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17 **UNITED STATES DISTRICT COURT**
 18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
 19 **SOUTHERN DIVISION**
 20

21
 22 MELISSA AHLMAN, DANIEL KAUWE,
 23 MICHAEL SEIF, JAVIER ESPARZA,
 24 PEDRO BONILLA, CYNTHIA
 25 CAMPBELL, MONIQUE CASTILLO,
 26 MARK TRACE, CECIBEL CARIDAD
 ORTIZ, and DON WAGNER, on behalf of
 themselves and all others similarly situated,

27 *Plaintiffs,*

Case No.: 08:20-cv-00835

CLASS ACTION

**FIRST AMENDED COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

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v.

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

Defendant.

IMMEDIATE RELIEF SOUGHT

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I. INTRODUCTION

1. Plaintiffs, who are all confined in the Orange County Jail, bring this action because the conditions of their incarceration have put them all at imminent risk of serious illness and death from COVID-19.

2. We are in the midst of the most dangerous pandemic in generations.¹ The effects of the COVID-19 pandemic have rippled through local communities across the country, including Orange County. While COVID-19 has spread through the community, jails, such as the Orange County Jail, have become hotbeds for COVID-19 cases, threatening the lives of people inside the jail and the broader community.² As of June 5, 2020, 381 people in the Orange County Jail have tested positive for COVID-19.³ This number will continue to rise unchecked absent urgent intervention.

17 ¹ John M. Barry, *The Single Most Important Lesson from the 1918 Influenza*, New York
18 Times (March 17, 2020), <https://cutt.ly/PtQ5uAZ> (Opinion piece by author of “The Great
19 Influenza: The Story of the Deadliest Pandemic in History,” noting comparison between
20 current COVID-19 outbreak and the 1918 influenza outbreak widely considered one of the
worst pandemics in history).

21 ² The Orange County Jail has this in common with jails all over the country. From a public
22 health perspective, jails are particularly dangerous environments. The rate of infection in
23 the Cook County Jail in Chicago “is higher than most anywhere else in the country.”
24 Cheryl Corley, *The COVID-19 Struggle in Chicago’s Cook County Jail*, NPR (Apr. 13,
25 2020), [https://www.npr.org/2020/04/13/833440047/the-covid-19-struggle-in-chicagos-
26 cook-county-jail](https://www.npr.org/2020/04/13/833440047/the-covid-19-struggle-in-chicagos-cook-county-jail). One of the largest outbreaks in the United States is in the Ohio prison
system. *Virus outbreak in Ohio prisons highlights risk at US lockups*, Boston Herald, April
21, 2020 (last visited April 21, 2020), [https://www.bostonherald.com/2020/04/21/virus-
27 outbreak-in-ohio-prisons-highlights-risk-at-us-lockups/](https://www.bostonherald.com/2020/04/21/virus-outbreak-in-ohio-prisons-highlights-risk-at-us-lockups/).

28 ³ COVID-19 in OC Jails, <https://www.ocsd.org/documents/sheriff/COVIDStats6.5.20.pdf>

1 3. COVID-19 is a novel communicable virus that has proved unusually fatal.⁴
2 Many have been sickened, and many have died. Those with certain underlying conditions
3 are at increased risk of COVID-19-related complications and death.

4 4. There is no vaccine or cure for COVID-19.⁵ Public health experts have
5 issued detailed recommendations to prevent the spread of COVID-19 and to save lives.
6 These recommendations include: maintaining social distancing of at least six feet; wearing
7 masks when venturing out to complete essential tasks; cleaning and disinfecting communal
8 surfaces regularly; and proper handwashing.⁶ Many, if not all, of these precautions are
9 impossible in the Orange County Jail facilities at the current population levels. The Orange
10 County Jail sees regular turnover of detainees, and staff come and go from the jail and into
11 the community daily. People incarcerated in the Orange County Jail cannot isolate and
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17 ⁴ As of June 9, over 1,938,000 people in the United States have contracted COVID-19 and
18 more than 110,000 people have died. Centers for Disease Control and Prevention, *Cases*
19 *in the U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.
20 *See also* Michael Rothfeld et al., *The Heartbreaking Last Texts of a Hospital Worker on*
21 *the Front Lines*, NY Times (Apr. 15, 2020) (describing the final texts from a hospital
22 worker who died after contracting coronavirus to her daughter, “Love you[.] Mom be
23 back[.]”). *See also* Exhibit A, Declaration of Don Wagner ¶ 21 (“I am 68 years old and I
24 don’t want to get a life sentence by catching the virus and dying.”). *Counsel have been
unable to secure wet signatures for certain declarations, and were instructed by the clerk’s
office to include a declaration to this effect. *See* Exhibit B, Declaration of Brittany
Benjamin.

25 ⁵World Health Organization, *Coronavirus*, <https://cutt.ly/ztWYf7e> (“At this time, there are
no specific vaccines or treatments for COVID-19.”).

26 ⁶ Center for Disease Control, *How Coronavirus Spreads*, <https://cutt.ly/CtYRkkC> (“The
27 virus that causes COVID-19 is spreading very easily and sustainably between people.”).
28

1 have no ability to maintain safe social distance.⁷ Efforts to regularly disinfect common
2 surfaces and maintain personal hygiene are difficult and inadequate.⁸

3 5. The steps Sheriff Barnes has taken to date are manifestly inadequate in the
4 face of the ongoing outbreak of COVID-19 inside the jail. At the current population levels,
5 people detained in the Orange County jail are unable to socially distance themselves from
6 others. While the jail staff provide some cleaning supplies, “[t]here are never enough
7 supplies to clean throughout the day.”⁹ The masks given to detained people are “cheap and
8 made of paper, and rip easily.”¹⁰ Jail staff do not always wear protective equipment, like
9 gloves and masks, and detainees have not been given gloves at all.

10 6. Compounding the problem, people continue to be booked into the jail for
11 low-level offenses that pose little or no public safety risk: public intoxication, simple drug
12 possession, and motor vehicle offenses such as driving with one’s lights off.¹¹ These
13 bookings, as well as the transportation of these defendants to court in close proximity to
14 deputies, create unnecessary exposure risks for everyone involved.¹²

15 7. Perhaps most dangerously of all, the Orange County Jail has identified, but
16 not released, over 500 detainees who are medically vulnerable and at heightened risk of
17 serious infection and death. Defendants have arbitrarily decided only to proceed with the
18 release of a small sub-group of the medically-vulnerable people detained.

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21 ⁷ Exhibit C, April 22, 2020 Declaration of Melissa Ahlman ¶ 24 (“All of the woman [sic]
22 in the medical tank share two toilets. Sometimes we have to wait in line for these. If we
23 have to wait in line we can not [sic] space out six feet apart.”); Exhibit D, Declaration of
Enrique Hernandez ¶ 7-8.

24 ⁸ Exhibit E, Declaration of Praney Saem ¶ 19 (“The jail is not giving us enough hygiene or
cleaning products.”).

25 ⁹ Exhibit F, April 22, 2020 Declaration of Monique Castillo ¶ 19.

26 ¹⁰ Exhibit D, Hernandez Decl. ¶ 17.

27 ¹¹ Exhibit G, Declaration of William Webster ¶ 7.

28 ¹² *Id.* at ¶ 8.

1 8. To prevent further infections and unnecessary fatalities, the Orange County
2 Jail must align its operations with public health principles by immediately releasing the
3 medically-vulnerable population and then releasing others in sufficient numbers so that the
4 jail can adhere to the medically-recommended quarantining, testing, distancing, hygiene,
5 and treatment protocols. Public health expertise tells us that aggressive measures,
6 including reducing the jail population, are our last and best chance to slow the growth of
7 new infections in the jail and in the surrounding community.

8 9. Preventing the Orange County Jail outbreak from getting worse will have
9 clear benefits not only for the people inside the jail, but also for the community at large.
10 Jails are not closed off from the communities around them; every day, custody, medical,
11 and support staff and contractors who have direct contact with detainees enter and leave
12 the facility, along with detainees who are newly booked into the jail, leave and return for
13 court hearings, and leave upon release.¹³ For this reason, an outbreak in the jail can spread
14 easily to the surrounding community, often through jail staff who become infected and
15 bring the virus home.¹⁴ Additionally, when an incarcerated patient's needs are too acute
16 for the jail to provide adequate treatment, the patient must be transported to and treated at
17 a community hospital.¹⁵ Thus, a continued outbreak of COVID-19 cases in the Orange
18 County Jail will not only directly harm people infected by the jail outbreak, but will also
19 divert finite medical resources from the general Orange County community, leading to
20 further county-wide public health harms.¹⁶ The hospital resources in the Orange County

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22 ¹³ Exhibit H-A, Declaration of Joe Goldenson, M.D. ¶ 33.

23 ¹⁴ *Id.* ¶ 34.

24 ¹⁵ *Id.* ¶ 25.

25 ¹⁶ Exhibit I, Declaration of Daniel Parker, Ph.D. ¶¶ 28-30. *See also* Elizabeth Cohen *et al.*,
26 *New York surgeon writes haunting letter about rationing care for patients who don't have*
27 *the coronavirus*, CNN (Apr. 5, 2020, 2:22 PM),
28 [https://www.cnn.com/2020/04/05/health/rationing-care-patients-without-](https://www.cnn.com/2020/04/05/health/rationing-care-patients-without-coronavirus/index.html)
[coronavirus/index.html](https://www.cnn.com/2020/04/05/health/rationing-care-patients-without-coronavirus/index.html) (“We have had to make decisions that I personally have never had

1 community are limited and are not equipped to handle increased upticks in the quantity of
2 people who need treatment for COVID-19 infection.¹⁷ Given the existing number of
3 specialized beds and ventilators available in the County, a surge in the need for specialized
4 beds could result in a humanitarian disaster.¹⁸ Many deaths have occurred in places where
5 epidemics have outpaced hospital capacity.¹⁹ The Court can and must take action to
6 prevent these deaths.

7 10. Accordingly, Plaintiffs bring this action on behalf of themselves and all those
8 similarly situated. Plaintiffs seek to represent a class of all current and future people
9 incarcerated in the Orange County Jail, and seek to represent four subclasses. These
10 subclasses include: two “Medically-Vulnerable” Subclasses (one pre-trial and one post-
11 conviction), including all people detained at the Jail who, because of age, pregnancy, and/or
12 underlying medical conditions, are particularly vulnerable to death or serious illness if they
13 contract COVID-19; and two “Disability” Subclasses (one pre-trial and one post-
14 conviction), including all people in the Medically-Vulnerable Subclasses who are
15 vulnerable because of conditions that are protected under federal disability rights laws.
16 Plaintiffs seek all necessary steps to safeguard the health of those remaining in the Orange
17 County Jail, including further population reductions that would permit the jail to
18 successfully implement the public health measures needed to prevent a massive outbreak
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22 to contemplate before. . . . We have had to ration care and make decisions about who is
23 considered an urgent or emergent case.”); Joanne Kenen, *Local officials alarmed by dearth*
24 *of ventilators, hospital beds*, (Mar. 14, 2020, 7:00 a.m.), <https://cutt.ly/stYTDDk> (“[T]here
25 are worrisome limitations on critical care beds and the number of health care workers to
26 staff them, public health officials said.”).

27 ¹⁷ Exhibit I, Parker Decl. ¶ 28.

28 ¹⁸ *Id.* ¶ 29.

¹⁹ *Id.* ¶ 26.

1 inside—one that will inevitably spread to the surrounding communities. Given the
2 exponential spread of this highly contagious virus, time is of the essence.²⁰

3 II. JURISDICTION AND VENUE

4 11. Plaintiffs bring this putative class action pursuant to 42 U.S.C. § 1983 for
5 relief from both detention and conditions of confinement that violate their Eighth and
6 Fourteenth Amendment rights under the U.S. Constitution and pursuant to 42 U.S.C.
7 § 12131 *et seq.* and 29 U.S.C. § 794 for relief from disability discrimination.

8 12. This Court has subject matter jurisdiction over these claims pursuant to 42
9 U.S.C. § 1983, and 28 U.S.C. § 1331 (federal question jurisdiction).

10 13. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part
11 of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

12 III. PARTIES

13 14. Plaintiff Melissa Ahlman is a 32-year-old woman who is currently being held
14 pre-trial at the Central Women's Jail. She has been in OCSD custody since February 19,
15 2020. Ms. Ahlman is a nursing mother and has to pump milk for her seven-month-old
16 baby. She is housed in a "medical tank" with six medically-vulnerable women who have
17 diabetes, autoimmune diseases, and other women who are nursing. At least three of the
18 other women who Ms. Ahlman has been housed with have developed COVID-19 since the
19 original complaint was filed in this case. Ms. Ahlman must travel to the medical unit to
20 drop her milk off multiple times a day, exposing her to a significant amount of traffic and
21 people waiting for medical attention. She comes in close contact with nurses and other
22 incarcerated people who are at the medical unit because they feel ill, including people with
23 COVID-19-like symptoms such as fevers and coughs. The other incarcerated people with
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25 ²⁰ COVID-19 Dashboard by the Center for Systems Science and Engineering at Johns
26 Hopkins University, Coronavirus Resource Center, *available at*
27 <https://coronavirus.jhu.edu/map.html>; *see also* Brittany Shammas et al., *Trump says*
28 *quarantine for New York area 'Will not be Necessary'*; *U.S. coronavirus-related deaths*
double in two days, Washington Post (Mar. 28, 2020, 11:27 p.m.), <https://cutt.ly/ktRo8u0>.

1 whom Ms. Ahlman is housed similarly make regular trips between their shared housing
2 unit and the medical facility. Ms. Ahlman has been denied the ability to maintain social
3 distancing and has not been provided with sufficient Personal Protective Equipment
4 (“PPE”), hygiene, or cleaning supplies.

5 15. Plaintiff Daniel Kauwe is a 42-year-old man who is currently being held in
6 the Theo Lacy Facility. He has been in OCSD custody since September 25, 2019. He is
7 in pre-trial custody and is awaiting a hearing in June. Mr. Kauwe is medically vulnerable.
8 He is immunocompromised and prone to infection, and is currently housed in a medical
9 unit. While in custody, he has been unable to consistently practice social distancing and
10 has not been provided with adequate cleaning supplies or PPE. Mr. Kauwe is an individual
11 with a disability for purposes of the ADA and the Rehabilitation Act.

12 16. Plaintiff Michael Seif is a 35-year-old man who was held in the Central Men’s
13 Jail between December 5, 2019 and released on June 2, 2020. He was in pre-trial custody
14 at the time of the original complaint, and had numerous court hearings rescheduled. On
15 May 22, 2020 he pled guilty and was sentenced. He was released on June 2, 2020,
16 following his sentencing. Mr. Seif is medically vulnerable; he had a heart attack and
17 suffered a collapsed lung shortly before his incarceration and he did not have adequate
18 follow-up care. While in custody, he was unable to consistently practice social distancing
19 and was not been provided with adequate cleaning supplies or PPE. Mr. Seif is an
20 individual with a disability for purposes of the ADA and the Rehabilitation Act.

21 17. Plaintiff Javier Esparza is a 35-year-old man who is currently being held in
22 the Theo Lacy Facility. He has been in OCSD custody since February 25, 2019. While in
23 custody, Mr. Esparza has been repeatedly placed in close contact with others. He has also
24 been moved into new housing during the pandemic, increasing the risk of spreading the
25 virus throughout the facility. He is unable to consistently practice social distancing and
26 has not been provided with adequate cleaning supplies or PPE.

27 18. Plaintiff Pedro Bonilla is a 36-year-old man who is currently being held in
28 the Theo Lacy Facility. He has been in OCSD custody since August 12, 2018 and his

1 expected release date is August 5, 2020. While in custody, Mr. Bonilla has been repeatedly
2 placed in close contact with others, including individuals who have been exposed to
3 COVID-19. He is unable to consistently practice social distancing and has not been
4 provided with adequate cleaning supplies or PPE. Mr. Bonilla contracted Hepatitis C
5 during a previous period of incarceration. Mr. Bonilla is an individual with a disability for
6 purposes of the ADA and the Rehabilitation Act.

7 19. Plaintiff Cynthia Campbell is a 64-year-old woman who is currently being
8 held at the Central Women’s Jail. She has been in the custody of the OCSD since October
9 15, 2019. Ms. Campbell has—and receives immunosuppressants for—rheumatoid arthritis
10 which makes her medically vulnerable. She was housed in a designated medical unit until
11 May 13, 2020, when she tested positive for COVID-19. In spite of her vulnerable
12 condition, she has not received prompt medical attention while in custody. Other
13 individuals with whom Ms. Campbell was housed made regular trips between their shared
14 housing and the medical facility in order to receive routine treatments. During these trips,
15 these women were exposed to large numbers of (often sick) individuals. Ms. Campbell
16 similarly had to travel between her unit and the medical office on multiple occasions, and
17 was in close contact with others while doing so. In her housing unit, Ms. Campbell was
18 been denied the ability to maintain social distancing or proper hygiene. She was tested for
19 COVID-19 on May 13, 2020 and removed from contact with other highly-vulnerable
20 individuals. Ms. Campbell is an individual with a disability for purposes of the ADA and
21 the Rehabilitation Act.

