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17
 18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA
 20

21 JESSE HERNANDEZ et al., on behalf of
 22 themselves and all others similarly situated,

23 Plaintiffs,

24 v.

25 COUNTY OF MONTEREY; MONTEREY
 26 COUNTY SHERIFF'S OFFICE;
 27 CALIFORNIA FORENSIC MEDICAL
 28 GROUP, INCORPORATED, a California
 corporation; and DOES 1 to 20, inclusive,

Defendants.

Case No. CV 13 2354 PSG

**DECLARATION OF JAMES EGAR
 IN SUPPORT OF PLAINTIFFS'
 MOTION FOR CLASS
 CERTIFICATION**

Judge: Hon. Paul S. Grewal
 Date: June 3, 2014
 Time: 10:00 A.M.
 Crtrm.: 5, 4th Floor

Trial Date: None Set

1 I, James Egar, declare:

2 1. I am an attorney admitted to practice law in California, a member of the bar
3 of this Court, Public Defender for the County of Monterey, and counsel of record for
4 Plaintiffs in this action. I have personal knowledge of the matters set forth herein, and if
5 called as a witness I could competently so testify. I make this declaration in support of
6 Plaintiffs' Motion for Class Certification.

7 **I. Since Becoming Public Defender of Monterey County, I Have Been**
8 **Increasingly Disturbed by the Inhumane Conditions in the Monterey County**
Jail ("Jail")

9 2. I have been the Public Defender for the County of Monterey since August
10 2006. In that capacity, I supervise an office of approximately 27 attorneys and oversee the
11 conflicts program for the county. I also manage approximately 16 other employees,
12 including investigators, paralegals, and support staff. We are engaged in both traditional
13 criminal justice courts and treatment oriented therapeutic courts. I have prepared and
14 implemented sixteen plenary departmental budgets. Our office handles approximately
15 20,000 cases annually. I have worked with members of the California Legislature on
16 criminal justice, substance abuse and mental health related issues.

17 3. I graduated from Loyola University of Los Angeles, School of Law, in 1975.
18 I have been a California Public Defender since 1978, and a Chief Public Defender since
19 1996—first in Yolo County (1996-1999), then Santa Barbara County (2000-2006), and
20 now Monterey County. I have tried hundreds of criminal cases to verdict over my career.
21 I am a founding member of the American Council of Chief Defenders and participate in
22 numerous other organizations related to criminal justice and trial advocacy. I am a former
23 Board Member of the Orange County Bar Association and the California Public
24 Defender's Association. I have participated in the planning and operation of Adult and
25 Juvenile Drug Courts and the Proposition 36 Treatment Court. I teach nationally on behalf
26 of the United States Department of Justice, the National Drug Court Institute, and the
27 National Association of Drug Court Professionals. I have taught on Ethics and
28 Confidentiality for the National Drug Court Institute's Family Courts Program and Tribal

1 Healing to Wellness Courts. I have also taught evidence and trial advocacy at three law
2 schools.

3 4. In March 2014, I was named Defender of the Year by the California Public
4 Defenders Association. Attached as **Exhibit A** is a true and correct copy of the letter I
5 received notifying me of this award in part because of my “work in obtaining adequate
6 medical care and humane treatment for inmates in custody in Monterey County.”

7 5. I first became aware of problems in the Jail soon after I assumed office.

8 6. In approximately 2007, I became increasingly concerned about reports from
9 clients to my office of serious safety concerns, particularly in the gang pods, and suicide
10 attempts. I discussed these concerns with the former Monterey County Sheriff, Mike
11 Kanalakakis, on numerous occasions. Sheriff Kanalakakis represented to me that his first and
12 foremost concern was the safety of his own staff. I left these meetings unconvinced that
13 the Sheriff took my concerns seriously. I also raised these same concerns with the District
14 Attorney, Dean Flippo, and the County Administrative Officer, Lew Bauman.

