ZERO BAIL?
PC 187(A) MURDER/ PC290(A)(1)(A) REGISTER SEX OFFENDER	YES	NO	NO	NO
PC COURTOORDER/WI 6600 SEX PREDATOR PC COURTOORDER/WI 6600 SEX PREDATOR	YES	NO	NO	NO
PC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDER	YES	NO	NO	NO
PC 187(A) MURDER, PC 653F(A) SOLICIT SPECIFIC CRIMINAL ACT	YES	NO	NO	NO
PC 187 - MURDER, PC 186.22 - CRIMINAL STREET GANGPC 187 - MURDER, PC 186.22 - CRIMINAL STREET GANG	YES	NO	NO	NO
PC 187(A) MURDER/ PC 1203.2 PC 187(A) MURDER/ PC 1203.2 PC 187(A) MURDER/ PC 1203.2	YES	YES	NO	NO
PC 187(A) MURDER, PC 3056 VIOLATION OF PAROLE, PC 261(A)(2) ASSLT: COMMIT RAPE	NO	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, PC 273AA - CHILD ENDANGERMENT	YES	YES	NO	NO
PC 288(A) L&L W/ CHILD UNDER 14/PC288.7(B) ORAL COP CHILD UNDER 10	YES	YES	NO	NO
PC 187(A) MURDER/ PC3056- PAROLE VIOLATION PC 187(A) MURDER/ PC3056- PAROLE VIOLATION	NO	NO	NO	NO
PC 187 - MURDER, PC 186.22 - GANG INVOLVE PUBLIC OFFENSE	YES	NO	NO	NO
PC 187 - MURDER, PC 288 - L&L W/ CHILD UNDER 14, PC 273 - ASSAULT W/ GBI TO CHILD	YES	YES	NO	NO
PC 288(A) L&L W/CHILD/ PC 266/PC266J PROCURE CHILD UNDER 16/PC288.7(A) SEX W/ CHILD UNDER 10	YES	YES	NO	NO
PC 29800(A)(1) EX-FELON WITH FIREARM/VC 10851(A) VEHICLE THEFT	YES	YES	NO	NO
PC 187 - MURDER, US 1325 - VIOL OF IMMIGRATIONPC 187 - MURDER, US 1325 - VIOL OF IMMIGRATION	YES	YES	NO	NO
PC 288.7(A) SEX W/CHILD UNDER 10 YRS/PC 288(A) L&L W/CHILD UNDER 14	YES	YES	NO	NO
PC 288(A) L&L W/ CHILD UNDER 14, PC 288.7(B) ORAL COP CHILD UNDER 10 YRS	YES	YES	NO	NO
PC 191.5 - VEH. MANSLAUGHTER, VC 23153 - DUI CAUSING GBI	YES	YES	NO	NO
PC 187(A) MURDERPC 187(A) MURDERPC 187(A) MURDERPC 187(A) MURDERPC 187(A) MURDER	YES	NO	NO	NO
PC 187(A) MURDERPC 187(A) MURDERPC 187(A) MURDERPC 187(A) MURDERPC 187(A) MURDER	YES	NO	NO	NO
PC 288(A) L&L W/ CHILD UNDER 14PC 288(A) L&L W/ CHILD UNDER 14PC 288(A) L&L W/ CHILD UNDER 14	YES	YES	NO	NO
PC 288(A) L&L W/CHILD UNDER 14/PC 288.5(A) CONT SEX ABUSE OF CHILD	YES	NO	NO	NO
PC 664/187 ATTEMPTED MURDER/PC594(A) VANDALISM PC245 ASSAULT W/DEADLY WEAPON	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, US 1325 - VIOL OF IMMIGRATION	YES	YES	NO	NO
PC 664/187 - ATTEMPT MURDER, PC 273AA - CHILD ENDANGERMENT	YES	YES	NO	NO
PC 187(A) MURDERPC 187(A) MURDERPC 187(A) MURDERPC 187(A) MURDERPC 187(A) MURDER	YES	YES	NO	NO
PC 209(B)(1) KIDNAP: ROBBERY/PC261(A)(2) ASSAULT COMMIT RAPE	YES	NO	NO	NO
PC 1203.2 REVOKE PROBATION, PC 273.5(A) CORPORAL INJ OF SPOUSE	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 10 / ORAL COP. / CONTINUAL SEXUAL ABUSE OF CHILD	YES	YES	NO	NO
PC 187 - MURDER, PC 459 - BURGLARYPC 187 - MURDER, PC 459 - BURGLARY	YES	NO	NO	NO
PC 245(A)(1) ASSAULT W/DEADLY WEAPON/ PC 215(A) CARJACKING/ PC 664/10851(A) ATTEMPT AUTO THEFT	NO	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14 / ORAL COP., PC 261 - ASSAULT TO COMMIT RAPE	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 10 / ORAL COP.PC 288 - L&L ACTS W/ CHILD UNDER 10 / ORAL COP.	YES	YES	NO	NO
PC 664/187(A) ATT. MURDER/ PC 664/207(A) ATTEMPT/KIDNAPP/PC245(A)(1) ASSLT W/DEADLY WEAP	NO	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, US 1325 - VIOL OF IMMIGRATION	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, PC 261.5 - SEXUAL INTERCOURSE W/ MINOR	YES	YES	NO	NO
PC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDER	YES	YES	NO	NO

PC 261 - ASSAULT TO COMMIT RAPE, PC 286 - SODOMY, PC 289 - SEX PEN. BY FORCE/FEAR	YES	YES	NO	NO
PC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDER	YES	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14 / ORAL COP. OF CHILD UNDER 10	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 10 / ORAL COP.PC 288 - L&L ACTS W/ CHILD UNDER 10 / ORAL COP.	YES	YES	NO	NO
PC 286(B)(2) SODOMY:PERSON UNDER 16/ PC 288A(B)(2) ORAL COP:PERSON UNDER	YES	YES	NO	NO
PC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDER	YES	YES	NO	NO
PC 187(A) MURDER, VC 23153(A)(B) DUI: .08 ALCHL W/ GBI	YES	YES	NO	NO
PC 209(B)(1) KIDNAP: ROBBERY/OTHER, PC 261(A)(2) ASSLT:COMMIT RAPE, PC 288A(C)(2) ORAL COP	YES	NO	NO	NO
PC 211 ROBBERY/PC 245(A)(4) ASSAULT W/FORCE GBIPC 211 ROBBERY/PC 245(A)(4) ASSAULT W/FORCE GBI	YES	NO	NO	NO
VC 2800.2 EVADING PO, PC 496D(A) REC STOLEN VEH, VC 10851(A) VEH THEFT	YES	YES	NO	NO
PC 211 ROBBERY, PC 243(C)(2) BATT ON PO, PC 245(A)(1) ASSLT W/ DEADLY WEAPON	YES	NO	NO	NO
PC 187 - MURDER, PC 191.5 - VEHICULAR MANSLAUGHTER, VC 23153 - DUI CAUSING GBI	YES	NO	NO	NO
PC 220(B) ASSLT/COMMIT RAPE/PC 459 BURGLARY / PC 460(A) BURGLARY:FIRST DEGREE	YES	YES	NO	NO
PC 664/187 - ATTEMPT MURDER, PC 215 - CARJACKINGPC 664/187 - ATTEMPT MURDER, PC 215 - CARJACKING	YES	NO	NO	NO
PC 451(C) ARSON: FOREST LAND/ PC 451(B) ARSON:INHABITED STRUCTURE	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 10PC 288 - L&L ACTS W/ CHILD UNDER 10	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14PC 288 - L&L ACTS W/ CHILD UNDER 14	YES	YES	NO	NO
PC 288(A) L&L W/CHILD /1203.2/US1325-VIOL OF IMMIGRATION	YES	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14PC 288 - L&L ACTS W/ CHILD UNDER 14	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 10 / ORAL COP.PC 288 - L&L ACTS W/ CHILD UNDER 10 / ORAL COP.	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 10 / CONTINUAL SEXUAL ABUSE OF CHILD, PC 207 - KIDNAP TO COMMIT L&L	YES	YES	NO	NO
PC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDER	YES	NO	NO	NO
PC 187 - MURDER, PC 211 - ROBBERY, PC 186.22 - CRIMINAL STREET GANG	YES	YES	NO	NO
PC 187 - MURDER, PC 211 - ROBBERY, PC 186.22 - CRIMINAL STREET GANG	YES	NO	NO	NO
PC 664/187(A) ATTMPT MURDER, PC 245(A)(2) ASSLT W/ FIREARM ON PERS, PC 246.3(A) DISCHARGE FIREARM	YES	YES	NO	NO
PC 206 TORTURE, PC 273D(A) INFLICT INJURY UPON CHILD, PC 245(A)(1)	YES	YES	NO	NO
PC 206 TORTURE, PC 273D(A) INFLICT INJURY UPON CHILD, PC 245(A)(1)	YES	YES	NO	NO
HS 11378 POSSESSION FOR SALE/ PC 187(A) MURDERHS 11378 POSSESSION FOR SALE/ PC 187(A) MURDER	YES	YES	NO	NO
PC 664/187(A) ATTMPT MURDER, PC 186.22 CRIMINAL STREET GANG, PC 245(A)(4) ASSLT W/ FORCE GBI	YES	YES	NO	NO
PC 3056 VIOLATION OF PAROLE/PC451(A) ARSON CAUSING GBI/PC597 CRUELTY TO ANIMALS	YES	YES	NO	NO
PC 459 BURGLARY/ PC 460(A) BURGLARY:FIRST DEGREEPC 459 BURGLARY/ PC 460(A) BURGLARY:FIRST DEGREE	YES	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, US 1325 - VIOLATION OF IMMIGRATION	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14PC 288 - L&L ACTS W/ CHILD UNDER 14	YES	YES	NO	NO
PC 459 BURGLARY/ PC 460(B) BURGLARY:SECOND DEGREE	NO	NO	NO	NO
PC 273.5 INFLICT INJURY UPON SPOUSE/PC 459 BURGLARY/ PC 245(A)(1) ASSAULT W/DEADLY WEAPON	YES	YES	NO	NO
PC 187(A) MURDER/ PC664/187 ATTEMPTED MURDER PC 187(A) MURDER/ PC664/187 ATTEMPTED MURDER	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, US 1325 - VIOLATION OF IMMIGRATION	YES	YES	NO	NO
PC 203 - MAYHEM, PC 206 - TORTURE, PC 245 - ASSAULT W/ DEADLY WEAPON, PC 451 - ARSON	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14PC 288 - L&L ACTS W/ CHILD UNDER 14	YES	YES	NO	NO

PC 664/187 - ATTEMPT MURDER, PC 203 - AGGRAVATED MAYHEM	YES	YES	NO	NO
PC 187(A) MURDER PC 187(A) MURDER PC 187(A) MURDER PC 187(A) MURDER PC 187(A) MURDER	YES	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, PC 269 - ORAL COP. BY FORCE OR FEAR	YES	YES	NO	NO
HS 11351 POS/PUR F/SALE NARC/ PC 182(A)(1) CONSPIRACY:COMMIT CRIME	NO	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, PC286 - SODOMY	YES	YES	NO	NO
PC 451(D) ARSON:PROPERTY, PC 594(A) VANDALISM \$50000 OR MORE	YES	YES	NO	NO
PC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDER	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14 / CONTINUAL SEXUAL ABUSE OF CHILD, PC 667.61 - TIE/BIND DURING CRIM	NO	NO	NO	NO
HS 11352 TRANSPORT/SELL NARC, HS 11352 TRANSP/SELL NARC	NO	NO	NO	NO
HS 11378 POSSESSION FOR SALE, HS 11379(A) TRANSP/SELL CNTRL SUB	YES	NO	NO	NO
PC 236 - HUMAN TRAFFICKING, PC 266 - PIMPINGPC 236 - HUMAN TRAFFICKING, PC 266 - PIMPING	YES	NO	NO	NO
PC 187(A) MURDER/ VC 14601.1(A) LIC. SUSPEND/REVOKED	YES	YES	NO	NO
PC 664/187 - ATTEMPT MURDER, PC 3056 - VIOL. OF PAROLE	YES	YES	NO	NO
PC 245 - ASSAULT W/ DEADLY WEAPON, PC 273.5 - DV, PC 290.013 - FAIL TO REGISTER/SEX OFFENDER	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, US 1325 - VIOL OF IMMIGRATION	YES	YES	NO	NO
PC 187(A) MURDER, PC 451(B) ARSON INHABITED STRUCTURE	YES	YES	NO	NO
PC 187 - MURDER, PC 211 - ROBBERY PC 187 - MURDER, PC 211 - ROBBERY	YES	NO	NO	NO
PC 288(A) L&L W/ CHILD UNDER 14PC 288(A) L&L W/ CHILD UNDER 14PC 288(A) L&L W/ CHILD UNDER 14	YES	YES	NO	NO
PC 209(B)(1) KIDNAP:ROBBERY/OTHER/ PC 215(A) CARJACKING PC 211 ROBBERY	YES	YES	NO	NO
US 18USC US MARSHALUS 18USC US MARSHALUS 18USC US MARSHALUS 18USC US MARSHAL	NO	NO	NO	NO
PC 459 BURGLARY/ PC 646.9(A) STALKING/ PC 422(A) THRTN CRIME W/INTENT	YES	NO	NO	NO
VC 23153(A) DUI:ALC/DRUG CAUSING GBI/ VC 23153(B) DUI: .08 ALCOHOL W/GBI	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, PC 209 - KIDNAP(ROBBERY)	YES	YES	NO	NO
PC 664/187(A) ATTEMPTED MURDER/ PC 211 ROBBERY/PC 245(A)(1) ASSAULT W/DEADLY WEAPON	YES	YES	NO	NO
PC 29800 - EX-FELON W/ FIREARM, PC 186.22 - GANG PUNISHMENT	YES	YES	NO	NO
PC 187 - MURDER/ PC COURTORDER PC 187 - MURDER/ PC COURTORDER PC 187 - MURDER/ PC COURTORDER	YES	YES	NO	NO
PC 245(A)(2) ASSLT W/FIREARM ON PERS/ PC 245(B) ASSLT W/SEMIAUTO RIFLE	YES	YES	NO	NO
PC 664/187 - ATTEMPT MURDER, PC 245 - ASSAULT W/ SEMI AUTO RIFLE	YES	YES	NO	NO
PC 245 - ASSAULT W/ DEADLY WEAPON, PC 29800 - EX FELON W/ FIREARM	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, PC 288.5 - CONT SEX ABUSE OF CHILD, US 1325 - VIOL OF IMM.	YES	YES	NO	NO
PC 288(G) ORAL COP DISABLED VICT, PC 288(A) L&L CHILD UNDER 14, PC 289(A)(1)(C) SEX PEN MINOR	YES	YES	NO	NO
PC 455 AID IN ARSON, PC 453(A) POSS ARSON MATERIALS, PC 451(D) ARSON PROPERTY	YES	YES	NO	NO
PC 187 - MURDER, PC 273AB(4) - ASSAULT W/ GBI TO CHILD	YES	YES	NO	NO
PC 459 BURGLARY/496(A)/11375(B)(2)/460(A)/11377/148(A)(1)	YES	YES	NO	NO
PC 209(B) KIDNAP TO COMMIT ROBBERYPC 209(B) KIDNAP TO COMMIT ROBBERY	YES	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14PC 288 - L&L ACTS W/ CHILD UNDER 14	YES	YES	NO	NO
PC 666.5 AUTO THEFT WITH PRIOR, PC 29800(A)(1) EX-FELON W/FIREARM, VC 10851(A) VEH THEFT	NO	NO	NO	NO
HS 11378 POSSESSION FOR SALE/ HS 11379(A) TRANSP/SELL CNTL SUB	NO	NO	NO	NO
PC 187 - MURDER, PC 186.22 - CRIMINAL STREET GANGPC 187 - MURDER, PC 186.22 - CRIMINAL STREET GANG	NO	NO	NO	NO

EXHIBIT A

PC 664/187(A) ATTEMPTED MURDER/PC 245(A)(1) ASSAULT W/DEADLY WEAPON	YES	YES	NO	NO
PC 487(A) GRAND THEFT, PC 424(A)(1) PUB OFCR APPRP PUB FUNDS, PC 12022.6(A)(4) PROP DMGE OVER 2.5 MIL	YES	NO	NO	NO
PC COURTORORDER / PC 597.3(A) VANDALIZE PLACE OF WORSHIP	YES	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 10PC 288 - L&L ACTS W/ CHILD UNDER 10	YES	YES	NO	NO
PC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDER	YES	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14PC 288 - L&L ACTS W/ CHILD UNDER 14	YES	YES	NO	NO
PC 664/187(A) ATTEMPTED MURDER / CORPORAL INJURY OF SPOUSE	YES	NO	NO	NO
PC 288(A) L&L W/CHILD UNDER 14/ PC 269(A) SEX ASSAULT/CHILD	YES	YES	NO	NO
PC 266(A)(1) PANDERING/PUNISHMENT/PC 664/236.1(A) ATTEMPT HUMAN TRAFFICK	YES	NO	NO	NO
PC 664/187(A) ATTEMPTED MURDER/ PC 451(A) ARSON CAUSING GBI	YES	NO	NO	NO
PC 187(A) MURDER/ PC 288(A) L&L W/CHILD UNDER 14PC 187(A) MURDER/ PC 288(A) L&L W/CHILD UNDER 14	YES	NO	NO	NO
PC 664/187 - ATTEMPT MURDER, PC 245(B) - ASSAULT W/ SEMI AUTO RIFLE	YES	YES	NO	NO
PC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDER	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, PC 269 - SODOMY BY FORCE/FEAR	YES	YES	NO	NO
PC 191.5(A) GR VEH MANSL WHILE INT/ PC 187 (A) MURDER	YES	YES	NO	NO
PC 211 - ROBBERY, PC 245 - ASSAULT W/ DEADLY WEAPON	YES	YES	NO	NO
HS 11378 POSSESSION FOR SALE/HS 11370.1(A) POSSESSION W/FIREARM	YES	YES	YES	NO
PC 211 - ROBBERY, PC 459 - BURGLARY, PC 29800 - EX FELON W/ FIREARM	YES	YES	NO	NO
HS 11377(A) POSS CNTRLD SUB./11378/11379(A)/11370.1(A)	NO	NO	NO	NO
PC 451 - ARSONPC 451 - ARSONPC 451 - ARSONPC 451 - ARSONPC 451 - ARSONPC 451 - ARSON	NO	NO	NO	NO
PC 664/187 - ATTEMPT MURDER, PC 186.22 - CRIMINAL STREET GANG	YES	YES	NO	NO
PC 314.1 INDECENT EXPOSURE, PC 3056 VIOLATION OR PAROLE	YES	NO	NO	NO
PC 288(A) L&L W/ CHILD UNDER 14, PC 287 SODOMY, PC 261(A)(2) ASSLT: COMMIT RAPE	YES	YES	NO	NO
PC 236 - FALSE IMPRISONMENT, PC 245 - ASSAULT W/ DEADLY WEAPON, PC 273.5 - DV	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, US 1325 - VIOLATION OF IMMIGRATION	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, US 18USC US MARSHAL	YES	YES	NO	NO
PC 191.5(B) GROSS VEHICLE MANSLAUG/ VC 20001(A) HIT AND RUN:DEATH/INJURY	YES	YES	NO	NO
PC 451(B) ARSON:INHABITED STRUCT/ PC 243(C)(2) BATTERY ON PO/ PC 417.8 WEAPON OFFENSE	YES	YES	NO	NO
PC 288(A) L&L W/ CHILD UNDER 14, PC 288.7(C)(1) LEWD AND LASCIVIOUS ACTS	YES	YES	NO	NO
PC 314 - INDECENT EXPOSUREPC 314 - INDECENT EXPOSUREPC 314 - INDECENT EXPOSURE	YES	YES	NO	NO
PC 241.1 ASSLT ON CUSTODIAL OFFICER/69/243(B) BATT PO/EMERG PRSNL	YES	YES	NO	NO
PC COURTORORDER/ WI 6600 SEX PREDATOR PC COURTORORDER/ WI 6600 SEX PREDATOR	NO	NO	NO	NO
PC 288.4 - ARRANGE MEETING W/ MINOR, PC 311.11 - OBSCENE MATERIAL OF MINOR UNDER 14	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 10/ORAL COP., PC 311.11 - OBSCENE MATERIAL OF MINOR UNDER 14	YES	YES	NO	NO
PC 243(B) BATT PO/EMERG PRSNL, VC 23153(A)(B) DUI 0.08%, PC 148(A)(1) RESISTING	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14PC 288 - L&L ACTS W/ CHILD UNDER 14	YES	YES	NO	NO
HS 11377(A) POSS CONTROLLED SUBSTANCE/ PC 459 BURGLARY/PC 472 FORGE OFFICIAL SEAL	YES	NO	NO	NO
PC 273.5(A) CORPORAL INJURY OF SPOUSE/PC 136.1(C)(1) INTIMIDATE WIT/VICT	YES	NO	NO	NO
PC 288(A) L&L W/ CHILD UNDER 14PC 288(A) L&L W/ CHILD UNDER 14PC 288(A) L&L W/ CHILD UNDER 14	YES	YES	NO	NO