22 20. Plaintiff Monique Castillo is a 43-year-old woman who is currently being
23 held at the Central Women’s Jail. She has been in OCSD custody since December 19,
24 2019. Ms. Castillo is medically vulnerable. She has—and is medicated for—Type 1
25 diabetes and anxiety. As a result of her medical needs, she is housed in a “medical tank”
26 with six other medically-vulnerable women. In order to receive insulin, she is brought to
27 the medical office four times per day, each time finding herself in close contact with
28 incarcerated people from other parts of the jail, many of whom are ill and show symptoms

1 consistent with COVID-19. Other incarcerated people with whom Ms. Castillo is housed
2 similarly make regular trips between their shared housing and the medical facility. Ms.
3 Castillo has been denied the ability to maintain social distancing or proper hygiene. Ms.
4 Castillo is an individual with a disability for purposes of the ADA and the Rehabilitation
5 Act.

6 21. Plaintiff Mark Trace is a 53-year-old man who is currently being held in the
7 Central Men’s Jail. He has been in OCSD custody for approximately six months and is set
8 to be released on June 23, 2020. Before being transferred to his current housing, he was
9 held at the Theo Lacy Facility. Mr. Trace is medically vulnerable. He has multiple,
10 significant underlying health conditions. These include sclerosis of the liver, Hepatitis C
11 and D, asthma, tuberculosis, valley fever, and seizures. Several people in adjacent housing
12 units have contracted COVID-19, but despite Mr. Trace’s symptoms and vulnerability, he
13 has been denied a test. He is housed with approximately 12 other individuals in his module
14 and is unable to consistently practice social distancing. He has also not been provided with
15 adequate cleaning supplies or PPE. Since the COVID-19 outbreak, Mr. Trace’s access to
16 medical care has slowed. He missed his medication on March 20 and April 13, and went
17 several days without an inhaler. Mr. Trace is an individual with a disability for purposes
18 of the ADA and the Rehabilitation Act.

19 22. Plaintiff Cecibel Caridad Ortiz is a 31-year-old woman who is currently being
20 held at the Central Women’s Jail. She has been in the custody of the OCSD since October
21 30, 2018. Ms. Caridad Ortiz is medically vulnerable and was housed in a designated
22 medical module until May 11, 2020, when she was removed and tested for COVID-19.
23 She has—and receives medical treatment for—Type 1 diabetes and anxiety. In order to
24 receive a diabetic check, she is brought to the medical office three times per day, each time
25 finding herself in close contact with people who are housed in other parts of the jail, many
26 of whom are ill. Other individuals with whom Ms. Caridad Ortiz is housed similarly make
27 regular trips between their shared housing and the medical facility. Ms. Caridad Ortiz has
28 been denied the ability to maintain social distancing or proper hygiene. Despite her

1 repeated exposure to potentially contagious individuals she was not tested for COVID-19
2 or removed from the congregate setting until May 11, 2020, hours after she first reported
3 symptoms. Ms. Caridad Ortiz is an individual with a disability for purposes of the ADA
4 and the Rehabilitation Act.

5 23. Plaintiff Don Wagner is a 68-year-old man who is currently being held at the
6 Theo Lacy facility. He has been in OCSD custody since the first week of March 2020. He
7 was transported to Theo Lacy from a federal facility in San Diego on a bus that held 30 to
8 40 people sitting in close proximity. He is uncertain when his next court appearance will
9 be held. Mr. Wagner is medically vulnerable. He is a cancer survivor and his blood
10 pressure and thyroid levels are monitored by the jail's nurses. In order to receive this
11 monitoring, Mr. Wagner must go to the nurse's station, where he sometimes waits in line
12 with incarcerated people from across the jail. The nurses told Mr. Wagner that he needs to
13 see a medical specialist outside of the jail due to his thyroid levels and his blood pressure,
14 but Mr. Wagner is uncertain when he will be able to be seen by such a specialist.
15 Mr. Wagner has also been in close proximity with people who he suspects may have been
16 in contact with COVID-19—with no option to distance himself. Mr. Wagner has also been
17 denied the means to keep himself and his surroundings clean. He receives only a small bar
18 of soap per week and, because he is indigent he cannot buy more. He uses the only towel
19 he receives to clean both himself, and his cell. Mr. Wagner's age and his medical
20 conditions make him particularly vulnerable to COVID-19, and he fears for his safety and
21 well-being. Mr. Wagner is an individual with a disability for purposes of the ADA and the
22 Rehabilitation Act.

23 24. The Orange County Sheriff, Don Barnes ("Sheriff Barnes"), is an Orange
24 County Official, and the elected head of OCSD. Sheriff Barnes currently has immediate
25 custody over Plaintiffs and all other putative class members as the administrator of the
26 Orange County Jail. Sheriff Barnes is a final policymaker for running and administering
27 the jail in Orange County. Sheriff Barnes is sued in his official capacity.

1 There is no vaccine against COVID-19 and no known medication to prevent or treat
 2 infection.²⁶ Social distancing—deliberately keeping at least six feet of space between
 3 persons to avoid spreading illness²⁷—and a vigilant hygiene regimen, including washing
 4 hands frequently and thoroughly with soap and water, are the only known effective
 5 measures for protecting against transmission of COVID-19.²⁸ Because the coronavirus
 6 spreads among people who do not show symptoms, staying away from people is the best
 7 way to prevent contracting the virus. In other words, *everyone* (including Orange County
 8 Jail officials) must act as if *everyone* has the disease.

9 28. Once contracted, COVID-19 can cause severe damage to lung tissue,
 10 including a permanent loss of respiratory capacity, and it can damage tissues in other vital
 11 organs, such as the heart and liver.²⁹

12 29. The risk of illness or death from COVID-19 is increased for older
 13 populations.³⁰ In a February 29, 2020 preliminary report, individuals age 50-59 had an
 14 overall mortality rate of 1.3%; 60-69-year-olds had an overall 3.6% mortality rate, and
 15 those 70-79 years old had an 8% mortality rate.³¹

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 17 ²⁶ *Supra* note 5.

18 ²⁷ Johns Hopkins University, *Coronavirus, Social Distancing and Self-Quarantine*,
 19 <https://cutt.ly/VtYYiDG>.

20 ²⁸ Centers for Disease Control and Prevention, *How to Protect Yourself & Others*,
 21 <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>;
 Exhibit I, Parker Decl. ¶ 14.

22 ²⁹ Centers for Disease Control and Prevention, *Interim Clinical Guidance for Management*
 23 *of Patients with Confirmed Coronavirus Disease (COVID-19)*, <https://cutt.ly/etRPVr1>.

24 ³⁰ Xianxian Zhao et al., Incidence, clinical characteristics and prognostic factor of patients
 25 with COVID-19: a systematic review and meta-analysis (Mar. 20, 2020),
<https://cutt.ly/etRAkmt>.

26 ³¹ *Age, Sex, Existing Conditions of COVID-19 Cases and Deaths* Chart, Worldometer,
 27 <https://cutt.ly/ytEimUQ> (data analysis based on WHO China Joint Mission Report);
 Exhibit H-A, Goldenson Decl. ¶ 27.

1 30. People of any age who have certain underlying medical conditions, including
 2 lung disease, heart disease, chronic liver or kidney disease (including hepatitis and dialysis
 3 patients), diabetes, epilepsy, hypertension, compromised immune systems (such as from
 4 cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease),
 5 inherited metabolic disorders, stroke, developmental disabilities, and asthma, also have an
 6 elevated risk.³² Early reports estimate that the mortality rate for those with cardiovascular
 7 disease was 13.2%, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory
 8 disease, and 7.6% for cancer.³³ People with all of these conditions are people with
 9 disabilities protected under federal disability rights laws.

10 31. In many people, COVID-19 causes fever, cough, and shortness of breath.
 11 However, for people over the age of fifty or with medical conditions or disabilities that
 12 increase the risk of serious COVID-19 infection, shortness of breath can be severe.³⁴ Most
 13 people in higher risk categories who develop serious illness will need advanced support.
 14 This requires highly specialized equipment like ventilators that are in limited supply, and
 15

16 ³² Exhibit I, Parker Decl. ¶ 19; Exhibit H-A, Goldenson Decl. ¶ 27; Centers for Disease
 17 Control and Prevention, *Symptoms of Coronavirus*,
 18 <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (“Older
 19 adults and people who have severe underlying medical conditions like heart or lung disease
 20 or diabetes seem to be at higher risk for developing more serious complications from
 21 COVID-19 illness”); World Health Organization, *Coronavirus disease (COVID-19) advice
 22 for the public: Myth busters*, <https://cutt.ly/dtEiCyc> (“Older people, and people with pre-
 23 existing medical conditions (such as asthma, diabetes, heart disease) appear to be more
 24 vulnerable to becoming severely ill with the virus.”).

25 ³³ World Health Organization, *Report of the WHO-China Joint Mission on Coronavirus
 26 Disease 2019 (COVID-19)*, 12 (Feb. 28, 2020) [https://www.who.int/docs/default-
 27 source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf](https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf) (finding
 28 fatality rates for patients with COVID-19 and co-morbid conditions to be: “13.2% for those
 with cardiovascular disease, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic
 respiratory disease, and 7.6% for cancer”).

³⁴ Zhao, *supra* note 30.

1 an entire team of care providers, including nurses, respiratory therapists and intensive care
2 physicians.³⁵

3 32. In serious cases, COVID-19 causes acute respiratory disease syndrome
4 (“ARDS”), which is life-threatening; those who receive ideal medical care with ARDS
5 have a 30% mortality rate.³⁶ Even in non-ARDS cases, COVID-19 can severely damage
6 lung tissue, which requires an extensive period of rehabilitation, and in some cases, causes
7 permanent loss of breathing capacity.³⁷ COVID-19 may also target the heart, causing a
8 medical condition called myocarditis, or inflammation of the heart muscle. Myocarditis
9 can reduce the heart’s ability to pump.³⁸ This reduction can lead to rapid or abnormal heart
10 rhythms in the short term, and long-term heart failure that limits exercise tolerance and the
11 ability to work.

12 33. COVID-19 can also trigger an over-response of the immune system and result
13 in widespread damage to other organs, including permanent injury to the kidneys and
14 neurologic injury.³⁹

15 34. These complications can manifest at an alarming pace. Patients can show the
16 first symptoms of infection in as little as two days after exposure, and their condition can
17 seriously deteriorate in as little as five days or sooner.⁴⁰

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19 ³⁵ Exhibit I, Parker Decl. at ¶ 26.

20 ³⁶ Letter from the Faculty at the Johns Hopkins School of Medicine, School of Nursing,
21 and Bloomberg School of Public Health to Hon. Larry Hogan, Gov. of Maryland, March
22 25, 2020, <https://cutt.ly/stERiXk>.

23 ³⁷ Exhibit J, *Dawson v. Asher*, 20-cv-409 (W.D. Wash.) at Doc. No. 5, Declaration of Dr.
Jonathan Louis Golob at ¶ 7.

24 ³⁸ *Id.*

25 ³⁹ *Id.*

26 ⁴⁰ Centers for Disease Control and Prevention, *Interim Guidance on Management of*
27 *Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23,
2020), <https://cutt.ly/atJPt5B>.

1 35. Even some younger and healthier people who contract COVID-19 may
2 require supportive care, including supplemental oxygen, positive pressure ventilation, and
3 in extreme cases, extracorporeal mechanical oxygenation.⁴¹

4 36. The need for care, including intensive care, and the likelihood of death, is
5 much higher from COVID-19 infection than from the seasonal influenza.⁴² According to
6 recent estimates, the fatality rate of people infected with COVID-19 is about ten times
7 higher than a severe seasonal influenza, even in advanced countries with highly effective
8 health care systems.⁴³ For people in the highest risk populations, the fatality rate of
9 COVID-19 infection is about 15 percent.⁴⁴

10 37. Patients who do not die from serious cases of COVID-19 may face prolonged
11 recovery periods, including extensive rehabilitation from neurologic damage, loss of digits,
12 and loss of respiratory capacity.⁴⁵

13 38. It is not yet clear whether previous infection with COVID-19 confers
14 protection from reinfection, and the CDC has warned against assuming that the presence
15 of COVID-19 antibodies confers such protection.⁴⁶

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19 _____
20 ⁴¹ Exhibit J, Golob Decl., *supra* note 37 ¶ 5.

21 ⁴² *Id.* at ¶ 4.

22 ⁴³ McKay, *supra* note 21.

23 ⁴⁴ Exhibit J, Golob Decl., *supra* note 37 at ¶ 4.

24 ⁴⁵ *Id.*

25 ⁴⁶ CDC, Interim Guidelines for COVID-19 Antibody Testing (last revised May 23, 2020),
26 <https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antibody-tests-guidelines.html>
27 (“[I]t remains uncertain whether individuals with antibodies (neutralizing or total) are
28 protected against reinfection with SARS-CoV-2, and if so, what concentration of
antibodies is needed to confer protection.”)

1 **B. COVID-19 Poses Special Risks to People Who are Incarcerated.**

2 39. Beyond the general public health risks the COVID-19 pandemic presents,
3 people who are incarcerated face a particularly acute threat of illness, permanent injury,
4 and death.

5 40. People in congregate environments where they live, eat, and sleep in close
6 proximity are at increased danger of contracting COVID-19, as already evidenced by the
7 rapid spread of the virus across the country in jails,⁴⁷ in cruise ships⁴⁸ and nursing homes.⁴⁹
8 In particular, it is virtually impossible for people who are confined in crowded prisons,
9 jails, and detention centers to engage in the necessary social distancing and hygiene
10 required to mitigate the risk of transmission. For example, dramatic outbreaks have taken
11 hold in the Cook County Jail⁵⁰ and Rikers Island in New York City, where the transmission
12 rate for COVID-19 is estimated to be the highest in the world.⁵¹ The CDC also warns of
13 “community spread” where the virus spreads easily and sustainably within a community
14 where the source of the infection is unknown.⁵²

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17 ⁴⁷ *Supra* note 2.

18 ⁴⁸ The CDC is currently recommending that travelers defer cruise ship travel worldwide.
19 “Cruise ship passengers are at increased risk of person-to-person spread of infectious
20 diseases, including COVID-19.” *COVID-19 and Cruise Ship Travel*, Centers for Disease
21 Control and Prevention, <https://cutt.ly/7tEEQvT>.

22 ⁴⁹ The CDC notes that long-term care facilities and nursing homes pose a particular risk
23 because of “their congregate nature” and the residents served. Centers for Disease Control
24 and Prevention, *Preparing for COVID-19: Long-term Care Facilities, Nursing Homes*,
25 <https://cutt.ly/7tEEITH>.

26 ⁵⁰ *See supra* note 2.

27 ⁵¹ Craig McCarthy and Natalie Musumeci, *Top Rikers Doctor: Coronavirus ‘Storm is
28 Coming,’* New York Post (March 19, 2020), <https://cutt.ly/ptRSnVo>.

⁵² Centers for Disease Control and Prevention, *How Coronavirus Spreads*,
<https://cutt.ly/jtEE9vG>.

1 41. Correctional settings further increase the risk of contracting COVID-19 due
2 to the high numbers of people with chronic, often untreated, illnesses housed in a setting
3 with minimal levels of sanitation, limited access to personal hygiene, limited access to
4 medical care, presence of many high-contact surfaces, and no possibility of staying at the
5 necessary distance from others.⁵³

6 42. Correctional facilities house large groups of people together, and move
7 people in groups.⁵⁴ They frequently have insufficient medical care for the population even
8 outside of times of crisis.⁵⁵ Hot water, soap, and paper towels are often in limited supply.
9 Incarcerated people, rather than professional cleaners, are responsible for cleaning the
10 facilities⁵⁶ and often are not given appropriate supplies. People in jails have high rates of
11 disabilities, including the disabilities that create particular risk factors for COVID-19
12 complications and death. The Bureau of Justice Statistics reports that people in jail are
13 four times as likely as the general population to have a disability, and this is almost
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17 ⁵³ Letter from the Johns Hopkins Faculty, *supra* note 36; Exhibit K, *Velesaca v. Decker*,
18 20-cv-1803 (S.D.N.Y.) at Doc. No. 42 (Mar. 16, 2020) (Declaration of Dr. Jaimie Meyer)
19 (noting, *inter alia*, that jails environments have reduced prevention opportunities, increased
20 susceptibility, and are often poorly equipped to diagnose and manage outbreaks of infection
21 disease).

22 ⁵⁴ See, e.g., Nathalie Baptiste, *Correctional Facilities are the Perfect Incubators for the*
23 *Coronavirus*, Mother Jones (Mar. 6, 2020), <https://cutt.ly/GtRSi3e>.

24 ⁵⁵ See, e.g., Steve Coll, *the Jail Health-Care Crisis*, *The New Yorker* (Feb. 25, 2019),
25 <https://cutt.ly/ftERHNg>.

26 ⁵⁶ See, e.g., Wendy Sawyer, *How much do incarcerated people earn in each state?*, Prison
27 Policy Initiative, (Apr. 10, 2017); <https://cutt.ly/qtER2bh> (noting that “custodial,
28 maintenance, laundry” and “grounds keeping” are among the most common jobs for
incarcerated people); North Carolina Dept. of Corrections, *North Carolina Prison Inmates
at Work*, <https://cutt.ly/jtERCbb> (noting that cleaning the grounds and facilities is one of
the jobs of incarcerated persons in North Carolina).

