

EXHIBIT A

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18 UNITED STATES DISTRICT COURT
 19 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

20 Charles Criswell, Levi Johnson, Samuel
 21 Camposeco, Adam Ibarra, and California
 Attorneys for Criminal Justice,

22 Plaintiffs,

23 vs.

24 Michael Boudreaux, in his official capacity as
 25 Sheriff of Tulare County,

26 Defendant.

Case No. 1:20-cv-01048-DAD-SAB

[PROPOSED] SUPPLEMENTAL
 COMPLAINT

Judge: Hon. Dale A. Drozd

1 Plaintiffs Charles Criswell, Levi Johnson, Samuel Camposeco, and Adam Ibarra, on behalf
2 of a class of similarly situated incarcerated people in the custody of the Tulare County Sheriff's
3 Office ("TCSO" or "TCSD") at the Tulare County Jails¹ and Plaintiff California Attorneys for
4 Criminal Justice (collectively, "Plaintiffs") raise the following allegations and claims to
5 supplement the allegations and claims in their original Complaint ("Original Complaint") (ECF
6 No. 1, July 29, 2020):

7 **INTRODUCTION**

8 1. This Supplemental Complaint addresses events that have occurred since Plaintiffs
9 filed their Original Complaint on July 29, 2020. Defendant's deliberate indifference since then has
10 caused a large-scale COVID-19 outbreak in the Jails—with at least 60 individuals testing positive
11 in one housing unit in the Bob Wiley Detention Facility in December 2020. The extent of the
12 December 2020 outbreak remains unknown, as Defendant has failed and continues to fail to take
13 the reasonable and available measures of testing all staff and incarcerated people in the Jails even
14 after an outbreak. He has failed to do so despite the increased risk of harm posed by new COVID-
15 19 variants in California, which scientists agree are even more contagious and likely more deadly
16 than earlier variants. His failure to respond appropriately to the COVID-19 outbreak amounts to
17 deliberate indifference to Plaintiffs' and proposed Class Members' Eighth and Fourteenth
18 Amendment rights.

19 2. Before Plaintiffs filed their lawsuit, Defendant did not have a social distancing
20 policy. That failure amounted to unconstitutional deliberate indifference. And while Defendant
21 said he would create a social distancing policy (after the Court ordered him to do so) with standard
22 procedures such as keeping people six feet apart,² Defendant has instead implemented a policy
23 that keeps incarcerated individuals in their cells up to 23 or 24 hours per day. Defendant has broad
24 latitude and discretion to implement policies in the Jails, but in doing so, he cannot burden

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26 ¹ The terms "Tulare County Jails" or simply "Jails" refer to the five detention facilities managed
27 by the Tulare County Sheriff's Office: Bob Wiley Detention Facility (BWDF), Main Jail, Men's
28 Correctional Facility, Adult Pretrial Facility (APTF), and South County Detention Facility (South
County). Only BWDF, APTF, and South County are in active use.

² See ECF No. 27-1.

1 incarcerated people’s rights. Put differently, Defendant cannot remedy one unconstitutional
2 practice (i.e., not requiring social distancing) with another unconstitutional policy (i.e., solitary-
3 like lockdown).

4 3. Defendant is implementing a solitary-like lockdown despite his awareness of the
5 importance of out-of-cell time and of a burgeoning mental health crisis in the Jails. Since
6 September 2020, there have been at least four suicide attempts—one resulting in death—in the
7 Jails. Defendant has failed to respond to the mental health crisis and has instead continued to
8 implement a solitary-like lockdown that exacerbates that crisis. Even worse, on information and
9 belief, he has involuntarily medicated certain incarcerated individuals, including at least three
10 seriously mentally ill individuals.

11 4. Defendant’s purported “social distancing” policy amounts to an inhumane solitary-
12 like lockdown policy that infringes on Plaintiffs’ and proposed Class Members’ constitutional
13 rights to exercise and their procedural due process rights to the minimum standards of Title 15 of
14 the California Code of Regulations, including section 1065. For those Plaintiffs and proposed
15 Class Members who are pretrial detainees, and therefore presumed innocent and entitled to non-
16 punitive conditions of confinement, the lockdown conditions at the Jails also amount to
17 unconstitutional punishment in violation of the Fourteenth Amendment. For Plaintiffs and
18 proposed Class Members detained post-conviction, the punitive lockdown conditions amount to
19 cruel and unusual punishment in violation of the Eighth Amendment.

20 5. To remedy Defendant’s ongoing constitutional violations, and in addition to the
21 relief requested in the Original Complaint, Plaintiffs and proposed Class Members request
22 injunctive relief that requires Defendant to take steps to determine whether he has properly
23 contained the December outbreak and will prevent similar future outbreaks in the Jails by
24 (1) requiring all staff or vendors who enter the Jails to be regularly tested at no cost to them, and
25 (2)(a) maintaining a constitutional social distancing policy that prevents the spread of COVID-19
26 while also providing adequate out-of-cell and exercise time or, (2)(b), if such a policy is not
27 possible at the current population levels, exercising his authority under Section 8658 of
28 California’s Government Code to de-populate the Jails to a level at which a constitutional social

1 distancing policy is possible. Without these measures, which Defendant has refused to implement
2 voluntarily, Plaintiffs and proposed Class Members are at substantial risk of contracting the
3 potentially lethal COVID-19 virus and are currently experiencing violations of their constitutional
4 rights.

5 JURISDICTION AND VENUE

6 6. This Court has subject matter jurisdiction over the federal supplemental claims in
7 this action pursuant to 28 U.S.C. § 1331, because they arise under the Constitution and laws of the
8 United States, specifically 28 U.S.C. § 2241 and 42 U.S.C. § 1983. Plaintiffs allege herein that
9 Defendant Michael Boudreaux, in his official capacity as Sheriff of Tulare County, has violated
10 the Eighth and Fourteenth Amendments to the Constitution.

11 7. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C.
12 §§ 2201-02, by Federal Rules of Civil Procedure 57 and 65, and by the inherent equitable powers
13 of this Court.

14 8. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial
15 part of the events or omissions giving rise to this action occurred, and continues to occur, in this
16 District.

17 STATEMENT OF FACTS

18 **A. Defendant Has Responded to a Large-Scale Outbreak in the Jails with Deliberate 19 Indifference.**

20 1. *Defendant's Failures Caused COVID-19 to Enter and Spread in the Jails.*

21 9. A large-scale COVID-19 outbreak in a housing unit called "Mod-22" in the Bob
22 Wiley Detention Facility has sickened inmates in the Jails, and may continue to threaten other
23 incarcerated people and staff.³ According to Defendant's and the Board of State and Community
24 Corrections' ("BSCC") data, at least 60 incarcerated persons had tested positive for COVID-19 in
25 "Mod-22"—a shocking 80% positivity rate.⁴ But there is no way to know the true extent of the
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³ See ECF. No. 53 (Def's status report).