PC 269 - AGGRVTD SEXUAL ASSAULT/ORAL COP BY FORCE/FEAR	YES	YES	NO	NO
PC 451(C) ARSON:FOREST LAND/PC 451(D) ARSON:PROPERTY	YES	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, PC 311.11 - OBSCENE MATTER OF MINOR UNDER 14	YES	YES	NO	NO
US 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDM	NO	NO	NO	NO
PC 288.7(B) ORAL COP CHILD UNDER 10/ PC288 CRIMES AGAINST CHILDREN/PC 288(A)	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14PC 288 - L&L ACTS W/ CHILD UNDER 14	YES	YES	NO	NO
US 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDM	NO	NO	NO	NO
HS 11351 POS/PUR F/SALE NARC/HS 11351.5 POSS/PUR COKE BASE-SALE	NO	NO	NO	NO
HS 11352 (A) TRANSP/SELL NARC/ HS11370.6(A) POSS \$ FROM SALE CNTRL SUB.	YES	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14 / CONTINUAL SEXUAL ABUSE OF CHILD	YES	YES	NO	NO
PC 187(A) MURDERPC 187(A) MURDERPC 187(A) MURDERPC 187(A) MURDERPC 187(A) MURDER	YES	NO	NO	NO
PC 245(C) ADW NO FIREARM:GBI, PC 273.5 CORP INJURY OF SPOUSE, PC 69 OBSTRUCT/RESIST EXEC OFCR	YES	YES	NO	NO
PC 459 BURGLARY, PC 664/245(A)(1) ATTMPT ASSLT W/ DEADLY WPN	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14PC 288 - L&L ACTS W/ CHILD UNDER 14	YES	YES	NO	NO
PC 1203.2 REVOKE PROBATION, PC 666.5 AUTO THEFT W/ PRIOR, PC 496D(A) REC STOLEN VEH	NO	NO	NO	NO
PC 211 - ROBBERY, PC 245 - ASSAULT W/ FIREARM, PC 148 - RESISTING ARREST	YES	YES	NO	NO
HS 11377 (A) POSSESSION OF A CNTRLD SUBSTANCE/ HS11378 POSSESSION FOR SALE	NO	NO	NO	NO
HS 11378 POSSESSION FOR SALE, HS 11364(A) POSS OF PARA/PIPE	NO	NO	NO	NO
PC 368 - INFLECT INJURY ON ELDERLY/PROPERTY THFT OF ELDERLY, PC 242 - BATTERY	YES	NO	NO	NO
PC 288(A) L&L W/CHILD UNDER 14PC 288(A) L&L W/CHILD UNDER 14PC 288(A) L&L W/CHILD UNDER 14	YES	YES	NO	NO
HS 11378 POSSESSION FOR SALE/ HS 11379(A) TRANSP/SELL CNTL SUB	YES	YES	NO	NO
PC 211 ROBBERY/ PC 529(A)(3) FALSELY PERSONATES/ PC212.5/HS11378 POSS. FOR SALE	YES	YES	NO	NO
VC 23153(A) DUI:ALC/DRUG CAUSING GBI/ VC23153(B) DUI: .08 ALCOHOL W/GBI	YES	YES	NO	NO
PC 207(A) KIDNAPPING/ PC 261(A)(2) ASSAULT:COMMIT RAPE/PC 288(C)(1) LEWD AND LASCIVIOUS ACT	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14PC 288 - L&L ACTS W/ CHILD UNDER 14	YES	YES	NO	NO
HS 11377 (A) POSSESSION OF A CNTRLD SUBSTANCE/ PC487(A) GRAND THEFT/VC 10851(A) VEHICLE THEFT	NO	NO	NO	NO
PC 451(C) ARSON:FOREST LAND/ PC 452(C) CAUSE FIRE OF STRUC/FO	YES	NO	NO	NO
PC 187(A) MURDER/ US 18/1073 UNLAWFUL FLIGHTPC 187(A) MURDER/ US 18/1073 UNLAWFUL FLIGHT	YES	NO	NO	NO
PC 485 APPROPR LOST PROPPC 485 APPROPR LOST PROPPC 485 APPROPR LOST PROPPC 485 APPROPR LOST PROP	NO	NO	NO	NO
PC 220(B) ASSLT/COMMIT RAPE/ PC 459 BURGLARY/PC 209(B)(1) KIDNAP:ROBBERY/OTHER	YES	YES	NO	NO
HS 11351 POS/PUR F /SALE NARC/HS11352(A)TRANSP/SELL CNTL SUB	NO	NO	NO	NO
PC 311.11 - OBSCENE MATERIAL OF MINOR UNDER 14, PC 422 - CRIMINAL THREATS	NO	NO	NO	NO
PC 211 ROBBERY, PC 212.5 ROBBERY:SECOND DEGREEPC 211 ROBBERY, PC 212.5 ROBBERY:SECOND DEGREE	YES	NO	NO	NO
PC 424 (A)(1) PUB OFCR APPRP PUB FUNDSPC 424 (A)(1) PUB OFCR APPRP PUB FUNDS	NO	NO	NO	NO
HS 11378 POSSESSION FOR SALE/ HS 11351/ PC 4573.6 POSSESSION OF DRUGS IN JAIL	NO	NO	NO	NO
PC 211 - ROBBERY, PC 368 - INFLECT INJURY ON ELDERLYPC 211 - ROBBERY, PC 368 - INFLECT INJURY ON ELDERLY	YES	YES	NO	NO
PC 69 OBSTRUCT RESIST/PC245(C) ADW:GBI/HS 11351 POSS/PUR F/SALE NARC	YES	YES	NO	NO
PC 245(A)(4) ASSAULT W/FORCE GBI/664/187(A) ATTEMPTED MURDER	YES	YES	NO	NO
VC 10851(A) VEHICLE THEFT, PC 496D(A) REC STOLEN VEHICLE	NO	NO	NO	NO

EXHIBIT A

PC 4573 BRING CNTL SUB/ETC JAIL/PC 32310 LARGE CAP MAGAZINE	YES	YES	NO	NO
PC 273.5 - DV, US 18USC FEDMPC 273.5 - DV, US 18USC FEDMPC 273.5 - DV, US 18USC FEDM	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14PC 288 - L&L ACTS W/ CHILD UNDER 14	YES	YES	NO	NO
PC 211 - ROBBERY, PC 245 - ASSAULT W/ GBI, PC 215 - CARJACKING	YES	YES	NO	NO
PC 209 - KINAP FOR ROBBERY/RANSOM, PC 664/518 - ATTEMPT EXTORTION	YES	YES	NO	NO
PC 209 - KINAP FOR ROBBERY/RANSOM, PC 664/518 - ATTEMPT EXTORTION	YES	YES	NO	NO
PC 530.5(A) USE OTHER'S ID 4 GAIN/PC 30605(A) POSS OF ASSLT WEAPON	NO	NO	NO	NO
HS 11378/11352(A) POSSESSION FOR SALE /SALES NARC. HS 11378/11352(A) POSSESSION FOR SALE /SALES NARC.	NO	NO	NO	NO
PC 459 BURGLARY, PC 537(A)(1) DEFRAUD INKEEPER, PC 273.6 DOMESTIC VIOLENCE	YES	YES	NO	NO
PC 459 - BURGLARY, PC 422 - CRIMINAL THREATSPC 459 - BURGLARY, PC 422 - CRIMINAL THREATS	NO	NO	NO	NO
HS 11378 POSSESSION FOR SALE, HS 11379(A) TRANSP/SELL CNTRL SUB	NO	NO	NO	NO
PC 451(D) ARSON: PROPERTY PC 451(D) ARSON: PROPERTY PC 451(D) ARSON: PROPERTY	NO	NO	NO	NO
PC 459 BURGLARY, PC 3056 PAROLE VIOL, PC 182(A)(1) CONSPIRACY	YES	NO	NO	NO
VC 23152(A)(B) DUI ALCHL 0.08%, US 1325 VIOL OF IMMIGRATION	YES	YES	NO	NO
HS 11351 POSS/SALE NARCOTICS/ HS 11378 POSS. FOR SALE/ PC 22210 LEADED CANE/BILLY CLUB	NO	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, PC 269 - ORAL COP. BY FORCE OR FEAR, PC 1551 - FUGI OF UTAH	YES	YES	NO	NO
US 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDM	NO	NO	NO	NO
PC 261 - ASSAULT TO COMMIT RAPE / RAPE UNCONCIOUS VIC., PC 286 - SODOMY OF UNCONCIOUS VIC.	YES	YES	NO	NO
PC 451 - ARSON, PC 1203.2 - REVOKE PROBATIONPC 451 - ARSON, PC 1203.2 - REVOKE PROBATION	YES	YES	NO	NO
PC 288(A) L&L W/ CHILD UNDER 14/ PC243.4(A) SEXUAL BATTERY/PC288.7(B) ORAL COP CHILD UNDER 10	YES	YES	NO	NO
PC 187(A) MURDER/ PC 211 ROBBERYPC 187(A) MURDER/ PC 211 ROBBERY	YES	NO	NO	NO
PC 21810 METAL KNUCKLES, HS 11378 POSS FOR SALEPC 21810 METAL KNUCKLES, HS 11378 POSS FOR SALE	NO	NO	NO	NO
US 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDM	NO	NO	NO	NO
US 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDM	NO	NO	NO	NO
VC 10851 - UNLAWFUL TAKING OF VEHICLE, PC 186.22 - CRIMINAL STREET GANG	YES	YES	NO	NO
PC 245(A)(1) ASSAULT W/DEADLY WEAPON/PC 243(D) BATT W/SERIOUS BODILY	YES	YES	NO	NO
PC 286/287 - ORAL COP/SODOMY OF MINOR UNDER 16PC 286/287 - ORAL COP/SODOMY OF MINOR UNDER 16	YES	NO	YES	NO
PC 209(B)(1) KIDNAP:ROBBERY/OTHER/ PC 182(A)(1) CONSPIRACY:COMMIT CRIME/PC 211 ROBBERY	YES	YES	NO	NO
PC 422(A) THRTN CRIME W/INTENT/ PC 136.1(A)(1) PREVENT/DISSUADE WIT/V	NO	NO	NO	NO
PC 311.11(A) OBSCN MTR:MNR U/14 SEX/ PC 647(J)(3)(A) USE CAMERA/EQUIP TO	YES	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14PC 288 - L&L ACTS W/ CHILD UNDER 14	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 10 / ORAL COP. / CONTINUAL SEXUAL ABUSE OF CHILD	YES	YES	NO	NO
PC 451(B) ARSON INHABITED STRUCTURE, PC 457.1 REGISTER ARSON OFFENDER	YES	YES	NO	NO
PC 211 - ROBBERY, PC 215 - CARJACKING, PC 207 - KIDNAPPING	YES	YES	NO	NO
PC 187(A) MURDER / HS11378 POSSESSION FOR SALE/HS11379(A) TRANSPORT CNTL SUB.	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 10, PC 289 - SEXUAL PEN. W/ FOREIGN OBJECT	YES	YES	NO	NO
PC 245 - ASSAULT W/ DEADLY WEAPON, PC 215 - CARJACKING	YES	YES	NO	NO
PC 29800(A)(1) EX-FELON W/ A FIREARM/HS 11370.1(A) POSSESSION W/FIREARM	NO	NO	NO	NO
PC 664/288 - ATTEMPT L&L ACTS W/ CHILD UNDER 14, PC 314 - INDECENT EXPOSURE	NO	NO	NO	NO

PC 29800(A)(1) EX-FELON W/ FIREARM, HS 11378 POSS FOR SALE	YES	YES	NO	NO
HS 11364 - POSS. CONTROLLED SUSBTANCE, PC 646 - STALKING	YES	NO	NO	NO
HS 11379 - TRANS/SELL CONTROLLED SUBSTANCE, HS 11378 - POSS FOR SALE, PC 3455 - FAIL TO REPORT	NO	NO	NO	NO
VC 23152(A) DUI ALCOHOL/DRUGSVC 23152(A) DUI ALCOHOL/DRUGSVC 23152(A) DUI ALCOHOL/DRUGS	YES	YES	NO	NO
PC 496 - RECEIVING STOLEN VEH., PC 148 - RESISTING ARREST	YES	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14PC 288 - L&L ACTS W/ CHILD UNDER 14	YES	YES	NO	NO
PC 487(A) GRND THFT:PROP/ETC/ PC 186.10(A) MONEY LAUNDERING	NO	NO	NO	NO
PC 451 (D) ARSON: PROPERTY / PC 455 AID IN ARSON PC 451 (D) ARSON: PROPERTY / PC 455 AID IN ARSON	NO	NO	NO	NO
VC 10851 - VEH. THFT, PC 666.5 - AUTO THFT W/ PRIOR, PC 1170 - SUPERVISED RELEASE RTRN	NO	NO	NO	NO
PC - 245 ASSAULT W/ DEADLY WEAPON, PC 3056 - VIOL. OF PAROLE	YES	YES	NO	NO
PC 290.018 FAIL TO REG AS SEX OFFENDER, PC 3056 VIOL OF PAROLE	YES	NO	NO	NO
PC 245(A)(1) ASSAULT W/DEADLY WEAPON/ PC 422 THREAT TO TERRORIZE	YES	YES	NO	NO
PC 1203.2 REVOKE PROBATION, PC 4573.6 POSSES DRUGS IN PRISON	NO	NO	NO	NO
PC 21310 DIRK/DAGGER/ PC 3056 PAROLE VIOLATION PC 21310 DIRK/DAGGER/ PC 3056 PAROLE VIOLATION	NO	NO	NO	NO
PC 664/187(A) ATTEMPTED MURDER/ PC 245(A)(1) ASSAULT W/DEADLY WEAPON	NO	NO	NO	NO
PC 245 (A)(2) ASSAULT W/ FIREARM ON A PERSON/ PC30305(A)(1)/PC206 TORTURE/PC205 AGG. MAYHEM	YES	YES	NO	NO
PC 460 - BURGLARY (1ST DEGREE), PC 666.5 - AUTO THFT W/ PRIOR	YES	YES	NO	NO
PC 187(A) MURDER/ VC 20001(A) HIT AND RUN:DEATH/INJURY	YES	YES	NO	NO
PC 664/187 - ATTEMPT MURDERPC 664/187 - ATTEMPT MURDERPC 664/187 - ATTEMPT MURDER	YES	YES	NO	NO
PC COURTORDER / PC 422 (A) HS 11350 (A) POSSESSESION OF NARCOTICS	YES	NO	NO	NO
PC 236.1 - HUMAN TRAFFICK., PC 266 - PIMPING VIC UNDER 16	YES	NO	NO	NO
PC 422 THREAT TO TERRORIZE / PC 594 (A) (2) VANDALISM	YES	NO	NO	NO
PC 664/187 - ATTEMPT MURDER, PC 186.22 - CRIMINAL STREET GANG	YES	NO	NO	NO
US 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDM	NO	NO	NO	NO
HS 11351.5 POSS/PUR COKE BASE-SAL/ HS 11378 POSSESSION FOR SALE	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14PC 288 - L&L ACTS W/ CHILD UNDER 14	YES	YES	NO	NO
PC 1203.2 REVOKE PROBATION, PC 459 BURGLARY, PC 487(A) GRAND THEFT	NO	NO	NO	NO
PC 273.5 - DV, PC 245 - ASSAULT W/ DEADLY WEAPON, PC 236 - FALSE IMPRISONMENT	YES	YES	NO	NO
VC 23153 - DUI CAUSING GBI, PC 1203.2 - REVOKE PROBATION	YES	YES	NO	NO
PC 273.5 - DV, PC 243.4 - TOUCHING PERSON INTIMATE PART	NO	YES	NO	NO
PC 1203.2 REARREST/REVOKE PROBAT/HS 11351 POS/PUR F/SALE NARC	NO	NO	NO	NO
PC 69 OBSTRUCT/RESIST, PC 148(A)(1) RESISTING ARRESTPC 69 OBSTRUCT/RESIST, PC 148(A)(1) RESISTING ARREST	YES	YES	NO	NO
PC 245 - ASSAULT W/ DEADLY WEAPON, PC 211 - ROBBERY	YES	YES	NO	NO
PC 666.5 AUTO THEFT W/ PRIOR, PC 496D(A) REC STOLEN VEHICLE	NO	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 10 / ORAL COP.PC 288 - L&L ACTS W/ CHILD UNDER 10 / ORAL COP.	YES	YES	NO	NO
PC 664/211 ATTEMPTED ROBBERY/ PC 368(B)(2) GREAT BODILY INJURY/ PC 211 ROBBERY	YES	YES	NO	NO
VC 23152 (A) DUI ALCOHOL/DRUGS/ VC 23152 (B) VC 23152 (A) DUI ALCOHOL/DRUGS/ VC 23152 (B)	YES	YES	NO	NO
PC 459 BURGLARY/PC 460(A) BURGLARY:FIRST DEGREEPC 459 BURGLARY/PC 460(A) BURGLARY:FIRST DEGREE	YES	NO	NO	NO
HS11379(A) TRANSP/SELL CONTROLLED SUBSTANCEHS11379(A) TRANSP/SELL CONTROLLED SUBSTANCE	NO	NO	NO	NO