15 7. Another incident from about this time alerted me that the Jail was not a safe
16 place to be. An attorney from my office was sexually assaulted while she interviewed a
17 client in the Jail’s interview rooms. There are approximately nine booths for attorney
18 visits at the Jail, each of which is cinder-block rooms with no division between attorneys
19 and prisoners. The attorney and prisoner are locked into the room from the outside. There
20 is a small window onto a hallway that could allow a guard in the hallway to see what
21 occurs in the room, but in my experience, there is almost never a guard nearby while
22 attorneys meet with their clients. In the room itself, there is a telephone and two panic
23 buttons for communicating with the custody staff.

24 8. The attorney from my office attempted to contact the guards when the sexual
25 assault occurred. However, some time passed before a guard removed the prisoner from
26 the room. After this incident, I expressed my serious concerns for my attorneys’ safety to
27 the County Administrative Office and the Sheriff’s Office. I received oral promises from
28 the County that the Jail would respond promptly to any future incidents like this.

1 However, in my experience, I have found that the custody staff continues to respond very
2 slowly to requests made by attorneys visiting with prisoners in the Jail.

3 9. Around the same time, in approximately 2007, my office had a client who
4 was seriously hearing impaired. He needed hearing aids in order to effectively
5 communicate, but neither the court nor the Jail provided him with hearing aids or any other
6 accommodations. I spoke with both the Court and the Jail about getting him the
7 accommodations he needed, but I was unable to obtain any help from the County. I
8 ultimately purchased a hearing aid for this client from Central Coast Audiology.

9 10. I became further alarmed in September 2009 after a difficult situation was
10 brought to my attention involving a young prisoner who had been accused of a
11 misdemeanor and appointed a Public Defender. Elisha McCoy had been taken from the
12 Jail to the Superior Court on September 1, 2009. The Sheriff's Office failed to bring
13 Mr. McCoy back to the Jail after his court hearing. I believe this means that the Sheriff's
14 Office missed him during their transit census and their jail custody census.

15 11. Mr. McCoy was left overnight in a cold and unlit area, without food or
16 access to water, while he was shackled, handcuffed, and manacled at the waist.
17 Fortunately this was a week night and not a weekend, so the Sheriff's Office returned to
18 the courthouse the next day and found him there. I am informed and believe that
19 Mr. McCoy had to be treated for hypothermia when the Sheriff's Office finally found him
20 the next morning. After the incident, I am informed and believe that a member of the
21 County Counsel staff, upon request of the Sheriff's Office, went to see Mr. McCoy while
22 he was in bed for hypothermia and offered him \$1,000 in exchange for signing a waiver of
23 liability for the County. Neither I nor anyone else was present at, or notified about, this
24 meeting with my office's client. When I found out about this incident, I was outraged for
25 many reasons. I was very disturbed that the Jail custody staff "lost" Mr. McCoy and that
26 Mr. McCoy was exposed to severe medical risks. I was further outraged that the County
27 failed to contact me before speaking with my client, Mr. McCoy. I advised Mr. McCoy
28 that he should not have signed the liability waiver. I drafted court filings aimed at getting

1 the charges against him dismissed and invalidating the waiver in response to this incident.
2 I told the County Counsel's office and court officials that I would file these papers in court
3 if Mr. McCoy was not released from his liability waiver and if the charges against him
4 were not dismissed. The County agreed to release him, and I never filed these papers. The
5 County later entered into a confidential settlement with Mr. McCoy.

6 12. This incident was widely reported in the local media. Attached as **Exhibit B**
7 is a true and correct copy of an article by Virginia Hennessey published in the Monterey
8 Herald entitled "Monterey County asked to investigate man-left-in-cell case," dated
9 December 20, 2009, and available at http://www.montereyherald.com/ci_14036962.