28 ⁴ *Id.*

1 December 2020 outbreak (or whether it is ongoing) in the Jails because Defendant refuses to
2 conduct regular surveillance testing or broad-based testing of incarcerated individuals in the Jails.

3 10. According to Defendant, on December 9, 2020, 6 inmates in the 75-inmate Mod-22
4 tested positive for COVID-19.⁵ By the next day, December 10, 2020, 47 incarcerated people in the
5 unit had tested positive—a 62% positivity rate.⁶ By December 18, that number increased yet again
6 with another 13 people testing positive—bringing the positivity rate among the incarcerated
7 population in Mod-22 up to 80%.⁷

8 11. “Mod-22” is a housing unit in the Bob Wiley Detention Facility for incarcerated
9 people on work detail, including kitchen, farm, and processing work. Mod-22 also houses
10 individuals who attend the Residential Substance Abuse Treatment (“RSAT”) program—a
11 program that allows individuals to receive court-ordered classes while in custody in subjects such
12 as anger management, parenting, or literacy.⁸

13 12. Defendant has posited that the “most probable source of the [December 2020
14 outbreak] [was] a worker in the kitchen staff.”⁹ The non-incarcerated worker was asymptomatic
15 and apparently discovered he was COVID-19 positive not because of any testing program
16 Defendant provided, but because he took it upon himself to get tested through a County program.¹⁰
17 According to Defendant, although kitchen workers are required to wear personal protective
18 equipment (“PPE”), “it is not physically possible to maintain social distancing” in the kitchen, and
19 workers (who include staff and incarcerated persons) “must remove their masks and face shields
20 when tasting food.”¹¹

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23 ⁵ *Id.* at 3–4.

24 ⁶ *Id.* at 4.

25 ⁷ *Id.*

26 ⁸ *Id.* at 3.

27 ⁹ *Id.* at 5.

28 ¹⁰ *Id.* at 7.

¹¹ *Id.* at 5.

1 13. In response to the outbreak, Defendant tested the residents of Mod-22, along with
2 18 residents in another housing unit (Mod-13) who also work in the kitchen.¹² But neither his
3 status report to the Court nor the BSCC data show that Defendant tested other residents of Bob
4 Wiley Detention Facility beyond a very limited scope. The evidence shows—and Defendant
5 knows—that the boundaries between units and facilities are permeable such that the Mod-22
6 residents may have exposed other residents at Bob Wiley Detention Facility or even the South
7 County Detention or Adult Pretrial Facilities to COVID-19. It is therefore possible, and even
8 likely, that the outbreak extended beyond Mod-22. The true extent of the outbreak, including
9 whether it is ongoing, is unknown because of Defendant’s insufficient and inadequate testing
10 policies and practices.

11 14. Defendant says that, following the outbreak, he has implemented additional
12 screening and testing procedures for kitchen workers and students in the RSAT program.¹³ The
13 additional measures that Defendant purportedly says he will implement include COVID-19
14 medical screening for “inmate workers” (without specifying which workers) and making rapid
15 tests available (but not requiring them) for the kitchen workers.¹⁴ Defendant also states that he will
16 provide rapid tests on a “frequent and regular basis” for incarcerated people attending the RSAT
17 classes and making rapid tests available (but not requiring them) for the RSAT staff.¹⁵

18 15. Defendant’s actions in December 2020 show that “frequent and regular” testing and
19 screening *are* reasonable and available measures of which he is aware and able to take, but which
20 have not been implemented outside of known exposures. Defendant’s refusal to implement more
21 frequent and widespread testing has caused a large outbreak (whose actual scale is unknown) and
22 will likely result in future outbreaks. That is deliberate indifference.

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26 ¹² *Id.* at 6.

27 ¹³ *Id.* at 6.

28 ¹⁴ *Id.* at 6-7.

¹⁵ *Id.*

1 require either surveillance testing (i.e., testing of random, large-scale samples across the
2 facilities)²⁰ or broad-based testing (i.e., testing of an entire facility or all the facilities) of
3 incarcerated individuals, staff, and vendors. This is despite Defendant’s knowledge that COVID-
4 19 can enter the Jails through outside workers and vendors—and, indeed, that the December 2020
5 outbreak likely began when an outside, non-incarcerated kitchen worker who was asymptomatic
6 spread the virus to incarcerated persons working in the kitchen.²¹

7 19. For instance, the BSCC data show that in the entire month of December through
8 January 30, 2021, Defendant did not conduct *any* tests of the 345 residents at the South County
9 Detention Facility, despite the large-scale outbreak in Mod-22 the month before.²² The BSCC data
10 also show Defendant tested approximately 70 and 28 residents of the Bob Wiley Detention
11 Facility in the second and third weeks of December, respectively—but he apparently tested only 5
12 residents of Bob Wiley beyond the 75-person Mod-22 housing unit and 18 kitchen workers in Unit
13 13.²³

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15 ²⁰ According to the CDC:

16 “Surveillance testing may sample a certain percentage of a specific population to monitor
17 for increasing or decreasing prevalence and to determine the population effect from
18 community interventions, such as social distancing. An example of surveillance testing is a
19 plan developed by a state public health department to randomly select and sample a
percentage of all individuals in a city on a rolling basis to assess local infection rates and
trends.”

20 *See Interim Guidance for Use of Pooling Procedures in SARS-CoV-2 Diagnostic, Screening, and*
Surveillance Testing, Centers for Disease Control and Prevention (Updated Oct. 23, 2020),
21 <https://www.cdc.gov/coronavirus/2019-ncov/lab/pooling-procedures.html>.

22 ²¹ *See* ECF No. 53 (Def.’s status report) at 5 (“[T]he most probably source of the exposure [w]as a
worker in the kitchen staff . . . this person was asymptomatic”).

23 ²² *See COVID-19 in Detention Facilities*, BSCC data for Adult Detention Facilities for month of
December and January in South County,
24 [https://public.tableau.com/profile/kstevens#!/vizhome/BSCCCOVID-](https://public.tableau.com/profile/kstevens#!/vizhome/BSCCCOVID-19inDetentionFacilitiesDashboard/Instructions)
25 [19inDetentionFacilitiesDashboard/Instructions](https://public.tableau.com/profile/kstevens#!/vizhome/BSCCCOVID-19inDetentionFacilitiesDashboard/Instructions).