EXHIBIT A

US 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDM	NO	NO	NO	NO
PC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDER	YES	NO	NO	NO
VC 23152(A) DUI ALCOHOL/DRUGSVC 23152(A) DUI ALCOHOL/DRUGSVC 23152(A) DUI ALCOHOL/DRUGS	YES	YES	NO	NO
HS 11378 POSSESSION FOR SALE/ HS11364(A) POSSESSION OF A CNTRLD SUB.	NO	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14 AND 10, PC 286 - SODOMY	YES	YES	NO	NO
VC 23152(A)(B) DUI ALCOHOL/0.08 PERCENT OR MOREVC 23152(A)(B) DUI ALCOHOL/0.08 PERCENT OR MORE	YES	NO	NO	NO
PC 236 FALSE IMPRISONMENT/PC 4573.5 BRING ALC/DRUGS IN PRISON	YES	NO	NO	NO
PC 484(A) PETTY THEFT, VC 10851(A) VEH THEFT, PC 459 BURGLARY	YES	YES	NO	NO
PC 594(A) VANDALISM/ VC 23152(B) DUI ALCOHOL/0.08/VC 20002(A)(2) HIT&RUN PROP DAMAGE	YES	YES	NO	NO
PC 1203.2 REARREST/REVOKE PROBATION/PC 368(B)(1) INFLICT INJURY ON ELDERLY	NO	NO	NO	NO
PC 211 ROBBERY, PC 459 BURGLARY, VC 2800.2 EVADING	YES	YES	NO	NO
HS 11351 POSS/PUR FOR SALE NARC, HS 11377(A) POSS CNTRL SUBSTANCE	NO	NO	NO	NO
PC 290.011(A) FAILURE TO REGISTER/PC290.018(G) FAIL TO REGISTER AS A SEX OFFENDER	YES	YES	NO	NO
PC 666.5 AUTO THEFT W/ PRIOR, VC 10851(A) VEHICLE THEFT	NO	NO	NO	NO
HS 11351 - POSS. NARCOTICS FOR SALE, PC 1203.2 - REVOKE PROB.	NO	NO	NO	NO
PC 3455 FAILURE TO REPORT, PC 245(A)(1) ASSLT W/ DEADLY WEAPON	YES	NO	NO	NO
PC 1203.2 - REVOKE PROBATIONPC 1203.2 - REVOKE PROBATIONPC 1203.2 - REVOKE PROBATION	NO	NO	YES	NO
HS 11378 POSSESSION FOR SALE/PC 1203.2 REARREST/REVOKE PROBATION	NO	NO	NO	NO
PC 314.1 INDECENT EXPOSURE / PC488 PETTY THEFT / PC484 (A)	YES	YES	NO	NO
VC 23153(A) DUI:ALC/DRUG CAUSING GBI/ VC23153(B) DUI: .08 ALCOHOL W/GBI	YES	YES	NO	NO
PC 245(A)(4) ASSAULT W/FORCE GBI/ PC 273.5(A) CORPORAL INJURY OF SPO/ PC 664/187(A) ATTEMPTED MURDEF	YES	YES	NO	NO
WI 300 VIOL JUVI COURT, PC COURT ORDERWI 300 VIOL JUVI COURT, PC COURT ORDER	YES	NO	NO	NO
PC 220(A)(1) ASLT COM MAYHM RAPE/ PC 664/261(A)(2) ATTEMPT RAPE	YES	YES	NO	NO
HS 11351 - POSS. FOR SALEHS 11351 - POSS. FOR SALEHS 11351 - POSS. FOR SALEHS 11351 - POSS. FOR SALE	YES	YES	NO	NO
PC 459 - BURGLARY, PC 487 - GRAND THFT, PC 594 - VANDALISM (\$50,000 OR MORE)	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 10 / ORAL COP.PC 288 - L&L ACTS W/ CHILD UNDER 10 / ORAL COP.	YES	YES	NO	NO
PC 236.1 - HUMAN TRAFFICK., PC 266 - PIMPING VIC UNDER 16	YES	YES	NO	NO
VC 20002 - HIT AND RUN, PC 1203.2 - REVOKE PROBATION	YES	NO	NO	NO
HS 11378 POSSESSION FOR SALE / HS 11379(A) TRANSP/SELL CNTL SUB, PC 29800 EX-FELON W/ FIREARM	NO	NO	NO	NO
PC 245(A)(1) ASSLT W/ DEADLY WPN, PC 1203.2 REVOKE PROBATION	NO	NO	NO	NO
PC 314.1 INDECENT EXPOSURE / PC 647 (A) SOLICIT LEWD ACT	YES	NO	NO	NO
PC 646.9 - STALKING, PC 273AA - CHILD ENDANGERMENT, PC 422 - CRIMINAL THREATS	NO	NO	NO	NO
PC 664/187(A) ATTEMPT MURDER, PC 186.22 CRIMINAL STREET GANG, PC 245(A)(1) ASSLT W/ DEADLY WPN	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 10, PC 261 - ASSAULT TO COMMIT RAPE	YES	YES	NO	NO
HS 11379 - TRANSPORT/SELL CONTROLLED SUBSTANCEHS 11379 - TRANSPORT/SELL CONTROLLED SUBSTANCE	NO	NO	NO	NO
HS 11378 - POSS. FOR SALE, PC 135 - DESTROY EVIDENCEHS 11378 - POSS. FOR SALE, PC 135 - DESTROY EVIDENCE	YES	YES	NO	NO
PC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDER	YES	NO	NO	NO
VC 23152(A)(B) DUI ALCOHOL/0.08 PERCENT OR MOREVC 23152(A)(B) DUI ALCOHOL/0.08 PERCENT OR MORE	YES	NO	NO	NO
PC 187 - MURDER, PC 186.22 - CRIMINAL STREET GANGPC 187 - MURDER, PC 186.22 - CRIMINAL STREET GANG	NO	NO	NO	NO

PC 290.018 - FAIL TO REG AS SEX OFFENDER, PC 3056 - VIOL OF PAROLE	NO	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, PC 261 - RAPE, PC 288.5 - CONT SEX ABUSE OF CHILD	YES	YES	NO	NO
PC 1203.2 - REVOKE PROBATION/PC245 ASSAULT W/ DEADLY WEAPON/PC 273A(B) CRUELTY TO CHILD	NO	NO	NO	NO
PC 664/209(A) ATTEMPT KIDNAP FOR RANSOM / PC 182(A)(1) CONSPIRACY:COMMIT CRIME/PC 209(A)	YES	YES	NO	NO
HS 11378 - POSS FOR SALE, PC 1203.2 REVOKE PROBATION	YES	YES	NO	NO
PC 664/187 - ATTEMPT MURDER, PC 211 - ROBBERYPC 664/187 - ATTEMPT MURDER, PC 211 - ROBBERY	YES	YES	NO	NO
PC 459 BURGLARY, PC 3455 FAILURE TO REPORTPC 459 BURGLARY, PC 3455 FAILURE TO REPORT	NO	NO	NO	NO
PC 647(H) LOITER TO COMMIT CRIME / HS11379 (A) TRANSPORT FOR SALES / PC273.6(A) DOMESTIC VIOLENCE	YES	NO	NO	NO
HS 11378 - POSS. FOR SALE, PC 1203.2 - REVOKE PROBATION	NO	NO	NO	NO
PC 1301 BAIL FAIL DELIVER DEF / PC 530.5(A) USE OTHER'S ID 4 GAIN	YES	NO	NO	NO
PC 262(A) RAPE SPOUSE BY FORCE/ PC 273.5 INFLICT INJURY UPON SPOUSE/PC207(A) KIDNAPPING	YES	YES	NO	NO
HS 11352 TRANSPORT/SELL NARCOTICS/ PC 273A(A) CHILD ENDANGERMENT	YES	YES	NO	NO
PC 211 - ROBBERYPC 211 - ROBBERYPC 211 - ROBBERYPC 211 - ROBBERYPC 211 - ROBBERYPC 211 - ROBBERY	YES	YES	NO	NO
PC 666.5 - AUTO THFT W/ PRIOR, PC 530.5 - USE OTHERS ID 4 GAIN	NO	NO	NO	NO
PC 3455 FAILURE TO REPORT PC 3455 FAILURE TO REPORT PC 3455 FAILURE TO REPORT	NO	NO	NO	NO
PC 3056 VIOLATION OF PAROLE/PC 3000.08 PAROLE VIOLATION	YES	NO	NO	NO
PC COURT ORDER, PC 187(A) MURDER, PC TRANSORDER OUTSIDE AGENCY	YES	NO	NO	NO
PC 245(A)(1) ASSLT W/ DEADLY WPN, PC 422(A) THRTN CRIME W/ INTENT, PC 236 FALSE IMPRSNMNT	NO	NO	NO	NO
PC 245(A)(1) ASSAULT W/DEADLY WEAPON PC 245(A)(1) ASSAULT W/DEADLY WEAPON	NO	NO	NO	NO
PC 451(C) ARSON: FOREST LANDPC 451(C) ARSON: FOREST LANDPC 451(C) ARSON: FOREST LAND	YES	NO	NO	NO
PC 451.5(A) AGGRAVATED ARSON, PC 597(B) CRUELTY TO ANIMALS	YES	YES	NO	NO
PC 3056 - PAROLE VIOLATION, PC 290.15 - FAIL TO REGISTER AS SEX OFFENDER	NO	NO	NO	NO
PC 666.5 - AUTO THFT W/ PRIOR, VC 10851 - VEH THFT, VC20002(A) HIT AND RUN/PROPERTY	NO	NO	NO	NO
HS 11379 - TRANSPORT/SELL CONTROLLED SUBSTANCEHS 11379 - TRANSPORT/SELL CONTROLLED SUBSTANCE	NO	NO	NO	NO
HS 11378 POSSESSION FOR SALE, HS 11364(A) POSS OF PARA/PIPE	NO	NO	NO	NO
PC 664/187(A) ATTEMPTED MURDER, PC 245(A)(2) ASSLT W/ FIREARM, PC 368(B)(1) INFLICT/INJ ON ELDERLY	YES	YES	NO	NO
VC 23152 - DUI VC 23152 - DUI VC 23152 - DUI VC 23152 - DUI VC 23152 - DUI VC 23152 - DUI	YES	YES	NO	NO
US 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDM	NO	NO	NO	NO
US 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDM	NO	NO	NO	NO
US 18USC US MARSHALUS 18USC US MARSHALUS 18USC US MARSHALUS 18USC US MARSHAL	NO	NO	NO	NO
PC 245(A)(4) ASSAULT W/FORCE GBIPC 245(A)(4) ASSAULT W/FORCE GBIPC 245(A)(4) ASSAULT W/FORCE GBI	NO	NO	NO	NO
PC 273.5 - DV, PC 422 - THREAT TO TERRORIZE, PC 148 - RESISTING ARREST	YES	YES	NO	NO
VC 23152 - DUI, PC 148.9 - FALSE ID TO P/OVC 23152 - DUI, PC 148.9 - FALSE ID TO P/O	NO	NO	NO	NO
PC 243(D) BATT W/SERIOUS BODILY/ PC 245(A)(4) ASSAULT W/FORCE GBI	YES	YES	NO	NO
PC 4573 - BRING CNTRL SUB INTO JAIL, HS11351 - POSS. FOR SALE	NO	NO	NO	NO
PC 211 ROBBERY/ PC 212.5(C) ROBBERY:SECOND DEGREE	YES	YES	NO	NO
US 18USC US MARSHALUS 18USC US MARSHALUS 18USC US MARSHALUS 18USC US MARSHAL	NO	NO	NO	NO
US 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDM	NO	NO	NO	NO
US 18USC US MARSHALUS 18USC US MARSHALUS 18USC US MARSHALUS 18USC US MARSHAL	NO	NO	NO	NO

US 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS	NO	NO	NO	NO
PC COURT ORDER, PC TRANS ORDER OUTSIDE AGENCYPC COURT ORDER, PC TRANS ORDER OUTSIDE AGENCY	YES	NO	NO	NO
PC 21310 DIRK/DAGGER/HS 11377(A) POSS CONTROLLED SUBSTANCE	YES	NO	NO	NO
PC COURTOORDER/ PC 245(A)(1) ASSAULT W/DEADLY WEAPON	YES	NO	NO	NO
PC 29900(A)(1) FELONY POSS FIREARM PR/ PC 30305(A)(1) PROHBTD PERSON POSS AM	NO	NO	NO	NO
HS 11379(A) TRANSP/SELL CNTL SUB/ HS 11378 POSSESSION FOR SALE	NO	NO	NO	NO
PC COURTOORDER/PC 459 BURGLARYPC COURTOORDER/PC 459 BURGLARYPC COURTOORDER/PC 459 BURGLARY	YES	NO	NO	NO
PC 211 ROBBERY/ PC 459 BURGLARYPC 211 ROBBERY/ PC 459 BURGLARYPC 211 ROBBERY/ PC 459 BURGLARY	NO	NO	NO	NO
HS 11352(A) TRANSP/SELL NARC/CNTL/ PC 1203.2 REARREST/REVOKE PROBAT	NO	NO	NO	NO
PC 266 - PIMPING/PROCURE PERSON FOR PROSTITUTION, PC 245 - ASSAULT W/ DEADLY WEAPON	YES	NO	NO	NO
PC 187(A) MURDER, PC TRANSORDER OUTSIDE AGENCY, PC 211 ROBBERY	YES	NO	NO	NO
PC 245(A)(1) ASSLT W/ DEADLY WPN, PC 42(A) THRTN CRIME W/ INTENT TO COMMIT	YES	YES	NO	NO
PC 3455 - FAILURE TO REPORTPC 3455 - FAILURE TO REPORTPC 3455 - FAILURE TO REPORT	NO	NO	YES	NO
PC 207 - KIDNAPPING, PC 215 - CARJACKING, PC 245 - ASSAULT W/ DEADLY WEAPON	YES	YES	NO	NO
PC 211 ROBBERY/ PC 459 BURGLARY/ PC 273A(B) CRUELTY TO CHILD	NO	NO	NO	NO
PC COURTOORDER, PC 29800(A)(1) EX-FELON W/ FIREARMPC COURTOORDER, PC 29800(A)(1) EX-FELON W/ FIREARM	NO	NO	NO	NO
PC 496D(A) RECEIVE STOLEN VEHICLE/HS 11364(A) POSS CNTL SUB PARA/PIP	NO	NO	NO	NO
PC 1203.2 REVOKE PROBATION, PC 273.6(A) DOMESTIC VIOLENCE	NO	NO	NO	NO
HS 11351 POSS/PUR FOR SALE NARCHS 11351 POSS/PUR FOR SALE NARCHS 11351 POSS/PUR FOR SALE NARC	NO	NO	NO	NO
PC 417.4 BRANDISHING F/ARM/ PC 422(A) THRTN CRIME W/INTENT/PC245 ASSAULT W/DEADLY WEAPON	NO	NO	NO	NO
PC COURT ORDER, PC 459 BURGLARY, PC 460(A) BURGLARY 1ST DEGREE	YES	NO	NO	NO
PC 211 ROBBERY, PC 245(A)(1) ASSLT W/ DEADLY WPN, PC 136.1(A)(1) PREVENT/DISUADE WITNESS	YES	YES	NO	NO
PC 288.7(A) SEX W/CHILD UNDER 10 / PC 288(A) L&L W/ CHILD UNDER 14 / PC289(I) SEX PENETRATION	YES	NO	NO	NO
PC 594(A) VANDALISM, PC 422(A) THRTN CRIME W/ INTENT, PC 459 BURGLARY	YES	YES	NO	NO
PC 487 (A) GRND THFT PC 487 (A) GRND THFT PC 487 (A) GRND THFT PC 487 (A) GRND THFT	NO	NO	NO	NO
PC 664/187 - ATTEMPT MURDER, PC 148 - RESISITING ARREST	YES	YES	NO	NO
PC 187 MURDER, PC COURT ORDERPC 187 MURDER, PC COURT ORDERPC 187 MURDER, PC COURT ORDER	YES	NO	NO	NO
PC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDERPC 187 - MURDER	YES	YES	NO	NO
VC 10851(A) VEHICLE THEFT/ 245(A)(1) ASSAULT W/DEADLY WEAPON	NO	NO	NO	NO
PC 288.7(B) ORAL COP CHILD UNDER 10 / PC 288(A) L&L W/CHILD UNDER 14	YES	NO	NO	NO
PC 207 - KIDNAPPING, PC 211 - ROBBERY, PC 245 - ASSAULT W/ DEADLY WEAPON	NO	NO	NO	NO
PC 215(A) CARJACKING/ PC 211 ROBBERY PC 215(A) CARJACKING/ PC 211 ROBBERY	YES	YES	NO	NO
PC 187(A) MURDER / PC COURTOORDER PC 187(A) MURDER / PC COURTOORDER	YES	NO	NO	NO
PC COURTOORDERPC COURTOORDERPC COURTOORDERPC COURTOORDERPC COURTOORDERPC COURTOORDER	YES	YES	NO	NO
PC 594(B)(1) VANDALISM \$50000 / PC 186.22(B) TERRORISM/ PC 594(A) VANDALISM	NO	NO	NO	NO
PC COURTOORDER PC COURTOORDER PC COURTOORDER PC COURTOORDER PC COURTOORDER PC COURTOORDER	YES	NO	NO	NO
HS 11378 POSSESSION FOR SALE, PC 1551.1 NV FUGI, PC 1203.2 REVOKE PROBATION	YES	NO	NO	NO
PC 664/187(A) ATTEMPTED MURDER/ PC 186.22(B)(1) GANG/PUNISHMENT	YES	YES	NO	NO
PC 245(A)(4) ASSAULT W/ FORCE GBI / PC 245(A)(1) ASSAULT W/DEADLY WEAPON	NO	NO	NO	NO

EXHIBIT A

PC 664/187(A) ATTEMPTED MURDER/ PC 211 ROBBERY/ PC 245(A)(1) ASSAULT W/DEADLY WEAPON	YES	NO	NO	NO
PC 459 - BURGLARY, PC 530.5 - USE OTHERS ID 4 GAINPC 459 - BURGLARY, PC 530.5 - USE OTHERS ID 4 GAIN	YES	YES	NO	NO
PC 148 - RESISTING ARREST, VC 23152 - DUI, VC 20002 - HIT AND RUN	YES	YES	NO	NO
PC 273.5(A) CORPORAL INJURY OF SPOUSE / PC 245(A)(4) ASSAULT W/FORCE GBI / PC 236 FALSE IMPR.	NO	NO	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14, PC 290(B) - FAIL TO REGISTER AS SEX OFFENDER	YES	YES	NO	NO
PC 211 ROBBERY, PC 21310 DIRK/DAGGER, PC 242 BATTERY	NO	NO	NO	NO
PC 422(A) THRTN CRIME W/ INTENT TO COM, PC 647(F) DISORDERLY CONDUCT	YES	YES	NO	NO
PC 368 - INFLICT INJURY ON ELDERLY, PC 273AB - CRUELTY TO CHILD, PC 21310 - DIRK/DAGGER	YES	YES	NO	NO
PC 1203.2 REVOKE PROBATION, 594(A) VANDALISM, VC 23152(F) DUI ALCHL/DRUG COMBO	YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 14PC 288 - L&L ACTS W/ CHILD UNDER 14	YES	YES	NO	NO
PC 29800 - EX-FELON W/ FIREARM, PC 33215 - SHORT BARREL RIFLE	YES	YES	NO	NO
HS 11378 POSSESSION FOR SALE / HS 11379(A) TRANSP/SELL CNTL SUB, PC 29800 EX-FELON W/ FIREARM	NO	NO	NO	NO
PC 243.4 - TOUCHING PERSON INTIMATE, PC 314 - INDECENT EXPOSURE	YES	YES	NO	NO
VC 23152 - DUIVC 23152 - DUIVC 23152 - DUIVC 23152 - DUIVC 23152 - DUIVC 23152 - DUIVC 23152 - DUI	NO	NO	NO	NO
PC 3056 - PAROLE VIOLATIONPC 3056 - PAROLE VIOLATIONPC 3056 - PAROLE VIOLATION	NO	NO	NO	NO
PC 459 BURGLARY, PC 594 VANDALISM, PC 422(A) THRN CRIME W/ INTENT	YES	YES	NO	NO
PC 3056 - PAROLE VIOLATION, PC 602 - TRESSPASSINGPC 3056 - PAROLE VIOLATION, PC 602 - TRESSPASSING	YES	YES	NO	NO
PC 290.011(B) TRANSIENT FAIL TO REGISTER/PC 22210 LEADED CANE, BILLY	NO	NO	NO	NO
PC 246.3(A) DISCHARGE FIREARM/ US1325/PC1203.2PC 246.3(A) DISCHARGE FIREARM/ US1325/PC1203.2	NO	NO	NO	NO
PC290.011(B) TRANSIENT FAIL TO REGISTERPC290.011(B) TRANSIENT FAIL TO REGISTER	YES	YES	NO	NO
VC 23152(A)(B) DUI ALCOHOL/0.08 PERCENT OR MORE, PC 1203.2 REVOKE PROBATION	YES	YES	NO	NO
PC 3056 - PAROLE VIOLATIONPC 3056 - PAROLE VIOLATIONPC 3056 - PAROLE VIOLATION	YES	NO	YES/3056	NO
PC 368 - INFLICT INJURY ON ELDERLY, PC 422 - CRIMINAL THREATS	YES	YES	NO	NO
PC 211 ROBBERY/ PC273(A) CHILD ENDAGERMENTPC 211 ROBBERY/ PC273(A) CHILD ENDAGERMENT	NO	NO	NO	NO
PC 451(B) ARSON:INHABITED STRUCTURE PC 451(B) ARSON:INHABITED STRUCTURE	YES	YES	NO	NO
PC 245 - ASSAULT W/ DEADLY WEAPON, PC 368 - INFLICT INJURY ON ELDERLY	YES	YES	NO	NO
PC 273.6(A) DOMESTIC VIOLENCEPC 273.6(A) DOMESTIC VIOLENCEPC 273.6(A) DOMESTIC VIOLENCE	YES	YES	NO	NO
PC 422(A) THRTN CRIME W/INTENT/ PC 245(A)(1) ASSAULT W/DEADLY WEAPON	YES	YES	NO	NO
PC 211 ROBBERY/ PC 212.5(C) ROBBERY:SECOND DEGREE	YES	YES	NO	NO
PC 3455 FAILURE TO REPORTPC 3455 FAILURE TO REPORTPC 3455 FAILURE TO REPORT	NO	NO	YES	NO
HS 11351 - POSS. FOR SALE, VC 2800 - WANTON DISREGARD FOR SAFETY	YES	YES	NO	NO
PC 273.5(A) CORP INJURY OF SPOUSE, PC 1203.2 REVOKE PROBATION	YES	YES	NO	NO
PC 243(B) BATT PO/EMERG PRSNL/ET/ PC 243(C)(2) BATTERY ON POLICE/PC 69 OBSTRUCT/RESIST EXEC	YES	YES	NO	NO
PC 273.6(A) DOMESTIC VIOL, PC242 ASSAULT, PC 1203.2 REVOKE PROBATION	YES	YES	NO	NO
PC 422(A) THRTN CRIME W/INTENT/PC 245(A)(1) ASSAULT W/DEADLY WEAPON	YES	YES	NO	NO
VIOL. OF PAROLEVIOL. OF PAROLEVIOL. OF PAROLEVIOL. OF PAROLEVIOL. OF PAROLEVIOL. OF PAROLE	YES	NO	YES/3056	NO
273.6(A) DOMESTIC VIOLENCE/ PC 1203.2 REARREST/REVOKE PROBATION	YES	YES	NO	NO
PC 245(A)(1) ASSAULT W/DEADLY WEAPON/ PC 417(A)(1) EXH DEADWPN:NOT F/ARM	NO	NO	NO	NO
PC 3056 - PAROLE VIOLATION/PC 3000.8PC 3056 - PAROLE VIOLATION/PC 3000.8	NO	NO	YES	NO