1 certainly an undercount.⁵⁷ BJS also reports that people in jail are disproportionately
 2 affected by many of the specific conditions that increase risk of COVID-19 complications
 3 or death.⁵⁸

4 43. Outbreaks of the flu regularly occur in jails. During the H1N1 epidemic in
 5 2009, jails and prisons dealt with a disproportionately high number of cases.⁵⁹

6 44. Numerous public health experts, including Dr. Gregg Gonsalves,⁶⁰ Ross
 7 MacDonald,⁶¹ Dr. Marc Stern,⁶² Dr. Oluwadamilola T. Oladeru and Adam Beckman,⁶³ Dr.
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 13 ⁵⁷ Jennifer Bronson et al., *Special Report: Disabilities Among Jail and Prison Inmates, 2011-12*, U.S. Dept. of Justice Bureau of Prison Statistics (Dec. 2015) available at
 14 <https://www.bjs.gov/content/pub/pdf/dpji1112.pdf>.

15 ⁵⁸ *Id.* at 2-3.

16 ⁵⁹ See, e.g., Exhibit K, Meyer Decl., *supra* note 53 at ¶ 19; Exhibit J, Golob Decl., *supra*
 17 note 37 at ¶ 13. This H1N1 “swine flu” pandemic outbreak spread dramatically in jails and
 18 prisons in 2010, but that strain of virus had a low fatality rate because of the characteristics
 19 of the virus—COVID-19’s fatality rate is far higher. David M. Reutter, *Swine Flu*
 20 *Widespread in Prisons and Jails, but Deaths are Few*, Prison Legal News (Feb. 15, 2010),
 21 <https://cutt.ly/yTRSkuX>.

22 ⁶⁰ Kelan Lyons, *Elderly Prison Population Vulnerable to Potential Coronavirus Outbreak*,
 Connecticut Mirror (Mar. 11, 2020), <https://cutt.ly/BtRSxCF>.

23 ⁶¹ Craig McCarthy and Natalie Musumeci, *Top Rikers Doctor: Coronavirus ‘Storm is*
 24 *Coming,* New York Post (Mar. 19, 2020), <https://cutt.ly/ptRSnVo>.

25 ⁶² Marc F. Stern, MD, MPH, *Washington State Jails Coronavirus Management Suggestions*
 26 *in 3 “Buckets,”* Washington Assoc. of Sheriffs & Police Chiefs (Mar. 5, 2020),
 27 <https://cutt.ly/EtRSm4R>.

28 ⁶³ Oluwadamilola T. Oladeru, et al., *What COVID-19 Means for America’s Incarcerated*
 Population – and How to Ensure It’s Not Left Behind, HealthAffairs (Mar. 10, 2020),
<https://cutt.ly/QtRSYNA>.

1 Anne Spaulding,⁶⁴ Dr. Homer Venters,⁶⁵ Jaimie Meyer,⁶⁶ the faculty at the Johns Hopkins
2 schools of nursing, medicine, and public health,⁶⁷ and Josiah Rich⁶⁸ have all strongly
3 cautioned that people booked into and held in jails are likely to face serious, even grave,
4 harm due to the outbreak of COVID-19.

5 45. The CDC is a federal agency that is part of the U.S. Department of Health
6 and Human Services. It serves as the national focus for developing and applying disease
7 prevention and control, environmental health, and health promotion and health education
8 activities designed to improve the health of the people of the United States. The CDC is
9 responsible for controlling the introduction and spread of infectious diseases, and provides
10 consultation and assistance to other nations and international agencies to assist in
11 improving their disease prevention and control, environmental health, and health
12 promotion activities. It also provides program expertise and assistance in responding to
13 Federal, State, local, and private organizations on matters related to disease prevention and
14 control activities.⁶⁹

17
18 ⁶⁴ Anne C. Spaulding, MD MPDH, *Coronavirus COVID-19 and the Correctional Jail*,
19 Emory Center for the Health of Incarcerated Persons (Mar. 9, 2020),
20 http://www.chip.sph.emory.edu/documents/For%20Correctional%20Facility%20Leadership_2020.pdf.

21 ⁶⁵ Madison Pauly, *To Arrest the Spread of Coronavirus, Arrest Fewer People*, Mother
22 Jones (Mar. 12, 2020), <https://cutt.ly/jtRSPnk>.

23 ⁶⁶ Exhibit K, Meyer Decl., *supra* note 53.

24 ⁶⁷ *Supra* note 36.

25 ⁶⁸ Amanda Holpuch, *Calls Mount to Free Low-risk US Inmates to Curb Coronavirus*
26 *Impact on Prisons*, The Guardian (Mar. 13, 2020 3:00 p.m.), <https://cutt.ly/itRSDNH>.

27 ⁶⁹ Centers for Disease Control and Prevention, Mission Statement,
28 <https://www.cdc.gov/about/organization/cio-orgcharts/pdfs/CDCfs-508.pdf> (last visited
Apr. 28, 2020).

1 46. Because of the extraordinary danger that COVID-19 will spread in jails and
2 prisons, the CDC has issued specific guidance for dealing with correctional and detention
3 facilities, including local jails.⁷⁰ The guidance was published on March 23, 2020. It
4 acknowledges that incarcerated people are forced to exist “within congregate
5 environments” that “heighten[] the potential for COVID-19 to spread once introduced,”
6 especially given that “[t]here are many opportunities for COVID-19 to be introduced into
7 a correctional or detention facility,” including “daily staff ingress and egress” as well as
8 “high turnover” of “admit[ted] new entrants.” In light of these concerns, the guidance
9 recommends that detention facilities “explore strategies to prevent over-crowding of
10 correctional and detention facilities during a community outbreak.” The guidance further
11 recommends that the correctional facilities:

- 12 a. Post signage throughout the facility communicating COVID-19
13 symptoms and hand hygiene instructions, ensure such signage is
14 understandable for non-English speaking people as well as those with
15 low literacy, and provide clear information about the presence of
16 COVID-19 cases within a facility and the need to increase social
17 distancing and maintain hygiene precautions;
- 18 b. Ensure sufficient stocks of hygiene and cleaning supplies, including
19 tissues; liquid soap where possible; hand drying supplies; alcohol-
20 based hand sanitizer; cleaning supplies effective against the
21 coronavirus; and recommended personal protective equipment like
22 face masks, disposable medical gloves, and N95 respirators;
- 23 c. Provide incarcerated people no-cost access to soap (providing liquid
24 soap where possible), running water, hand drying machines or
25 disposable paper towels for hand-washing, and tissues (providing no-
26

27 ⁷⁰ CDC, *Interim Guidance*, *supra* note 40.

- 1 touch trash receptacles for disposal);
- 2 d. Suspend co-pays for incarcerated people seeking medical evaluation
- 3 for respiratory symptoms;
- 4 e. Even if COVID-19 cases have not been identified locally or inside,
- 5 implement “intensified cleaning and disinfecting procedures” that
- 6 clean and disinfect high-touch surfaces and objects “[s]everal times
- 7 per day,” and ensure adequate supplies to support intensified cleaning
- 8 and disinfection practices”;
- 9 f. Perform pre-intake screening and temperature checks for all new
- 10 entrants;
- 11 g. Adopt social distancing strategies to increase space between
- 12 individuals, including rearranging bunking to ensure that beds are at a
- 13 minimum six feet apart in all directions, increasing space in lines and
- 14 waiting areas, staggering meals and rearranging seating during meals
- 15 so that detainees are sitting on only one side of the table and are
- 16 separated with adequate space;
- 17 h. Medically isolate confirmed and suspected cases and quarantine of
- 18 contacts.

19 47. According to the CDC, “[f]acilities should make every possible effort to place

20 suspected and confirmed COVID-19 cases under medical isolation individually.”⁷¹

21 Further, quarantined individuals should be “housed separately, in single cells with solid

22 walls . . . and solid doors that close fully.”⁷² Cohorting should only be considered as a last

23 resort, and even then all incarcerated people must have enough room to retain at least 6

24 feet of space between each other at all times. If a facility has no option but to implement

25 cohorting, it must do so while following several strict precautions. These precautions

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27 ⁷¹ *Id.*

28 ⁷² *Id.*

1 include mandating that individuals wear face masks at all times, ensuring that individuals
2 with laboratory-confirmed cases are not mixed with individuals who have not tested
3 positive, and ensuring that individuals with respiratory problems are not cohorted “unless
4 no other possibilities exist.”⁷³

5 **C. Defendants’ Actions Have Been Inadequate to Protect People**
6 **Incarcerated in the Orange County Jail From These Risks of Infection.**

7 48. The OCSD’s response has been inadequate to curtail the rampant spread of
8 COVID-19 through the Jail. Plaintiffs and other class members are detained in unsafe
9 conditions where they are at intolerable risk of serious illness and death. Two of the
10 medically vulnerable and disabled Plaintiffs were housed in special housing for high
11 medical-needs detainees, where they were exposed and developed COVID-19. After
12 contracting COVID-19, the women were housed in a common cell, P-13, despite the
13 CDC’s clear directive to “be especially mindful” of persons who are at a higher risk of
14 severe illness from COVID-19 and seek to avoid if at all possible cohorting with other
15 infected individuals. Defendants have not complied with the majority of the CDC
16 Guidelines despite the increasing number of infections in the Orange County Jail since
17 these guidelines were first issued. Without further action, it is likely that the epidemic
18 inside the Orange County Jail will continue to worsen. As of June 8, 2020 there have been
19 128,812 confirmed cases of COVID-19 in California,⁷⁴ with 7,527 confirmed cases in
20 Orange County.⁷⁵ To date, there have been 4,626 deaths from COVID-19 in California
21

22
23 ⁷³ *Id.*

24 ⁷⁴ California Department of Public Health, *California COVID-19 By The Numbers*,
25 <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx#COVID-19%20by%20the%20Numbers>.

26 ⁷⁵ OC Health Care Agency, *Orange County COVID-19 Case Counts*,
27 <https://occovid19.ochealthinfo.com/coronavirus-in-oc>.

1 alone,⁷⁶ with 177 deaths in Orange County.⁷⁷ The Governor of California has declared a
 2 statewide emergency,⁷⁸ as have local Orange County officials.⁷⁹ Governor Newsom
 3 directed a statewide stay at home order, requiring all Californians to stay home if not
 4 performing essential activities.⁸⁰

5 49. Defendants have not ensured social distancing at the Jail. The Orange County
 6 Jail consists of four physically separate facilities that operate as a single system. There is
 7 constant movement of staff and incarcerated people among each of the four facilities,
 8 widening the circles of potential outbreak and exposure. These facilities include the Men's
 9 Central Jail, the Women's Central Jail, the Theo Lacy Facility, and the Intake and Release
 10 Center. Each of these facilities is configured differently and has a different type of
 11 housing.⁸¹ The rated capacity of each facility is determined on a biannual basis by the
 12 California Board of State and Community Corrections (BSCC), an independent statutory
 13 agency that, *inter alia*, inspects local correctional facilities in California for compliance
 14

15 ⁷⁶ *Supra* note 74.

16 ⁷⁷ *Supra* note 75.

17 ⁷⁸ Office of Governor Gavin Newsom, *Governor Newsom Declares State of Emergency to*
 18 *Help State Prepare for Broader Spread of Covid-19*, (Mar. 4, 2020),
 19 [https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-](https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/)
 20 [help-state-prepare-for-broader-spread-of-covid-19/](https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/).

21 ⁷⁹ Brittany Martin, *Why Orange County has Declared a Coronavirus Emergency*, Los
 22 Angeles Magazine, (Feb. 27, 2020), [https://www.lamag.com/citythinkblog/orange-county-](https://www.lamag.com/citythinkblog/orange-county-coronavirus-emergency/)
 23 [coronavirus-emergency/](https://www.lamag.com/citythinkblog/orange-county-coronavirus-emergency/).

24 ⁸⁰ Office of Governor Gavin Newsom, *Governor Gavin Newsom Issues Stay at Home*
 25 *Order* (Mar. 19, 2020), [https://www.gov.ca.gov/2020/03/19/governor-gavin-newsom-](https://www.gov.ca.gov/2020/03/19/governor-gavin-newsom-issues-stay-at-home-order/)
 26 [issues-stay-at-home-order/](https://www.gov.ca.gov/2020/03/19/governor-gavin-newsom-issues-stay-at-home-order/).

27 ⁸¹ *See generally*, State of California Board of State and Community Corrections 2016-2018
 28 Biennial Inspection: Orange County's Type II and Court Holding Facilities, Penal Code
 Section 6031 (Sep. 26, 2018), [https://drive.google.com/file/d/1h-](https://drive.google.com/file/d/1h-E41vMsJa3S06bW8PGSTwS3DWpPbj5/view?usp=sharing)
[E41vMsJa3S06bW8PGSTwS3DWpPbj5/view?usp=sharing](https://drive.google.com/file/d/1h-E41vMsJa3S06bW8PGSTwS3DWpPbj5/view?usp=sharing).

1 with Title 15 regulations, which set minimum standards for these facilities.⁸² The rated
 2 capacity of a facility means the maximum number of incarcerated occupants for which a
 3 facility's cells or dormitories, except those dedicated for health care or disciplinary
 4 separation housing, were planned and designed in conformity to Title 15 regulations
 5 (maintained by BSCC) and Title 24 regulations (maintained by the California Building
 6 Standards Commission).⁸³

7 50. The Orange County Jail is inspected against the Type II facility regulations.⁸⁴
 8 For dormitories rated for use with single bunks, a minimum of 50 square feet per person is
 9 required.⁸⁵ For dormitories rated for use with double bunks, a minimum of 70 square feet
 10 per person is required.⁸⁶ For single or double-occupancy cells, a minimum of 70 square
 11 feet per person is required in a Type II facility.⁸⁷ However, the BSCC rated capacities were
 12 not designed with a pandemic that requires social distancing in mind.⁸⁸

13 51. Theo Lacy has a rated capacity of 2,080 occupants. It is composed of a large
 14 number of barrack style dorms, seven module units where people are housed in two-person
 15 cells that share common day rooms and shower facilities, and two module units where

17 ⁸² Board of State and Community Corrections, About the Board of State and Community
 18 Corrections (last visited Apr. 28, 2020), http://www.bscc.ca.gov/m_bsccboard/; BSCC,
 19 Title 15 Minimum Standards for Local Detention Facilities (effective Oct. 1, 2019),
 20 [http://www.bscc.ca.gov/wp-content/uploads/Adult-Title-15-Regulations-Effective-
 10.1.2019.pdf](http://www.bscc.ca.gov/wp-content/uploads/Adult-Title-15-Regulations-Effective-10.1.2019.pdf).

21 ⁸³ BSCC, Title 15 Minimum Standards, *supra* at 82.

22 ⁸⁴ *Id.*

23 ⁸⁵ California Board of State and Community Corrections, Title 24 Minimum Standards
 24 for Local Detention Facilities, Part Two, Section 1231 Minimum Standards for Adult
 25 Detention Facilities (effective July 1, 2018), § 1231.2.8(1), [http://www.bscc.ca.gov/wp-
 content/uploads/Adult-Title-24-Part-1-Sept-2017-Part-2-July-2018.pdf](http://www.bscc.ca.gov/wp-content/uploads/Adult-Title-24-Part-1-Sept-2017-Part-2-July-2018.pdf).

26 ⁸⁶ *Id.* § 1231.2.8(1).

27 ⁸⁷ *Id.* §§ 1231.2.6(2) & 1231.2.7(2).

28 ⁸⁸ Exhibit H-B Goldenson Supplemental Decl., ¶ 3

1 people are housed in single-person cells that share common day rooms and shower
2 facilities.⁸⁹ The Men’s Central Jail has a rated capacity of 1,219 occupants. It is composed
3 primarily of module units where people are housed in cells that vary in size from four to
4 eight occupants; occupants share toilet and shower facilities.⁹⁰ There are also dormitory
5 style units where occupants share common day rooms, shower, and toilet facilities.⁹¹ The
6 Women’s Central Jail has a rated capacity of 274 occupants. It is composed primarily of
7 dormitory style units which sleep up to 30 occupants in one unit, where occupants share
8 toilet and shower facilities.⁹² There is also one unit where people are housed in single cells
9 and share shower facilities.⁹³ The Intake and Release Center has a rated capacity of 407
10 occupants. It is composed primarily of module units where people are housed in single-
11 person cells that share common day rooms and shower facilities.⁹⁴ Collectively, the Orange
12 County Jail has a total of 51 medical isolation cells.⁹⁵

13 52. Given the current population, social distancing in these facilities is not
14 possible. People in the Orange County jail are regularly housed in group barracks or in
15 multiple-person cells (often containing as many as 8 bunks in each cell) that share
16 dayrooms with other cells. The largest number of people are housed in the Theo Lacy
17 facility, which consists largely of large barrack-style dorms.⁹⁶ People in barracks sleep in
18

19 ⁸⁹ *See supra*, note 81, BSCC 2016-2018 Biennial Inspection, at 50–56.

20 ⁹⁰ *See id.* at 47–40.

21 ⁹¹ *Id.*

22 ⁹² *See id.* at 44–45.

23 ⁹³ *Id.*

24 ⁹⁴ *See id.* at 26–32.

25 ⁹⁵ *See id.* at 26–56. There are 15 medical isolation cells in the Women’s Central Jail and
26 at the Theo Lacy Facility. There are no medical isolation cells at the Men’s Central
Jail or the Intake and Release Center.

27 ⁹⁶ *See supra* note 81.