26 ²³ *See also* ECF No. 53 (Def.’s status report) (reporting the Defendant decided to test “all of the
remaining inmates in Mod-22”—but not reporting that any additional testing beyond Mod-22
27 would be conducted); *accord COVID-19 in Detention Facilities*, BSCC data for Adult Detention
Facilities, [https://public.tableau.com/profile/kstevens#!/vizhome/BSCCCOVID-](https://public.tableau.com/profile/kstevens#!/vizhome/BSCCCOVID-19inDetentionFacilitiesDashboard/Instructions)
28 [19inDetentionFacilitiesDashboard/Instructions](https://public.tableau.com/profile/kstevens#!/vizhome/BSCCCOVID-19inDetentionFacilitiesDashboard/Instructions) (showing 70 and 28 individuals were tested in Bob

1 20. Defendant knows that COVID-19 can pass from one unit into the general
2 population in the Jails in numerous ways. Defendant’s assertion that the Mod-22 outbreak is
3 isolated to that particular housing unit is not credible, given Defendant’s own admission that Mod-
4 22 is not sealed off from the rest of the Jail or its employees²⁴ and is not supported by the testing
5 that would be required to show it were true. The assertion is, in fact, all but certainly not true: By
6 Defendant’s own admission, Defendant transferred six people in Mod-22 in the Bob Wiley
7 Detention Facility to the Adult Pretrial Facility *after* they tested positive—likely infecting others
8 in the Adult Pretrial Facility.²⁵ Similarly, even after Defendant learned of the outbreak, the
9 incarcerated workers in Mod-22 continued to do the laundry for all the detention facilities
10 throughout the outbreak—they handled both dirty laundry coming into the laundry room and clean
11 laundry going out.

12 21. Furthermore, Defendant admits that residents of Mod-22 interact with incarcerated
13 people in other housing units when they attend video court.²⁶ As Plaintiffs extensively
14 documented in previous pleadings, transfers to and from court appearances create a high risk of
15 transmission of COVID-19.²⁷ For instance, according to incarcerated worker Michael Bradbury,
16 who is currently housed in Mod-22, incarcerated workers in Mod-22 often go to the kitchen and
17 booking areas of the Bob Wiley Detention Facility to prepare food, clean working areas, and
18 perform other menial labor.

19 22. Likewise, although Defendant purports to aim to test and quarantine every
20 individual who is newly booked in the Jails,²⁸ Plaintiffs have documented lapses in these

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23 Wiley the weeks of December 6 and December 13, respectively, which is consistent with
24 Defendant testing only the residents of Mod-22).

24 ²⁴ See ECF No. 53 at 5 ¶ 8; *see also supra* (detailing the permeability among the units).

25 ²⁵ See ECF No. 53 at 4.

26 ²⁶ *Id.* at 3 ¶ 3.

27 ²⁷ See, e.g., ECF No. 44-20, Ex. 10 at ¶7-10 (Declaration of Samuel Camposeco detailing his
27 possible exposure to COVID-19 during two court transfers).

28 ²⁸ See ECF at 45-1 at 10.

1 procedures that raise the potential of COVID-19 outbreaks in the general Jail population.²⁹ These
2 lapses continue. For instance, Jesus Enrique Garcia was booked into the Adult Pretrial Facility on
3 November 8, 2020, and, after being exposed to COVID-19 by his cellmate on or around
4 November 11, he was transferred to a supposedly quarantined unit, where he could infect everyone
5 there. After fourteen days in that unit, Mr. Garcia was transferred by Defendant to the general
6 population at Bob Wiley Detention Facility without first receiving a COVID-19 test, even though
7 he was experiencing symptoms consistent with COVID-19 at the time of his transfer. These types
8 of lapses increase the risk of COVID-19 transmission in the general Jail population and demand
9 more regular general population testing.

10 23. In addition, Mod-22 residents are not housed according to their work detail,
11 meaning residents of Mod-22 who work in the kitchen may interact not only with other kitchen
12 workers, but also with incarcerated people working in other facilities, like the farm detail or
13 processing detail.³⁰ Nor does Defendant's December 21 status report to the Court state that
14 Sheriff's deputies and other staff are specifically assigned to Mod-22, meaning that deputies may
15 also work in multiple housing units and thus potentially transport the virus from one unit to
16 another. In short, Defendant knows that Mod-22 is not remotely a sealed environment and is likely
17 to have spread the virus to other housing units. Those other units are also vulnerable to outbreaks
18 not just from Mod-22 but also from other outside workers.

19 24. Despite Defendant's knowledge that Mod-22 residents may have had contact with
20 residents in other housing units and facilities at the Jails,³¹ Defendant has not conducted
21 surveillance or broad-based testing for residents across all facilities. Nor has he implemented
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23 ²⁹ See, e.g., ECF No. 44-21, Ex. 12 at ¶¶ 4-7 (Declaration of James Gonzalez detailing his
24 mistaken transfer from quarantine unit), ECF No. 44-23, Ex. 21 at ¶¶ 7 (Declaration of Daniel
25 Lujano detailing his transfer from quarantine without receiving a COVID-19 test), ECF No. 44-23,
26 Ex. 24 at ¶7 (Declaration of Santos Moreno detailing the placement of newly booked incarcerated
people into his general population unit at SCDF).

27 ³⁰ *Id.*

28 ³¹ See ECF No. 53 (Def.'s status report) (stating the Mod-22 inmates don't interact with other
facilities and housing modules "unless they are going to court").

1 additional screening or testing protocols for Medically Vulnerable People in the Jails, who are at
2 increased risk of suffering serious illness if they contract COVID-19.

3 25. The risk of contracting COVID-19 is heightened by the high rate of community
4 transmission in Tulare County that will fuel current and future outbreaks in the Jails. As of
5 February 24, 2021, 162 in 100,000 people in Tulare County have tested positive for COVID-19.³²
6 Due to the high rate of asymptomatic spread of the disease, those numbers likely disguise the true
7 extent of the surge. In addition, several new COVID-19 variants have been detected in California;
8 scientists agree that certain of these variants are even more contagious than original variants of the
9 virus, and may be more deadly.³³ The risk of contracting COVID-19 has thus never been higher
10 inside the Tulare community and in the Jails.

11 26. Defendant's knowing failure to respond to the substantial risk of COVID-19 by
12 seeking to identify and isolate positive cases in the Jails through the reasonable and available
13 measure of frequent and regular testing of staff and incarcerated people amounts to deliberate
14 indifference in violation of Plaintiffs' and proposed Class Members' Fourteenth and Eighth
15 Amendment constitutional rights. *See* Compl., ECF No. 1 (Counts I and II).