10 13. I learned more about the severity of problems at the Jail when a client who I
11 was personally representing, Jesse Crow, committed suicide on or around August 7, 2010.
12 Mr. Crow was facing a possible death sentence at the time, and, as such, was at high risk
13 for self-harm. The Jail placed him in an isolation cell for a prolonged period of time,
14 where his mental stability began to deteriorate. I could tell that he was mentally
15 decompensating from my attorney-client visits with him, from the experts working with
16 me on the case, and from representations made to me by his family. I talked to the
17 Sheriff's Office about his housing assignment, and informed members of the Sheriff's staff
18 that Mr. Crow's isolated housing assignment was having a deleterious effect on him. After
19 several weeks, I was able to get him transferred out of isolation. However, the Jail moved
20 him to a lockdown pod unit, where he remained largely isolated from other prisoners and
21 mentally unstable.

22 14. Mr. Crow committed suicide by hanging himself with a bed sheet, which had
23 been braided into a lengthy cord and which was also attached to his cell door to block
24 entry by guards. I am informed and believe that the window to his cell had also been
25 covered in some fashion. I was informed by members of the Sheriff's Office that custody
26 staff checked on Mr. Crow on an hourly basis. I viewed photos of the cord used by
27 Mr. Crow and it is my opinion that this cord could not have been prepared in an hour or
28 less. I hired an independent pathologist to observe the autopsy of Mr. Crow, given the

1 circumstances. She was permitted to remain only after Sheriff Kanalakis personally told
2 her that she was not to tell me anything or make a report without his permission. I
3 immediately complained about the Sheriff's instructions to the County Administrator and
4 the County Counsel, but they refused to intervene.

5 15. Mr. Crow's suicide was widely reported in the local media. Attached hereto
6 as **Exhibit C** is a true and correct copy of a newspaper article by Virginia Hennessey
7 published in the Monterey Herald entitled "Monterey County Jail safety scrutinized after
8 high-profile Jesse Crow suicide," dated August 10, 2010, and available at
9 http://www.montereyherald.com/ci_15728472.

10 16. I believe the Jail failed to adequately protect my client from this tragic
11 suicide and ignored my notice to them of his mental deterioration.

12 17. Another incident from this time period sticks with me. In approximately
13 2009 or 2010, I received a call about one of my office's clients, who was housed in the
14 Jail. This client's face had been slashed repeatedly in a manner described as a spiral. His
15 injuries were so severe that I am informed and believe that he required 100 stitches to his
16 face and that his ear had to be reattached. I went to speak with then-Lieutenant James
17 Bass, who is now a Commander at the Jail, about this incident. I told then-Lieutenant Bass
18 that I was concerned that other prisoners were trying to kill my client. I was told in
19 response that these injuries were the result of gang violence, and that the other prisoners
20 did not wish to kill my client but only to maim him. Then-Lieutenant Bass did not take
21 any responsibility for my client's life-threatening injuries. He instead blamed my client for
22 provoking other prisoners by having copies of his police reports in the Jail with him.

23 18. In addition, in March 2009, Steve Rease, one of the Deputy Public Defenders
24 in my office, represented a client named Jaimen Galindo. Mr. Galindo is a paraplegic and
25 a full-time wheelchair user. In the course of Mr. Galindo's criminal proceedings, the
26 Superior Court for the County of Monterey conducted an evidentiary hearing. The purpose
27 of the hearing was to assess Mr. Galindo's claim that it would constitute cruel and unusual
28 punishment under the Eighth Amendment to the United States Constitution if Mr. Galindo

1 were sentenced to the custody of the California Department of Corrections and
2 Rehabilitation (“CDCR”), because CDCR could not accommodate Mr. Galindo’s
3 disability. Attached hereto as **Exhibit D** is a true and correct copy of transcript excerpts
4 from the first day of the evidentiary hearing, conducted on March 19, 2009.