EXHIBIT A

PC 182(A)(1) CONSPIRACY:COMMIT CRIME/ PC 211 ROBBERY	YES	YES	NO	NO
PC 459 BURGLARY/ PC 664/10851(A) ATTEMPT AUTO THEFT	NO	NO	NO	NO
VC 10851(A) VEHICLE THEFT/ PC 496D(A) RECEIVE STOLEN VEHICLE	NO	NO	NO	NO
RELEASED 6/4/2020RELEASED 6/4/2020RELEASED 6/4/2020RELEASED 6/4/2020RELEASED 6/4/2020	NO	NO	NO	NO
PC 245(A)(1) ASSLT W/ DEADLY WPN, PC 594(B)(1) VANDLISM \$50000 OR MORE	NO	NO	NO	NO
PC 1203.2 REVOKE PROBATIONPC 1203.2 REVOKE PROBATIONPC 1203.2 REVOKE PROBATION	NO	NO	YES/1203.2	NO
PC 29800(A)(1) EX-FELON W/ FIREARM, HS 11370.1(A) POSS W/ FIREARM	NO	NO	NO	NO
PC 3056 - PAROLE VIOLATIONPC 3056 - PAROLE VIOLATIONPC 3056 - PAROLE VIOLATION	NO	NO	YES	NO
US 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDM	NO	NO	NO	NO
PC466 POSSESSION OF BURGLARY TOOLS/PC186.55(A) CRIMINAL STREET GANG	NO	NO	NO	NO
PC 261 - ASSAULT TO COMMIT RAPE, PC 314 - INDECENT EXPOSURE, PC 69 - OBSTRUCT/RESIST OFFICER	YES	YES	NO	NO
PC 187(A) MURDERPC 187(A) MURDERPC 187(A) MURDERPC 187(A) MURDERPC 187(A) MURDER	YES	YES	NO	NO
PC 664/211 ATTEMPT ROBBERY, PC 245(A)(1) ASSLT W/ DEADLY WPN	YES	YES	NO	NO
PC 664/187(A) ATT. MURDER/ PC 246 SHOOT AT INHABITED DWE.	YES	YES	NO	NO
PC 25850(A) LOADED FIREARM IN PUBLIC, HS 11370.1 POSSESSION W/ FIREARM	YES	YES	NO	NO
PC 529(A)(3) FALSELY PERSONATES/ PC 666.5 AUTO THEFT WITH PRIOR/PC 459 BURGLARY	NO	NO	NO	NO
PC 647(H) DISORD CONDUCT/ PC 3056/PC 30000.08 PAROLE VIOLATION	YES	NO	NO	NO
VC 23152(A) DUI ALCOHOL/DRUGS/VC 14601.2(A) TRAFFIC OFFENSE	YES	YES	NO	NO
PC 245(A)(1) ASSAULT W/DEADLY WEAPON/ PC 459 BURGLARY	NO	NO	NO	NO
PC 273.6(E) VIO CRT ORDER W/PRIORS/ PC 166(C)(1) VIOL RESTRAIN ORDER	YES	YES	NO	NO
PC 451 - ARSONPC 451 - ARSONPC 451 - ARSONPC 451 - ARSONPC 451 - ARSONPC 451 - ARSONPC 451 - ARSON	YES	NO	NO	NO
PC 1203.2 REVOKE PROBATION, PC 487(A)PC 1203.2 REVOKE PROBATION, PC 487(A)	NO	NO	NO	NO
HS 11364 - POSS. CONTROLLED SUSBTANCE, PC 166 - VIOL. RESTRAINING ORDER	YES	YES	NO	NO
PC 3455 FAILURE TO REPORTPC 3455 FAILURE TO REPORTPC 3455 FAILURE TO REPORT	NO	NO	YES	NO
PC 290.018(B) VIOLATE REQMNT TO REGISTER / FAILURE TO REGISTER/ PC290(B) FAIL TO REGISTER	NO	NO	NO	NO
HS 11350(A) POSSESS NARCOTIC CONTR/ PC 470(B) FORGERY	NO	NO	NO	NO
PC 3455 - FAILURE TO REPORTPC 3455 - FAILURE TO REPORTPC 3455 - FAILURE TO REPORT	NO	NO	NO	NO
PC 273.5(A) CORPORAL INJURY OF SPOUSE/PC 245(A)(2) ASLT W/FIREARM ON PERSON	NO	NO	NO	NO
PC 459 BURGLARY, PC 1203.2 REVOKE PROBATIONPC 459 BURGLARY, PC 1203.2 REVOKE PROBATION	YES	NO	NO	NO
PC 288(A) L&L W/CHILD UNDER/ PC 289(J) SEX PENETRATION:SPEC	YES	YES	NO	NO
PC 647.6 ANNOY/MOLEST CHILD W/P/PC 647.6(A)(1) ANNOY/ETC CHILD UNDER	YES	YES	NO	NO
PC 166(C)(1) VIOLATION RESTRAINING ORDERPC 166(C)(1) VIOLATION RESTRAINING ORDER	NO	NO	NO	NO
PC 273.5 (A) DV. 273.5(F)(1) DOMV CAUS INJ PRIOR / VC 23152(A)	YES	YES	NO	NO
HS 11377 - POSS. OF CONTROLLED SUBSTANCE, HS 11550 - UNDER INFLUENCE	NO	NO	NO	NO
PC 245(A)(1) ASSAULT W/DEADLY WEAPON / PC 422(A) THRNTN CRIME W/INTENT	YES	YES	NO	NO
PC 1551.1 FUGI STATE OF MISSOURIPC 1551.1 FUGI STATE OF MISSOURIPC 1551.1 FUGI STATE OF MISSOURI	YES	NO	NO	NO
PC 245 - ASSAULT W/ DEADLY WEAPON, HS 11364 - POSS. OF PARAPHERNALIA	YES	YES	NO	NO
VC 23152(A) DUI ALCOHOL/DRUGS VC 23152(A) DUI ALCOHOL/DRUGS VC 23152(A) DUI ALCOHOL/DRUGS	NO	NO	NO	NO
PC 211 - ROBBERY, PC 186.22 - CRIMINAL STREET GANG, US 1325 - VIOLATION OF IMMIGRATION	YES	YES	NO	NO

EXHIBIT A

PC 664/187 - ATTEMPT MURDER	PC 664/187 - ATTEMPT MURDER	PC 664/187 - ATTEMPT MURDER	YES	YES	NO	NO
PC COURTORDER	PC COURTORDER	PC COURTORDER	YES	NO	NO	NO
PC 1203.2 - REVOKE PROBATION	PC 1203.2 - REVOKE PROBATION	PC 1203.2 - REVOKE PROBATION	YES	NO	YES/1203.2	NO
PC 368 - INFLECT INJURY ON ELDERLY, PC 22900 - SELL TRANSPORT TEAR GAS			YES	YES	NO	NO
PC 207 - KIDNAPPING, PC 273.5 - DV, PC 148 - RESISTING ARREST			YES	YES	NO	NO
PC 211 ROBBERY/ PC212.5(C) ROBBERY SECOND DEGREE/PC 242 BATTERY			YES	YES	NO	NO
PC 245(A)(1) ASSLT W/ DEADLY WPN, PC 42(A) THRTN CRIME W/ INTENT TO COMMIT			YES	YES	NO	NO
PC 29800 - EX-FELON W/ FIREARM, HS 11351 - POSS. FOR SALE OF NARCOTICS			YES	YES	NO	NO
PC 273.6 - DOMESTIC VIOLENCE, PC 69 - OBSTRUCT/RESIST OFFICER			YES	YES	NO	NO
PC 69 - OBSTRUCT/RESIST OFFICER, PC 243.4 - SEXUAL BATTERY, PC 3056 - PAROLE VIOLATION			YES	YES	NO	NO
VC 23152 - DUIVC 23152 - DUIVC 23152 - DUIVC 23152 - DUIVC 23152 - DUIVC 23152 - DUIVC 23152 - DUI			NO	NO	NO	NO
PC 273.6 - DOMESTIC VIOLENCE, PC 148 - RESISTING ARREST			YES	YES	NO	NO
US 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDMUS 18USC FEDM			NO	NO	NO	NO
PC 245 - ASSAULT W/ DEADLY WEAPON, PC 148 - RESISTING OFFICER			YES	YES	NO	NO
PC 243E1 - DV, PC 148 - RESISTING ARREST	PC 243E1 - DV, PC 148 - RESISTING ARREST		NO	NO	NO	NO
PC 245(A)(1) ASSAULT W/ DEADLY WEAPON/ PC273.5 DOMES. VIOL./PC273A(B) CRUELTY TO CHILD			YES	YES	NO	NO
PC 1203.2 REVOKE PROBATION, VC 23152(G) DUI COMB, HS 11357(B)(2) POSS >28.5 GRMS CANNIBUS			NO	NO	NO	NO
HS 11550(A) UNDER INFLUENCE CNTL/ PC 488 PETTY THEFT/ PC 1203.2 REARREST/REVOKE PROBAT			YES	NO	NO	NO
PC 422(A) THRTN CRIME W/ INTENT, PC 417(A)(1) EXH DEADLY WEAPON:NOT FIREARM			YES	YES	NO	NO
PC 211 ROBBERY/ PC 186.22(A) CRIMINAL STREET GANG/ PC 1203.2 PROBATION VIOLATION			YES	YES	NO	NO
PC 288 - L&L ACTS W/ CHILD UNDER 10	PC 288 - L&L ACTS W/ CHILD UNDER 10		YES	YES	NO	NO
PC 664/459 ATTEMPT BURGLARY, PC 459 BURGLARY, PC 647(F) DISORD CONDUCT			YES	YES	NO	NO
PC 368(B)(1) INFLECT INJURY ON ELDERLY/PC166(C)(4) VIOLATION OF RESTRAINING ORDER			YES	YES	NO	NO
PC 245 - ASSAULT W/ DEADLY WEAPON, PC 422 - CRIMINAL THREATS, PC 1203.2 - REVOKE PROBATION			YES	YES	NO	NO
HS 11351 POS/PUR F/SALE NARC/HS 11352(A) TRANSP/SELL NARC/CNTL			YES	NO	NO	NO
VC 23153(F) DUI ALCHL/DRUG COMBO	VC 23153(F) DUI ALCHL/DRUG COMBO		NO	NO	NO	NO
PC 3455 FAILURE TO REPORT	PC 3455 FAILURE TO REPORT	PC 3455 FAILURE TO REPORT	YES	NO	YES	NO
PC 215(A) CARJACKING/ PC 245(A)(2) ASLT W/FIREARM ON PERS			YES	NO	NO	NO
PC 241(B)/243(B) MISD BATTERY PO/EMERG PRSNL/ETC, PC 148(A)(1) RESISTING ARREST			NO	NO	NO	NO
PC 666.5 - AUTO THFT W/ PRIOR, VC 10851 - VEH THFT, US 1325 - VIOL OF IMMIGRATION			NO	NO	NO	NO
PC 3455 - FAILURE TO REPORT, US 1325 - VIOLATION OF IMMIGRATION			NO	NO	NO	NO
PC 245 - ASSAULT W/ DEADLY WEAPON, PC 422 - CRIMINAL THREATS			YES	YES	NO	NO
HS 11350 - POSSESSION OF CONTROLLED SUBSTANCE, HS 11377 - POSSESSION OF PARAPHERNALIA			NO	NO	NO	NO
PC 314 - INDECENT EXPOSURE	PC 314 - INDECENT EXPOSURE	PC 314 - INDECENT EXPOSURE	YES	YES	NO	NO
HS 11378 POSSESSION FOR SALE/ HS 11377 (A) POSSESSION OF A CNTRLD SUB.			NO	NO	NO	NO
PC 29800 (A)(1) EX-FELON W/ A FIREARM/ PC 243(E)(1) BATTERY/FORMER SPOUSE/PC 240 ASSAULT			YES	YES	NO	NO
RELEASED 6/5/20	RELEASED 6/5/20	RELEASED 6/5/20	NO	NO	NO	NO
PC 4573 BRING CNTRL SUBSTANCE INTO JAIL	PC 4573 BRING CNTRL SUBSTANCE INTO JAIL		NO	NO	NO	NO
PC 459 BURGLARY/460 (B)/PC 594 (A) VANDALISM	PC 459 BURGLARY/460 (B)/PC 594 (A) VANDALISM		YES	NO	NO	NO

PC COURTORORDER PC COURTORORDER PC COURTORORDER PC COURTORORDER PC COURTORORDER PC COURTORORDER	YES	NO	NO	NO
VC 10851 (A) VEHICLE THEFT/ PC 496D (A) RECEIVE STOLEN VEHICLE/ PC 466 POSS BURG TOOLS	YES	YES	NO	NO
VC 10851(A) VEHICLE THEFT/ PC496D(A) RECEIVING STOLEN PROPERTY	YES	YES	NO	NO
PC - 530.5 - ACQRE PRSNL ID TO DEFRAUDPC - 530.5 - ACQRE PRSNL ID TO DEFRAUD	YES	NO	NO	NO
PC 3455 - FAILURE TO REPORTPC 3455 - FAILURE TO REPORTPC 3455 - FAILURE TO REPORT	YES	NO	YES/3455	NO
RELEASED 6/4/20RELEASED 6/4/20RELEASED 6/4/20RELEASED 6/4/20RELEASED 6/4/20RELEASED 6/4/20	NO	NO	NO	NO
PC 459 BURGLARY/ PC 460 (B) BURGLARY SEC. DEGREE/ PC487(A) GRND THFT	YES	NO	NO	NO
PC - 290.011 - TRANSIENT FAIL TO REGI, PC 1203.2 - REVOKE PROB.	YES	NO	NO	NO
PC 245 (A) (1) ASSAULT W/ A DEADLY WEAPON/ PC 459 BURGLARY/ PC 460 (B) BURGLARY SEC. DEGREE	YES	YES	NO	NO
VC 23152 (A)(B) DUI / 14601.2(A) TRAFFIC OFFENSE VC 23152 (A)(B) DUI / 14601.2(A) TRAFFIC OFFENSE	YES	YES	NO	NO
PC 3455 - FAILURE TO REPORT, US 1325 - VIOL OF IMMIGRATION	YES	NO	NO	NO
PC 460 - BURGLARY (1ST DEG.), PC 487 - GRND THFTPC 460 - BURGLARY (1ST DEG.), PC 487 - GRND THFT	YES	YES	NO	NO
PC 487(A) GRND THFT/PC 182(A)(1)/ PC 466 HS 11377(A)PC 487(A) GRND THFT/PC 182(A)(1)/ PC 466 HS 11377(A)	YES	YES	NO	NO

TOTAL INMATES PRE-TRIALTOTAL INMATES PRE-TRIALTOTAL INMATES PRE-TRIALTOTAL INMATES PRE-TRIAL	369			
TOTAL INMATES WITH ORDERS FOR BAILTOTAL INMATES WITH ORDERS FOR BAIL		267		
TOTAL INMATES ARRESTED FOR PAROLE/PROBATION VIOLATIONS ONLY			9	
TOTAL INMATES THAT QUALIFY FOR ZERO BAILTOTAL INMATES THAT QUALIFY FOR ZERO BAIL				0

TOTAL INMATES THAT ARE PRE-TRIAL AND HAVE AN ORDER FOR BAIL	266
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10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **SOUTHERN DIVISION**

14
15 MELISSA AHLMAN, DANIEL KAUWE,
MICHAEL SEIF, JAVIER ESPARZA,
16 PEDRO BONILLA, CYNTHIA
CAMPBELL, MONIQUE CASTILLO,
17 MARK TRACE, CECIBEL CARIDAD
ORTIZ, and DON WAGNER, on behalf of
18 themselves and all others similarly situated,
et al.,

19 Plaintiffs/Petitioners,

20 v.

21 DON BARNES, in his official capacity as
22 Sheriff of Orange County, California; and
ORANGE COUNTY, CALIFORNIA.

23 Defendants/Respondents.
24

Case No. 8:20-cv-00835-JGB-SHK

Assigned to the Honorable Jesus G. Bernal

**DECLARATION OF ERIN WINGER,
R.N. IN SUPPORT OF DEFENDANTS'
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
APPLICATION TO IMMEDIATELY
DISSOLVE PRELIMINARY
INJUNCTION OR ALTERNATIVELY
SET EXPEDITED HEARING TO
DISSOLVE PRELIMINARY
INJUNCTION [ECF 65]**

Action Filed: April 30, 2020

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE

DECLARATION OF ERIN WINGER, R.N.

I, Erin Winger, R.N., declare as follows:

1. I have personal knowledge of the facts contained in this declaration unless such facts are stated on information and belief, in which case I believe them to be true. If called upon to testify, I could and would do so competently.

2. I am currently employed by the Orange County Health Care Agency (“HCA”) as a Deputy Agency Director for Correctional Health Services (“CHS”). I have held this title for over two years. Prior to that my title was Chief of Operations, Correctional Health which I held for five years. I have been employed with the County of Orange for twenty four (24) years – all of which has been in the area of correctional health with the Health Care Agency

3. In my capacity as the Deputy Agency Director for Correctional Health Services I oversee all the health care services for the adult and juvenile correctional facilities in Orange County.

4. I have been a registered nurse for 28 years. I currently hold bachelor’s in nursing and am in process of obtaining a master’s degree in nursing. I am also a Certified Correctional Health Professional which is a certification provided by the National Commission on Correctional Health Care, a leading organization for correctional health

5. I work with the Correctional Health Services (“CHS”) Medical Director to oversee the health care of the inmates in the Orange County jails. I am familiar with the policies promulgated by CHS in relation to COVID-19 outbreak and am very familiar with the measures put in place to address the COVID-19 pandemic and prevent the spread of COVID-19 in the jails.

6. When we became aware of the COVID-19 outbreak, I worked with our Medical Director to develop policies and procedures to address the prevention of the spread of COVID-19 in the jails; including how to address quarantine, isolation and treatment of those that test positive for COVID-19 or are feared to have been exposed to

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1 COVID-19. In my preparation of this plan we took into consideration and implemented
2 the CDC Interim Guidelines for correctional facilities in Orange County.

3 7. I have reviewed the declarations submitted in support of Plaintiffs pleadings
4 in this matter. I have reviewed the inmates' medical charts to investigate allegations
5 regarding Correctional Health Services.

6 a) **Plaintiff Melissa Ahlman** (Declarations at Dkts. 41-19, 41-41, 57-1, 79-
7 33, 79-34.)

- 8 i. Plaintiff Ahlman is housed in the Women's Jail, sector P-13. Plaintiff
9 Ahlman alleges that on or around May 14, 2020, she requested a
10 COVID test and still had not been tested. (Dkt. 57-1, ¶ 4.)
- 11 ii. I am informed and believe that Plaintiff Ahlman was tested on May
12 21st and the results were negative.
- 13 iii. Plaintiff Ahlman also alleges that she does not know anyone in her
14 tank (P-13) that has been tested, including some that appear to have
15 symptoms. (Dkt. 41-19, ¶ 17.)
- 16 iv. I am informed and believe that all the women housed in P-13 were
17 tested due to exposure to COVID.
- 18 v. Plaintiff Ahlman alleges that when she goes to the medical unit there
19 is never enough room to keep six feet apart and that they might put
20 someone with virus symptoms on the bench with her. (Dkt. 41-19, ¶
21 14.)
- 22 i. I am informed and believe that when inmates leave their sector to go
23 to medical, they are instructed to wear a mask to practice safe social
24 distancing. In addition, there are blue pieces of tape on the medical
25 benches to give the inmates six feet of social distancing. There are
26 only as many inmates waiting in the medical unit as there are blue
27 tape marks. Patients who are reporting COVID-19 symptoms are
28

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COUNTY OF ORANGE

1 seen outside of normal sick call hours and do not congregate on the
2 medical bench to be seen by the medical unit.