1 bunk beds in close proximity to each other, much closer than six feet apart.⁹⁷ People in
 2 multi-person cells sleep in similarly close proximity.⁹⁸ Even persons who are detained in
 3 single or double bunked cells often remain constantly in close proximity and air space with
 4 others in their modules.⁹⁹ Indeed, the Commander of Custody Operations of the Orange
 5 County Jail has conceded unequivocally that the “[t]he Sheriff’s jail facilities do not allow
 6 for spacing of six feet between incarcerated people.”¹⁰⁰

7 53. Housing units in jails generally lack adequate ventilation, a factor that
 8 facilitates the likelihood of airborne transmission of COVID-19.¹⁰¹ Some cells have open
 9 bars and many open directly into communal day rooms. Detainees congregate in groups
 10 in the day rooms, often in numbers too large for social distancing.¹⁰² They are forced to
 11 line up close together to receive mail.¹⁰³ They share phones “basically shoulder to shoulder
 12

13 ⁹⁷ Exhibit L, Declaration of Dalton James Cardone ¶ 7 (before quarantine, slept with a large
 14 group, may 60 people, in an open dorm); Exhibit D, Hernandez Decl. ¶ 7 (“[t]he beds are
 15 very close together, only a couple of inches apart” and his feet touch his cellmates’ feet
 16 while sleeping).

17 ⁹⁸ Exhibit C, Ahlman Decl. ¶ 7 (“Our bunks are about two feet from one another.”); Exhibit
 18 D, Hernandez Decl. ¶ 7 (“The beds are very close together, only a couple of inches apart.
 19 If people sleep with their heads facing each other, their heads will touch. I sleep with my
 20 feet facing a cellmate’s feet, and our feet touch each other’s during the night.”).

21 ⁹⁹ Exhibit M, Declaration of Mark Trace ¶ 7 (all of the cells in the module have open bars
 22 and share the same air); Exhibit N, Declaration of Fernando Maldonado ¶ 11 (“Our bunks
 23 are so close that we can reach other’s bunk when we lay down.”); Exhibit O, Declaration
 24 of Sean S. Wells ¶ 9 (“It is impossible for my cellmate and I to maintain six feet distance
 25 from each other when we are confined in our cell, which is about 21 hours a day.”).

26 ¹⁰⁰ ECF No. 66-4, Declaration of Commander Joseph Balicki, ¶ 2.A.

27 ¹⁰¹ Exhibit H-A, Goldenson Decl. ¶ 19.

28 ¹⁰² Exhibit C, Ahlman Decl. ¶ 22.; Exhibit A, Wagner Decl. ¶ 16 (entire module shares
 day room, 8 people at a time together); Exhibit P, Declaration of Cecibel Caridad Ortiz ¶
 6 (dayroom shared by 7 people in module, without enough space to keep six feet apart).

¹⁰³ Exhibit D, Hernandez Decl. ¶ 26.

1 with each other,”¹⁰⁴ and share communal shower spaces.¹⁰⁵ Many detainees must also share
2 communal toilets.¹⁰⁶

3 54. There is increasing evidence that COVID-19 spreads through fecal matter.¹⁰⁷
4 This makes shared bathrooms—like the communal toilets in the Jail—a likely source of
5 transmission, because flushing a toilet sends a plume of droplets into the air that could be
6 ingested by nearby individuals or land on surfaces.¹⁰⁸

7 55. The jail relies on incarcerated people to perform much of the work of laundry,
8 food preparation and distribution across the jail.¹⁰⁹ Incarcerated people prepare and cook
9 the food and serve meals in the chow hall at Theo Lacy, where large groups of people
10 continue to congregate for a hot meal.¹¹⁰ Along with jail staff, they deliver meals and
11 laundry to modules in each of the jail buildings.¹¹¹ Incarcerated staff process new incoming
12

13
14 ¹⁰⁴ Exhibit C, Ahlman Decl. ¶ 21; Exhibit N, Maldonado Decl. ¶ 15 (describing inability to
15 socially distance while using telephones that are “about two feet away from each other.”);
16 Exhibit O, Wells Decl. ¶ 15.

17 ¹⁰⁵ Exhibit A, Wagner Decl. ¶ 17.

18 ¹⁰⁶ Exhibit C, Ahlman Decl. ¶ 24 (“All of the women in the medical tank share two toilets.
19 Sometimes we have to wait in line for these. If we wait in line we can not space out six feet
20 apart.”); Exhibit D, Hernandez Decl. ¶ 10 “We all use the same toilet, shower, and table
21 for eating.”); *Id.* ¶ 14 (“The phones are [in the dayroom] about three feet away from the
22 table and two feet away from the toilet.”).

23 ¹⁰⁷ Exhibit I, Parker Decl. ¶ 15.

24 ¹⁰⁸ *Id.*

25 ¹⁰⁹ Exhibit M, Trace Decl. ¶¶ 7, 14; Exhibit D, Hernandez Decl. ¶ 23; Exhibit Q,
26 Declaration of Cynthia Campbell ¶ 19; Exhibit A, Wagner Decl. ¶ 13; Exhibit R,
27 Declaration of Julian Miranda, Jr. ¶ 8.

28 ¹¹⁰ Orange County California, Grand Jury, Jail Food: Reservation Required, pp. 5-6
(describing meal preparation and by detainees).

¹¹¹ Exhibit D, Hernandez Decl. ¶ 19; Exhibit Q, Campbell Decl. ¶ 21; Exhibit S, Declaration
of Michael Seif ¶ 18; Exhibit T, Declaration of Jose Armendariz ¶¶ 35-27 (describing

1 detainees, swapping laundered jail clothing for their street clothing, and cleaning the
 2 showers as the newly admitted individuals shower in groups.¹¹² The incarcerated staff who
 3 perform each of these roles—laundry, new intake processing, and food preparation—are
 4 housed in common worker dorms.¹¹³ Many of these individuals, who travel between
 5 facilities and housing units for their jobs, have tested positive for COVID-19.¹¹⁴
 6 Respondent has not reported how many correction staff have tested positive for COVID-
 7 19, but some of the initial media stories about the outbreak in the jail reported staff who
 8 had become infected. Like the incarcerated staff, OCSD staff with the virus who travel the
 9 jail facilities are another source of infection.

10 56. Although court hearings have slowed, some hearings are still held in person
 11 at the court house and others occur via video-conferencing. In both instances, people are
 12 brought across the jail from their cells, put in close contact with each other in crowded
 13 holding cells, and then returned to their cell modules or barracks without testing or
 14 screening.¹¹⁵ Incarcerated people are regularly in close contact with each other and large

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 16
 17 observing staff and incarcerated workers handle and distribute meals without wearing
 18 masks properly, without changing gloves.).

19 ¹¹² Exhibit U, Declaration of Donald Timmons ¶ 15.

20 ¹¹³ *Id.* at ¶ 5; Exhibit R, Miranda, Jr. Decl. ¶¶ 7-9; Exhibit V, Declaration of Leonard
 21 Farias ¶ 6; Exhibit W, Declaration of Mitchell Lentz ¶¶ 5-6; Exhibit X, Declaration of
 Carlos Godinez Sanchez ¶¶ 8-9.

22 ¹¹⁴ Exhibit U, Timmons Decl. ¶ 17; Exhibit V, Farias Decl. ¶ 19; Exhibit R, Miranda, Jr.
 Decl. ¶ 21.

23 ¹¹⁵ Exhibit C, Ahlman Decl. ¶ 5 (describing being transported in the middle of March to
 24 court with other women, then placed with 15 people in a 10 person holding cell “all on top
 25 of each other, for close to two hours.”); Exhibit S, Seif Decl. ¶ 5 (traveling to court on a
 26 bus with over 30 people from other sectors, waiting in a holding cell for 7 hours at the
 27 courthouse with 13 people, and then returning to the jail); Exhibit E, Saem Decl. ¶ 7
 28 (transported to court in early March with 30 to 40 other people, and held in a holding cell
 with 30 other people); Exhibit O, Wells Decl. ¶ 12 (describing concern over cellmate’s

1 groups of people on a daily basis.¹¹⁶ The jail guards do not facilitate social distancing
 2 standards in common areas, and groups of over forty are regularly gathered during
 3 recreational periods.¹¹⁷ Individuals move within and between the facilities.¹¹⁸ Group
 4 movements within modules and across the jail “may cluster large numbers of people
 5 together in small spaces, increase the risk of transmission between incarcerated persons
 6 and throughout the facility.”¹¹⁹

7 57. When individuals at the jail require medical treatment, they must face a
 8 gauntlet of crowded lines at the nurses’ stations and medical units.¹²⁰ Medically at-risk
 9 individuals are repeatedly placed in close contact with other people, including those who
 10 exhibit COVID-19 symptoms, when they seek routine medical treatment.¹²¹ They may be
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 13
 14 possible exposure to virus during a trip to court where he was in “close contact with about
 20 other people during the day.”)

15 ¹¹⁶ Exhibit C, Ahlman Decl. ¶ 5; Exhibit A, Wagner Decl. ¶¶ 6, 8 (people moved into his
 16 pod in a large group); Exhibit P, Caridad Ortiz Decl. ¶ 18 (discussing an outside trip to
 17 visit a doctor); Exhibit M, Trace Dec. ¶ 15 (explaining frequent transfers of inmates in and
 18 out of unit without quarantine period); Exhibit F, Castillo Decl. ¶¶ 8-11, 13, 21 (discussing
 exposure while seeking/transiting to and from medical treatment); Exhibit Q, Campbell
 Decl. ¶ 14.

19 ¹¹⁷ Exhibit D, Hernandez Decl. ¶ 30.

20 ¹¹⁸ *Id.* ¶ 14 (describing moving to a new building because his cell became a quarantine area
 21 and having to take a bus with 40 other people, “bunched up together,” being searched by
 22 guards without PPE, and held again in a crowded holding cell for hours).

23 ¹¹⁹ Exhibit H-A, Goldenson Decl. ¶ 23.

24 ¹²⁰ Exhibit A, Wagner Decl. ¶ 8 (when he goes for daily blood pressure if there is a line
 25 “we all sit on a set of stairs right next to each other”); Exhibit O, Wells Decl. ¶ 20
 26 (describing it as “impossible to maintain six feet distance from medical and custody
 staff.”); Exhibit T, Armendariz Decl. ¶ 30 (“While we wait to be seen by an RN, we sit on
 small dirty benches basically shoulder to shoulder.”).

27 ¹²¹ Exhibit F, Castillo Decl. ¶¶ 8-11.

1 escorted in groups by a guard to the nurses' station, and must wait on crowded benches to
2 be seen.¹²²

3 58. The conditions are harrowing for women who are nursing. Until late March
4 2020, the women had to travel to the nurses' office to share the breast pump, even though
5 the space was not cleaned between uses.¹²³ The women decided to start pumping milk in
6 their tanks after learning that COVID-19 had spread throughout the women's facility, but
7 they must still travel to the nurses' station multiple times a day to transport their breastmilk.
8 These trips make them nervous because they increase their exposure to the disease,
9 particularly because they must come into contact with people who are seeking treatment
10 for COVID-19 and other illnesses in the medical unit.¹²⁴

11 59. Potentially contagious persons are housed alongside asymptomatic bunk and
12 cellmates, exacerbating the likelihood of rapid COVID-19 spread. As more and more
13 people in the jail become symptomatic, presumptively healthy detainees must continue to
14 share close quarters with large numbers of symptomatic individuals who have not been
15 isolated or tested despite having symptoms.¹²⁵ Defendants used narrow criteria for treating
16 detained persons as requiring a change in housing, despite the fact that numerous persons
17 describe common COVID-19 symptoms like headaches, dry coughs or inability to smell.¹²⁶
18 Additionally, Defendants are not consistently isolating symptomatic individuals.

19 _____
20 ¹²² Exhibit Q, Campbell Decl. ¶ 11; Exhibit F, Castillo Decl. ¶ 10.

21 ¹²³ Exhibit C, Ahlman Decl. ¶ 11.

22 ¹²⁴ *Id.* at 12-13.

23 ¹²⁵ Exhibit M, Trace Decl. ¶ 9 (medical personnel denied test, and said it was because Mr.
24 Trace did not have a fever, although he shared ventilation with other detainees in nearby
modules who tested positive).

25 ¹²⁶ Exhibit S, Seif Decl. ¶ 7 (despite trouble breathing, headache and likely exposure to a
26 guard who tested positive, Mr. Seif has not been seen by a doctor or tested for COVID-
27 19); Exhibit Y, Declaration of Jaime Herrera ¶ 7 (despite headache and exposure to guard
who tested positive, Mr. Herrera has not been tested); Exhibit M, Trace Decl. ¶ 9.

1 Frequently, people who are symptomatic or were close contacts of exposed individuals
 2 continue to be housed with others—and potentially infecting them—until they receive
 3 positive COVID-19 test results.¹²⁷ Although Defendants have increased testing in recent
 4 weeks, the testing still falls short of the CDC recommendation for sentinel monitoring of
 5 asymptomatic individuals in congregate living settings.¹²⁸ Detection of asymptomatic and
 6 mildly symptomatic individuals is critical because those individuals can transmit the
 7 disease.¹²⁹ Both California and the federal government have identified testing of all
 8 individuals in jails as a priority.¹³⁰ Without knowing who in the Jail has COVID-19,
 9 Defendants cannot effectively track close contacts. Defendants have failed to provide for
 10 adequate contact tracing, a “priority” in congregate settings and a “key strategy for
 11 preventing further spread of COVID-19.”¹³¹

12 60. The Orange County Jail has failed to follow the CDC’s guidance with respect
 13 to isolation of suspected cases and its use of cohorting.¹³² Only after people test positive
 14 for COVID-19 are they removed from their barrack or modular housing and transferred to
 15 isolation. Defendants are not making “every effort to quarantine close contacts of COVID-
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 19 ¹²⁷ See, e.g., Exhibit Z, Declaration of Sandy Gonzalez ¶¶ 7-8; Exhibit AA, May 13, 2020
 Declaration of Monique Castillo ¶¶ 3-7;

20 ¹²⁸ White House, CDC & FDA, Testing Blueprint, 3, 6 & n.1 (April 27, 2020);
 21 <https://www.whitehouse.gov/wp-content/uploads/2020/04/Testing-Blueprint.pdf>.

22 ¹²⁹ Exhibit I, Parker Decl. ¶ 17.

23 ¹³⁰ *Id.* at ¶ 17, n. 12; Testing Blueprint, *supra* note 130 (“Identifying asymptomatic cases
 24 in these settings is a high priority because the people who live in them and use them are
 at high risk for both infection and poor clinical outcomes.”).

25 ¹³¹ CDC, Contact Tracing, Part of a Multipronged Approach to Fight the COVID-19
 26 Pandemic, at 1-2 (April 29, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/php/principles-contact-tracing-booklet.pdf>.

27 ¹³² Exhibit A, Wagner Decl. ¶ 5.

1 19 cases individually,” increasing the risk that others will be infected.¹³³ People who have
2 been exposed to positive cases have not always been quarantined and are themselves often
3 still in group settings, where new individuals are added.

4 61. As the jail has sought to isolate or quarantine some symptomatic or confirmed
5 cases, it has failed to adequately protect those who were exposed or remain in large cells
6 or units. Defendants inappropriately move people in and out of cohorts before waiting the
7 full 14 days.¹³⁴ For example, as new sick individuals are identified, groups of people have
8 been moved between housing units and rearranged in new combinations, and individuals
9 who have not tested positive are required to use the same showers and phones with those
10 who have tested positive.¹³⁵ In dorm or module settings, after the infected individuals have
11 been moved, the jail assigns other detained people to clean the cells of the suspected or
12 confirmed cases without any PPE, increasing their risk of exposure.¹³⁶

13 62. Recent test results show the dangerous consequences of the Jail’s failures to
14 properly quarantine. On or around April 25, the Jail expanded its testing to evaluate its
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18 _____
19 ¹³³ Exhibit H-A, Goldenson Decl. ¶ 45.

20 ¹³⁴ Exhibit R, Miranda Jr. Decl. ¶¶ 9-12, 22-25 (while housed in the worker unit A-5, Mr.
21 Miranda was exposed to a person with COVID-19, then placed under group quarantine
22 without a mask where he eventually tested positive for COVID-19. After testing positive,
23 Mr. Miranda was transferred to a two-person cell in a rat-infested filthy module, M-25,
24 where he shares phones and showers, including with some other men who do not have
25 COVID-19); Exhibit L, Cardone Decl. ¶¶ 7-8 (after developing a fever, Mr. Cardone was
26 moved from a 60-person barrack to the R-mod, where he was placed in a 7-day quarantine
27 with 10 other people; he was tested for COVID-19 and when his results were negative he
28 was moved to yet another cohort quarantine in O-41 for another 7 days).

¹³⁵ Exhibit R, Miranda Jr. Decl. ¶ 25.

¹³⁶ *Id.*, at ¶¶ 9, 12.