16 **B. Defendant's "Social Distancing" Policy Amounts to Unconstitutional Confinement**

17 27. Under the Fourteenth and Eighth Amendments to the U.S. Constitution, Courts
18 have recognized that incarcerated persons have a right to exercise, typically for at least five to
19 seven hours per week. *See, e.g., Spain v. Proconier*, 600 F.2d 189, 199-200 (9th Cir. 1979). The
20 California legislature has also defined the minimal standards that detention facilities like the
21 Tulare County Jails must implement. Plaintiffs and proposed Class Members have procedural due
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24 ³² *See Tracking the coronavirus in Tulare County*, Los Angeles Times (last visited Feb. 24, 2020),
25 <https://www.latimes.com/projects/california-coronavirus-cases-tracking-outbreak/tulare-county/> .

26 ³³ Rong-Gong Lin II, Luke Money, *More contagious COVID-19 variants bring new uncertainties*
27 *to California*, Los Angeles Times (Jan. 20, 2021), <https://www.latimes.com/california/story/2021-01-20/vaccines-aggressive-strains-and-fatigue-california-hits-3-million-covid-cases-and-a-crossroads>;
28 Alex Wigglesworth, *Coronavirus variant from Brazil found in California*, Los Angeles Times (Feb. 2, 2021), <https://www.latimes.com/california/story/2021-02-02/coronavirus-variant-from-brazil-found-in-bay-area> .

1 process rights in the proper implementation of those standards. *See* Cal. Code Regs., tit. 15,
2 § 1000 *et seq.*, which includes a minimum of three hours of exercise per week, *id.* § 1065.

3 28. In conscious disregard of these constitutional and statutory mandates, Defendant
4 has implemented an unconstitutional “social distancing” policy that keeps people in their jail cells
5 for up to 23 to 24 hours per day. He has maintained these inhumane, solitary-like lockdown
6 conditions despite his knowledge of the deleterious effect of lockdown policies on individuals’
7 mental health and of the burgeoning mental health crisis in the Jails.

8 1. *Defendant Implemented an Unconstitutional “Social Distancing” Policy in*
9 *Response to Plaintiffs’ Complaint.*

10 29. Before Plaintiffs filed this action on July 29, 2020, Defendant failed to take even
11 the most basic steps to protect incarcerated people from the health and safety risks of COVID-19.
12 For example, before Plaintiffs filed this lawsuit, Defendant refused to issue masks to incarcerated
13 people or to implement a social distancing policy—both of which are cornerstones of public health
14 guidance to prevent the spread of the disease. According to Defendant, in mid-July 2020,
15 Benjamin Mitchell, the Tulare County Health and Human Services Agency (“HHSA”) liaison,
16 recommended that Defendant ensure social distancing during programming and “keep the inmates
17 at least six feet apart at all times.”³⁴ But it was not until *after* Plaintiffs filed their Original
18 Complaint on July 29, 2020, that Defendant issued any masks or implemented any type of social
19 distancing policy.

20 30. As alleged in Plaintiffs’ Original Complaint, before July 29, 2020, Defendant had
21 failed to take even basic steps to allow for social distancing.³⁵ For example, Defendant had not
22 scheduled the movements of jail residents to limit the mixing of people.³⁶ Nor had Defendant
23 rearranged common areas to increase space between people, limit the size of group activities,
24 stagger meal times, and modify work details.³⁷ In short, “Defendant ha[d] no comprehensive

25 ³⁴ ECF No. 45-6 ¶ 23.

26 ³⁵ *See* Compl. ¶ 102.

27 ³⁶ *Id.* ¶ 103.

28 ³⁷ *Id.*

1 policy on social distancing—despite it being one of the simplest and most effective strategies to
2 prevent COVID-19 transmission.”³⁸

3 31. On September 2, 2020, the Court issued a Temporary Restraining Order (“TRO”)
4 requiring, among other things, that Defendant write and implement a “policy designed to reduce
5 contacts between incarcerated people in all common areas, including (but not limited to)
6 bathrooms, day rooms, yards, and pill lines, and allow for the possibility of social distancing by
7 inmates.”³⁹

8 32. In response to this Court’s TRO, Defendant memorialized a social distancing
9 policy in a September 8, 2020 submission to the Court.⁴⁰ The written policy provided that TCSD
10 would allow only one person to shower at a time, people must remain six feet apart in the multi-
11 person bathroom, and inmates and staff members must wear face masks and face shields when
12 receiving medication.⁴¹ The written policy further provided that “[i]nmates are reminded to
13 socially distance (six feet apart) while in the day room and yard areas and must wear their issued
14 face masks and shields while in the day room and yard areas. Staff will continue to allow only the
15 number of inmates out to program at one time that allows for six feet of distance in the day rooms
16 and the yard areas.”⁴²

17 2. *Defendant Has Implemented an Unconstitutional Solitary-Like Lockdown*
18 *Rather than a Humane Social Distancing Policy.*

19 33. Whether or not that written social distancing policy would have been adequate and
20 constitutional, Defendant is not complying with it. Instead, since approximately mid-September
21 2020, Defendant has implemented a solitary-like lockdown requiring incarcerated people to stay
22 inside their jail cells for up to 23 to 24 hours per day, six days a week, with potentially no out-of-
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24 ³⁸ *Id.* ¶ 105.

25 ³⁹ ECF No. 26.

26 ⁴⁰ ECF No. 27-1.

27 ⁴¹ ECF No. 27-1.

28 ⁴² *Id.*

1 cell time the seventh day per week.⁴³ Stated differently, as a matter of TCSD policy, incarcerated
2 people are in their cells for approximately 165 hours out of a 168-hour week. Several housing
3 units do not get any out-of-cell time at all on Sundays—meaning the people in those units are
4 confined to their cells for 24 hours straight at least one day a week.⁴⁴

5 34. In the Adult Pretrial Facility, as a matter of policy, Defendant releases only two
6 people (one cell) out of their cells at a time, and each inmate is typically given only 30 minutes per
7 day, and only six days a week.⁴⁵ At the Bob Wiley Detention Facility, again as a matter of policy,
8 Defendant releases four people (two cells) at a time and each inmate is typically allowed out for
9 only 30 minutes per day, six days per week.⁴⁶ At the South County Detention Facility, Defendant
10 asserts that programming time is typically one hour per day out of cell.⁴⁷

11 35. On information and belief, the actual out-of-cell time made available is typically
12 even more limited. For instance, at South County (where Defendant allegedly gives “one hour” per
13 day), the out-of-cell time is often only 30 minutes a day.⁴⁸ Jail resident Drew Kaupelis in the Bob
14 Wiley Detention Facility reports that he receives as little as 15 minutes out-of-cell time a day.
15 Robert Crossley, also resident at Bob Wiley who suffers from serious mental illness, only gets
16 approximately 20-25 minutes a day and, on some days, they do not let him out at all if he misses
17 his slotted time at 7 a.m. Certain residents in Bob Wiley Detention Facility have more recently
18 been given one hour per day but, as of the filing of this Supplemental Complaint, that practice has
19 lasted approximately one week and it is not clear whether it will continue at Bob Wiley or is the
20 policy at all jail facilities.