3 **b) Plaintiff Daniel Kauwe:** (Dkts. 41-28, 41-37)

- 4 i. Plaintiff Kauwe alleges that he needs medical attention for
5 depression, stress, isolation and acid reflux but cannot get medical
6 attention. (Dkt. 41-28, ¶¶ 14-15.)
- 7 ii. I reviewed inmate Kauwe’s chart and found that inmate Kauwe was
8 seen by medical and mental health for the issues complained of
9 above on April 1, April 13, April 21, April 29, May 1, May 2, May
10 6, May 7, May 8, May 12, May 14, May 20, May 26, and June 9. I
11 am informed and believe that inmate Kauwe is receiving his
12 requested medication (which was refilled again on June 12.).
- 13 iii. In addition, the ACLU has contacted me directly about this inmate
14 and requested a health evaluation on his behalf.

15 **c) Plaintiff Michael Seif:** (Dkts. 41-13, 41-32, 57-4)

- 16 vi. Plaintiff Seif alleges having cold like symptoms and not being seen by
17 medical. (Dkt. 41-13, ¶ 7)
- 18 vii. I reviewed Plaintiff Seif’s chart and found that Seif submitted medical
19 slips on the following topics and dates:
- 20 a. 4/10/20 Health Message Slip submitted for trouble breathing.
21 Evaluated by CHS – diagnosis not related to COVID
- 22 b. 4/21/20 Health Message Slip submitted for request for athletic
23 supporter. Evaluated by CHS.
- 24 c. 4/28/20 Health Message Slip submitted to dental for “toothache”.
25 Evaluated by CHS.
- 26 d. 5/14/20 Health Message Slip submitted requesting
27 buprenorphine. Evaluated by CHS.
- 28 e. 5/25/20 Health Message Slip submitted by individual for “pains

1 in chest". Evaluated by CHS – diagnosis not related to COVID

2 f. 5/27/20 Health Message Slip submitted by individual for
3 abdominal issue. Evaluated by CHS.

4 g. The only mention of cold symptoms was on a health request
5 dated 3/17/20. Patient was evaluated by CHS and exhibited mild
6 cold symptoms (no fever) and did NOT meet criteria in place at
7 that time for COVID-19 testing.

8 viii. Plaintiff Seif alleges that no one in his tier has been tested for COVID.
9 (Dkt. 41-13 ¶ 9.)

10 ix. I am informed and believe that no inmate from Central Men's Jail,
11 Mod D, sector 19, where Plaintiff Seif is housed, has tested positive
12 for COVID-19. Since Plaintiff Seif did not have COVID-19
13 symptoms and was not housed in an area with a known exposure to
14 COVID-19, Plaintiff Seif was not tested.

15 **d) Plaintiff Javier Esparza:** (Dkts. 41-15, 41-33.)

16 i. Plaintiff Esparza is housed in Theo Lacy Facility, Mod P, sector 45.
17 Plaintiff Esparza alleges that he doesn't know if anyone in his cell
18 has been tested for COVID and that no one is coming around to
19 check on him. (Dkt. 41-15, ¶ 8.)

20 ii. There have been no known COVID cases that originated at the Theo
21 Lacy Facility. All known COVID cases originated out of Central
22 Men's and Central Women's Jail. However, some inmates who
23 tested positive at Central Men's Jail and/or tested positive during
24 booking into the Jail (i.e., new arrestees) have been placed in
25 isolation at Theo Lacy, but those inmates have no contact with other
26 inmates until they have completed isolation.

27 iii. I am informed and believe that Plaintiff Esparza has never been in a
28 housing area with known COVID-19 exposure and therefore a

1 COVID test is not necessary. In addition, I reviewed his chart and
2 Plaintiff Esparza has never reported COVID symptoms or requested a
3 COVID-19 test.

4 **e) Plaintiff Cynthia Campbell:** (Dkts. 41-30, 41-40.)

- 5 i. Plaintiff Campbell is housed at Central Women’s Jail in sector P-13.
6 Plaintiff Campbell alleges that when she travels to the medical unit it
7 is too crowded to social distance. (Dkt. 41-30, ¶ 11.)
8 ii. I am informed and believe that when inmates leave their sector to go
9 to medical, they are instructed to wear a mask to practice safe social
10 distancing measures. In addition, there are blue pieces of tape on the
11 medical benches to identify for the inmates how to maintain six feet of
12 social distancing. There are only as many inmates waiting in the
13 medical unit as there are blue tape marks.
14 iii. I am informed and believe that all the women housed in P-13 were
15 tested due to exposure to COVID.
16 iv. I reviewed Campbells’ chart. Plaintiff Campbell was tested for
17 COVID-19 on May 14, 2020, and the results came back positive on
18 May 15. Campbell was medically isolated consistent with guidelines
19 and has since recovered without hospitalization.

20 **f) Plaintiff Monique Castillo:** (Dkts. 41-27, 41-42.)

- 21 i. Plaintiff Castillo is housed at Central Women’s Jail in sector P-13.
22 Plaintiff Castillo alleges that when she goes to the medical unit there
23 is never enough room to keep six feet apart and that they might put
24 someone with virus symptoms on the bench with her. (Dkt. 41-27, ¶¶
25 9, 11.)
26 ii. I am informed and believe that when inmates leave their sector to go
27 to medical, they are instructed to wear a mask to practice safe social
28 distancing. In addition, there are blue pieces of tape on the medical

1 benches to identify for the inmates how to maintain six feet of social
2 distancing. There are only as many inmates waiting in the medical
3 unit as there are blue tape marks. Patients who are reporting COVID-
4 19 symptoms are seen outside of normal sick call hours and do not
5 congregate on the medical bench to be seen by the medical unit.

6 iii. I am informed and believe that all the women housed in P-13 were
7 tested due to exposure to COVID.

8 iv. I reviewed Plaintiff Castillo's chart. Castillo was placed in
9 quarantine due to exposure to COVID-19 Plaintiff Castillo was tested
10 for COVID-19 on 5/21/20 and the results came back negative.

11 **g) Plaintiff Mark Trace:** (Dkts. , 41-11, 41-13, 41-24, 41-38, 41-39.)

12 i. Plaintiff Trace is housed at Central Men's Jail in Mod D, sector 20.
13 Plaintiff Trace alleges that he has requested COVID testing 4 times
14 by submitting medical slips and still has not been tested. (Dkt. 41-
15 11, ¶ 8.)

16 ii. I am informed and believe that Plaintiff Trace was never housed in
17 an area with known exposure to COVID-19.

18 iii. I reviewed Plaintiff Trace's chart. Trace submitted a request for
19 COVID-19 testing on May 12 and May 29. Plaintiff Trace was
20 examined by CHS and did not have COVID symptoms. Since
21 Plaintiff Trace did not have COVID-19 symptoms and was not
22 housed in an area with a known exposure to COVID-19, Plaintiff
23 Trace was not tested.

24 **h) Plaintiff Cecibel Ortiz:** (Dkts. 41-21, 41-31.)

25 i. Plaintiff Ortiz is housed at Central Women's Jail in sector P-13.
26 Plaintiff Ortiz alleges that she comes in close contact with other
27 individuals when travelling to medical. (Dkt. 41-21, ¶ 10.)
28

- 1 ii. I am informed and believe that when inmates leave their sector to go
- 2 to medical, they are instructed to wear a mask to practice safe social
- 3 distancing measures. In addition, there are blue pieces of tape on the
- 4 medical benches to identify for the inmates how to maintain six feet
- 5 of social distancing. There are only as many inmates waiting in the
- 6 medical unit as there are blue tape marks.
- 7 iii. I am informed and believe that all the women housed in P-13 were
- 8 tested due to exposure to COVID.
- 9 iv. I reviewed Plaintiff Ortiz’s chart. Ortiz was tested for COVID-19 on
- 10 May 11 and the results came back positive on May 13. Plaintiff Ortiz
- 11 was placed in medical isolation consistent with guidelines. Ortiz has
- 12 since recovered without hospitalization.

13 **i) Plaintiff Don Wagner:** (Dkts. 41-4, 41-12, 41-35.)

- 14 i. Plaintiff Wagner is housed at Theo Lacy Facility in Mod P-47.
- 15 Plaintiff Wagner alleges that he made several requests to be tested for
- 16 COVID-19 and was denied. (Dkt. 41-12, ¶ 8.) Plaintiff Wagner also
- 17 alleges that he heard he was housed with an inmate whose dad was in
- 18 the hospital with COVID-19 (Dkt. 41-4) and he does not know if his
- 19 current cellmate is positive for COVID-19. (Dkt. 41-12, ¶ 3.)
- 20 ii. There have been no known COVID cases that originated at the Theo
- 21 Lacy Facility. All known COVID cases originated out of Central
- 22 Men’s and Central Women’s Jail. However, some inmates who
- 23 tested positive at Central Men’s Jail and/or tested positive during
- 24 booking into the Jail (i.e., new arrestees) have been placed in
- 25 iii. isolation at Theo Lacy but those inmates have no contact with other
- 26 inmates until they have completed isolation
- 27 iv. I reviewed this inmate’s chart and most of the requests for health
- 28 services have been dental related. The only medical slip that

1 mentions cold-like symptoms was dated April 5. Plaintiff Wagner
2 was evaluated on April 5, where he did not have a fever and the exam
3 results were normal. On April 6, Plaintiff Wagner was rechecked by
4 healthcare and he denied the cold-like symptoms he had complained
5 of on April 5. As a result, Plaintiff Wagner was not tested for
6 COVID-19.

7 **j) Declarant Jose Armendariz:** (Dkts. 41-10, 79-21.)

- 8 i. Inmate Armendariz is housed at Theo Lacy Facility in a cell by
9 himself. Inmate Armendariz alleges that he was tested for COVID
10 on May 8 but was never quarantined or isolated. (Dkt. 41-10, ¶ 22.)
11 ii. I reviewed Armendariz's chart. Armendariz was tested for COVID-
12 19 on May 8 and the results were negative.

13 **k) Declarant Donald Timmons:** (Dkt. 57-5.)

- 14 i. Inmate Timmons is housed at Central Men's Jail and tested positive
15 for COVID on May 1. (Dkt. 57-5, ¶ 6.)
16 ii. I reviewed Timmons chart. Timmons did test positive on May 1. He
17 was isolated, has recovered from the virus and cleared to regular
18 housing without incident.

19 **l) Declarant Mitchell John Lentz:** (Dkt. 41-18.)

- 20 i. Inmate Lentz is housed in Central Men's Jail and tested positive for
21 COVID on April 29. (Dkt. 41-18, ¶ 16.)
22 ii. I reviewed Lentz's chart. Lentz tested positive on April 24. Inmate
23 Lentz was isolated and remained in isolation (with no COVID
24 symptoms) until he was cleared to regular housing without incident.

25 **m) Declarant Carlos Godinez Sanchez:** (Dkt. 41-16.)

- 26 i. Inmate Sanchez is housed in Central Men's Jail in Mod A. Inmate
27 Sanchez alleges that he was tested for COVID on April 22. (Dkt. 41-
28 16, ¶ 22.)

1 ii. I reviewed Godinez Sanchez chart. Inmate Sanchez COVID test
2 results came back negative on April 24.

3 **n) Declarant Jaime Herrera:** (Dkts. 41-23, 41-36.)

4 i. Inmate Herrera is housed in Central Men’s Jail in Mod D, sector 19.
5 Inmate Herrera alleges that he was quarantined because a deputy in
6 the jail tested positive for COVID and has not been tested for
7 COVID. (Dkt. 41-23, ¶¶ 6-7.)

8 ii. I am informed and believe that inmate Herrera’s sector did not have
9 known exposure to COVID. The entire Central Men’s Jail went on
10 “lockdown” to minimize inmate movement as part of COVID
11 mitigation measures

12 i. I reviewed inmate Herrera’s chart and did not find a request for
13 COVID testing. Since Herrera did not have COVID-19 symptoms
14 and was not housed in an area with a known exposure to COVID-19,
15 the inmate was not tested.

16 **o) Declarant Charles Lucious:** (Dkt. 57-2.)

17 i. Inmate Lucious is housed in the Theo Lacy Facility in Mod O,
18 section 39. Lucious alleges that he left for a medical appointment
19 outside of the facility and when he returned, he was not tested for
20 COVID-19. (Dkt. 57-2, ¶ 13.)

21 ii. I am informed and believe that CHS and/or OCSD are temperature
22 and symptom screening for individuals transferring between
23 facilities, court, appointments, etc., however, CHS/OCSD do not
24 conduct COVID testing on individuals who are re-entering the Jail
25 due to transfer, court, appointments, etc., unless clinically indicated.

26 iii. I am informed and believe that since inmate Lucious did not have a
27 temperature or other COVID symptoms when he returned to the Jail
28

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1 after a medical appointment, there was no clinical reason to test him
2 for COVID.

3 **p) Declarant Mejia Sanchez:** (Dkt. 57-3, 79-30.)

- 4 i. Inmate Sanchez is housed in Theo Lacy in Mod P, sector 45. Inmate
5 Sanchez alleges that his neighboring sector, M-30 and M-27, tested
6 positive for COVID. (Dkt. 79-30, ¶¶ 5-6.) Inmate Sanchez alleges
7 that he has had COVID-19 symptoms and requested a test on May 11
8 but was denied. (Id. ¶ 7.)
- 9 ii. I reviewed this inmate's chart and found that inmate Mejia Sanchez
10 submitted a request for COVID testing on May 11. He was evaluated
11 by CHS on May 12 and the findings were consistent with a common
12 cold. The inmate was provided treatment for common cold
13 symptoms. After May 12, the inmate made subsequent medical
14 requests regarding complaints of ear wax and requests to see the
15 optometrist.
- 16 iii. There have been no known COVID cases that originated at the Theo
17 Lacy Facility. All known COVID cases originated out of Central
18 Men's and Central Women's Jail. However, some inmates who
19 tested positive at Central Men's Jail and/or tested positive during
20 booking into the Jail (i.e., new arrestees) have been placed in
21 isolation at Theo Lacy, but those inmates have no contact with other
22 inmates until they have completed isolation.

23 **q) Declaration Aaron Jackson:** (Dkt. 41-10.)

- 24 i. Inmate Jackson is housed at Central Men's Jail in Mod D, sector 15.
25 Inmate Jackson alleges that he was tested for COVID on May 8.
26 (Dkt. 41-10, ¶ 23.) Inmate Jackson alleges that he requested testing
27 before May 8 but never received a response. (Id.)
- 28

- ii. Assuming this inmate’s booking number is 2969937¹, inmate Jackson tested positive for COVID on May 11. The inmate was medically isolated consistent with guidelines and has since recovered without hospitalization.
- iii. In reviewing this inmate’s chart, inmate Jackson never submitted a medical slip requesting testing before May 8. On March 20, 2020, this individual complained of feeling sick, but never requested COVID testing and after being evaluated on March 20th, he did not meet testing criteria in place at that time.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed June 18, 2020, at Santa Ana, California.



Erin Winger, RN

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COUNTY OF ORANGE

¹ There was more than one inmate with this name and the declaration did not provide the inmate’s booking number. Therefore, based on his housing location in the declaration, I presume this to be the correct inmate.

ECF 90

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10
 11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**
 13 **SOUTHERN DIVISION**
 14

15 MELISSA AHLMAN, DANIEL KAUWE,
 16 MICHAEL SEIF, JAVIER ESPARZA,
 PEDRO BONILLA, CYNTHIA
 17 CAMPBELL, MONIQUE CASTILLO,
 MARK TRACE, CECIBEL CARIDAD
 18 ORTIZ, and DON WAGNER, on behalf of
 themselves and all others similarly situated,
 19 *et al.*,

20 Plaintiffs/Petitioners,

21 v.

22 DON BARNES, in his official capacity as
 Sheriff of Orange County, California; and
 23 ORANGE COUNTY, CALIFORNIA.

24 Defendants/Respondents.

Case No. 8:20-cv-00835-JGB-SHK

Assigned to the Honorable Jesus G. Bernal

**SUPPLEMENTAL DECLARATION OF
 C. HSIEN CHIANG, M.D. IN SUPPORT
 OF DEFENDANTS' EX PARTE
 APPLICATION TO DISSOLVE MAY
 26, 2020 PRELIMINARY INJUNCTION;
 OR IN THE ALTERNATIVE, SET
 EXPEDITED HEARING TO DISSOLVE
 PRELIMINARY INJUNCTION**

Action Filed: April 30, 2020

OFFICE OF THE COUNTY COUNSEL
 COUNTY OF ORANGE

DECLARATION OF C. HSIEN CHIANG, M.D.

I, C. Hsien Chiang, M.D., declare as follows:

1. I have personal knowledge of the facts contained in this declaration unless such facts are stated on information and belief, in which case I believe them to be true. If called upon to testify, I could and would do so competently.

2. As of today, we only have 4 COVID-19 positive inmates in medical isolation, all of whom are new bookings.

3. As of today, we are currently averaging 1 new positive case every 2 days, all from new bookings who are in quarantine. (See graph as of June 24, 2020, attached as **Exhibit A**. "NB" stands for New Bookings; "JT" means Jail Transmission.)

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

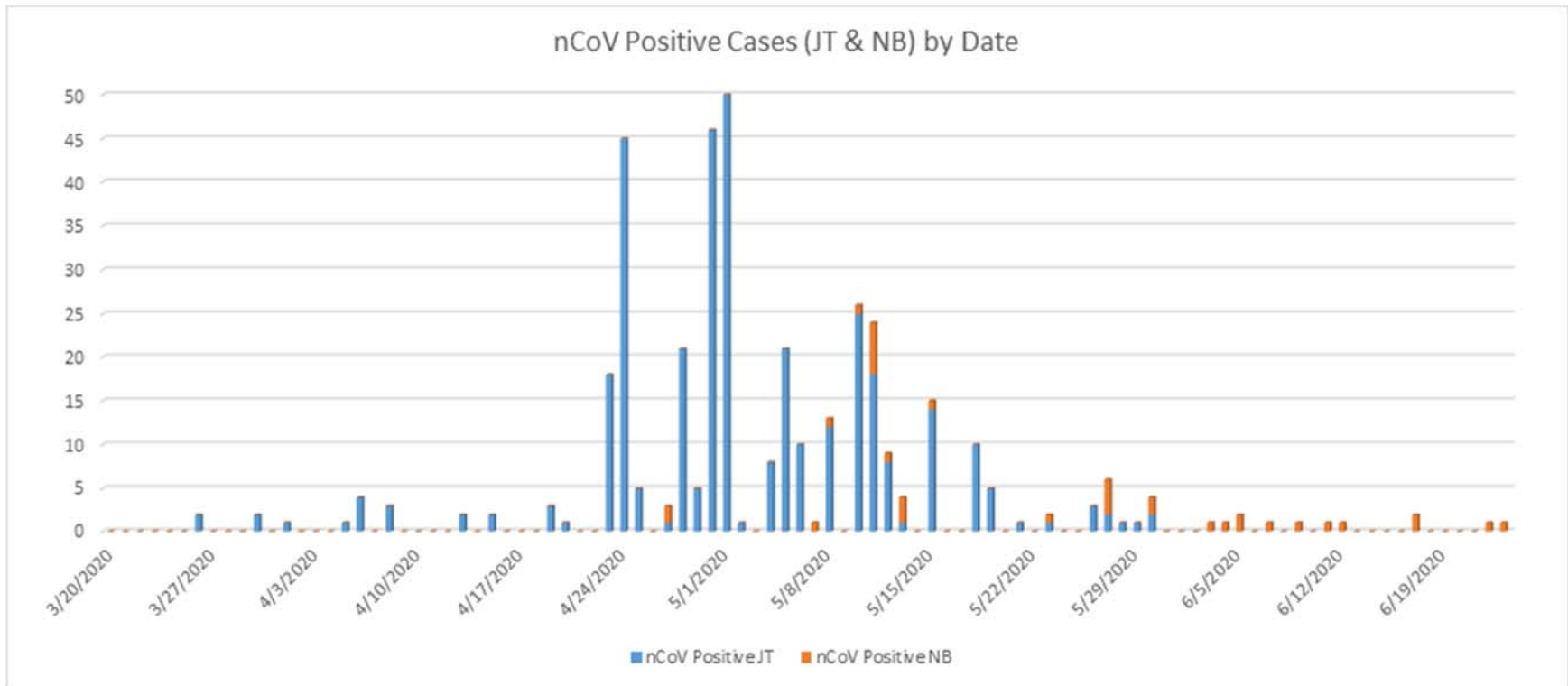
Executed this 24th day of June, 2020, at Santa Ana, California.