1 quarantined population and 18 of 22 asymptomatic people who were being considered for
2 reintegration into the larger population tested positive.¹³⁷

3 63. As the disease has spread, and quarantine needs grown, this has put additional
4 pressure on non-quarantined housing units, causing them to become more crowded. Don
5 Wagner, a 68-year-old man with serious medical conditions, was in a unit with 16 people
6 and no cell mate until late April, allowing him to avoid at least some of the dangerous
7 contact of close quarters. But on April 22, 2020, the jail added an additional 16 people to
8 the unit, double bunking every cell, including his.¹³⁸

9 64. Even in ordinary times, the medical care system in the Orange County jail is
10 overburdened. The medical care system has been further encumbered due to the pandemic.
11 People in the jail must routinely wait long periods of time to receive medical attention even
12 after they request care.¹³⁹ During the current crisis, medical care in the jails has further
13 slowed, creating heightened risks for patients.¹⁴⁰ This poses special risks to people who
14 already have significant medical needs and disabilities. When people have poorly-
15 controlled chronic conditions, this puts them at even greater risk of death if infected with
16 COVID-19.

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20 ¹³⁷ Sareen Habeshian, *18 inmates at O.C. jails test positive for COVID-19, after testing is*
21 *expanded to asymptomatic people in quarantine*, KTLA 5 (Apr. 25, 2020),
22 [https://ktla.com/news/local-news/18-inmates-at-o-c-jails-test-positive-for-covid-19-after-](https://ktla.com/news/local-news/18-inmates-at-o-c-jails-test-positive-for-covid-19-after-testing-is-expanded-to-asymptomatic-people-in-quarantine/)
23 [testing-is-expanded-to-asymptomatic-people-in-quarantine/](https://ktla.com/news/local-news/18-inmates-at-o-c-jails-test-positive-for-covid-19-after-testing-is-expanded-to-asymptomatic-people-in-quarantine/).

24 ¹³⁸ Exhibit A, Wagner Decl. ¶ 6.

25 ¹³⁹ Exhibit Q, Campbell Decl. ¶ 8; Exhibit M, Trace Decl. ¶ 8; Exhibit E, Saem Decl. ¶ 11.

26 ¹⁴⁰ Exhibit C, Ahlman Decl. ¶¶ 10-12 (explaining that nursing mothers are no longer able
27 to pump in the nurse's office and she can no longer get fresh milk to her baby); Exhibit E,
28 Saem Decl. ¶ 11 (requires an eye examination and cannot get one scheduled); Exhibit Q,
Campbell Decl. ¶ 8 (despite her serious medical conditions and the fact that she has felt
sick for a week and filled out three medical slips, she has not been able to see the doctor).

1 65. Hygiene, information, and nutrition are other areas where the Jail has fallen
2 short. Incarcerated people have been insufficiently informed about the dangers COVID-
3 19 poses and about the safety measures public health officials advise. Although the CDC
4 recommends clear informational signage be posted in all languages spoken in the facility,
5 the Orange County Jail facilities have only provided sporadic and inadequate advisories.¹⁴¹

6 66. The PPE provided by the jail is ineffective, and is used and distributed
7 inadequately and inconsistently. People held in the jail describe the PPE as “swatches of
8 fabric” and not real masks, and explain that guards and workers do not consistently wear
9 them.¹⁴² Even in a unit where deputies explicitly told incarcerated people that one of their
10 colleagues had recently contracted COVID-19, many deputies do not wear gloves or
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13 ¹⁴¹ Exhibit A, Wagner Decl. ¶ 10 (describing barely audible announcements); Exhibit P,
14 Caridad Ortiz Decl. ¶ 17; Exhibit D, Hernandez Decl. ¶ 29; Exhibit M, Trace Decl. ¶ 12
(announcement difficult to hear); Exhibit E, Saem Decl. ¶ 9.

15 ¹⁴² Exhibit C, Ahlman Decl. ¶¶ 15, 16, Exhibit A, Wagner Decl. ¶ 11 (describing the PPE
16 as being “just swatches of fabric” that are not regularly replaced); Exhibit Q, Campbell
17 Decl. ¶¶ 16-19; Exhibit D, Hernandez Decl. ¶¶ 17, 18; Exhibit M, Trace Decl. ¶¶ 14, 16
18 (inconsistent use of PPE by staff and jail workers); Exhibit E, Saem Decl. ¶ 12-13; Exhibit
19 N, Maldonado Decl. ¶ 17 (“Custody staff provided us with torn sheets to use as face
20 coverings.”); Exhibit O, Wells Decl. ¶ 24; Exhibit T, Armendariz Decl. ¶ 27 (described
21 receiving “torn sheets . . . to use as bandanas/face coverings . . .”) and ¶ 28 (“I have seen
22 several deputies not wearing masks.”); Exhibit BB, Declaration of Charles Lucious ¶ 16
23 (“I was given a torn sheet to use as a mask about a month ago. I continue to wear the same
24 mask. There has never been any mask cleaning or exchange.”); Exhibit AA, May 13, 2020
25 Castillo Decl. ¶ 9 (“I still have a very thin mask that the jail provided. It’s so thin that I
26 wear a bandanna underneath for more protection.”); Exhibit CC, Declaration of David
27 Mejia Sanchez ¶ 15 (“We receive only cut up sheets to use as masks. We just received
28 replacement masks on May 9, 2020 after using the last ones for over a month. I asked the
guard if the masks were clean because they did not look washed, and he responded by
asking if I wanted it or not.”); Exhibit DD, Declaration of Daisy Ramirez ¶ 17 (“On May
9, 2020, Korrell Cole, who is also housed in Module N, Sector 31 of the Theo Lacy Facility,
reported that he has a cloth mask, made from soiled sheets, with stains of feces and blood.
His cloth mask has only been exchanged once.”).

1 masks.¹⁴³ Incarcerated people have only received minimal PPE. Although some have
2 received masks, those masks were not replaced and have long ceased to function
3 effectively.¹⁴⁴

4 67. Respondent has further heightened the risk to Petitioners by failing to
5 adequately clean spaces where COVID-19 cases spend time and by requiring detained
6 persons to assist in the cleaning of evacuated bed space and cells without appropriate
7 equipment. CDC Guidance directs that jails should: “Close off areas used by the infected
8 individual; [i]f possible, open outside doors and windows to increase air circulation in the
9 area; [and] [w]ait as long as practical, up to 24 hours under the poorest air exchange
10 conditions before beginning to clean and disinfect, to minimize potential for exposure to
11 respiratory droplets.” CDC Guidance, p. 18. The guidance further specifies that the
12 surfaces should be cleaned with detergent or soap if dirty as well as disinfectant, and that
13 staff or detained person performing the cleaning wear recommended PPE, including N95
14 respirator, gloves, gown, and eye protection as necessary for the disinfectant product. *Id.*
15 at 26. Contrary to this guidance, detained persons are forced to clean up cells and infected
16 areas with no or little PPE protection, and on some occasions, shortly after the infected
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22 ¹⁴³ Exhibit S, Seif Decl. ¶¶ 9, 12.

23 ¹⁴⁴ Exhibit P, Caridad Ortiz Decl. ¶¶ 11,12; Exhibit C, Ahlman Decl. ¶ 1; Exhibit D,
24 Hernandez Decl. ¶¶ 17-18; Exhibit M, Trace Decl. ¶ 13; Exhibit F, Castillo Decl. ¶ 18;
25 Exhibit EE, Declaration of Jeffrey Davis ¶ 3 (“I have not received adequate PPE. For a
26 mask, I was given a torn piece of cloth. I was given this ‘mask’ three weeks ago and it has
27 not been replaced or cleaned. I have not been given gloves or other protective gear at all.”);
28 Exhibit U, Timmons Decl. ¶ 17 (“In both jobs, I used the same N-95 mask. I wore the mask
for 52 days straight before receiving a new one two days ago.”).

1 person has been removed.¹⁴⁵ Incarcerated people are responsible for cleaning their cells,
2 but they are not given adequate supplies to maintain a hygienic space.¹⁴⁶

3 68. People in the Jail are becoming physically weakened and more susceptible to
4 disease because they are not receiving adequate nutrition. Many have not received hot
5 food in weeks and are receiving three paper sack meals a day. They describe meals that
6 consist of a few pieces of bread and a chunk of frozen meat.¹⁴⁷

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8 ¹⁴⁵ Exhibit R, Miranda, Jr. Decl. ¶ 10 (when asked to clean out belongings of the bunk of
9 a confirmed case, detained persons “were not given gloves or masks”); Exhibit W, Lentz
10 Decl. ¶ 13 (detainees not provided gloves, masks or other PPE before removing the
11 bedding of the confirmed case); Exhibit FF, May 15, 2020 Declaration of Melissa
12 Ahlman ¶ 3 (volunteering to remove bedding of confirmed case in group cell after the
13 staff asked a person with medical vulnerabilities to clean out the space).

14 ¹⁴⁶ Exhibit C, Ahlman Decl. ¶ 19, 20; Exhibit A, Wagner Decl. ¶ 15; Exhibit P, Caridad
15 Ortiz Decl. ¶ 15; Exhibit D, Hernandez Decl. ¶¶ 11-12; Exhibit M, Trace Decl. ¶ 18; Exhibit
16 F, April 22, 2020 Castillo Decl. ¶ 19; Exhibit E, Saem Decl. ¶ 16; Exhibit U, Timmons
17 Decl. ¶ 13 (“Cleaning supplies have not been given to us on a consistent basis. Recently,
18 we did not receive supplies for two days. When we did, the spray bottles were half full and
19 we had an inch of water to mop with. The mop was dirty.”); Exhibit GG, May 12, 2020
20 Declaration of Melissa Ahlman Decl. ¶ 10 (“We are still only receiving a mop bucket with
21 water and two towels every morning. We are not given any disinfectant. Sometimes the
22 water in the mop bucket is clear and sometimes it is bright yellow. We have no idea what
23 is in it.”); Exhibit HH, May 12, 2020 Declaration of Jaime Herrera Decl. ¶ 8 (“Cleaning
24 supplies are still limited. We get supplies once a day and it is not available throughout the
25 day.”); Exhibit EE, Davis Decl. ¶ 4 (“I am not provided with adequate cleaning supplies. I
26 have not been provided with sanitizer or disinfectant. To clean my cell, I am only provided
27 with a mop and a bucket of water.”); Exhibit II, May 11, 2020 Declaration of Michael Seif
28 Decl. ¶ 5 (“We are provided with cleaning supplies only on some mornings.”); Exhibit CC,
Mejia Sanchez Decl. ¶ 11 (“We are given one mop and one mop bucket with cleaning
solution to clean the day room. . . . The mop is often so moldy that the dayroom smells
worse after cleaning. We have to use the same cleaning solution for all of the surfaces in
the dayroom and are not able to use fresh solution when, for example, moving from the
showers to the phones.”).

¹⁴⁷ Exhibit C, Ahlman Decl. ¶ 25; Exhibit P, Caridad Ortiz Decl. ¶ 16; Exhibit D, Hernandez
Decl. ¶ 19; Exhibit M, Trace Decl. ¶ 14; Exhibit F, Castillo Decl. ¶ 20.

1 **D. Existing Procedures and Protocols Will Not Be Sufficient to Ensure the**
 2 **Safety of Class Members or the General Public.**

3 69. Because of the severity of the threat posed by COVID-19, and its potential to
 4 rapidly spread throughout a correctional setting, public health experts recommend the rapid
 5 release from custody of people most vulnerable to COVID-19.¹⁴⁸ Release protects the
 6 people with the greatest vulnerability to COVID-19 from transmission of the virus, and
 7 also allows for greater risk mitigation for people held or working in a jail and the broader
 8 community.¹⁴⁹ People who are medically vulnerable at the Orange County Jail are at “a
 9 heightened risk for serious illness and death” and “[g]iven the high likelihood of contagion
 10 and spread in the jail, the safety of these individuals is a pressing emergency that needs to
 11 be addressed on an urgent basis.”¹⁵⁰ Release of the most vulnerable people from custody
 12 also reduces the burden on the region’s health care infrastructure by reducing the likelihood
 13 that an overwhelming number of people will become seriously ill from COVID-19 at the
 14 same time.¹⁵¹

15 70. Notwithstanding the fact that the OCSJ has released a modest number of
 16 people and adopted (at least formally) some precautionary policies to address COVID-19,
 17 large numbers of Medically-Vulnerable and Disability Subclass Members continue to be
 18 exposed to the dangers of continued detention in the Orange County Jail. Their immediate
 19

21 ¹⁴⁸ Exhibit JJ, *Dawson v. Asher*, 20-cv-409 (W.D. Wash.) at Doc. No. 6, Declaration of
 22 Marc Stern at ¶¶ 9–10 (noting that release is “a critically important way to meaningfully
 23 mitigate” the risks of harm to persons who are at high risk of serious illness or death, as
 24 well as to support the broader community health infrastructure).

24 ¹⁴⁹ *Id.*

25 ¹⁵⁰ Exhibit H-A, Goldenson Decl. ¶ 48; *see also*, Exhibit I, Parker Decl. ¶¶ 32-34.

26 ¹⁵¹ Matthew J. Akiyama et al, *Flattening the Curve for Incarcerated Populations - Covid-*
 27 *19 in Jails and Prisons*, New England Journal of Medicine, (Apr. 2, 2020),
 28 <https://www.nejm.org/doi/full/10.1056/NEJMp2005687>.

1 release remains a necessary public health intervention.¹⁵² Further release will benefit those
 2 remaining in the Jail and broader community by helping the Jail achieve the necessary goal
 3 of ensuring proper social distancing to reduce transmission for all class members and the
 4 wider public.¹⁵³

5 71. Not only has Sheriff Barnes failed to release adequate numbers of medically-
 6 vulnerable and disabled people from the jail, OCSD has continued to arrest individuals for
 7 low-level offenses and unnecessarily expose them to infection by bringing them into the
 8 Orange County Jail where an outbreak has already occurred. Due to decreased court
 9 operations, these individuals could wait in the jail for days if not weeks before having an
 10 opportunity to see a judge and be released. Maintaining this practice in the midst of the
 11 COVID-19 crisis needlessly risks people's lives and must be ended.

12 72. As a result of the Supreme Judicial Council's March 30, 2020 Emergency
 13 Order extending deadlines for criminal cases, many people recently charged with felonies
 14 are being forced to languish in the jail for up to seven days before even being presented to
 15 a magistrate judge.¹⁵⁴

16 73. The Orange County Jail must respond to and manage the continued risk of
 17 harm that the COVID-19 outbreak poses by following CDC¹⁵⁵ and other public health
 18 guidelines. This requires: (a) providing all incarcerated persons a six-foot radius or more
 19 of distance between any other persons, including during meals, transportation, court
 20 sessions, recreation, counts, and all other activities; (b) instituting a safety plan to manage
 21

22 ¹⁵² See Exhibit H-A, Goldenson Decl. ¶ 50.

23 ¹⁵³ *Id.* at ¶ 51.

24 ¹⁵⁴ Judicial Council of California Statewide Emergency Order by Hon. Tani G. Cantil-
 25 Sakauye, Chief Justice of California and Chair of the Judicial Council (Mar. 30, 2020),
 26 https://newsroom.courts.ca.gov/internal_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/20202/Statewide%20Order%20by%20the%20Chief%20Justice-Chair%20of%20the%20Judicial%20Council%203-30-2020.pdf.

27 ¹⁵⁵ CDC, *Interim Guidance*, *supra* note 40.

1 the COVID-19 outbreak in the Orange County Jail, in accordance with CDC guidelines;
 2 (c) making readily available access to sanitation solutions, without charge, for the purposes
 3 of cleaning cells, dormitories, laundry, and eating areas, including sufficient soap, and
 4 lifting any ban on alcohol-based hygiene supplies (e.g., hand sanitizer, cleaning wipes); (d)
 5 providing appropriate COVID-19 testing for all class members, jail staff, and visitors; (e)
 6 waiving all medical co-pays for those experiencing COVID-19-like symptoms; and (f)
 7 waiving all charges for medical grievances during the COVID-19 outbreak; (g)
 8 quarantining all confirmed or suspected cases of COVID-19 without resorting to cohorting,
 9 if possible.¹⁵⁶

10 **E. Orange County’s Policies, Practices, and Procedures in the Face of**
 11 **COVID-19 Violate the ADA and the Rehabilitation Act.**

12 74. Sheriff Barnes’ and Orange County’s actions and inactions in the face of
 13 COVID-19 constitute disability discrimination. The Disability Subclasses include
 14 everyone in the Medically-Vulnerable Subclasses who is vulnerable because of a disability,
 15 as defined under federal law. This includes everyone in the Medically-Vulnerable
 16 Subclasses except those vulnerable solely because of age or pregnancy status. All other
 17 conditions that increase risk for COVID-19 complications or death—including lung
 18 conditions, asthma, heart conditions, diabetes, kidney disease, liver disease, HIV, immune
 19 dysfunction, autoimmune disorders, cancer treatment, and history of organ or bone marrow
 20 transplantation—are disabilities under federal disability rights laws. People in the Orange
 21 County Jail who have any of these conditions are medically-vulnerable people with
 22 disabilities protected by the ADA and the Rehabilitation Act, in addition to being protected
 23 by the constitutional provisions that protect all medically-vulnerable subclass members.
 24 By continuing to detain members of the Disability Subclass, Defendants’ policies and
 25 practices violate the ADA and the Rehabilitation Act.

26
 27
 28 ¹⁵⁶ See Exhibit H-A, Goldenson Decl. ¶¶ 38, 40.