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23 ⁴³ ECF No. 45-6 (Jones Decl.) ¶¶ 23-25; ECF No. 44-8 (Jones Depo. at 123:7-21) (testifying that
24 people get only three hours per week out of cell and potentially no out of cell time on certain
days).

25 ⁴⁴ *Id.*

26 ⁴⁵ ECF No. 45-1 at 12 (citing Jones Decl. ¶ 23; Mitchell Decl. ¶ 22).

27 ⁴⁶ *Id.*

28 ⁴⁷ ECF No. 45-1 at 12.

⁴⁸ ECF No. 44-24, Ex. 29 (Sanchez Decl.) ¶ 8.

1 36. According to Defendant, “programming time” includes out-of-cell time during
2 which incarcerated people are permitted to “move around, shower, clean their cells, or make
3 telephone or video calls.”⁴⁹ In other words, during the limited time incarcerated people are out of
4 their cells on some of the days of the week, the residents must conduct *all* of their out-of-cell
5 tasks, including showering and maintaining personal hygiene (necessary for health, particularly
6 during a pandemic), calling their lawyers, calling their loved ones, exercising, visiting the
7 commissary, and any other out-of-cell programming that the Jails require.⁵⁰

8 37. Plaintiffs and proposed Class Members are not permitted to conduct those
9 necessary activities during their in-cell time. For instance, Plaintiffs and proposed Class Members
10 have no access to showers inside their cell.⁵¹ Nor are they able to call anyone from their cells.⁵²
11 Defendant has made no effort to make the in-cell time productive or tolerable—for instance, by
12 providing TVs or tablets to use in cells.⁵³ This is despite Defendant’s own expert, Michael Brady,
13 recommending that Defendant take steps to make the in-cell time more humane, such as by
14 “purchas[ing] interactive journals from the Change Company and mak[ing] them available to all
15 inmates in the TCSO facilities.”⁵⁴

16 38. What’s more, the evidence shows that Defendant implemented his restrictive
17 “social distancing” policy as punishment for Plaintiffs for filing this lawsuit. For instance, Jose
18 Ayala explains that he overheard a Sheriff’s deputy saying that the newly implemented policy
19 requiring excessive in-cell time was because people had complained to the ACLU.⁵⁵

20 39. Moreover, Defendant has failed to undertake minimally reasonable social
21 distancing actions in the Jails. For instance, according to Plaintiff Charles Criswell, a former
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23 ⁴⁹ ECF No. 45-1 at 8 (citing Jones Decl.).

24 ⁵⁰ *Id.*

25 ⁵¹ *See* ECF No. 44-8 (Jones Depo.) at 131:11-13.

26 ⁵² *Id.* at 131:14-24.

27 ⁵³ *Id.* at 130-132; ECF 44-24, Ex. 26 (Payan Decl.) ¶ 9.

28 ⁵⁴ *See* ECF No. 45-2.

⁵⁵ ECF No. 44-20, Ex. 8 (Ayala Decl.) ¶ 9.

1 resident at the South County Detention Facility, the programming time runs between 7 a.m. and 12
2 p.m. and no one is let out of their cells after 12 p.m. each day; it is unclear why Defendant cannot
3 let residents out of their cells after 12 p.m. to allow for more programming time each day.
4 Resident Jennifer Autry also reports that women incarcerated in Mod-13 at the Bob Wiley
5 Detention Facility remain housed in a series of dormitory-style pods in which they sleep on bunk
6 beds a mere three feet apart from one another. Another woman incarcerated in that unit, Alexandra
7 Meza, corroborates this report. Both women report that Defendant has maintained this lack of
8 social distancing despite the fact that the entire upper tier of Mod-13 is closed off that would allow
9 for more distance between residents.

10 3. *Defendant's Inhumane Solitary-Like Lockdown Policy Has Caused, and*
11 *Will Continue to Cause, Substantial Injury.*

12 40. Defendant's inhumane solitary-like lockdown policy has already caused, and will
13 continue to cause, Plaintiffs and proposed Class Members substantial and irreparable injury.

14 41. As a result of Defendant's solitary-like lockdown policy, Plaintiffs and proposed
15 Class Members are forced to make impossible trade-offs each day on how they use their time.
16 Incarcerated persons Jose Ayala, Adam Ibarra, and Drew Kaupelis have had to choose, for
17 instance, between calling their loved ones and showering.⁵⁶ Rigoberto Benavidez and Benny
18 Cortez have had difficulty meeting with their lawyers due to the extremely limited out-of-cell
19 time.⁵⁷

20 42. Because Plaintiffs and proposed Class Members must use their negligible out-of-
21 cell time to call their lawyers, shower, and conduct other necessary activities, their ability to
22 exercise is virtually nonexistent. Experts agree that Defendant's purported "social distancing"
23 policy is more akin to solitary confinement.⁵⁸

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25 _____
26 ⁵⁶ ECF No. 44-20 (Ayala Decl.) ¶ 6; ECF No. 44-21 (Ibarra Decl.) ¶ 7; ECF No. 44-22 (Kaupelis
Decl.) ¶ 6.

27 ⁵⁷ ECF No. 44-20 (Benavidez Decl.) ¶ 9; ECF No. 44-21 (Cortez Decl.) ¶ 5.

28 ⁵⁸ See ECF No. 44-19 (Haney Decl.) ¶ 15, 30.

1 43. Experts also agree that this essentially solitary confinement takes a significant
2 psychological toll on incarcerated individuals.⁵⁹ As a result of the extreme solitary-type
3 conditions, “many incarcerated persons [are] act[ing] out in ways that, in turn, adversely affect
4 general living conditions.”⁶⁰

5 44. Proposed Class Member Francisco Arreola states that he is “breaking down in
6 here” and that he has told “staff [he] want[s] to die many times.”⁶¹ Another inmate says that the
7 amount of in-cell time “makes [him] feel like [he’s] going nuts.”⁶² Many other residents of the
8 Jails have experienced severe physical and mental health problems—including depression,
9 anxiety, sleeplessness, violent outbursts, and suicidal thoughts—since Defendant’s lockdown
10 “social distancing” policy was implemented.⁶³ This stress is only getting worse as Defendant
11 continues his inhumane lockdown. For instance, resident Robert Crossley reports that the scant
12 twenty minutes per day of out-of-cell time he receives in Mod-32 at the Bob Wiley Detention
13 Facility makes him want to explode or harm himself simply as a way to get out of the isolation.
14 Resident Juan Garcia reports that many people in his unit have clear mental illnesses and scream
15 and yell at all hours of the night due to the increased isolation during the pandemic lockdown. Mr.
16 Garcia reports that this environment is making it increasingly hard for him not to mentally break
17 down.