C. Hsien Chiang, M.D., Declarant

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COUNTY OF ORANGE

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Exhibit A



CERTIFICATE OF SERVICE

I do hereby declare that I am a citizen of the United States employed in the County of Orange, over 18 years old and that my business address is 333 W. Santa Ana Blvd., Ste. 407, Santa Ana, California 92701; and my e-mail address is simon.perng@coco.ocgov.com. I am not a party to the within action.

[] (BY U.S. MAIL) On , I caused the document, **SUPPLEMENTAL DECLARATION OF C. HSIEN CHIANG, M.D. IN SUPPORT OF DEFENDANTS' EX PARTE APPLICATION TO DISSOLVE MAY 26, 2020 PRELIMINARY INJUNCTION; OR IN THE ALTERNATIVE, SET EXPEDITED HEARING TO DISSOLVE PRELIMINARY INJUNCTION**, to be placed in an envelope(s) addressed as shown below (last known addresses) for collection and mailing at Santa Ana, California, following our ordinary business practices. I am readily familiar with this office's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

[X] (BY CM/ECF) On **June 24, 2020**, I caused the aforementioned document to be served upon all counsel of record in this action who are registered with the United States District Court's CM/ECF system and listed below by utilizing the United States District Court's CM/ECF system:

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ECF 93

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **SACV 20-00835 JGB (SHKx)** Date June 26, 2020

Title ***Melissa Ahlman, et al. v. Don Barnes, et al.***

Present: The Honorable **JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE**

MAYNOR GALVEZ

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

Proceedings: Order (1) DENYING Defendants’ Ex Parte Application to Dissolve Injunction (Dkt. No. 86); (2) GRANTING Plaintiffs’ Motion for Expedited Discovery (Dkt. No. 83); (3) DENYING Plaintiff’s Ex Parte Application to Shorten Time (Dkt. No. 89); and (4) VACATING the July 20, 2020 Hearing (IN CHAMBERS)

Before the Court is (1) an Ex Parte Application to Immediately Dissolve Preliminary Injunction file by Defendants Don Barnes and Orange County; (2) a Motion for Expedited Discovery filed by Plaintiffs Melissa Ahlman, Pedro Bonilla, Cynthia Campbell, Monique Castillo, Javier Esparza, Daniel Kauwe, Cecibel Caridad Ortiz, Michael Seif, Mark Trace, and Don Wagner. (“Application,” Dkt. No. 86; “Motion,” Dkt. No. 83.) The Court finds these matters appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support of and in opposition to the Motion, the Court DENIES the Application and GRANTS the Motion.¹ The Court VACATES the hearing set for July 20, 2020 on the Motion.

I. BACKGROUND

On May 26, 2020, the Court issued an injunction compelling Defendants to implement several practices within the Orange County Jails to quell the spread of COVID-19. (“PI Order,” Dkt. No. 65.) Defendants then requested that both this Court and the Ninth Circuit stay the injunction. (Dkt. Nos. 66, 68.) Those requests were denied. (Dkt. Nos. 72, 75, 80.)

¹ Plaintiffs’ ex parte application to shorten the time for the Motion hearing is DENIED AS MOOT. (See Dkt. No. 89.)

On June 18, 2020, Plaintiff filed a motion requesting expedited discovery. (Motion.) Defendants filed an ex parte application requesting that the Court immediately dissolve the preliminary injunction on June 19, 2020. (Application.)

II. DISCUSSION

After finding that Defendants' response to the COVID-19 outbreak in Orange County Jail was inadequate, the Court ordered Defendants to implement several remedial measures aimed at stopping the spread of the disease. (See PI Order.) Now, Defendants seek to dissolve that injunction, arguing that it is no longer necessary. The request is premature.

Dissolution of a preliminary injunction is only proper only if there has been a significant change that renders the original preliminary injunction inequitable. Alto v. Black, 738 F3d 1111, 1120 (9th Cir. 2013). Defendants insist that the rate of infection is now zero. (Application at 5.) However, they support this assertion with their own evidence and testimony from County employees. Certainly, the County employees are incentivized to submit evidence that will support the County's position.

Before the Court can conclude that the circumstances have truly changed in such a way to warrant dissolution of the injunction, Plaintiffs must have the opportunity to evaluate Defendants' evidence and determine whether other evidence contradicts it. Because it would serve both parties' interests to quickly determine the actual state of the outbreak, there is good cause for ordering expedited discovery. See Fed. R. Civ. Pro. 26(d)(1); Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 276 (N.D. Cal. 2002) ("Good cause may be found where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.")

Moreover, even though Defendants now insist that there is zero transmission within the Jail, they acknowledge that there are still six active cases. (Application at 5.) As Defendants have previously demonstrated, six cases can rapidly become three hundred in the absence of sufficient mitigating measures. The country remains deep in the throes of the outbreak—tens of thousands of new cases are still being reported every day.² Even if Defendants have dropped the transmission rate to zero, it is certainly not time yet to draw down preventative measures—unless Defendants consistently implement those steps outlined in the injunctive order, a second spike is likely occur.

Defendants have repeatedly insisted that they are going above and beyond what is necessary to stop the spread of infection—including implementing all the measures that the court ordered with the injunction. (See, e.g., Dkt. No. 44-10 ¶ 2 ("OCSD has, at a minimum already implemented all of the mitigation efforts outlined in plaintiffs' request for relief.")) Yet they have filed four separate requests asking to be relieved of the obligation to do what they have long

² <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

claimed to be doing. And they refuse to provide Plaintiffs with any information regarding their compliance with the Court's order. (Application, Exhibit A.)

III. CONCLUSION

For the reasons above, the Court:

1. DENIES Defendants' Application;
2. GRANTS Plaintiffs' Motion;
3. ORDERS that by July 8, 2020, (1) Defendants will serve responses to all outstanding written discovery, (2) the parties will agree on a date for inspection of the Jail to be no later than July 15, 2020, and (3) the parties will agree on a time and date for the video depositions of Erin Winger, Dr. C. Hsien Chiang, and Commander Joseph Balicki to be no later than July 15, 2020;
4. ORDERS the parties to meet and confer regarding additional discovery;
5. ORDERS Defendants to submit weekly updates to Plaintiffs regarding compliance with the injunction so long as the injunction remains in effect;
6. ADMONISHES both parties to fully comply with the entirety of this Order and all other orders applicable to this case—failure to do so will result in sanctions;
7. VACATES the hearing set for July 20, 2020 on the Motion.
8. DENIES as moot Plaintiffs' ex parte application to shorten the time for the Motion hearing (See Dkt. No. 89.).

IT IS SO ORDERED.

Dkt. 16

20-55568

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 12 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MELISSA AHLMAN; et al.,

Plaintiffs-Appellees,

v.

DON BARNES, in his official capacity as
Sheriff of Orange County, California;
COUNTY OF ORANGE,

Defendants-Appellants.

No. 20-55568

D.C. No.

8:20-cv-00835-JGB-SHK

Central District of California,
Santa Ana

ORDER

Before: GRABER, WARDLAW, and R. NELSON, Circuit Judges.

Appellants' emergency motion to stay the district court's May 26, 2020 order (Docket Entry No. 8) is denied. *See Nken v. Holder*, 556 U.S. 418, 426 (2009).

A written order giving the court's reasoning will follow in due course.

Appellants' emergency motion to supplement the record on appeal (Docket Entry No. 15) is denied. However, we *sua sponte* remand the case to the district court for the limited purpose of allowing the parties to present any evidence of changed circumstances that might merit modification or dissolution of the preliminary injunction. *See* Fed. R. App. P. 8(a)(1)(C) ("A party must ordinarily move first in the district court for . . . an order suspending [or] modifying . . . an injunction while an appeal is pending."); *Nat'l Wildlife Fed'n v. Burlington N.*

R.R., 23 F.3d 1508, 1511 n.5 (9th Cir. 1994) (declining to consider new evidence in a preliminary injunction appeal because “[f]acts not presented to the district court are not part of the record on appeal”). In the event that such evidence is presented, the district court may consider whether it is appropriate to hold an evidentiary hearing. After reviewing any new evidence, the district court may, in its discretion, modify or dissolve the preliminary injunction as it deems appropriate.

The previously established briefing schedule remains in effect.

R. NELSON, Circuit Judge, concurring in part and dissenting in part:

I respectfully dissent. I would vote to grant appellants’ motion to stay the district court’s May 26, 2020 order. I concur in the panel’s limited remand to the district court.

Dkt. 19

20-55568

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUN 17 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MELISSA AHLMAN; et al.,

No. 20-55568

Plaintiffs-Appellees,

D.C. No.

v.

8:20-cv-00835-JGB-SHK

DON BARNES, in his official capacity as
Sheriff of Orange County, California;
COUNTY OF ORANGE,

Central District of California,
Santa Ana

ORDER

Defendants-Appellants.

Before: GRABER, WARDLAW, and R. NELSON, Circuit Judges.

Defendants-Appellants Orange County and Sheriff Don Barnes (Defendants) have filed a motion to stay the district court’s May 26, 2020, preliminary injunction order. We deny the motion to stay, but remand for the limited purpose of allowing the district court to consider whether changed circumstances justify modifying or dissolving the injunction.¹

I.

Plaintiffs-Appellees, putative classes and subclasses of pre-trial and post-trial inmates housed in four facilities at the Orange County Jail, filed this suit

¹ On June 12, 2020, we issued an order denying the motion to stay and explaining that a written order giving the court’s reasoning would follow in due course. This order supplies that reasoning.

alleging that Defendants failed to take adequate measures to prevent the spread of COVID-19 within the jail. They asserted Eighth Amendment, Fourteenth Amendment, and statutory claims, and sought a preliminary injunction requiring Defendants to implement specific “mitigation efforts” to prevent the spread of the virus.²

In the district court, Defendants argued that an injunction was unnecessary because they had already implemented each of the specific mitigation efforts Plaintiffs requested. In support, they proffered a sworn declaration from Commander Joseph Balicki of the Orange County Sheriff’s Department’s (OCSD) Custody Operations Command. Balicki attested under penalty of perjury that he had reviewed Plaintiffs’ complaint³ and that “OCSD ha[d], at a minimum, already implemented *all* of the mitigation efforts outlined in [their] request for relief.” (emphasis added). Balicki’s declaration made clear that the “mitigation efforts” he was referring to were those that were identified in the complaint’s “Request for

² Plaintiffs also asked the district court to order the release of inmates who were medically vulnerable or had disabilities that could put them at particular risk of harm from COVID-19. The district court denied this request, concluding that a release of inmates was not necessary because any harm to these individuals could be mitigated by additional preventative measures within the jail. Plaintiffs have not appealed that denial.

³ Plaintiffs have since amended their complaint in the district court. All references in this order are to the original petition for habeas corpus and complaint, which was the operative complaint at the time the district court issued the preliminary injunction.

Relief.” He cited Paragraph 138 of the complaint, where Plaintiffs listed each of their requested “mitigation efforts,” including, among other things, that Defendants “[p]rovide adequate spacing of six feet or more between incarcerated people so that social distancing can be accomplished in accordance with CDC guidelines;” “[e]nsure that each incarcerated person receives, free of charge, an individual supply of hand soap and paper towels sufficient to allow frequent hand washing and drying each day;” “[e]nsure that all incarcerated people have access to hand sanitizer containing at least 60% alcohol;” and “[c]onduct immediate testing for anyone . . . displaying known symptoms of COVID-19.”

Although Defendants maintained that they were already voluntarily providing all of the relief sought in the complaint (other than a release of inmates), Plaintiffs produced evidence to the contrary. According to declarations from inmates at the jail, Defendants housed multiple inmates in the same room, with beds less than six feet apart; placed some inmates in overcrowded holding units; allowed quarantined inmates to use the same common spaces as the general population; failed to provide inmates with sufficient cleaning and hygiene supplies, including sufficient soap for hand-washing; and gave inmates cloth masks that, in some cases, were not replaced for weeks or were “made from blood-and[-]feces-stained sheets.” Inmates also reported that Defendants were not testing all individuals with suspected cases of COVID-19 and that on May 13, 2020—less

than two weeks before the injunction issued—an inmate who was exhibiting COVID-19 symptoms was left in a “medical tank” with non-symptomatic inmates pending the results of his COVID-19 test.

The district court recognized that Plaintiffs’ evidence contradicted the declarations submitted by Commander Balicki and other OCSD officials. It resolved this factual conflict in favor of Plaintiffs, concluding that the detailed inmate declarations were more credible than the brief and general declarations of the OCSD officers, which “fail[ed] to explain with specificity how the [County’s] policies ha[d] been implemented and enforced and the degree of compliance.”

The district court also considered the results of COVID-19 testing within the jail. It noted that as of May 26, 2020—the day it issued its order—369 inmates had tested positive for COVID-19, an increase of more than 300 confirmed cases in a little over a month. And while the district court acknowledged that Defendants reported that 302 of those inmates had recovered, it explained that there were likely still 57 inmates⁴ who had contracted the virus within the previous two weeks.

After evaluating the evidence before it, the district court found, as a factual

⁴ The district court may have meant to say that there were 67 inmates who had likely contracted the virus within the previous two weeks—the difference between the 369 positive tests and the 302 recoveries. The arithmetical discrepancy is immaterial for our purposes.

matter, that Defendants were “not complying meaningfully with the CDC Guidelines,” which it concluded “represent[ed] the floor, not the ceiling, of an adequate response to COVID-19 at the Jail, with at least 369 COVID-19 cases.” In light of this finding, the district court concluded that Plaintiffs had established (1) that they were likely to succeed on the merits of their claims, (2) that they were likely to face irreparable harm absent an injunction, and (3) that the balance of the equities and the public interest weighed in favor of injunctive relief. It issued an injunction directing Defendants to comply with fourteen requirements that were taken, essentially word-for-word, from Paragraph 138 of Plaintiffs’ complaint.

Defendants moved to stay the injunction pending appeal. The district court denied the motion, concluding, among other things, that Defendants could not establish irreparable injury because the injunction did nothing more than require them to implement the very same measures that Commander Balicki had specifically stated, under oath, had already been put in place. Defendants then appealed the grant of the preliminary injunction and asked us to grant a stay.

II.

In determining whether to exercise our discretion to stay the injunction, we consider (1) whether Defendants have made “a strong showing of the likelihood of success on the merits;” (2) whether Defendants will be “irreparably injured absent a stay;” (3) “whether a stay will substantially injure other parties;” and (4) “where

the public interest lies.” *Doe #1 v. Trump*, 957 F.3d 1050, 1058 (9th Cir. 2020) (citing *Nken v. Holder*, 556 U.S. 418, 426 (2009)). “The first two factors are the most critical,” *id.* (cleaned up), and a showing of irreparable injury is an absolute prerequisite. “[I]f the petition has not made a certain threshold showing regarding irreparable harm . . . then a stay may not issue, regardless of the petitioner’s proof regarding the other stay factors.” *Id.* (quoting *Leiva-Perez v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011) (per curiam)).

A.

We begin with the issue of irreparable harm. Defendants argue that they will be irreparably harmed because the requirements imposed by the district court’s injunction are “impossible” to adhere to. In support, they have submitted a new declaration from Commander Balicki, who now asserts that “portions of the [injunction] require action that the Sheriff simply cannot comply with due to safety and security concerns for jail staff and inmates.”

Defendants’ new position cannot be reconciled with Balicki’s sworn statement in the district court, which represented not only that Defendants were willing and able to implement each of the specific measures requested by Plaintiffs (and later incorporated into the injunction), but that they had in fact *already implemented them*. Nowhere in their papers have Defendants attempted to explain why the measures they assured the district court had already been taken have

suddenly become impossible to carry out.⁵

“Self-inflicted wounds are not irreparable injury.” *Al Otro Lado v. Wolf*, 952 F.3d 999, 1008 (9th Cir. 2020) (cleaned up). An injunction cannot cause irreparable harm when it requires a party to do nothing more than what it maintained, under oath, it was already doing of its own volition. On these particular facts, where Defendants have advanced an argument that is diametrically opposed to their litigating position in the district court, they cannot show irreparable harm. Either Defendants were already willingly complying with the requirements of the injunction before it issued, in which case they will suffer no irreparable injury from it, or they misrepresented the nature of their response to COVID-19 in the district court, in which case they are not entitled to discretionary relief in the form of a stay. *See Doe #1*, 957 F.3d at 1058; *see also Virginian Ry. Co. v. United States*, 272 U.S. 658, 672–73 (1926) (explaining that a stay is “not a matter of right” and that “[t]he propriety of its issue is dependent upon the circumstances of the particular case”).

⁵ The dissent contends that Commander Balicki’s declaration was merely “inartfully crafted” and “lacked nuance.” Dissent at 21. This blinks reality. There can be no doubt about the message Balicki intended to convey to the district court. His declaration precisely mirrored Defendants’ litigating position: that “there [wa]s not a single ‘mitigation effort’ outlined in Plaintiffs ex parte application that ha[d] not already been implemented in the jails.”

B.

The absence of irreparable harm is alone sufficient reason to deny Defendants' motion, *Doe #1*, 957 F.3d at 1061, but we also address whether Defendants have made a "strong showing" that they are likely to succeed on the merits of this appeal.

First, Defendants argue that the claims in this case are unlikely to succeed because they have satisfied their obligations under the Eighth and Fourteenth Amendments by implementing the CDC guidelines "to the extent practicable to do so." But in advancing this argument, Defendants focus largely on their own evidence, ignoring the fact that the district court expressly credited the accounts of several inmates who painted a much different picture of conditions at the jail. For example, while Defendants contend that they "test[] any inmate who exhibits COVID-19 symptoms and isolate[] that inmate according to CDC Guidance," the district court credited the accounts of inmates who reported that Defendants were not testing all suspected cases and had recently left at least one inmate exhibiting COVID-19 symptoms in the same area as inmates who did not have symptoms.

The district court's factual findings are reviewed for clear error, *Armstrong v. Brown*, 768 F.3d 975, 979 (9th Cir. 2014), and Defendants have fallen far short of making a strong showing that the findings here were clearly erroneous, *see Valentine v. Collier*, 140 S. Ct. 1598, 1600 (2020) (statement of Sotomayor, J.)

(noting the importance of deferring to the district court’s factual findings in the preliminary injunction context).⁶ On those facts, which portrayed a response that fell well short of the CDC guidelines and resulted in an explosion of COVID-19 cases in the jail,⁷ Defendants are not likely to establish that the issuance of the injunction was an abuse of discretion.⁸

⁶ The dissent notes that Justice Sotomayor ultimately agreed with the Supreme Court’s decision not to overturn a stay issued by the Fifth Circuit. Dissent at 10 n.5. But as Justice Sotomayor made clear, she did so because she could not conclude that the Fifth Circuit was “demonstrably wrong” in determining that the plaintiffs had failed to exhaust their administrative remedies, as required by the Prison Litigation Reform Act (PLRA). *Valentine*, 140 S. Ct. at 1598. In contrast here, Defendants have not challenged the district court’s finding that Plaintiffs likely satisfied the PLRA’s exhaustion requirement.

⁷ The dissent makes much of the fact that the *rate* of infection was decreasing in the days immediately preceding the issuance of the injunction. Dissent at 13–17. But it is undisputed that the *number* of cases was still increasing at an alarming rate—at least 57 new cases (and perhaps 67) in the two weeks before the injunction was issued. Given the potential for serious illness, or even death, faced by each of those newly infected inmates, this is hardly the rosy picture the dissent makes it out to be.

⁸ Although we recently stayed an injunction in a different case to the extent it imposed requirements beyond the CDC guidelines, *Roman v. Wolf*, No. 20-55436, 2020 WL 2188048, at *1 (9th Cir. May 5, 2020), that case involved a detention facility that did not yet have any confirmed cases of COVID-19, *see Roman v. Wolf*, No. EDCV 20-768 TJH (PVCx), 2020 WL 1952656, at *3 (C.D. Cal. Apr. 23, 2020). Given the district court’s findings that Defendants fell significantly short of complying with the CDC guidelines in a jail in which more than 300 inmates tested positive for COVID-19 in a one-month period, we do not believe Defendants are likely to show that the district court abused its discretion in ordering them to implement the mitigation efforts outlined in Plaintiffs’ complaint, which they represented were already in effect.

Next, Defendants argue that the injunction is likely to be overturned because the situation in the jail has improved significantly in the weeks since it issued. They insist that the injunction “is based on outdated information” and that we must consider the current conditions in the jail in determining whether they are likely to prevail on appeal. In support, Defendants have filed a motion to supplement the record on appeal with evidence that they contend demonstrates that there are now only 23 inmates currently suffering from COVID-19 and that all new cases have come from COVID-19-positive inmates being booked into the jail, rather than from the spread of the virus within jail facilities.