5 19. During the hearing, Mr. Galindo testified at length regarding the problems he
6 experienced related to his disability during the five and a half months he was in the
7 Monterey County Jail as a pre-trial detainee. For the first day of his incarceration in the
8 Jail, Mr. Galindo was placed in a safety cell on suicide watch. The Jail’s safety rooms
9 contain neither a toilet nor a sink. There is only a bare hole in the ground for defecation.
10 Mr. Galindo was stripped naked, and had his wheelchair, catheter, and urine bag taken
11 away from him. He was afraid to move because it would have caused him to soil himself;
12 as a result, he developed two pressure sores on his ankles. Because of the manner in which
13 Mr. Galindo must use the bathroom to evacuate his bowels and the fact that he lacked the
14 equipment needed to do so, he was not able to go to the bathroom for the first 48 hours he
15 was in the Jail. When he complained to the guard he was told, “there’s the hole, use it.”
16 He was ultimately placed in one of the dorms in the Jail, where the shower, toilet, and bed
17 to which he was assigned were all inaccessible to him. He was forced to pay other
18 prisoners with chips and cookies for assistance with basic functions, like getting into and
19 out of his bed. *See* Ex. D, at 49-56.

20 20. During this time period, i.e., from 2009-2011, a number of additional
21 disturbing incidents occurred that suggested to me that there were significant public health
22 and medical and mental health care problems at the Jail. There had always been
23 complaints about the health care at the Jail, but I believe that the frequency and severity of
24 these complaints increased around this time. Attorneys from my office would come to me
25 with concerns about their individual clients, and I would tell them which County official
26 would be most likely to be able to help them obtain the care their clients needed.

27 21. I raised my serious concerns about the safety of my clients at the Jail at
28 county budget meetings, meetings of the Board of Supervisors, and later at meetings of the

1 Community Corrections Partnership (CCP), the group that oversees the use of state
2 prisoner realignment funds. At these public meetings, I argued that the Jail was
3 dangerously overcrowded and understaffed, leading to all sorts of associated problems. I
4 also repeatedly brought up my clients' safety issues to the Criminal Justice Collaborative,
5 an organization that I helped found in approximately 2007. The Criminal Justice
6 Collaborative is a group that meets monthly and is comprised of the District Attorney, the
7 Sheriff, the Presiding Judge of the Monterey County Superior Court, the Chief Probation
8 Officer, and me. At these meetings, I spoke candidly about my concerns.

9 22. I also had numerous private meetings with county officials about these
10 issues. I spoke repeatedly with representatives of the Sheriff's Office, first with Sheriff
11 Kanalakakis, and then with Sheriff Scott Miller when he assumed office in 2010. Some of
12 the very first meetings I had with Sheriff Miller, both before and after he was elected, were
13 about the health care provided to prisoners. I also met privately with staff of the County
14 Counsel's office, the County Administrative Office, former Chief Deputy of the Jail
15 Jeffrey Budd, and current Jail Commander Bass about these issues. I informed each
16 County official that I wanted immediate changes to the Jail, and if they refused to take
17 steps to ensure the safety and well-being of my clients in the Jail, I had an obligation to
18 seek some other solution.

19 23. I also expressed my concerns to local community organizations at their
20 regular meetings, including the local chapters of the League of United Latin American
21 Citizens (LULAC) and the National Association for the Advancement of Colored People
22 (NAACP). Sheriff Miller attended at least one LULAC meeting as a candidate for Sheriff.
23 I was also at that same LULAC meeting, and I used that opportunity to reiterate my serious
24 concerns about the Jail to him.

25 24. Nothing changed; in fact, conditions grew worse.
26
27
28

II. After Many Months of Advocacy, It Became Clear to Me that the Crowding in the Jail Was Becoming More Severe, the Problems Were Getting Worse, and Additional Resources Were Needed

25. My colleague, Assistant Public Defender Donald Landis, and I became aware of a law firm in San Francisco, Rosen Bien Galvan & Grunfeld LLP (“RBGG”), which had recently obtained relief for the class of mentally ill prisoners in the California prisons. *See Brown v. Plata*, 131 S. Ct. 1910 (2011). In early 2012, I began meeting regularly with RBGG while continuing to investigate the conditions at the Jail.

26. As part of our investigation, I was provided a large number of Incident Reports describing horrific violence in the Jail and unsafe conditions. *See* Decl. of Gay Crosthwait Grunfeld in Supp. of Pls.’ Mot. for Class Certification, filed herewith (“Grunfeld Declaration”), ¶¶ 45-48.