22 ⁵⁹ *Id.* ¶¶ 21, 23.

23 ⁶⁰ *Id.* ¶ 23.

24 ⁶¹ ECF No. 44-20 (Arreola Decl.) ¶ 4.

25 ⁶² ECF No. 44-22 (Lucero Decl.) ¶ 8.

26 ⁶³ *See* ECF No. 44-20 (Alvidrez Decl.) ¶ 6–7 ; ECF No. 44-20, (Ayla Decl.) ¶ 10; ECF No. 44-20,
27 (Benavidez Decl.) ¶ 5; ECF No. 44-21, (Cortez Decl.) ¶ 6; ECF No. 44-22 (Lucero Decl.) ¶¶ 5–8;
28 ECF No. 44-23 (Moreno, S. Decl.) ¶ 6; ECF No. 44-24 (Sanchez Decl.) ¶ 8; ECF No. 44-25
(Williams Decl.) ¶¶ 5–7; ECF No. 44-25 (Vargas Decl.) ¶ 6; ECF No. 44-25 (Watson Decl.) ¶¶ 7–
8; *see generally* Ex. 44-19 (Haney Decl.) ¶¶ 23-24, 33-43.

1 45. The solitary-like lockdown is also causing physical harm. For instance, pretrial
2 detainee Arthur Alvidrez’s legs are turning black because his diabetes causes poor circulation and
3 he has been unable to walk around throughout the day to increase circulation.⁶⁴

4 46. Defendant’s solution to the deteriorating mental and physical health conditions in
5 his Jails is not to let people out of their cells more, but to subject them to psychiatric medications.
6 For example, when resident Drew Kaupelis complained to TCSD about the lack of out-of-cell
7 time, TCSD staff offered him psychiatric medications to help him cope. He states that “I don’t
8 need medications, though – I just need more time outside of my cell.”⁶⁵

9 47. On information and belief, Defendant has involuntary medicated incarcerated
10 people to avoid suicide attempts. Defendant forcibly and involuntarily medicated at least three
11 individuals with serious mental illness. In early January and again in mid-January 2021, residents
12 of the Jails watched as members of the Special Emergency Response Team (“SERT”) wearing
13 white jumpsuits forcibly extracted three residents from their cells—using spit masks and leg
14 shackles. When the residents returned, they appeared sedated.

15 48. Defendant’s actions to involuntarily medicate individuals in the Jails shocks the
16 conscience, and demonstrates his actual knowledge of the worsening mental health conditions in
17 his Jails. Since September 2020, there have been at least four suicide attempts in the Jails,
18 including one death by suicide, further underscoring Defendant’s awareness of a burgeoning
19 mental health crisis in the Jails. In September 2020, one person tried to kill himself by throwing
20 himself off the top tier of the Jails.⁶⁶ On December 24, 2020, one resident of the Adult Pretrial
21 Facility actually killed himself.⁶⁷ Shortly thereafter, in January 2021, another resident tried to kill

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24 ⁶⁴ See ECF 44-20 (Alvidrez Decl.) ¶ 4.

25 ⁶⁵ See ECF No. 44-22 (Kaupelis Decl.) ¶ 6.

26 ⁶⁶ See ECF No. 44-20 (Ayala Decl.) ¶ 12.

27 ⁶⁷ See Sheyanne N. Romero, *Tulare County inmate found dead in jail cell, deputies suspect*
28 *suicide*, Visalia Times Delta (Dec. 24, 2020),
<https://www.visaliatimesdelta.com/story/news/2020/12/24/tulare-county-inmate-found-dead-jail-cell-deputies-suspect-suicide/4044377001/>

1 himself and was hospitalized as a result. Plaintiffs are aware of at least one other recent suicide
2 attempt.

3 4. *Defendant’s Excuses Do Not Justify These Unconstitutional Conditions.*

4 49. Defendant excuses his unconstitutional solitary-like lockdown policy by saying it is
5 “temporary” and necessary to prevent the spread of COVID-19.⁶⁸ Neither explanation excuses
6 these unconstitutional conditions. Nor are there any facts suggesting the lockdown was imposed to
7 protect inmates or staff from violence or that the incarcerated persons are responsible for the
8 lockdown conditions due to their own misconduct. Defendant’s so-called “social distancing”
9 policy is in excess of any legitimate purpose.

10 50. The lockdown is not “temporary” by any normal definition of the word. Title 15,
11 for instance, allows for “temporary” suspension of its provisions in emergency circumstances—
12 meaning for 15 days. *See* Cal. Code Regs., tit. 15, § 1012. In contrast, Defendant’s lockdown has
13 already lasted for at least *six months* and there is no end in sight.⁶⁹

14 51. Defendant knows that a “vaccine has been released and is in the early stages of
15 circulation, including in Tulare County.”⁷⁰ Although Plaintiffs understand a limited set of jail
16 residents have been vaccinated, Defendant has not articulated to Plaintiffs or the Court any plan
17 for securing the vaccines for all residents in the Jails. As of February 24, 2021, the state and
18 county have not entered a phase in their COVID-19 vaccine plan whereby incarcerated people are
19 eligible for the vaccine—meaning there is no set date for all incarcerated individuals in the Jails to
20 be vaccinated. Moreover, even when the state and county enters a phase when incarcerated people
21 are eligible to receive the vaccine, it is unclear how Tulare County will prioritize vaccine
22 distribution among categories of people within a phase or tier, so it is not clear that incarcerated
23 people will be first in line when Tulare County begins vaccinating future phases and tiers. Nor is it

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26 ⁶⁸ *See* ECF No. 45-1 at 12.

27 ⁶⁹ *See* ECF No. 45-1 (stating vaguely that the programming reductions “will be reversed as soon as
it is safe to do so”).

28 ⁷⁰ ECF No. 53 ¶ 11.

1 clear that, once jail residents are eligible for the vaccine, Defendant will efficiently secure and
2 distribute the vaccines to residents. As of February 24, 2021, approximately 92% of residents of
3 Tulare County have not received the vaccine.⁷¹ It is likely to be months before all Plaintiffs and
4 proposed Class Members are vaccinated.