This evidence, which post-dates the injunction and is offered for the first time here, on appeal, is simply not relevant to whether Defendants are likely to succeed on the merits of their appeal. Review of a preliminary injunction is “restricted to the limited and often nontestimonial record available to the district court when it granted or denied the injunction motion.” *Zepeda v. U.S.*

Immigration & Naturalization Serv., 753 F.2d 719, 724 (9th Cir. 1983); *see also*

We emphasize that the dissent is simply wrong to assert that we have “blessed” the district court’s legal findings, “effectively affirm[ed] the notion that the CDC guidelines as drafted are a per se violation of the Eighth Amendment,” and “permitt[ed]” the issuance of the preliminary injunction. *See* Dissent at 1, 5. The propriety of the injunction is not before us. Instead, we are tasked only with determining whether Defendants are entitled to a stay pending appeal. On the facts here, Defendants cannot show irreparable harm and have fallen short of making a “strong showing” that they are likely to succeed on the merits. Each of these conclusions, on its own, is a legally sufficient reason to deny the motion to stay.

Wilson v. Williams, ___ F.3d ___, 2020 WL 3056217, at *1 (6th Cir. June 9, 2020).

The evidence submitted by Plaintiffs therefore has no bearing on whether the district court abused its discretion in issuing an injunction on the record before it.⁹

Nat'l Wildlife Fed'n v. Burlington N. R.R., Inc., 23 F.3d 1508, 1511 n.5 (9th Cir. 1994); *cf. Ashcroft v. ACLU*, 542 U.S. 656, 671–72 (2004).

III.

In sum, we conclude that Defendants have failed to carry their burden of establishing that a stay of the preliminary injunction is appropriate. We therefore deny the motion for a stay pending appeal.

Nevertheless, we recognize that the circumstances surrounding the COVID-19 pandemic are evolving rapidly. While we express no view on the new evidence proffered by Defendants on appeal, we believe the parties should be permitted to present any evidence of changed circumstances to the district court, which can determine in the first instance whether it is appropriate to modify or dissolve the injunction. *See* Fed. R. App. P. 8(a)(1)(C) (“A party must ordinarily move first in the district court for . . . an order suspending [or] modifying . . . an injunction while an appeal is pending.”).

Accordingly, we *sua sponte* remand the case to the district court for the limited purpose of allowing the parties to present any evidence of changed

⁹ Defendants’ emergency motion to supplement the record is denied.

circumstances that might merit modification or dissolution of the preliminary injunction. In the event such evidence is presented, the district court may consider whether it is appropriate to hold an evidentiary hearing. After reviewing any new evidence, the district court may, in its discretion, modify or dissolve the preliminary injunction as it deems appropriate.

The previously established briefing schedule remains in effect.

IT IS SO ORDERED.

Melissa Ahlman v. Don Barnes, et al., No. 20-55568

R. Nelson, Circuit Judge, concurring in part and dissenting in part:

The exceptional threats COVID-19 poses to individual health and safety have created unforeseen challenges in all aspects of our society. It has altered how we work, how we interact, how we worship, and how we educate our children. Perhaps nowhere are these impacts more apparent than in our prison systems. I am sympathetic to the plight of our incarcerated populations and the unique health risks confinement presents during this pandemic. Despite these realities, our Article III judicial role is confined to deciding the legal questions before us, not to mandate conditions unless required by statute or the Constitution.

Splitting with recent decisions from three of our sister circuits, the majority adopts an unprecedented interpretation of the Eighth and Fourteenth Amendments by permitting a district court to issue a preliminary injunction ordering a jail to comply with safety requirements *exceeding* the CDC's Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities ("CDC guidelines"). And the majority does this in spite of jail officials' implementation of increased protective measures *prior* to the Plaintiffs' motion for a preliminary injunction and well prior to the issuance of the injunction; measures that resulted in a drastically *decreased* COVID-19 infection rate within the jail.

This decision is wrong both on the law and the facts as they existed when the district court issued its injunction. Most significantly, between March 1 and May 19, 2020, Appellants released about 53 per cent of the inmates to increase social distancing and alleviate the outbreak. This unprecedented step alone negates the subjective deliberate indifference necessary for an Eighth Amendment violation. Because Appellants are likely to succeed on the merits and have also demonstrated an almost inherent likelihood of irreparable harm in the form of judicial micromanagement of prison affairs and resources, they are entitled to a stay of the injunction. I respectfully dissent.¹

I

To grant a stay of an injunction pending appeal, we must consider: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 426 (2009) (internal quotation marks omitted).

A district court’s grant of preliminary injunctive relief is reviewed for abuse

¹ I concur with the majority that the district court should be allowed to consider Appellants’ new evidence of recent developments in the jail’s COVID-19 conditions on a limited remand. Because the injunction was unwarranted on May 26, and conditions have improved even more significantly, the district court will hopefully take advantage of this opportunity for a redo and lift the injunction.

of discretion. *See Park Vill. Apartment Tenants Ass’n v. Mortimer Howard Tr.*, 636 F.3d 1150, 1158–59 (9th Cir. 2011). A district court abuses its discretion when it “base[s] its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence.” *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (internal quotation marks omitted).

II

The first *Nken* factor, “whether the stay applicant has made a strong showing that he is likely to succeed on the merits,” requires a “minimum quantum of likely success necessary to justify a stay—be it a reasonable probability or fair prospect[.]” *Leiva-Perez v. Holder*, 640 F.3d 962, 967 (9th Cir. 2011) (internal quotation marks omitted).

This first factor weighs in favor of staying the district court’s preliminary injunction because the district court based its order on both an erroneous application of the law and clearly erroneous factual findings. As a preliminary matter, the district court’s decision to impose numerous requirements on the jail exceeding the CDC guidelines runs contrary to the sound reasoning of our sister circuits’ recent decisions. *See Valentine v. Collier*, 956 F.3d 797, 802 (5th Cir. 2020); *Swain v. Junior*, 958 F.3d 1081, 1090 (11th Cir. 2020).

Moreover, whether examined under the Fourteenth Amendment’s objective analysis or Eighth Amendment’s subjective analysis, there cannot be deliberate

indifference where the jail both intentionally and effectively acted in response to the crisis. Particularly significant is that under the data available to the district court when it entered the preliminary injunction, the jail had already largely curbed the infection rate by implementing its internal guidelines to address the COVID-19 pandemic. While the district court determined Plaintiffs had demonstrated a likelihood of success on the merits based largely on its factual finding that “[r]ates of COVID-19 infection at the Jail are skyrocketing,” the data reveals the opposite to be true: the infection rate when the injunction issued was plummeting. More fundamentally, the district court failed to even state the correct legal standards under the objective and subjective deliberate indifference tests.

Appellants have thus demonstrated more than a reasonable probability of success on the merits.

A

As an initial matter, the majority should have followed the approach taken by other circuits staying similar injunctions to the extent they imposed obligations beyond the CDC guidelines. *See, e.g., Valentine*, 956 F.3d at 801 (staying injunction that required specific measures that “go[] even further than CDC guidelines”); *Swain*, 958 F.3d at 1087–88 (staying preliminary injunction where CDC guidelines “formed the basis” of the district court’s required measures); *see also Swain v. Junior*, No. 20-11622, 2020 WL 3167628, at *2 (11th Cir. June 15,

2020) (vacating preliminary injunction even though the scope of the district court’s injunction was “based largely on the CDC’s guidance”). The majority blesses the district court’s legal error in finding that the CDC guidelines provide the “floor, not the ceiling,” for constitutional claims. But this legal principle is inconsistent with Supreme Court precedent. *See Bell v. Wolfish*, 441 U.S. 520, 543 n.27 (1979) (holding that the guidance of outside organizations, including a Department of Justice Task Force, “simply do not establish the constitutional minima” and “are not determinative of the requirements of the Constitution”). The majority effectively affirms the notion that the CDC guidelines as drafted are a per se violation of the Eighth Amendment during a COVID-19 outbreak. That is inconsistent with both law and reason.

Under the standard followed by the Fifth and Eleventh circuits, most of the injunctive requirements imposed by the district court should be stayed in full or in part because they exceed the CDC guidelines and even conflict with them in some instances. For example, the district court’s order requires Appellants to “take the temperature of all class members . . . daily” and to interview “each incarcerated person daily to identify potential COVID-19 infections,” while the CDC guidelines provide no such guidance, and only suggest temperature checks for new entrants and “in housing units where COVID-19 cases have been identified[.]” *Ctrs. for Disease Control & Prevention, Interim Guidance on Management of Coronavirus*

Disease 2019 (COVID-19) in Correctional and Detention Facilities,

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf> at 22.² Additionally, while the CDC guidelines provide that “ideally” at least six feet should be maintained between all individuals, *id.* at 11, the district court went beyond this ideal by mandating that Appellants “provide adequate spacing of six feet or more between incarcerated people” without time, place, or other exceptions.

Even where the injunction simply requires substantial compliance with the CDC guidelines, however, Appellants are still likely to succeed on the merits of their deliberate indifference claims, as outlined below.

B

The Eighth Amendment provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const., amend. VIII. Prison officials’ “deliberate indifference to serious medical needs of prisoners” has been held to violate the Cruel and Unusual Punishment Clause of the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Where, as here, pretrial detainees challenge conditions of confinement, such a claim “arise[s] under the Fourteenth Amendment’s Due Process Clause, rather than

² As Commander Balicki observed, mandatory daily temperature checks increases dangers for both inmates and staff because it significantly increases in-person contact between them.

under the Eighth Amendment’s Cruel and Unusual Punishment Clause.” *Gordon v. County of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018) (internal quotation marks omitted).³

That standard requires that an official show *objective* deliberate indifference for a Fourteenth Amendment violation. *Id.* Under that standard, an official must fail to “take reasonable available measures to abate [a substantial] risk [of serious harm], even though a reasonable official in the circumstances would have appreciated the high degree of risk involved.” *Id.* at 1125. A plaintiff “must prove more than negligence but less than subjective intent—something akin to reckless disregard.” *Id.* (internal quotation marks omitted).

The district court determined the jail was objectively deliberately indifferent under the Fourteenth Amendment because it was “aware of the CDC Guidelines and able to implement them but fail[ed] to do so.” The district court also held that the law required the jail to “fully and consistently” apply the CDC guidelines, as well as its own additional guidelines, to “abate the spread of infection.”

The district court abused its discretion in making these erroneous legal determinations. *See First Amendment Coal. v. U.S. Dep’t of Justice*, 878 F.3d

³ Because about 57 per cent of the jail population was being held pretrial and the other 43 per cent was serving a sentence of incarceration, I provide separate analyses under both the Fourteenth and Eighth Amendments. *See Gordon*, 888 F.3d at 1124–25.

1119, 1126 (9th Cir. 2017) (a district court abuses its discretion by applying an “incorrect legal standard”). The Fourteenth Amendment’s objective deliberate indifference standard asks whether the jail took “reasonable available measures to abate [the] risk,” *Gordon*, 888 F.3d at 1125, not whether the jail was “aware” of specific measures in the CDC guidelines.⁴ Appellants’ “aware[ness]” only relates to the subjective deliberate indifference standard, involving an entirely different analysis under the Eighth Amendment test. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The district court failed to mention (much less analyze) how a reasonable official would have acted under the circumstances—or why releasing 53 per cent of the detained inmates was not reasonable enough. Because the district court employed an “incorrect legal standard” to arrive at its conclusion of likely objective deliberate indifference by the jail, it abused its discretion. *First Amendment Coal.*, 878 F.3d at 1126.

A district court also abuses its discretion when it “mischaracterize[s]” the appropriate legal standard. *Golden v. Cal. Emergency Physicians Med. Grp.*, 782

⁴ While the district court appears to have merged the Fourteenth Amendment’s objective deliberate indifference standard outlined in *Gordon* (only applicable to pretrial detainees) with the objective prong of the Eighth Amendment, these are two distinct tests in the Ninth Circuit. Regarding the Eighth Amendment’s “objectively sufficiently serious” deprivation prong, which requires Appellees to demonstrate they are being “incarcerated under conditions posing a substantial risk of serious harm,” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994), Appellees have likely met this burden with respect to the risk of COVID-19 infection the jail’s inmates face. *See Swain*, 2020 WL 3167628, at *5.

F.3d 1083, 1093 (9th Cir. 2015). Here, the district court abused its discretion by finding the jail “must fully and consistently” apply the CDC guidelines because it was “able” to in order to avoid objective deliberate indifference. “Full and consistent” compliance is a higher standard than required by the Constitution, and the district court fails to point to any precedent to the contrary. When our precedents provide that “even gross negligence,” *see Lemire v. Cal. Dep’t of Corr. & Rehab.*, 726 F.3d 1062, 1082 (9th Cir. 2013), or a “lack of due care by a state official,” *see Gordon*, 888 F.3d at 1125, are insufficient to show objective deliberate indifference, “full and consistent” compliance mischaracterizes the appropriate legal standard.

Given its reliance on an incorrect and mischaracterized interpretation of the objective standard, the district court abused its discretion in determining Appellants have not demonstrated a likelihood of success on the merits regarding objective deliberate indifference.

C

For the class of individuals here who are not in pre-trial detention, the Eighth Amendment and its subjective deliberate indifference test applies. *Farmer*, 511 U.S. at 837. To show an official’s subjective deliberate indifference, an official must “know[] of and disregard[] an excessive risk to inmate health or safety[.]” *Id.* To be sufficiently culpable, “the official must *both* be aware of facts

from which the inference could be drawn that a substantial risk of serious harm exists, *and he must also draw the inference,*” as with the criminal recklessness standard. *Id.* (emphasis added). A court cannot support a deliberate indifference finding based on a mere “difference of medical opinion”; rather the official’s actions must have been “in *conscious disregard* of an excessive risk to [inmate] health.” *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996) (requiring a prison’s choice of treatment to be “medically unacceptable” for prisoner to show Eighth Amendment violation) (emphasis added).

The Fifth Circuit held that under the subjective deliberate indifference standard, a district court should not look to “whether the [d]efendants reasonably abated the risk of infection” or “how [the jail’s] policy is being administered.” *Valentine*, 956 F.3d at 802 (internal quotation marks omitted). Instead, where a prison took steps to mitigate the risk of infection by increasing internal safety procedures, it could not have consciously “disregarded the risk” to inmate health and safety, even if the measures sometimes fall short of the CDC guidelines. *Id.* at 801–03. Accordingly, the Fifth Circuit granted a stay of the district court’s preliminary injunction. *Id.* at 806. The Supreme Court then denied the application to vacate the stay. *Valentine v. Collier*, 140 S. Ct. 1598 (2020).⁵

⁵ While the majority quotes Justice Sotomayor’s reference to deferring to the district court’s factual findings in *Valentine*, it is worth noting Justice Sotomayor

A similar stay of a preliminary injunction in the context of protecting prison inmates from COVID-19 was also granted by the Eleventh Circuit. *See Swain*, 958 F.3d at 1090 (granting a motion to stay a preliminary injunction because prison’s mitigation efforts “likely do not amount to deliberate indifference”); *cf. Wilson v. Williams*, No. 20-3447, 2020 WL 3056217, at *7–8 (6th Cir. June 9, 2020) (vacating injunction because the prison “responded reasonably” to the risk by implementing a plan to mitigate the risk, and conditions did not violate the Eighth Amendment).⁶ The Eleventh Circuit recently vacated that injunction on the merits, concluding that the district court “abused its discretion in granting the preliminary injunction.” *Swain*, 2020 WL 3167628, at *13. For the reasons outlined below, we should have similarly granted the stay here.

i

Subjective deliberate indifference requires both “knowledge” *and* a

voted with the unanimous Supreme Court not to reimpose the district court’s injunction.

⁶ Similar to these recent cases from our sister circuits, the mere fact that there was an outbreak in COVID-19 cases in the Orange County jails is insufficient on its own to justify the injunction. The COVID-19 outbreaks in *Valentine* and *Wilson* were more severe, with at least one inmate’s death reported in *Valentine*, 140 S. Ct. at 1599, and at least six inmate deaths and other inmates placed on ventilators in *Wilson*, 2020 WL 3056217 at *2, *12. Here, by contrast, the outbreak was thankfully mild, with 302 of 369 cases (81 percent) recovering before the injunction was imposed, not a single death, and only two cases requiring hospitalization.

“conscious disregard” of an excessive risk. Yet in determining whether jail officials were subjectively deliberately indifferent, the district court relied solely on the evidence that the jail “knew, by way of the CDC Guidelines, that failure to take certain precautionary measures would result in an increase in the spread of infections.” Because the district court failed to articulate how the jail then “conscious[ly] disregard[ed]” this knowledge, its determination that the jail acted with subjective deliberate indifference was based “on an erroneous view of the law.” *Weber*, 767 F.3d at 942. As with the jail in *Swain*, “[n]either the resultant harm of increasing infections nor the impossibility of achieving six-foot social distancing in a jail environment establishes that the defendants acted with subjective recklessness as used in the criminal law.” 2020 WL 3167628, at *6 (internal quotation marks omitted). The district court thus abused its discretion by failing to address how the jail disregarded the COVID-19 risk. *See Sali v. Corona Reg’l Med. Ctr.*, 909 F.3d 996, 1002 (9th Cir. 2018) (holding a district court abuses its discretion when it “omits a substantial factor” of the analysis).

ii

Even supposing that the district court intended to incorporate its objective deliberate indifference reasoning into the subjective analysis to show “conscious disregard” (without saying so), the district court still abused its discretion by relying on clearly erroneous factual findings. The district court relied heavily on

its assertion that “the numbers speak for themselves” to support its deliberate indifference determination. Based on its interpretation of the epidemiological data in the record, the district court claimed the “[r]ates of COVID-19 infection at the Jail are skyrocketing,” the number of confirmed cases is “soaring,” and “the Jail lacks the ability to contain the infection.”⁷ The district court reasoned that since jail officials “undoubtedly [knew] of the risks posed by COVID-19 infections,” its actions satisfy subjective deliberate indifference.

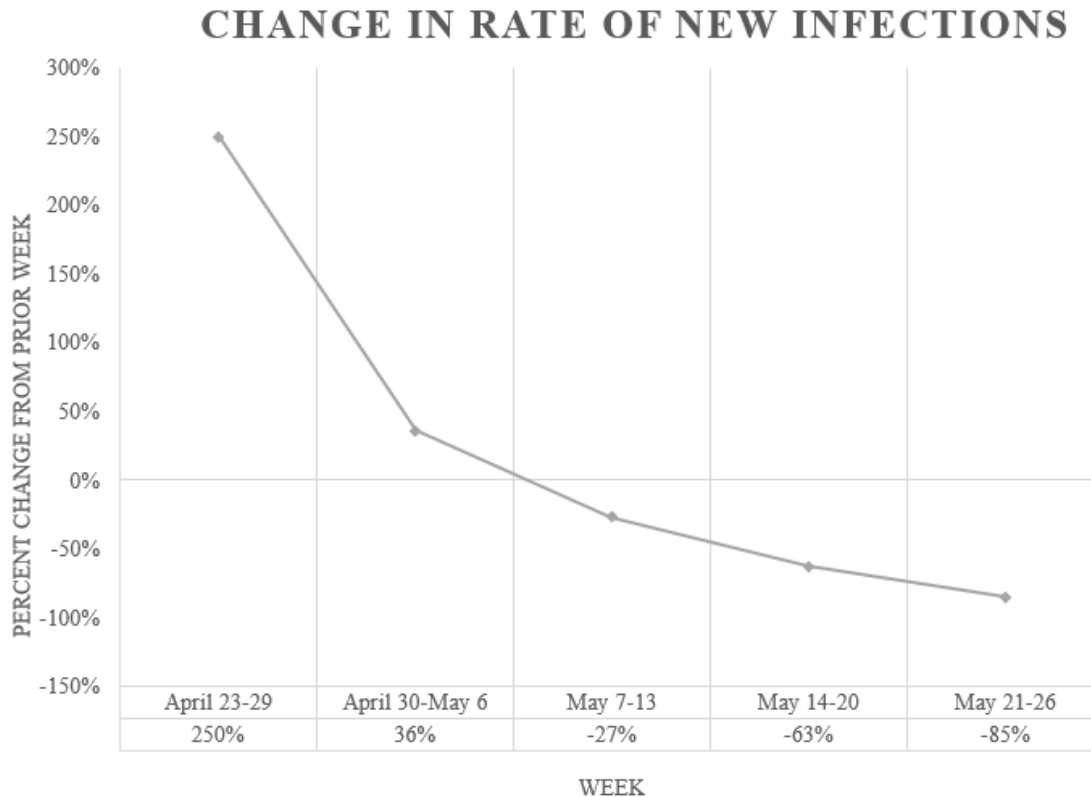
The data, however, supports the exact opposite conclusion. True, the rate of COVID-19 infection and the number of active COVID-19 cases did sharply increase from April 22 to May 8. However, the district court did not issue the injunction until May 26. As data cited in the district court’s own order confirms, from May 8—prior to Plaintiffs even filing their motion for a preliminary injunction—until the issuance of the injunction, the rate of new infections decreased by over 52 per cent compared to the previous two-and-a-half weeks.