27. Along with RBGG attorneys, I set up meetings with Monterey County Supervisors in the fall of 2012 and the spring of 2013. We apprised them of the dangerous conditions in the Jail and told them that we wanted immediate action for the safety and welfare of the prisoners. Nothing seemed to come from these meetings.

III. Given the Systemic Failures in the Jail, and the Lack of Resources or Responsiveness, I Decided that My Office Would Co-Counsel with RBGG in a Lawsuit Against the County Regarding the Conditions in the Jail

28. As Public Defender, I have certain statutorily mandated duties, including under California Government Code section 27706(g). Pursuant to that statute “[u]pon ... the request of the person involved, the public defender may represent any person who is not financially able to employ counsel in a proceeding of any nature relating to the *nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile proceedings.*” Cal. Gov’t Code § 27706(g) (emphasis added). Given the serious and long-standing unconstitutional and illegal conditions I observed in the Jail, my statutory obligation, and the inability of the majority of my clients to pay for a private lawyer, I determined that it was my duty to pursue action to improve conditions at the Jail. Since that time, I and my staff have assisted RBGG and other co-counsel identifying specific problems at the Jail and coordinating with local

1 officials. We are committed to continuing our advocacy on behalf of our clients until
 2 constitutional and statutory violations no longer cause injury and suffering for prisoners in
 3 the Jail.

4 29. On April 15, 2013, after months of investigations, we sent a detailed letter
 5 to Monterey County officials informing them of the seriousness of the situation and
 6 asking for a prompt meeting. A true and correct copy of that letter is attached hereto as
 7 **Exhibit E**. The County failed to undertake any serious remedial efforts in response to our
 8 letter.

9 30. We subsequently filed a complaint on May 23, 2013, alleging violations of
 10 the federal and California constitutions, the Americans with Disabilities Act, the
 11 Rehabilitation Act, and California Government Code section 11135.

12 **IV. Since Filing the Complaint, Our Office Continues to Receive Evidence of**
 13 **Serious ADA and Constitutional Violations, Including Four Deaths**

14 31. It has been almost a year since we filed the complaint. Although we have
 15 met with many Monterey County officials and opened a more serious dialogue about
 16 reform, problems persist at the Jail.

17 32. To my knowledge, there have been four prisoner deaths since May 2013.

18 33. In May 2013, I was informed that Joshua Claypole attempted suicide while
 19 in the Jail. I was informed that his attorney had requested that Mr. Claypole be kept on
 20 suicide watch, which, to my knowledge, did not occur. I was informed that Mr. Claypole
 21 subsequently died a few days later in the hospital. Reports related to Mr. Claypole's
 22 suicide were produced to Plaintiffs' counsel and are attached as Exhibit EE to the Grunfeld
 23 Declaration. This incident was widely reported in the local papers. Attached hereto as
 24 **Exhibit F** is a true and correct copy of an article by Julia Reynolds and Larry Parsons,
 25 entitled "Joshua Claypole, Monterey stabbing suspect, pronounced dead," dated May 9,
 26 2013, and available at [http://www.montereyherald.com/ci_23210069/joshua-claypole-](http://www.montereyherald.com/ci_23210069/joshua-claypole-monterey-stabbing-suspect-pronounced-dead)
 27 [monterey-stabbing-suspect-pronounced-dead](http://www.montereyherald.com/ci_23210069/joshua-claypole-monterey-stabbing-suspect-pronounced-dead).
 28

1 34. In November 2013, I was informed that Artemio Martinez Resendiz died
 2 after suffering for months in the Jail with serious health problems. A true and correct copy
 3 of a report on Mr. Resendiz's death is included within Exhibit CC to the Grunfeld
 4 Declaration.