1 75. The ADA and the Rehabilitation Act require all covered entities to provide
2 reasonable modifications in their policies, practices, and procedures in order to give people
3 with disabilities an equal opportunity to benefit from the entity’s programs, services, and
4 activities. Orange County is a covered entity under these laws. Orange County Jail has
5 failed to make modifications to ensure that high-risk people with disabilities can avoid
6 contracting—and possibly dying from—COVID 19. Release of the Disability Subclasses
7 is the most appropriate modification of the jail’s program. Absent that, the jail must
8 implement modifications to protect Disabled Subclass members during incarceration,
9 including implementing meaningful social distancing in compliance with CDC guidelines,
10 ensuring full use of PPE, regular testing, and complete quarantine of people who test
11 positive. The ADA and the Rehabilitation Act also prohibit covered entities from using
12 methods of administration that defeat or impair the accomplishment of the objectives of
13 the public entity’s program. For pre-trial detainees, the jail’s main purpose and objectives
14 are to provide required safety and health services while ensuring an individual’s
15 appearance at arraignment and trial. A person who is sickened, unconscious, or killed by
16 COVID-19 will be unable to make such an appearance. By setting up a system where mass
17 infection and resulting harm and death will disproportionately fall on people with
18 disabilities, the jail has failed to establish methods of administration that do not
19 discriminate against people with disabilities.

20 76. As a result of the Orange County Jail’s failures to make reasonable
21 modifications, including release, and its failure to establish a non-discriminatory method
22 of administering its program, people with disabilities are being denied an equal opportunity
23 to participate in the adjudication of their cases and are denied the reasonable modifications
24 they may need to survive this pandemic.

25 **F. Plaintiffs Have Exhausted Administrative Remedies.**

26 77. Each of the Named Plaintiffs timely filed administrative grievances with the
27 Jail prior to filing suit that conformed to the requirements of OCSD Policy Section 1600.5
28

1 et seq., and exhausted such administrative remedies as were available within the meaning
2 of 42 U.S.C. § 1997e(a).

3
4 **V. CLASS ACTION ALLEGATIONS**

5 78. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil
6 Procedure on behalf of themselves and a class of similarly situated individuals.

7 79. Plaintiffs Melissa Ahlman, Daniel Kauwe and Michael Seif seek to represent
8 a class of all current and future detainees in pre-trial custody at the Orange County Jail,
9 including alleged violations of probation or parole, (“Pre-trial Class”), including a subclass
10 of all persons who, by reason of age or medical condition, the CDC has identified as
11 particularly vulnerable to injury or death if they were to contract COVID-19 (“Medically-
12 Vulnerable Pre-trial Subclass”), and a subclass of all persons within the Medically-
13 Vulnerable Pre-trial Subclass who are vulnerable because of a disability as defined in
14 federal law (“Disability Pre-trial Subclass”). Plaintiffs Daniel Kauwe and Michael Seif are
15 also representatives and members of the Medically-Vulnerable Pre-trial Subclass and the
16 Disability Pre-trial Subclass.

17 80. Plaintiffs Javier Esparza, Pedro Bonilla, Cynthia Campbell, Monique
18 Castillo, Mark Trace, Cecibel Caridad Ortiz and Don Wagner seek to represent a class of
19 all current and future detainees in post-conviction custody, including those serving a term
20 of incarceration pursuant to an adjudicated violation of probation or parole, at the Orange
21 County Jail (“Post-conviction Class”), including a subclass of persons who, by reason of
22 age or medical condition, are particularly vulnerable to injury or death if they were to
23 contract COVID-19 (“Medically-Vulnerable Post-conviction Subclass”), and a subclass of
24 all persons within the Medically-Vulnerable Post-conviction Subclass who are vulnerable
25 because of a disability as defined in federal law (“Disability Post-conviction Subclass”).
26 Plaintiffs Pedro Bonilla, Cynthia Campbell, Monique Castillo, Mark Trace, Cecibel
27 Caridad Ortiz, Don Wagner are also representatives and members of the Medically-
28 Vulnerable Post-conviction Subclass and the Disability Post-conviction Subclass.

1 81. The “Medically-Vulnerable” subclasses are defined as all current and future
2 persons held at the jail over the age of 55, as well as all current and future persons held at
3 the Orange County Jail of any age who experience (a) lung disease, including asthma,
4 chronic obstructive pulmonary disease (e.g. bronchitis or emphysema), or other chronic
5 conditions associated with impaired lung function; (b) heart disease, such as congenital
6 heart disease, congestive heart failure and coronary artery disease; (c) chronic liver or
7 kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine
8 disorders; (e) epilepsy; (f) hypertension; (g) compromised immune systems (such as from
9 cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication,
10 or other autoimmune disease); (h) blood disorders (including sickle cell disease); (i)
11 inherited metabolic disorders; (j) history of stroke; (k) a developmental disability; and/or
12 (l) a current or recent (last two weeks) pregnancy.

13 82. The “Disability” subclasses are defined as all current and future members of
14 the Medically-Vulnerable Subclasses who are vulnerable because of a disability as defined
15 under federal disability rights laws. The Disability Subclasses include all members of the
16 Medically-Vulnerable Subclasses except those who are vulnerable solely by reason of age
17 or current or recent pregnancy. People with all other conditions listed in the preceding
18 paragraph are people with disabilities and members of the Disability Subclasses.

19 83. This action has been brought and may properly be maintained as a class action
20 under federal law. It satisfies the numerosity, commonality, typicality, and adequacy
21 requirements for maintaining a class action under Fed. R. Civ. P. 23(a).

22 84. Joinder is impracticable because (1) the classes and subclasses are numerous;
23 (2) the classes and subclasses include future members, and (3) the classes and subclass
24 members are incarcerated, rendering their ability to institute individual lawsuits limited.

25 85. Based on available information, there are at least 40 people in the proposed
26 Pre-trial Class, the proposed Post-Conviction Class, and each proposed subclass. Everyone
27 in the Orange County Jail is a proposed class member. There are approximately 3,336
28

1 individuals currently incarcerated in the Orange County Jail.¹⁵⁷ An estimated 40% of the
2 Pre-trial and Post-conviction Classes would be expected to be members of the Disability
3 subclasses, with an even greater number being a part of each Medically-Vulnerable
4 Subclass.¹⁵⁸

5 86. Common questions of law and fact exist as to all members of the proposed
6 classes: all are at unreasonable risk of serious harm from contracting COVID-19 due to the
7 conditions in the Orange County Jail and Defendants' failure to take reasonable measures
8 to assure their safety from the disease, and all have a right to receive adequate COVID-19
9 prevention, testing, and treatment.

10 87. Questions of fact common to all proposed class members include whether the
11 conditions in the Orange County Jail expose them to heightened risk of contracting
12 COVID-19, and whether social distancing is possible with the current jail population.
13 Questions common to all members of the subclasses include whether the conditions in the
14 Orange County Jail expose them to heightened risk of serious illness, injury, or death and
15 whether the jail's policies and practices discriminate against people with disabilities in
16 violation of federal disability rights laws. Questions of law common to all proposed class
17 and subclass members include what relief is necessary to mitigate the risks posed by their
18 confinement in the Orange County Jail.

19 88. Plaintiffs' claims are typical of the class and the subclass members' claims.
20 Defendants have placed them at significant risk of harm by failing to take appropriate steps
21 to address the risk of contracting, and being rendered seriously ill or injured by, COVID-

24 ¹⁵⁷ BSCC, Supplemental JPS Reporting Dashboard (last visited Apr. 29,
25 2020)[https://app.smartsheet.com/b/publish?EQBCT=82b29a92ea9a4a0ea7aa480f1287e1](https://app.smartsheet.com/b/publish?EQBCT=82b29a92ea9a4a0ea7aa480f1287e137)
26 37.

27 ¹⁵⁸ U.S. Department of Justice, *Medical Problems of State and Federal Prisoners and Jail*
28 *Inmates, 2011-2012*, <https://www.bjs.gov/content/pub/pdf/mpsfpi1112.pdf> (39.9% of
people in jail have a chronic conditions).

1 19 in the Orange County Jail. Plaintiffs, like every person in the Jail, face heightened risk
2 of contracting COVID-19 if they are not adequately protected by Defendants.

3 89. Named Plaintiffs have the requisite personal interest in the outcome of this
4 action and will fairly and adequately protect the interests of the class. Plaintiffs have no
5 interests adverse to the interests of the proposed class. Plaintiffs retained *pro bono* counsel
6 with experience and success in the prosecution of civil rights litigation. Counsel for
7 Plaintiffs know of no conflicts among proposed class members or between counsel and
8 proposed class members.

9 90. Defendants have acted on grounds generally applicable to all proposed class
10 members, and this action seeks declaratory and injunctive relief. Plaintiffs therefore seek
11 class certification under Rule 23(b)(2).

12 91. In the alternative, the requirements of Rule 23(b)(1) are satisfied, because
13 prosecuting separate actions would create a risk of inconsistent or varying adjudications
14 with respect to individual class members that would establish incompatible standards of
15 conduct for the party opposing the proposed classes.

16 VI. ARGUMENT

17 A. Plaintiffs' Incarceration Amidst the Current COVID-19 Outbreak in 18 the Orange County Jail Violates their Right to Constitutional 19 Conditions of Confinement.

20 92. It is well-settled that, under the Eighth and Fourteenth Amendments, jail
21 officials have a constitutional obligation to keep detainees safe and to address their medical
22 needs. *See DeShaney v. Winnebago Cty Dept. of Soc. Servs.*, 489 U.S. 189, 200 (1989)
23 (“[W]hen the State by the affirmative exercise of its power so restrains an individual’s
24 liberty that it renders him unable to care for himself, and at the same time fails to provide
25 for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable
26 safety—it transgresses the substantive limits on state action set by the Eighth Amendment
27 and the Due Process Clause.”); *Youngberg v. Romeo*, 457 U.S. 307, 324 (1982) (the state
28 has an “unquestioned duty to provide . . . adequate . . . medical care” for detained persons);

1 *Wilson v. Seiter*, 501 U.S. 294, 300 (1991); *Estelle v. Gamble*, 429 U.S. 97, 104 (1976);
 2 *Brown v. Plata*, 563 U.S. 493, 531-32 (2011); *Farmer v. Brennan*, 511 U.S. 825, 834
 3 (1994) (remanding for determination of whether correctional officer violated Eighth
 4 Amendment by failing to prevent “a substantial risk of serious harm”).¹⁵⁹

5 93. This obligation requires jail officials, like Sheriff Barnes, to protect detainees
 6 from dangerous infectious diseases like COVID-19. This obligation to protect detainees
 7 exists *before* any incarcerated people test positive for the virus and *before* an outbreak
 8 begins. *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (“That the Eighth Amendment
 9 protects against future harm to inmates is not a novel proposition. . . . It would be odd to
 10 deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in
 11 their prison on the ground that nothing yet had happened to them”); *see also Farmer*, 511
 12 U.S. at 833 (“[H]aving stripped [prisoners] of virtually every means of self-protection and
 13 foreclosed their access to outside aid, the government and its officials are not free to let the
 14 state of nature take its course.”).

15 94. Acting fast is imperative. Before a detainee shows symptoms, they will have
 16 almost certainly have already infected many others, who may, in turn, have spread it
 17 further.¹⁶⁰

18
 19 ¹⁵⁹ Plaintiffs and Class Members are both pre-trial and post-conviction detainees. The
 20 Fourteenth Amendment’s Due Process Clause governs conditions-of-confinement claims
 21 like these for pre-trial detainees, while the Eighth Amendment governs post-conviction
 22 detainees. While it is clear that pre-trial detainees are presumed innocent and therefore
 23 merit greater protection, *see Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979), the distinction
 24 is irrelevant here: the harms of actual and potential COVID contraction alleged herein
 25 clearly satisfy the Eighth Amendment’s more restrictive standard.

26 ¹⁶⁰ CDC, *Symptoms of Coronavirus*, (last visited Apr. 20, 2020),
 27 [https://www.cdc.gov/coronavirus/2019-ncov/symptoms-
 28 testing/symptoms.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fabout%2Fsymptoms.html](https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fabout%2Fsymptoms.html) (noting a 2-14 day incubation period for COVID-19).

1 95. Jail officials violate their affirmative obligations to keep incarcerated people
2 safe by showing “deliberate indifference” to a substantial risk of serious harm. *Wilson*,
3 501 U.S. at 303.¹⁶¹ Corrections officials are deliberately indifferent when they “ignore a
4 condition of confinement that is sure or very likely to cause serious illness and needless
5 suffering [in] the next week or month or year,” even when “the complaining inmate shows
6 no serious current symptoms.” *Helling*, 509 U.S. at 33 (holding that a prisoner “*states a*
7 *cause of action . . . by alleging that [corrections officials] have, with deliberate indifference,*
8 *exposed him to [conditions] that pose an unreasonable risk of serious damage to his future*
9 *health*”) *Id.* at 35 (emphasis added); *see also Hope v. Pelzer*, 536 U.S. 730, 738 (2002)
10 (citing *Farmer*, 511 U.S. at 842) (court “may infer the existence of [deliberate indifference]
11 from the fact that the risk of harm is obvious”); *Foster v. Runnels*, 554 F.3d 807, 812 (9th
12 Cir. 2009) (finding that depriving an inmate of 16 meals over 23 days was a “sufficiently
13 serious” violation of the Eighth Amendment). Under the Eighth Amendment, an official
14 is deliberately indifferent if “he knows that inmates face a substantial risk of serious harm
15 and disregards that risk by failing to take reasonable measures to abate it.” *Farmer v.*
16 *Brennan*, 511 U.S. 825, 847 (1994). For pretrial detainees, the inquiry is a purely objective
17 one, looking to the following elements and asking whether:

18 (i) the defendant made an intentional decision with respect to the
19 conditions under which the plaintiff was confined; (ii) those
20 conditions put the plaintiff at substantial risk of suffering serious

21
22 ¹⁶¹ The Eighth Amendment sets a floor of “deliberate indifference,” while the Fourteenth
23 Amendment provides additional protections. *Youngberg v. Romeo*, 457 U.S. 307, 315-16
24 (1982) (“If it is cruel and unusual punishment to hold convicted criminals in unsafe
25 conditions, it must be unconstitutional to confine the involuntarily committed--who maybe
26 not be punished at all--in unsafe conditions”); *Young v. King Cty.*, No. 02-cv-35181, 2003
27 WL 21675319, at *2 (9th Cir. July 17, 2003) (“Equal protection does not allow pretrial
28 detainees to be *unjustifiably* held in conditions worse than those under which convicted
prisoners are held.”). For the purposes of this request for expedited relief, plaintiffs will
demonstrate that the sheriff’s actions violate the lower standard of deliberate indifference.

1 harm; (iii) the defendant did not take reasonable available
2 measures to abate that risk, even though a reasonable official in
3 the circumstances would have appreciated the high degree of risk
4 involved--making the consequences of the defendant's conduct
5 obvious; and (iv) by not taking such measures, the defendant
6 caused the plaintiff's injuries.¹⁶²

7 96. This is exactly what corrections officials are doing in Orange County with
8 respect to COVID-19. Despite knowledge of the risks, they intentionally continue to
9 incarcerate Class Members, including Medically-Vulnerable Subclass Members, in
10 circumstances that do not comply with public health recommendations and expose them to
11 unacceptably high levels of risk. The conditions of confinement place the Class Members
12 at substantial risk of contracting COVID-19. The Defendants have not taken available
13 mitigation measures, even though they must appreciate the obvious consequences of their
14 conduct.¹⁶³ Jail officials were living under one of the nation's strictest stay-at-home orders
15 for over five weeks;¹⁶⁴ the risk COVID-19 poses to the community, including Class
16 Members, is obvious. By failing to transfer Medically-Vulnerable Subclass Members,
17 failing to ensure social distancing, and failing to implement the necessary distancing and
18 hygiene measures, the Defendants injure Plaintiffs and Class Members by putting them at
19 significant risk of COVID-19. *Parsons v. Ryan*, 754 F.3d 657, 677 (9th Cir. 2014) (“[W]e
20 have repeatedly recognized that prison officials are constitutionally prohibited from being
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23 ¹⁶² *Gordon v. County of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018).

24 ¹⁶³ Jeremy B. White, *Newsom Orders All 40M Californians to Stay Home in Nation's*
25 *Strictest State Lockdown*, Politico (Mar. 19, 2020),
26 [https://www.politico.com/states/california/story/2020/03/19/newsom-orders-all-40m-](https://www.politico.com/states/california/story/2020/03/19/newsom-orders-all-40m-californians-to-stay-home-in-nations-strictest-state-lockdown-1268248)
[californians-to-stay-home-in-nations-strictest-state-lockdown-1268248.](https://www.politico.com/states/california/story/2020/03/19/newsom-orders-all-40m-californians-to-stay-home-in-nations-strictest-state-lockdown-1268248)

27 ¹⁶⁴ *Id.*

1 deliberately indifferent to policies and practices that expose inmates to a substantial risk of
2 serious harm.”).¹⁶⁵

3 97. Defendants are well aware of the risks posed by their practices, as they have
4 repeatedly been warned of these risks, including by Sheriff Barnes’s own deputies. In an
5 April 27 letter, Charles G. Barfield, General Manager of the Orange County Employees
6 Association, demanded that Orange County provide significantly more substantial PPE for
7 jail staff. Barfield specifically noted inadequate supplies of face masks, eye protection,
8 respirators, and isolation gowns. He further demanded that the County provide staff with
9 free COVID-19 testing “in light of the significant COVID-19 outbreak in the jails.”¹⁶⁶ On
10 March 12, 2020, Sheriff Barnes received a letter from the ACLU of Southern California
11 regarding the risks of COVID-19 infections and urging him to adopt policies to address
12 these risks.¹⁶⁷ On March 17, 2020, Sheriff Barnes received a letter from numerous local
13 organizations urging him to take action.¹⁶⁸ On March 25, 2020, Sheriff Barnes received a
14 letter from the Association of Orange County Deputy Sheriffs asking him to take more
15 steps to protect staff from COVID-19.¹⁶⁹ On April 6, 2020, Sheriff Barnes received another
16

17 ¹⁶⁵ Diane Solis, Immigration Detention Center in North Texas Erupts in COVID-19 Cases,
18 Dallas News (Apr. 21, 2020), [https://www.dallasnews.com/news/public-
19 health/2020/04/20/immigrant-detention-center-in-alvarado-erupts-in-covid-19-cases/](https://www.dallasnews.com/news/public-health/2020/04/20/immigrant-detention-center-in-alvarado-erupts-in-covid-19-cases/)
20 (“The evidence suggests system-wide inaction that goes beyond a mere ‘difference of
21 medical opinion or negligence.’”).