5 52. Furthermore, two pregnant women in the Jails—who qualify as medically
6 vulnerable per the CDC—were denied access to the vaccine because they were pregnant. Jail staff
7 forced them to sign refusal forms waiving their right to the vaccine, despite the CDC’s guidance
8 that getting vaccinated is a “personal choice for people who are pregnant.”⁷²

9 53. Even if all residents were vaccinated, given that the vaccines are not 100%
10 effective and achieving community herd immunity will take many more months,⁷³ precautions like
11 social distancing must still be taken to prevent the spread of COVID-19.⁷⁴

12 54. Defendant’s other excuse for the lockdown—that it is the only effective way to
13 prevent the spread of COVID-19 in the Jails—is belied by recent events. In early December 2020,
14 an infected kitchen worker likely spread the disease to 60 incarcerated residents. In other words,
15 sixty residents were infected despite Defendant’s inhumane lockdown. The incident proves that
16 Defendant’s lockdown is not only unconstitutionally punitive, but also wholly ineffective at
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18 ⁷¹ Tulare County, *Doses Administered by Day* (last visited Feb. 24, 2021),
19 [https://tularecounty.maps.arcgis.com/apps/opsdashboard/index.html#/04c75bf8b2ee44d69836998](https://tularecounty.maps.arcgis.com/apps/opsdashboard/index.html#/04c75bf8b2ee44d698369983ae31ffc9)
20 [3ae31ffc9](https://tularecounty.maps.arcgis.com/apps/opsdashboard/index.html#/04c75bf8b2ee44d698369983ae31ffc9)

21 ⁷² See *Vaccination Considerations for People who are Pregnant or Breastfeeding*, Centers for
22 Disease Control and Prevention (Updated Feb. 12, 2021), [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/pregnancy.html)
[ncov/vaccines/recommendations/pregnancy.html](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/pregnancy.html)

23 ⁷³ See Inyoung Choi, *Dr. Fauci said up to 90% of population needs to get vaccinated for herd*
24 *immunity against virus*, Business Insider (Dec. 27, 2020), [https://www.businessinsider.com/fauci-](https://www.businessinsider.com/fauci-up-to-90-population-needs-vaccine-for-herd-immunity-2020-12)
[up-to-90-population-needs-vaccine-for-herd-immunity-2020-12](https://www.businessinsider.com/fauci-up-to-90-population-needs-vaccine-for-herd-immunity-2020-12)

25 ⁷⁴ The CDC explains that, even after someone is vaccinated, “It’s important for everyone to
26 continue using all the tools available to help stop this pandemic as we learn more about how
27 COVID-19 vaccines work in real-world conditions. Cover your mouth and nose with a mask when
28 around others, stay at least 6 feet away from others, avoid crowds, and wash your hands often.”
See *What to Expect after Getting a COVID-19 Vaccine*, Centers for Disease Control and
Prevention (Updated Feb. 17, 2021), [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/expect/after.html)
[ncov/vaccines/expect/after.html](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/expect/after.html)

1 preventing the spread of COVID-19. As such, the lockdown is in gross excess of Defendant’s
2 stated purpose of preventing the spread of COVID-19.

3 55. Plaintiffs’ expert, Dr. Craig Haney, a psychologist, explains, “[L]ike all prisons and
4 jails, the Tulare County Jail facilities have only limited means of protecting incarcerated persons
5 from contact with staff who regularly enter the facility after having been in the outside world.”⁷⁵
6 Dr. Haney notes that Defendant has made no special effort to limit the contacts between staff and
7 Medically Vulnerable incarcerated people.⁷⁶ As such, Defendant’s refusal to test staff regularly
8 and/or provide additional measures to protect the Medically Vulnerable, including releases,
9 amounts to deliberate indifference.

10 5. *Defendant Must Either Find Alternatives to the Inhumane Lockdown or*
11 *Release Enough Incarcerated People to Make Social Distancing Possible.*

12 56. Defendant knows, or should have known, of the risks of depriving Plaintiffs and
13 proposed Class Members of the right to exercise. Defendant’s own expert “do[es] not believe that
14 30 minutes of out of cell time for incarcerated people outside of the Observation Units is a long-
15 term workable solution.”⁷⁷ He recommends Defendant consult with public health experts and other
16 county jails “to see if there are creative ways to increase the amount of out-of-cell time for inmates
17 outside the Observation Units without unreasonably creating a risk of harm to the inmate
18 population.”⁷⁸

19 57. Defendant’s expert even recommends reducing the inmate population, particularly
20 for the seriously mentally ill population.⁷⁹ Plaintiffs agree.

21 58. Defendant must either implement a humane social distancing policy—that keeps
22 people six feet away from one another while allowing more out-of-cell and exercise time—or
23 reduce the population to a level where a humane social distancing policy is possible.

24 _____
25 ⁷⁵ ECF No. 44-19 ¶ 27.

26 ⁷⁶ *Id.*

27 ⁷⁷ ECF No. 45-2 at 20 (Brady Decl.).

28 ⁷⁸ *Id.*

⁷⁹ *Id.* at 18.

1 59. Defendant asserts that, at the current population of the Jails, he is unable to
2 implement a humane social distancing policy that keeps people six feet away from one another
3 while also allowing more out-of-cell time.⁸⁰ Yet, when Defendant’s detentions command staff
4 were questioned during depositions about how they developed the current out-of-cell-time
5 schedule, they had no answers.⁸¹ Further discovery may reveal that Defendant’s assertion—that
6 keeping incarcerated people in their cells for up to 23 to 24 hours a day is the only way to keep
7 them at least six feet away from each other—is simply not true.

8 60. Even if social distancing were not possible in the Jails other than through an
9 unconstitutional lockdown, Defendant has deliberately disregarded another, more humane and
10 constitutional, option: reducing the population at the Jails. As noted, Defendant’s own expert
11 contemplates population reduction as an option.⁸² California law provides Defendant with clear
12 authority to protect incarcerated people “endanger[ed]” by the COVID-19 pandemic by
13 “remov[ing] them to a safe and convenient place” for the duration of the emergency. *See* Cal.
14 Gov’t Code § 8658.

15 61. Defendant is aware of his authority under Section 8658. On April 14, 2020, Edward
16 Medrano, Chief Division of Law Enforcement for the California Department of Justice, issued a
17 memorandum to all California County Sheriffs reminding them of their Section 8658 authority.⁸³
18 The memorandum notified Sheriffs—including Defendant—that Section 8658 applies to the
19 COVID-19 pandemic and provides a tool for responding to concerns raised by the COVID-19
20 pandemic within confinement facilities.

21 62. Despite Defendant’s assertion that incarcerated people cannot effectively practice
22 social distancing in the Jails, *even with* the enforcement of a punitive and unconstitutional
23 lockdown policy, Defendant has deliberately refused to consider any releases of residents at the
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25 ⁸⁰ *See* ECF 45-6 (Jones Decl.).

26 ⁸¹ *See* Macias Depo. 21:12–16, 98:13–100:13; Lehner Depo. 30:1–7; Jones Depo. 135:19–137:8.

27 ⁸² *See* ECF No. 45-2 at 18.

28 ⁸³ Edward Medrano, *COVID-19 and Statutory Authority Under Government Code Section 8658* (April 14, 2020), <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/2020-dle-05.pdf>.