5 35. I was informed of two additional prisoners, Jacob Parenti and David
 6 Stevens, who died within a week of each other in January 2014. From what I understand,
 7 both of these deaths resulted from health conditions that could have been effectively
 8 treated. A true and correct copy of a report on Mr. Parenti's death is included in Exhibit
 9 CC to the Grunfeld Declaration. Defendants have not provided Plaintiffs' counsel with
 10 any documents related to Mr. Stevens' death, despite a California Public Records Act
 11 request on March 10, 2014 for "[a]ny and all writings ... related to any deaths of prisoners
 12 while in the custody of Monterey County Jail since January 1, 2010"

13 36. The deaths of Mr. Parenti and Mr. Stevens were reported widely in the local
 14 media. Attached hereto as **Exhibit G** is a true and correct copy of an article by Julia
 15 Reynolds that appeared in the Monterey Herald entitled "Monterey County inmate deaths
 16 bring accusations against Sheriff's Office," dated January 23, 2014, and available at
 17 [http://www.montereyherald.com/news/ci_24981928/prisoner-deaths-bring-accusations-](http://www.montereyherald.com/news/ci_24981928/prisoner-deaths-bring-accusations-against-sheriffs-office)
 18 [against-sheriffs-office](http://www.montereyherald.com/news/ci_24981928/prisoner-deaths-bring-accusations-against-sheriffs-office). Attached as **Exhibit H** is a true and correct copy of an article by
 19 Arvin Temkar that appeared in the Monterey County Weekly entitled "A lawsuit against
 20 the Monterey County Jail is about to get bigger – here's a look at what the Public Defender
 21 and the ACLU say is wrong with medical care at the facility," dated April 10, 2014, and
 22 available at [http://m.montereycountyweekly.com/archives/2014/0410/a-lawsuit-against-](http://m.montereycountyweekly.com/archives/2014/0410/a-lawsuit-against-the-monterey-county-jail-is-about-to/article_cb3c3ffe-c01e-11e3-905a-0017a43b2370.html?mode=jqm)
 23 [the-monterey-county-jail-is-about-to/article_cb3c3ffe-c01e-11e3-905a-](http://m.montereycountyweekly.com/archives/2014/0410/a-lawsuit-against-the-monterey-county-jail-is-about-to/article_cb3c3ffe-c01e-11e3-905a-0017a43b2370.html?mode=jqm)
 24 [0017a43b2370.html?mode=jqm](http://m.montereycountyweekly.com/archives/2014/0410/a-lawsuit-against-the-monterey-county-jail-is-about-to/article_cb3c3ffe-c01e-11e3-905a-0017a43b2370.html?mode=jqm).

25 37. I was shocked and saddened to learn of each of these deaths, especially given
 26 the attention currently on the Jail and the promises of reform and remediation made, both
 27 to me and the public, by the Sheriff's Office. These four tragic deaths crystallized my
 28

1 concern that the County has not taken adequate action to fix the medical and mental health
2 care system in the Jail.

3 38. There have been other concerning incidents since we filed our complaint.
4 For example, in early 2013, one of my office's clients was found incompetent to stand
5 trial. However, the Jail failed to transfer him to Atascadero State Hospital for treatment in
6 a timely manner, leaving him to decompensate for over three months without adequate
7 mental health care.

8 39. Another client of my office also suffered from serious mental illness. He
9 was sent to a number of state hospitals, before being returned to the Jail in late-2013.
10 Metropolitan State Hospital, which treated him immediately before his return to the Jail,
11 determined that he was not competent to stand trial and would not regain his ability to
12 stand trial due to serious mental illness. No one notified my office when he was returned
13 to the Jail. He thus remained in the Jail for approximately 90 days without being placed on
14 the trial calendar. The Public Defender was only informed that he had been returned to the
15 Jail after his mother called my office. An attorney from my office expressed her grave
16 concern at the fact that her client was seemingly lost in a "black hole" to Doctor Taylor
17 Fithian ("Dr. Fithian"), a psychiatrist at the Jail and one of the owners of Defendant
18 California Forensic Medical Group ("CFMG"). Dr. Fithian responded that "[t]here are
19 'black holes' everywhere." A true and correct copy of this email exchange, with the name
20 of the client redacted, is attached hereto as **Exhibit I**.