22 ¹⁶⁶ Exhibit KK, Letter from Charles G. Barfield, General Manager, Orange County
23 Employees Association to Frank Kim, County Executive Officer (Apr. 27, 2020).

24 ¹⁶⁷ Exhibit LL, Letter from Jacob Reisberg and Daisy Ramirez, ACLU of Southern
25 California, to Sheriff-Coroner Donald Barnes, Re: COVID-19 Policy in Orange County
26 Jails (Mar. 12, 2020).

27 ¹⁶⁸ Exhibit MM, Letter from Transforming Justice, et al., to Sheriff Don Barnes, et al.,
28 Re: COVID-19 Containment in Orange County Jails and Courthouses (Mar. 17, 2020).

¹⁶⁹ Exhibit NN, Letter from Tom Dominguez, Ass’n of Orange County Deputy Sheriffs,
to Sheriff Don Barnes (Mar. 25, 2020).

1 letter from numerous local organizations urging him to act immediately to release more
2 people from custody.¹⁷⁰

3 98. For medically vulnerable and disabled individuals, their immediate transfer
4 out of the Jail is necessary. COVID-19 is “sure or very likely to cause serious illness”. *See*
5 *supra* ¶¶48-65. Here, the harmful “condition of confinement” is the confinement itself. In
6 the face of a disease with a lengthy incubation period and a high rate of contagion, there
7 are no mitigation efforts that can be undertaken that will adequately protect Medically
8 Vulnerable and Disabled detainees more than transferring them out of the jail.¹⁷¹ In
9 addition to immediately transferring, the Medically-Vulnerable Subclass Members, the jail
10 must implement the CDC’s guidance on preventing disease spread and ensure social
11 distancing. Transferring individuals out of the Jail to protect their health is not a “prisoner
12 release order” under the Prison Litigation Reform Act. *See, e.g., Plata v. Brown*, 427 F.
13 Supp. 3d 1211, 1222-24 (N.D. Cal. 2013) (order transferring medically vulnerable
14 prisoners out of two prisons due to risk of coccidioidomycosis (Valley Fever) was not a
15 prisoner release order); *Reaves v. Dep’t of Correction*, 404 F. Supp. 3d 520, 522-25 (D.
16 Mass. 2019) (order transferring prisoner with quadriplegia to outside treatment facility was
17 not a prisoner release order).

18 99. Failure to transfer at all Medically-Vulnerable Subclass Members and to
19 implement these public health recommendations, including social distancing,¹⁷² constitutes
20 deliberate indifference. *See, e.g., Hare v. City of Corinth, Miss.*, 74 F.3d 633, 644 (5th Cir.
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22 ¹⁷⁰ Exhibit OO, Letter from Transforming Justice Orange County, et al., to Sheriff Don
23 Barnes, et al., Re: COVID-19 in Orange County Jails (Apr. 6, 2020).

24 ¹⁷¹ Exhibit I, Parker Decl. ¶¶ 32-34; *see also*, Exhibit H, Goldenson Decl. ¶ 48.

25 ¹⁷² “Lack of resources is not a defense to a claim for prospective relief because prison
26 officials may be compelled to expand the pool of existing resources in order to remedy
27 continuing Eighth Amendment violations.” *Peralta v. Dillard*, 744 F.3d 1076, 1083 (9th
28 Cir. 2014).

1 1996) (“even where a State may not want to subject a detainee to inhumane conditions of
 2 confinement or abusive jail practices, its intent to do so is nevertheless presumed when it
 3 incarcerates the detainee in the face of such known conditions and practices.”); *Wilson v.*
 4 *Williams*, No. 20-cv-794, 2020 WL 1940882 (N.D. Ohio Apr. 22, 2020) (ordering
 5 enlargement¹⁷³ of medically vulnerable prisoners after finding that the prison’s failure to
 6 separate “inmates at least six feet apart, despite clear CDC guidance for some time that
 7 such measures are necessary to stop the spread and save lives” constitutes deliberate
 8 indifference).¹⁷⁴

9 100. Relatedly, pre-trial detainees have a constitutional right to pre-trial
 10 confinement that does not amount to punishment. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979)
 11 (“[U]nder the Due Process Clause, a detainee may not be punished prior to an adjudication
 12 of guilt in accordance with due process of law.”).¹⁷⁵ Punishment is established if the jailer’s
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14 ¹⁷³ Enlargement is a power available to courts in habeas actions that permit it to “‘enlarge’
 15 the custody of a defendant” by altering the place of custody. *Wilson*, 2020 WL 1940882
 16 at *4. In *Wilson*, the district court ordered the defendant Bureau of Prisons to transfer the
 17 medically vulnerable prisoners out of custody by evaluating their transfer to home release,
 18 parole or community supervision, or if necessary, another BOP facility where social
 19 distancing could be accomplished. *Id.*, at *11.

20 ¹⁷⁴ See also Public Health Experts’ Declarations; CDC, *Interim Guidance*, *supra* note 40
 21 (recommending cleaning and disinfecting surfaces several times a day, providing no cost
 22 personal hygiene items, and implementing social distancing).

23 ¹⁷⁵ *Santana v. Collazo*, 714 F.2d 1172, 1180 (1st Cir. 1983) (“For an individual not
 24 convicted of a crime, however, restrictions on his liberty beyond his initial incarceration
 25 must be reasonably related to some legitimate government objective—of rehabilitation,
 26 safety or internal order and security.”); *Lareau v. Manson*, 651 F.2d 96, 104 (2d Cir. 1981)
 27 (“The only conceivable purpose overcrowding in the HCCC serves is to further the state’s
 28 interest in housing more prisoners without creating more prison space. This basically
 economic motive cannot lawfully excuse the imposition on the presumptively innocent of
 genuine privations and hardship over any substantial period of time.”); *Vella v. State of*
Va., 805 F.2d 394, 394 (4th Cir. 1986) (allowing pre-trial detainee to prove allegations
 establishing conditions as punishment) (“Nor can we say on the current state of the record
 that it is beyond doubt that Vella can prove no set of facts entitling him to relief.”); *Parker*

1 conduct is not rationally related to, or is excessive in relation to, a legitimate, nonpunitive
2 government purpose. *Id.* at 561; *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473–74
3 (2015).

4 101. Both elements are satisfied here. Even if the jail’s current lack of social
5 distancing, inadequate testing, lack of hygiene and PPE, and lack of quarantining may serve
6 legitimate, nonpunitive interests in normal times, those procedures are now exposing
7 people to potentially lethal risks in the Orange County Jail.¹⁷⁶ *See Demery v. Arpaio*, 378
8 F.3d 1020, 1030 (9th Cir. 2004) (“Nothing in *Bell* requires that, to be punishment, a harm
9 must be independently cognizable as a separate constitutional violation.”). “[T]o constitute
10 punishment, the harm or disability caused by the government’s action must either
11 significantly exceed, or be independent of, the inherent discomforts of confinement.” *Id.*
12 Ongoing and increasing risk of death from a serious respiratory illness exceeds and is
13 independent of “the inherent discomforts of confinement.” *Id.* Continuing to detain
14 Plaintiffs and putative class members in these extremely dangerous conditions is not
15 rationally related to goals of health, safety, or even cost efficiency, and is excessive in
16 relation to those goals. For these reasons, the California Judicial Council has issued
17 advisories encouraging state courts to increase releases from jails, and the California

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v. Carpenter, 978 F.2d 190, 193 (5th Cir. 1992) (ordering evidentiary hearing on whether
23 transfer to more violent wing was punitive); *Smith v. Dart*, 803 F.3d 304, 312 (7th Cir.
24 2015) (allegation that pre-trial detainee’s “[f]ood is well below nutritional value” sufficient
25 to survive motion to dismiss on claim that conditions of confinement amounted to
26 punishment under Fourteenth Amendment); *White v. Monohan*, 326 Fed. Appx. 385, 388
(7th Cir. 2009) (allegations that bug bites left sores and injuries were sufficient to state a
claim).

27 ¹⁷⁶ Exhibit I, Parker Decl. ¶¶ 32-34; *see also*, Exhibit H-A, Goldenson Decl. ¶ 48.

1 Attorney General has clarified that county sheriffs have full statutory authority to release
2 people from custody in response to the COVID-19 emergency.¹⁷⁷

3 102. Other Courts have granted similar relief. Memorandum and Order, *Thakker*
4 *v. Doll*, No. 20-CV-0480, 2020 WL 1671563 (M.D. Pa. Mar. 31, 2020), Doc. No. 47 at 2
5 (categorically releasing petitioners who “suffer[] from chronic medical conditions and
6 face[] an imminent risk of death or serious injury if exposed to COVID-19”); Temporary
7 Restraining Order and Order to Show Cause, *Castillo v. Barr*, No. CV-20-00605 (TJH)
8 (AFM) (C.D. Cal. Mar. 27, 2020), Doc. No. 32 at 10 (releasing two ICE detainees where
9 they were not “kept at least six feet apart from others at all times.”); *Doe v. Barr*, No. 20-
10 cv-02141-LB, 2020 WL 1820667, at *9 (N.D. Cal. 2020) (releasing an immigration
11 detainee with COVID-19 comorbidities because those in the jail “live in close quarters,
12 cannot practice social distancing, do not have masks, and do not have access to adequate
13 disinfecting and cleaning supplies.”); Memorandum and Order, *Hope v. Doll*, No. 1:20-cv-
14 562 (M.D. Pa. Apr. 7, 2020) (releasing 22 people and noting that staff “do not reliably
15 wear gloves and masks[,] . . . temperature check are infrequently conducted,” and that cell
16 blocks were not cleaned to prevent spread); *Ortuño v. Jennings*, No. 20-CV-02064-MMC,
17 2020 WL 1701724, at *4 (N.D. Cal. Apr. 8, 2020) (releasing three ICE detainees because
18 people in the jail “cannot practice meaningful social distancing” and “have not been
19 provided with masks.”); Minute Order in Chambers, *Gray v. City. of Riverside*, No. 13-
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21 ¹⁷⁷ See Advisory from California Chief Justice Tani Cantil-Sakauye to Presiding Judges
22 and Court Executive Officers of the California Courts (Mar. 20, 2020),
23 [https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-on-](https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-on-emergency-relief-measures)
24 [emergency-relief-measures](https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-on-emergency-relief-measures) (encouraging the state’s superior courts to, among other things:
25 “[c]onsider a defendant’s existing health conditions, and conditions existing at the
26 anticipated place of confinement, in setting conditions of custody for adult or juvenile
27 defendants”; “[i]dentify detainees with less than 60 days in custody to permit early release,
28 with or without supervision or community-based treatment.”); Attorney General of
California, Information Bulletin: COVID-19 and Statutory Authority Under Government
Code Section 8658 (Apr. 14, 2020),
<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/2020-dle-05.pdf?>

1 CV-00444 (C.D. Cal. Apr. 14, 2020), Doc. No. 191 (releasing defendant where government
 2 “failed to demonstrate that it is currently taking adequate precautions to protect the health
 3 of the prisoners in the county jails.”); *Cameron v. Bouchard*, No. 20-cv-10494, 2020 WL
 4 1929876, at *2 (E.D. Mich. Apr. 17, 2020) (“It cannot be disputed that COVID-19 poses a
 5 serious health risk to Plaintiffs and the putative class.”).

6 **B. The ADA and Rehabilitation Act Mandate Release of Disabled Subclasses**
 7 **Amidst the Current COVID-19 Outbreak.**

8 103. Title II of the ADA requires that public entities refrain from discriminating
 9 against qualified individuals on the basis of a disability. 42 U.S.C. § 12132. Section 504
 10 of the Rehabilitation Act imposes parallel requirements on public entities. *See Duvall v.*
 11 *Cty. of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001). In order to avoid disability
 12 discrimination in the Orange County Jail in this public health emergency, the only
 13 reasonable modification and nondiscriminatory method of administration is transfer of the
 14 Disability Subclasses. Disability Subclass members should be transferred for the
 15 constitutional reasons discussed above, because they are all members of the Medically-
 16 Vulnerable Subclass. Disability Subclass members are also protected by federal disability
 17 rights laws, which, like the Constitution, mandate release.

18 **1. Plaintiffs in the Disability Subclasses and Defendants are Covered**
 19 **by the ADA and Section 504.**

20 104. Plaintiffs and Class Members in the Disability Subclasses are protected
 21 people with disabilities under the ADA and Section 504. They are all medically vulnerable
 22 to COVID-19 complications or death due to their disabilities. “Disability” is defined
 23 broadly, to include, *inter alia*, a “physical or mental impairment that substantially limits
 24 one or more major life activities.” 42 U.S.C. § 12102(1)(A). “Major life activity” is itself
 25 broadly defined, and includes “the operation of a major bodily function,” such as “functions
 26 of the immune system, normal cell growth . . . neurological, brain, respiratory, circulatory,
 27 [or] endocrine” systems. 42 U.S.C. § 12102(2)(B). All plaintiffs and Class Members in
 28

1 the Disability Subclasses have disabilities that substantially limit a major life activity or
2 major bodily function.¹⁷⁸

3 105. Plaintiffs and Class Members are “qualified” for Defendants’ programs,
4 services, and activities, including adjudication of their cases; safe, constitutional living
5 conditions during confinement; and medical care and rehabilitative services to prepare for
6 reentry after release. 42 U.S.C. § 12131(2); 28 C.F.R. § 35.104; 28 C.F.R. § Pt. 35, App.
7 B (“[T]itle II applies to anything a public entity does”).

8 106. Orange County is a “public entity” for purposes of the ADA, and is bound
9 to comply with Title II. 42 U.S.C. § 12131(B) (“public entity” includes “any department,
10 agency, special purpose district, or other instrumentality of a State or States or local
11 government”); *see also Pennsylvania Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998).

12 **2. Under the ADA and Section 504, the Orange County Jail has an**
13 **Affirmative Obligation to Ensure Equal and Equally Safe Access**
14 **to Programs, Services, and Activities and to Avoid Disability**
15 **Discrimination Against Disabled Class Members.**

16 107. In order to avoid disability discrimination, public entities have an affirmative
17 obligation to ensure that people with disabilities can participate in all of the entity’s
18 programs, benefits, and services on an equal and equally safe basis as people without
19 disabilities. 28 C.F.R. §§ 35.102(a), 35.130(a)-(b); *Pierce v. D.C.*, 128 F. Supp. 3d 250,
20 266 (D.D.C. 2015) (“[B]ecause Congress was concerned that ‘[d]iscrimination against
21 [people with disabilities] was . . . most often the product, not of invidious animus, but rather
22 of thoughtlessness and indifference – of benign neglect[,]’ the express prohibitions against
23 disability-based discrimination in Section 504 and Title II include *an affirmative obligation*
24 to make benefits, services, and programs accessible to disabled people”); *id.* at 269

25 ¹⁷⁸ Several conditions within the disability subclasses are expressly identified in regulations
26 as presumptively covered disabilities. 28 C.F.R. § 35.108(d)(2)(iii) (“it should easily be
27 concluded” that “[c]ancer substantially limits normal cell growth . . . diabetes substantially
28 limits endocrine function . . . epilepsy . . . substantially limits neurological function . . .
HIV infection substantially limits immune function.”).

1 (“[N]othing in the disability discrimination statutes even remotely suggests that covered
2 entities have the option of being passive in their approach to disabled individuals as far as
3 the provision of accommodations is concerned.”). Public entities must avoid policies,
4 practices, criteria, or methods of administration that have the effect of excluding or
5 discriminating against persons with disabilities. 28 C.F.R. § 35.130(b)(3), (8).

6 108. These affirmative obligations include a requirement that public entities make
7 reasonable modifications to their policies, practices, or procedures where necessary to
8 avoid disability discrimination. 28 C.F.R. § 35.130(b)(7)(i). The ADA also prohibits
9 public entities from “utiliz[ing] criteria or methods of administration . . . [t]hat have the
10 effect of subjecting qualified individuals with disabilities to discrimination on the basis of
11 disability” or “[t]hat have the purpose or effect of defeating or substantially impairing
12 accomplishment of the objectives of the public entity’s program with respect to individuals
13 with disabilities.” 28 C.F.R. § 35.130(b)(3)(i)-(ii).