⁷ The district court also claimed the rate of infection that existed at the time of its order was 12.4%, which it calculated by comparing the total *confirmed* COVID-19 cases to an assumed total jail population of 2,826. This calculation is misleading because it provides no insight regarding how many active COVID-19 cases are in the prison at one time. For instance, even if the prison had *zero* active COVID-19 cases at the time the injunction was issued, the district court’s rate of infection would still be 12.4% under this method of computation. A more accurate method of calculating this rate would be to compare each week’s rate of new infections to the previous week’s rate, thus showing whether the number of active COVID-19 cases in the jail is increasing or decreasing over time.

This decrease in the infection rate is apparent in the graphical depiction below. In fact, during the week immediately prior to the court’s injunction, the rate of new infections decreased by 76 per cent compared to the previous week. The district court’s assertion that the “[r]ates of COVID-19 infection at the Jail are skyrocketing,” was thus plainly erroneous: at the time it issued the injunction, the jail had been experiencing a dramatic *decrease* in infection rates for the previous two-and-a-half weeks.⁸

⁸ This graph (and the following one) merely provides a visual representation of the exact data the district court relied on. Had the preliminary injunction been issued in early May, this would have perhaps been a different case, with a demonstrably “skyrocketing” infection rate in the jail as characterized by the district court. *But see Valentine*, 956 F.3d at 802. But by May 26, this description was factually inaccurate.

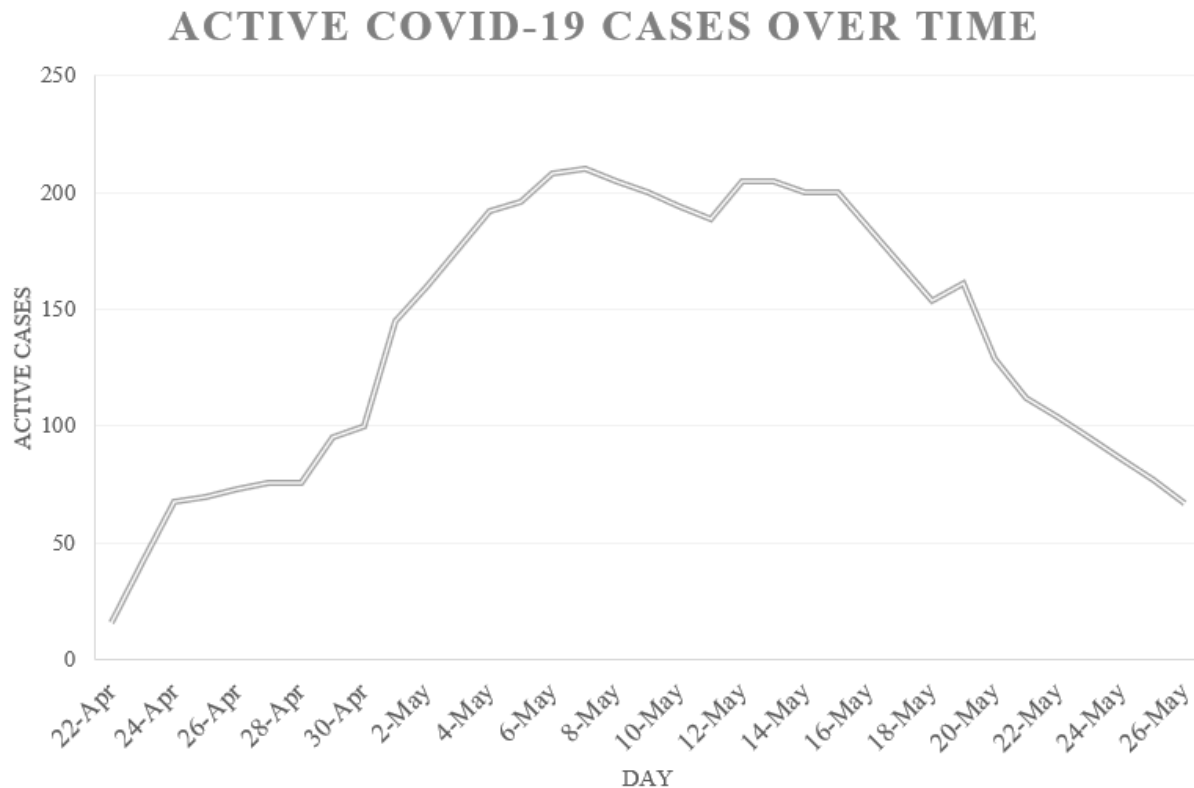
Furthermore, since the injunction issued, the number of active cases dropped to 35 on June 3, and to 23 cases on June 10. The district court can consider this new evidence on remand.



The same is true for the number of active COVID-19 cases. From May 8 until the issuance of the injunction, the jail saw a 67 per cent decrease in the number of active COVID-19 cases.⁹ Like the rate of infection, the district court’s claim that the number of cases of COVID-19 are “soaring,” misrepresented the data because the number of active COVID-19 cases decreased in the immediate two-and-a-half weeks before the injunction issued. These assertions are exactly

⁹ The Eleventh Circuit vacated an injunction even though the number of confirmed COVID-19 cases spiked from zero cases at the time Plaintiffs filed their complaint to 163 positive tests just three weeks later. *Swain*, 2020 WL 3167628, at *4. This surge in cases took place right before the district court entered its preliminary injunction, *id.*, in stark contrast with the sharp decline of cases here.

the kinds of clearly erroneous factual findings that qualify as an abuse of discretion. *See, e.g., Eat Right Foods Ltd. v. Whole Foods Market, Inc.*, 880 F.3d 1109, 1120 (9th Cir. 2018) (finding the district court abused its discretion by incorrectly identifying the time period the relevant facts occurred).



This graphical depiction above of active cases over time illustrates that the prison quickly flattened the curve, protecting a large majority of inmates from infection. Without intervention, the number of active cases would not likely have begun decreasing so early on. More than one hundred nations, fifty states, and thousands of localities have spent billions of dollars attempting to create a COVID-19 graph mirroring the decline in cases seen in the jail here. This is, by any

definition, a sign of success, hardly the subjective deliberate indifference of an Eighth Amendment violation.

While the district court correctly asserts that “the numbers speak for themselves,” these numbers tell a different story. The jail’s protective measures—well prior to any injunction—appear to have successfully reduced both the number of active COVID-19 cases and the infection rate. As a further illustration, the Sheriff took the extraordinary step of reducing the jail population from 5,303 inmates on March 1 to 2,799 inmates on May 19 in an effort to increase social distancing between inmates, free up housing space, and allow for quarantine and isolation. Releasing nearly 53 per cent of the jail’s inmate population to protect against the spread of the virus completely undermines any factual finding that the jail was subjectively deliberately indifferent to the risk of harm from COVID-19.

An increase in internal safety measures coupled with a demonstrable improvement in conditions thus cannot equate to a jail’s “conscious disregard” for the welfare of the prisoners. *See Colwell v. Bannister*, 763 F.3d 1060, 1068 (9th Cir. 2014) (internal quotation marks omitted) (noting that defendants must choose a medically unacceptable course under the circumstances in conscious disregard of an excessive risk to rise to the level of deliberate indifference). Instead, these facts support the jail’s contention that it actively took measures to reduce the risk of harm posed by the disease, the very opposite of subjective disregard. The district

court cannot find that the jail's active measures rose to the level of conscious disregard merely because "the district court might do things differently."

Valentine, 956 F.3d at 803.

The district court abused its discretion by determining Appellants had not demonstrated a likelihood of success on the merits based on a clearly erroneous assertion that the rate of the number of COVID-19 infections was increasing and that the jail had knowingly failed to take necessary precautionary measures.

III

Because there is a "strong likelihood [Appellants will] succe[ed] on the merits," they need only show that irreparable harm is probable. *Leiva-Perez*, 640 F.3d at 970. Appellants have carried this burden.

The district court's injunction obstructs Appellants' ability to oversee Orange County's jails without judicial micromanagement. As the Supreme Court has cautioned,

courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism. Moreover, where state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities.

Procunier v. Martinez, 416 U.S. 396, 405 (1974). Casting aside this admonition, the district court's injunction wades into the minutia of prison operations, going so far as to dictate the amount of hand soap and number of paper towels available to

each prisoner. In effect, the district court seizes the role of prison management from the elected officials of California and their agents. *Contra Maryland v. King*, 567 U.S. 1301, at *3 (2012) (Roberts, C.J., in chambers) (finding irreparable harm where injunction interfered with the state’s “enforcement and public safety interests”); *see also Valentine*, 956 F.3d at 803 (“The Texas Legislature assigned the prerogatives of prison policy to TDCJ. The district court’s injunction prevents the State from effectuating the Legislature’s choice and hence imposes irreparable injury.”) (internal citation omitted); *Swain*, 958 F.3d at 1090 (“Absent a stay, the defendants will lose the discretion vested in them under state law to allocate scarce resources among different county operations necessary to fight the pandemic. Through its injunction, the district court has taken charge of many administrative decisions typically left to MDCR officials.”); *Swain*, 2020 WL 3167628, at *12 (same).

The district court’s micromanagement of prison operations is particularly troubling given that our deference to prison officials should be at its zenith during the COVID-19 pandemic. Chief Justice Roberts recently emphasized the need to defer to elected officials as they confront the immense public policy problems created by COVID-19:

Our Constitution principally entrusts “[t]he safety and the health of the people” to the politically accountable officials of the States “to guard and protect.” *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905). When those officials “undertake[] to act in areas fraught with medical and scientific

uncertainties,” their latitude “must be especially broad.” *Marshall v. United States*, 414 U.S. 417, 427 (1974). Where those broad limits are not exceeded, they should not be subject to second-guessing by an “unelected federal judiciary,” which lacks the background, competence, and expertise to assess public health and is not accountable to the people.

S. Bay United Pentecostal Church v. Newsom, No. 19A1044, 2020 WL 2813056, at *1 (U.S. May 29, 2020) (Roberts, C.J., in chambers).

The district court wrongly assumed the prison administration role in issuing the injunction, throwing up a roadblock that prison officials must now overcome as they try to respond to real time developments in Orange County’s jails. *See Valentine*, 956 F.3d at 803 (observing that the preliminary injunction issued by the district court “locks in place a set of policies for a crisis that defies fixed approaches”); *Swain*, 958 F.3d at 1090 (“The injunction hamstring[s] MDCR officials with years of experience running correctional facilities, and the elected officials they report to, from acting with dispatch to respond to this unprecedented pandemic. They cannot respond to the rapidly evolving circumstances on the ground without first seeking a permission slip from the district court. Such a prohibition amounts to an irreparable harm.”) (internal quotation marks and citation omitted)).

The majority entirely ignores the Supreme Court’s guidance on the deference owed to prison officials in the midst of this crisis and instead limits its irreparable harm analysis to the “[s]elf-inflicted wound” created by Commander

Balicki's declarations. Shortly after the number of COVID-19 cases in the jails peaked, Commander Balicki signed a declaration attesting that "OCSD has, at a minimum, already implemented all of the mitigation efforts outlined in plaintiffs' request for relief. (See Complaint, ¶138(3)(a)-(o).)[.]" The district court did not hold an in-person evidentiary hearing before weighing conflicting affidavits from Commander Balicki and the prisoners. When Commander Balicki attempted to clarify in a subsequent affidavit that some portions of the district court's injunction potentially endangered the health and welfare of prison officials and inmates, the district court dismissed those concerns (again, without an in-person evidentiary hearing) for the sole reason that they were inconsistent with his first declaration. The majority doubles down on this approach.

To be sure, Commander Balicki's statement in his original declaration lacked nuance. And on remand the district court should hold an in-person evidentiary hearing to give Commander Balicki an opportunity to explain the putative discrepancies in his declarations. But the greater error belongs to the district court. The district court ignored the problems created by the injunction. An injunction must issue (and continue) based on a concrete constitutional violation, not as an apparent sanction for inartfully crafted declarations. Even if Commander Balicki's putative conflicting statements are problematic, they do not justify the judiciary's micromanagement of prison operations during a national

pandemic. *See Swain*, 2020 WL 3167628, at *6, *11 (vacating injunction despite conflicting evidence whether the jail was complying with its stated protocols); *see also Valentine*, 140 S. Ct. at 1600 n.2 (statement of Sotomayor, J.) (agreeing with denial of application to vacate stay while noting that the prison had “regularly fail[ed] to comply with standards far below” the CDC guidelines, despite its representation to the district court that it “updated [its] policy periodically in response to the ever-evolving CDC guidelines,” *Valentine*, 956 F.3d at 805 n.2).

There can be little doubt the harm caused by the district court’s injunction is irreparable. The injunction requires California to expend and allocate additional scarce public resources to take care of the prisoners in Orange County’s jails—potentially at the expense of other prisoners in other jails. In the likely event Appellants prevail on the merits, California cannot recover its misallocation of scarce public resources. *See Swain*, 958 F.3d at 1090. Such a harm is necessarily irreparable. *Id.*

IV

The third and fourth *Nken* factors—harm to the party opposing the injunction and the public interest—“merge when the Government is the opposing party.” 556 U.S. at 435. My discussion of the first and second *Nken* factors is dispositive of the third and fourth factors. Prison officials are harmed when the judiciary usurps their authority to manage prisons, particularly during a public

health crisis. And the public is unquestionably interested in the proper management of prisons. Accordingly, these factors also weigh in favor of a stay. *See Valentine*, 956 F.3d at 804; *Swain*, 958 F.3d at 1090–91.

* * *

Because the district court abused its discretion in granting Appellees preliminary injunctive relief, Appellants' emergency motion for a stay of the injunction should have been granted. I therefore respectfully dissent.

Dkt. 4

20-55668

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 3 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MELISSA AHLMAN; et al.,

Plaintiffs-Appellees,

v.

DON BARNES, in his official capacity as
Sheriff of Orange County, California;
COUNTY OF ORANGE,

Defendants-Appellants.

No. 20-55668

D.C. No.

8:20-cv-00835-JGB-SHK

Central District of California,
Santa Ana

ORDER

Before: GRABER, WARDLAW, and R. NELSON, Circuit Judges.

On June 12, 2020, in appeal No. 20-55568, we denied Defendants-Appellants Orange County and Sheriff Don Barnes' (collectively "Defendants") emergency motion to stay the district court's May 26, 2020 preliminary injunction order, but remanded for the limited purpose of allowing the district court to consider whether changed circumstances justified modifying or dissolving the injunction.

On remand, Defendants moved to dissolve the injunction immediately, arguing that evidence of a declining rate of COVID-19 infections in the Orange County Jail demonstrated that the injunction was no longer necessary. On June 26, 2020, the district court denied Defendants' motion to dissolve the injunction as

premature and ordered expedited discovery regarding the current conditions in the Orange County Jail.

Defendants challenge the district court's June 26, 2020 order in the instant appeal. They have filed an emergency motion to stay the district court's May 26, 2020 preliminary injunction order in light of the evidence of changed circumstances they presented in support of the motion to dissolve the injunction in the district court.

In evaluating whether to issue a stay pending appeal, we review the following factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Leiva-Perez v. Holder*, 640 F.3d 962, 964 (9th Cir. 2011) (quoting *Nken v. Holder*, 16 556 U.S. 418, 434 (2009)).

We review for abuse of discretion the district court's denial of a motion to dissolve, modify, or clarify a preliminary injunction. *See Karnoski v. Trump*, 926 F.3d 1180, 1198 (9th Cir. 2019). An applicant "seeking modification or dissolution of an injunction bears the burden of establishing that a significant change in facts or law warrants revision or dissolution of the injunction." *Sharp v. Weston*, 233 F.3d 1166, 1170 (9th Cir. 2000).

Defendants presented evidence to the district court showing that the infection rate among inmates at the Orange County Jail has decreased since the imposition of the preliminary injunction. The district court concluded, however, that it could not meaningfully evaluate this evidence without first allowing Plaintiffs to conduct the discovery necessary to respond to it. On appeal, Defendants argue that this court should stay the injunction pending this appeal, because the evidence Defendants presented to the district court was sufficient, on its own, to justify dissolving the injunction immediately. We disagree.

This court's prior order explicitly contemplated that the district court would receive evidentiary submissions from *both* sides in evaluating whether current circumstances warrant modification of the preliminary injunction. Consistent with our June 12, 2020 order, the district court ordered expedited discovery to be completed by July 15—an order that was necessary only because Defendants had refused to respond voluntarily to Plaintiffs' discovery requests regarding the current conditions in the jail. It was particularly appropriate for the district court to allow Plaintiffs to conduct expedited discovery before ruling on the motion to dissolve given Defendants' conflicting statements about their ability to comply with the requirements of the injunction. In light of these circumstances, Defendants have not demonstrated a strong likelihood of success in showing the

district court abused its discretion in denying the motion to dissolve the injunction as premature.

We therefore deny Defendants' emergency motion to stay the preliminary injunction (Docket Entry No. 2).

The previously established briefing schedule remains in effect.

IT IS SO ORDERED.

R. NELSON, Circuit Judge, dissenting:

The district court ordered expedited discovery in accordance with our instructions on limited remand to determine whether changed circumstances may warrant the preliminary injunction's dissolution. This is a positive first step. Nevertheless, the district court based its decision to deny Appellants' motion on erroneous legal principles. At a minimum, the court should have stayed the injunction in light of Appellants' new evidence brought forward showing that it is now likely unjustified, and granted the motion for an expedited evidentiary hearing. I dissent because the district court abused its discretion, *see Nguyen v. Nissan N. Am., Inc.*, 932 F.3d 811, 816 (9th Cir. 2019) ("A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law." (internal quotation marks omitted)), and I would grant Appellants' requested relief pending an evidentiary hearing.

First, the district court erred in holding that “[e]ven if Defendants have dropped the transmission rate to zero, it is certainly not time yet to draw down preventative measures—unless Defendants consistently implement those steps outlined in the injunctive order, a second spike is likely to occur.” The district court based its conclusion largely on the fact that the country “remains deep in the throes of the outbreak” and COVID-19 spreads “rapidly.” Beyond suggesting that attaining *zero* transmission may not be enough for the Jail to avoid an Eighth Amendment violation, the district court also maintains the injunction will continue to be necessary until Appellants “consistently implement those steps outlined in the injunctive order” to prevent a second spike in cases. This approach would justify imposing the district court’s sweeping injunction on every correctional facility in the country, regardless of current conditions within those facilities—an unprecedented extension of the judicial power.

Even assuming a constitutional violation here (highly unlikely at this point), enjoining the Jail until it “consistently implements” the district court’s measures exceeds the district court’s authority under the Prison Litigation Reform Act (PLRA) because the injunction extends “further than necessary to correct” the ongoing violation found by the district court. *See* 18 U.S.C. § 3626(a)(2). By requiring full and consistent compliance with measures well beyond what the CDC’s Interim Guidelines require, the district court’s remedy is not “narrowly

tailored” as the PLRA requires, and thus an abuse of discretion. *Cf. Graves v. Arpaio*, 623 F.3d 1043, 1050-51 (9th Cir. 2010) (finding district court’s ordered relief was narrowly tailored to the requirements of the Eighth Amendment by requiring detainees “be provided food that *meets* . . . the Department of Agriculture’s *Dietary Guidelines*”) (emphasis added). This error is only compounded by the district court’s failure to “give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief” and to “respect the principles of comity” as required by the PLRA. § 3626(a)(2).

Lastly, the district court erred because its initial reason for granting the injunction—that “[r]ates of COVID-19 infection at the Jail are skyrocketing”—is not factually accurate, *see Ahlman v. Barnes*, No. 20-55568, 2020 WL 3547960 at *6 (9th Cir. June 17, 2020) (order denying stay of preliminary injunction) (R. Nelson, J., dissenting), and is only further undermined by Appellants’ evidence of changed circumstances in a rapidly improving environment. Appellants informed the district court that the Jail had just six active COVID-19 cases (down to just four as of June 24, 2020), with zero transmission, and that these new positive cases are now only coming from new bookings. This information at a minimum justifies staying the injunction until it can be tested through additional discovery and an evidentiary hearing.

Because the district court abused its discretion, I respectfully dissent.