1 **CAUSES OF ACTION**

2 66. Plaintiffs restate and reassert each cause of action (Counts I-V) described in their
3 Original Complaint. *See* ECF No. 1.

4 **SIXTH CLAIM FOR RELIEF⁸⁶**

5 **42 U.S.C. § 1983 – FOURTEENTH AMENDMENT**

6 **(RIGHT TO EXERCISE)**

7 67. The Fourteenth Amendment to the United States Constitution protects the right of
8 Plaintiffs and proposed Class Members who are detained in the Tulare County Jails pretrial to the
9 right to outdoor exercise for a minimum of five to seven hours per week. *Candler v. Santa Rita*
10 *Cnty. Jail Watch Commander*, 798 F. App'x 95, 98 (9th Cir. 2020) (citing *Pierce v. Cnty. of*
11 *Orange*, 526 F.3d 1190, 1213 (9th Cir. 2008); *Keenan v. Hall*, 83 F.3d 1083, 1090 (9th Cir. 1996);
12 *Allen v. Sakai*, 48 F.3d 1082, 1088 (9th Cir. 1994); *Spain v. Proconier*, 600 F.2d 189, 199 (9th Cir.
13 1979)); *Salvador Venegas v. Stan Sniff*, No. 5:18-CV-02293-JLS (SHK), 2020 WL 6723353, at *6
14 (C.D. Cal. Sept. 8, 2020) (noting that the “Ninth Circuit recently clarified that a ‘minimum of five
15 to seven hours of exercise time per week for inmates confined [in administrative segregation] was
16 clearly established by [the Ninth Circuit’s] cases.’”).

17 68. Through his policies and practices, Defendant has actively interfered with
18 Plaintiffs’ and proposed Class Members’ constitutional right to exercise during their detention.

19 69. Defendant’s interference with Plaintiffs’ and proposed Class Members’ right to
20 exercise poses a risk so grave to Plaintiffs’ and proposed Class Members’ physical and mental
21 health that it violates contemporary standards of decency to expose anyone unwillingly to such a
22 risk.

23 70. Defendant at all times knew, or should have known, of the risks of depriving
24 Plaintiffs and proposed Class Members of the right to exercise.

25 71. Defendant’s interference with Plaintiffs’ and proposed Class Members’
26 constitutional rights was, and is, obvious to Defendant.

27
28 ⁸⁶ The claims continue the numbering from Plaintiffs’ Original Complaint, ECF No. 1.

1 **NINTH CLAIM FOR RELIEF**

2 **42 U.S.C. § 1983 – EIGHTH AMENDMENT**

3 **(CRUEL AND UNUSUAL PUNISHMENT—SOLITARY CONFINEMENT)**

4 91. The Eighth Amendment to the United States Constitution protects the right of
5 Plaintiffs and proposed Class Members who are detained in the Tulare County Jails pursuant to a
6 judgment of conviction from cruel and unusual punishment.

7 92. Through Defendant’s policies and practices providing for indefinite solitary-like
8 confinement, Defendant has subjected Plaintiffs and proposed Class Members to cruel and unusual
9 punishment.

10 93. This unnecessary solitary-like policy poses a risk so grave to Plaintiffs’ and
11 proposed Class Members’ physical and mental health that it violates contemporary standards of
12 decency to expose anyone unwillingly to such a risk.

13 94. Defendant’s policies and practices providing for indefinite solitary confinement
14 have resulted in conditions that have historically been regarded as cruel and unusual punishment.

15 95. Defendant at all times knew, or should have known, of the risks of imposing
16 indefinite solitary confinement on Plaintiffs and proposed Class Members.

17 96. Defendant’s interference with Plaintiffs’ and proposed Class Members’
18 constitutional right to be free from cruel and unusual punishment was, and is, obvious to
19 Defendant.

20 97. As a result of Defendant’s actions, Plaintiffs and proposed Class Members are
21 suffering actual and irreparable injuries, including but not limited to anxiety, depression, suicidal
22 ideations and attempts, degradation of their mental health, and degradation of their physical health

23 **TENTH CLAIM FOR RELIEF**

24 **42 U.S.C. § 1983 – FOURTEENTH AMENDMENT**

25 **(PROCEDURAL DUE PROCESS)**

26 98. Plaintiffs and proposed Class Members have a liberty interest in the protection of
27 minimum regulatory standards under Title 15 of the California Code of Regulations, including
28 section 1065.

1 99. Title 15 of the California Code of Regulations provides for “minimal standards for
2 local detention facilities.” These minimum standards include an obligation for detention facilities
3 like Defendant’s to “develop written policies and procedures for an exercise and recreation
4 program, in an area designed for recreation, which will allow a minimum of three hours of
5 exercise distributed over a period of seven days.” Cal. Code Reg., tit. 15, § 1065. Exercise is
6 defined as “physical exertion of large muscle groups.” *Id.* § 1006.

7 100. Title 15 further provides that the “facility administrator shall develop written
8 policies and procedures which allow reasonable access to a telephone beyond those telephone calls
9 which are required by Section 851.5 of the Penal Code [allowing for three completed telephone
10 calls after arrest].” Cal. Code Regs., tit. 15 § 1067.

11 101. Plaintiffs and proposed Class Members have a state-created liberty interest in these
12 minimum applicable standards codified in Title 15.

13 102. Plaintiffs and proposed Class Members also have a liberty interest in avoiding
14 indefinite detention in solitary confinement and atypical and significant hardships that present a
15 dramatic departure from the ordinary incidents of prison life under the Fourteenth and Eighth
16 Amendments.

17 103. Defendant has unilaterally deprived Plaintiffs and proposed Class Members of their
18 liberty interests under Title 15 and the Constitution without due process, a hearing, or any
19 procedural safeguards.

20 104. Defendant has failed to comply with Title 15’s requirement that Defendant seek
21 permission from the Board of State and Community Corrections in order to deviate from the
22 regulation’s typical mandates during an emergency.

23 105. Defendant’s interference with Plaintiffs’ and proposed Class Members’ rights to
24 due process was, and is, obvious to Defendant.

25 106. Defendant’s deprivation of Plaintiffs and proposed Class Members’ liberty interests
26 without procedural safeguards, such as periodic review and compliance with the procedural
27 guidelines enumerated in Title 15, is unreasonable and violates the Fourteenth Amendment’s
28 guarantee of procedural due process.

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confidential communication with detained individuals in and out of quarantine, and surveillance video of public areas of the facilities.

10. Release as many incarcerated people as necessary pursuant to Defendant’s authority under California Government Code § 8658 to ensure compliance with both a medically sound social distancing policy and incarcerated peoples’ right to out-of-cell exercise and to be free of punishment.

B. Award such further relief as this Court deems appropriate.

DATED: February 25, 2021

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