14 **3. Reasonable modifications, including transfer of the Disability**
15 **Subclasses, are required under the ADA and Section 504.**

16 109. The Disability Subclasses are entitled to full constitutional protections, as
17 discussed *supra*, Section V, as well as reasonable modifications under disability rights laws
18 to ensure they can participate equally and with equal safety in Defendants’ programs,
19 services, and activities. Defendants’ programs, services, and activities include the safe
20 adjudication of pre-trial detainees’ pending criminal cases, and safe, constitutionally-
21 adequate care, medical treatment, and rehabilitative support during confinement to prepare
22 the person for a safe return to society at the end of their sentence. Disability Subclass
23 members cannot access these equally if they are severely ill, unconscious, or dead. Given
24 the fast-moving, life-threatening nature of the COVID-19 pandemic, immediate transfer is
25 the only reasonable modification.

26 110. With respect to the Disability Pre-trial Subclass, Defendants are violating the
27 ADA and Rehabilitation Act by failing to ensure that people incarcerated pre-trial have
28 equal access to the safe adjudication of their cases. Plaintiff Michael Seif and the Disability

1 Pre-Trial Subclass are being held for purely administrative, not punitive, purposes, and are
2 presumed innocent. *Bell*, 441 U.S. at 535. All members of the Disability Pre-trial Subclass
3 are at high risk of severe complications or death if they contract COVID-19. Orange
4 County and the Jail are in the midst of a widespread COVID-19 outbreak, whose scope is
5 still unknown.

6 111. The Disability Pre-trial Subclass members must be well enough to
7 communicate; must be conscious, and must be *alive*, in order to have an equal opportunity
8 to participate in the adjudication of their cases. Given the high risk of a widespread
9 COVID-19 outbreak in the Jail, and given this subclass's high risk of being unable to
10 participate equally in their adjudication if they contract COVID-19, Defendants must
11 transfer this subclass as a reasonable modification to its administrative detention system to
12 ensure these class members an equal opportunity to participate in their criminal
13 proceedings.

14 112. Put another way, the jail's current method of administration of its pre-trial
15 incarceration system—including taking no action to transfer people in light of COVID-19
16 or to adequately prevent or control the infection's spread—has the effect of discriminating
17 against the Disability Pre-trial Subclass. This Subclass faces disproportionate risk of
18 serious illness, hospitalization, or death from COVID-19, all of which exclude them from
19 participation in the adjudication of their cases on an equal basis as nondisabled people.
20 Transfer is necessary to ensure equal access to their trials.

21 113. With respect to all Disability Subclass members, Defendants are violating the
22 ADA and the Rehabilitation Act by failing to ensure that disabled detainees—pre-trial and
23 post-conviction—have an equal opportunity to participate in the Jail's programs, services,
24 and activities, including adequate medical and mental health care, rehabilitative programs,
25 and ultimate release from confinement. The Disability Subclass members cannot equally
26 access the jail's programs, services, or activities—including medical care, programming,
27 meals, yard time, and religious gatherings—because all such activities require being in
28 close quarters with other people, posing a disproportionate risk of infection and death. The

1 Disability Subclass members cannot equally access the jail’s programs, services or
 2 activities—including receipt of constitutionally adequate minimum care standards to
 3 prevent avoidable death, rehabilitative programing, and, ultimately, release—if they are
 4 severely ill, unconscious, or dead. Because of their high risk of these catastrophic
 5 outcomes—which will inevitably result in exclusion from the jail’s programs—the jail
 6 must transfer them as a reasonable modification, and to avoid unlawful discriminatory
 7 methods of administration.

8 114. Transfer of the Disability Subclasses is a reasonable modification that is
 9 consistent with the nature and purpose of the jail, and is not a fundamental alteration. *Cf.*
 10 *Coleman v. Schwarzenegger*, 922 F. Supp. 2d 882, 1003 (E.D. Cal. 2009); *Inmates of*
 11 *Allegheny Cnty. Jail v. Peirce*, 487 F. Supp. 638, 644 (W.D. Pa. 1980). Jails across the
 12 country and the world are transferring to home confinement, or releasing people who are
 13 particularly vulnerable to severe illness or death from the virus. Indeed, Sheriff Barnes has
 14 already released many people as a result of COVID-19, but his actions thus far have left
 15 out many people with disabilities for whom transfer is especially critical. *Cf. Henrietta D.*
 16 *v. Bloomberg*, 331 F.3d 261, 281 (2d Cir. 2003) (“[t]he reasonableness of the modifications
 17 that plaintiffs seek . . . is evidenced by the fact that virtually all are modifications that
 18 defendants have long purported . . . to provide”) (quoting *Henrietta D. v. Giuliani*, 119 F.
 19 Supp. 2d 181, 208 n.17 (E.D.N.Y. 2000)). Transfer is consistent with the jail’s purposes,
 20 including administratively ensuring pre-trial detainees show up for court, and preparing
 21 post-conviction detainees for safe, healthy release into their communities.¹⁷⁹ Transfer is
 22 the most effective and reasonable modification to ensure Disability Subclass members are
 23 not subject to disability discrimination. If any Disability Subclass members are not
 24 immediately transferred, the ADA and Rehabilitation Act require Defendants to implement

25
 26 ¹⁷⁹ Orange County Sheriff’s Department, *Correctional Programs*,
 27 <https://www.ocsd.org/divisions/custody/inmate/correctional> (last visited Apr. 28, 2020)
 28 (“Mission: To provide the inmate population . . . the opportunity for an effective,
 rehabilitative experience following state and federal guidelines.”).

1 reasonable modifications within the jail to reduce the risk of infection among the Disability
2 Subclass members.

3
4 **VII. CLAIMS FOR RELIEF**
5 **FIRST CLAIM FOR RELIEF**

6 **Unconstitutional Conditions of Confinement in Violation of the Fourteenth**
7 **Amendment to the U.S. Constitution**

8 42 U.S.C. § 1983

9 *Pre-trial Class versus All Defendants*

10 115. Plaintiffs incorporate by reference each of the preceding paragraphs and
11 allegations as if fully set forth herein.

12 116. Under the Fourteenth Amendment, corrections officials are required to
13 provide for the reasonable health and safety of persons in pre-trial custody. *Youngberg*,
14 457 U.S. at 315–16, 324 (the state has an “unquestioned duty” to “provide adequate . . .
15 medical care” for detained persons).

16 117. As part of the right, the government must provide people held pre-trial with
17 reasonable safety and address serious medical needs that arise in jail, under the same
18 objective deliberate indifference standard that applies to failure-to-protect claims brought
19 by people held pre-trial. *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018),
20 *cert. denied sub nom. Cty. of Orange, Cal. v. Gordon*, 139 S. Ct. 794 (2019). Regardless
21 of the subjective intent of Defendants, objective deliberate indifference to the serious risk
22 that COVID-19 poses to members of the Pre-trial Class, and particularly members of the
23 Medically-Vulnerable Pre-trial Subclass, violates this right.

24 118. The Orange County Jail has taken insufficient steps to comply with public
25 health guidelines to manage the outbreak of COVID-19 that it is currently facing, and it
26 must take further protective steps, including the release of some individuals, to provide for
27 the safety of the Pre-trial Class. Defendants’ actions and inactions result in the confinement
28

1 of members of the Pre-trial Class in a jail where they do not have the capacity to test for,
2 treat, or manage COVID-19 outbreaks, which violates Plaintiffs' rights to treatment and
3 adequate medical care.

4 119. Accordingly, Defendants, as supervisors, direct participants, and policy
5 makers for Orange County and the Orange County Jail have violated the rights of the Pre-
6 trial Plaintiff Class under the Fourteenth Amendment.

7 **SECOND CLAIM FOR RELIEF**

8 **Unconstitutional Punishment in Violation of the Fourteenth Amendment to the U.S.**
9 **Constitution**

10 42 U.S.C. § 1983

11 *Pre-trial Class versus All Defendants*

12 120. Plaintiffs incorporate by reference each of the preceding paragraphs and
13 allegations as if fully set forth herein.

14 121. Under the Fourteenth Amendment, persons in pre-trial custody have greater
15 due process protections than those convicted and therefore cannot be punished as part of
16 their detention. *Bell*, 441 U.S. at 535 n.16. Punishment is established if the jailer's conduct
17 is either not rationally related to a legitimate, nonpunitive, government purpose or
18 excessive in relation to that purpose.

19 122. Even assuming that the Orange County Jail's spacing and provision of
20 medical services inside the facility normally serves the legitimate, nonpunitive, purpose of
21 maintaining the health and safety of detained persons, the Orange County Jail has failed to
22 comply with public health guidelines to manage the outbreak of COVID-19. In fact, the
23 Jail has neither the capacity nor the ability to comply with public health guidelines to
24 manage the outbreak. Therefore, continuing to detain Pre-trial Class members without
25 making the Orange County Jail compliant with COVID-19-specific guidance from public
26 health experts is not rationally related to, and excessive in relation to, that purpose.

1 COVID-19 infection. Defendants are further violating the ADA by employing methods of
2 administration (including a policy of non-release and non-transfer even in the face of
3 COVID-19) that tend to discriminate against people with disabilities by placing them at
4 heightened risk of severe illness and death.

5 **FIFTH CLAIM FOR RELIEF**

6 **Discrimination on the Basis of Disability in Violation of Section 504 of the**
7 **Rehabilitation Act**

8 29 U.S.C. § 794 *et seq.*

9 *Pre-trial and Post-conviction Disability subclasses versus all Defendants*

10 133. Plaintiffs incorporate by reference each of the preceding paragraphs and
11 allegations as if fully set forth herein.

12 134. Section 504 of the Rehabilitation Act states that “no otherwise qualified
13 individual with disability in the United States . . . shall, solely by reason of [] disability, be
14 excluded from the participation in, be denied the benefits of, or be subject to discrimination
15 under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a).
16 The regulations implementing Section 504 of the Rehabilitation Act require that entities
17 receiving federal financial assistance avoid unnecessary policies, practices criteria or
18 methods of administration that have the effect of discriminating against persons with
19 disabilities. 28 C.F.R. § 41.51(b)(3)(i).

20 135. Defendants receive “Federal financial assistance” within the meaning of 28
21 U.S.C. § 794(a).

22 136. Plaintiffs Daniel Kauwe, Michael Seif, Pedro Bonilla, Cynthia Campbell,
23 Monique Castillo, Mark Trace, Cecibel Caridad Ortiz and Don Wagner are individuals with
24 disabilities for the purposes of the Rehabilitation Act, 42 U.S.C. § 12012, 29 U.S.C. §
25 705(20)(B). As people held in the Orange County Jail, they are “qualified” for the
26 programs, services, and activities being challenged herein.

27 137. Defendants are violating section 504 of the Rehabilitation Act by failing to
28 make the reasonable modifications necessary to ensure equal access to adjudication, jail

1 services, and release for people with disabilities who face high risk of complications or
2 death in the event of COVID-19 infection. Defendants are further violating the
3 Rehabilitation Act by employing methods of administration (including a policy of non-
4 release and non-transfer even in the face of COVID-19) that tend to discriminate against
5 people with disabilities by placing them at heightened risk of illness and death.

6
7 **VIII. REQUEST FOR RELIEF**

8 138. Plaintiffs incorporate by reference each of the preceding paragraphs and
9 allegations as if fully set forth herein.

10 139. Plaintiffs and Class Members respectfully request that the Court order the
11 following:

- 12 1. Certification of this Complaint as a Class Action;
- 13 2. A permanent injunction requiring Defendants to immediately adopt mitigation
14 efforts to protect all Class Members, including but not necessarily limited to:
 - 15 a. Provide adequate spacing of six feet or more between incarcerated
16 people so that social distancing can be accomplished in accordance with
17 CDC guidelines;
 - 18 b. Effectively communicate to all incarcerated people, including low-
19 literacy and non-English-speaking people, sufficient information about
20 COVID-19, measures taken to reduce the risk of transmission, and any
21 changes in policies or practices to reasonably ensure that individuals
22 are able to take precautions to prevent infection;
 - 23 c. Ensure that each incarcerated person receives, free of charge, an
24 individual supply of hand soap and paper towels sufficient to allow
25 frequent hand washing and drying each day; an adequate supply of
26 clean implements for cleaning such as sponges and brushes and
27

1 disinfectant hand wipes or disinfectant products effective against the
2 virus that causes COVID-19 for daily cleanings;

3 d. Provide sufficient disinfecting supplies, free of charge, so incarcerated
4 people can clean high-touch areas or items (including, but not limited
5 to, phones and headphones) between each use;

6 e. Ensure that all incarcerated people have access to hand sanitizer
7 containing at least 60% alcohol;

8 f. Provide access to daily showers and daily access to clean laundry,
9 including clean personal towels and washrags after each shower;

10 g. Require that all Jail staff wear personal protective equipment, including
11 CDC-recommended surgical masks, when interacting with any person
12 or when touching surfaces in cells or common areas;

13 h. Require that all Jail staff wash their hands, apply hand sanitizer
14 containing at least 60% alcohol, or change their gloves both before and
15 after interacting with any person or touching surfaces in cells or
16 common areas;

17 i. Offer universal testing to all detained individuals and staff and
18 implement contact tracing to appropriately quarantine and isolate
19 exposed individuals and confirmed cases;

20 j. Take the temperature of all class members, jail staff, and visitors daily
21 (with a functioning and properly operated and sanitized thermometer)
22 to identify potential COVID-19 infections;

23 k. Assess (through questioning) each incarcerated person daily to identify
24 potential COVID-19 infections;

25 l. Ensure that individuals identified as having COVID-19 or having been
26 exposed to COVID-19 receive adequate medical care and are properly
27 quarantined (without resorting to cohorting), in a non-punitive setting,
28 with continued access to showers, recreation, mental health services,

1 reading materials, phone and video visitation with loved ones,
2 communications with counsel, and personal property;

3 m. Respond to all emergency (as defined by the medical community)
4 requests for medical attention within an hour;

5 n. Provide adequate and balanced nutrition to all detained class members,
6 including class members with special medical or religious diets;

7 3. A permanent injunction, requiring Defendants to take the following further
8 actions:

9 a. Submit a plan for approval by the Court, overseen by a qualified public
10 health expert pursuant to Fed. R. Evid. 706, which outlines any further
11 mitigation efforts that will substantially reduce the risks of COVID-19
12 infection for individuals housed in the Jail;

13 b. Submit a plan for approval by the Court, overseen by a qualified public
14 health expert pursuant to Fed. R. Evid. 706, which outlines any further
15 mitigation efforts that will enable Defendants to house the Medically-
16 Vulnerable and Disability Subclasses in a manner consistent with
17 federal law and, until such time as this plan is approved by the Court
18 and successfully implemented by Defendants:

19 i. Transfer for home confinement all individuals who are (1)
20 incarcerated solely due to their inability to afford a financial
21 condition of release; (2) incarcerated solely for technical
22 violations of probation or parole; or (3) serving convictions
23 for an offense listed on the California Judicial Council's
24 zero bail order as appropriate for no bail; and

25 ii. Adopt a process to consider the transfer to home confinement
26 or alternative placements for all remaining Medically-
27 Vulnerable and Disabled Subclass Members.
28

- 1 c. Report weekly on the population of persons in the Orange County Jail
- 2 who are Medically-Vulnerable and have disabilities as defined in this
- 3 action;
- 4 d. Conduct an evaluation of how many people the jail can house in a safe
- 5 manner consistent with public health guidance requiring all persons to
- 6 maintain six feet or more of space between them, including:
 - 7 i. A description of the size of all jail cells, tanks, and dorm-style
 - 8 housing, noting how many people can safely be housed in
 - 9 each;
 - 10 ii. The distance between beds in jail cells, tanks, and dorm-style
 - 11 housing;
 - 12 iii. The size and location of shared toilets and showers and the
 - 13 number of people who use each at a time; and
 - 14 iv. The size of each dayroom and the number of people who can
 - 15 safely use each while maintaining six feet or more of space
 - 16 between them.
- 17 e. Avoid booking individuals for any misdemeanor or felony offense
- 18 other than the exceptions set forth in Emergency rule 4(c) of the
- 19 California Rules of Court for which bail greater than \$0 may be set; and
- 20 f. Follow the terms of the public health expert plan submitted pursuant to
- 21 Fed. R. Evid. 706 and the terms of the Medically Vulnerable and
- 22 Disability Subclasses plan.
- 23 4. A declaration that the Orange County Jail's policies violate the Fourteenth
- 24 Amendment rights to reasonable safety and to be free from punishment prior
- 25 to conviction with respect to the Pre-trial Class;
- 26
- 27
- 28

- 1 5. A declaration that the Orange County Jail’s policies violate the Eighth
- 2 Amendment right against cruel and unusual punishment with respect to the
- 3 Post-Conviction Class;
- 4 6. A declaration that the Orange County Jail’s policies violate the Americans
- 5 with Disabilities Act and Section 504 of the Rehabilitation Act with respect
- 6 to both Disability Subclasses;
- 7 7. An award of Plaintiffs’ attorney fees and costs under 42 U.S.C. sec. 1988, 42
- 8 U.S.C. sec 12205, 29 U.S.C. sec. 794a and other applicable law; and
- 9 8. Any further relief this Court deems appropriate.

10
11 Respectfully submitted,

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20 Dated: June 12, 2020
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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June 2020, I electronically transmitted the foregoing document to the Clerk of Court using the ECF system for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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