21 40. In August 2013, I was informed by one of my attorneys that a prisoner in the
22 Jail suffered a stab wound after a gang-related fight. I am informed and believe that this
23 prisoner needed immediate medical attention and was air-lifted to San Jose for emergency
24 care.

25 41. On or around March 3, 2014, I was made aware that there was a backflow of
26 feces in the toilets in U-Pod, one of the housing units in the Women's Section of the Jail. I
27 immediately called the Sheriff's Office. When I ultimately spoke to Sheriff Miller, he did
28 not seem particularly surprised by this occurrence.

1 I declare under penalty of perjury under the laws of the United States and the State
2 of California that the foregoing is true and correct, and that this declaration is executed at
3 Salinas, California this 29th day of April, 2014.

4
5 /s/ James Egar
6 James Egar
7

8 Pursuant to Northern District General Order 45(X)(B), I hereby attest that I have on
9 file approvals for any signatures indicated by a “conformed” signature (/s/) within this e-
10 filed document.

11 DATED: April 29, 2014

ROSEN BIEN GALVAN & GRUNFELD LLP

12 By: /s/ Gay Crosthwait Grunfeld
13 Gay Crosthwait Grunfeld

14 Attorneys for Plaintiffs
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Exhibit A



CPDA

California Public Defenders Association
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A Statewide Association of Public Defenders and Criminal Defense Counsel

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Juliana Humphrey, 2012

March 24, 2014

James S. Egar
Monterey County Public Defender
111 W. Alisal Street
Salinas, CA 93901

Dear Jim,

On behalf of the Board of Directors of the California Public Defenders Association, I wish to extend sincerest congratulations on your being named Defender of the Year for 2014. You are being honored for your work in obtaining adequate medical care and humane treatment for inmates in custody in Monterey County, as well as your work on behalf of indigent defendants in Monterey County.

As for the awards ceremony, you will be receiving your award during the luncheon program at this years CPDA Convention at the Hilton-Mission Bay in San Diego, California. The program will include other award recipients. Because of the length of the program we are asking award recipients to limit their acceptance comments to no more than 6 minutes. While we hate to impose such limits, doing so will ensure that all recipients receive time to make meaningful comments to the luncheon participants.

On behalf of CPDA, I look forward to seeing you at the state convention and joining with your public defender colleagues in this celebration.

Jack T. Weedin, Chair
Awards Committee
California Public Defenders Association

Exhibit B

MONTEREY HERALD

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Monterey County asked to investigate man-left-in-cell case

LULAC leader notifies Department of Justice

By VIRGINIA HENNESSEY

Herald Salinas Bureau

POSTED: 12/20/2009 01:27:15 AM PST | UPDATED: 4 YEARS AGO

0 COMMENTS

The case of a man left shackled in a Salinas courthouse holding cell overnight was more serious than Monterey County officials initially portrayed.

When the County Counsel's Office got 21-year-old Elisha McCoy to sign a release and accept a \$1,000 settlement, he was in the jail infirmary being treated for hypothermia.

According to court records, when McCoy was discovered in the unheated cell his temperature had dropped to 93 degrees.

"It could have had deadly consequences if it had happened on a Friday," and McCoy was left over the weekend in the cell, said Diana Jimenez, president of the North Monterey County League of United Latin American Citizens, who asked the Board of Supervisors to investigate the Sept. 1 incident. Jimenez said she's notified attorneys in the civil rights division of the U.S. Department of Justice about the situation.

Deputy County Counsel Traci Kirkbride, who handled the settlement, said McCoy's temperature had returned to normal when she spoke with him. He was in good spirits and anxious to get out of jail. Kirkbride said she, the prosecutor and the deputy public defender met with Superior Court Judge Tom Wills the next day, and she expressed her hopes that McCoy could be released on his own recognizance, which he was.

Later that day, in what he insists was a chance meeting, Sheriff Mike Kanalakakis took McCoy to an In-N-Out restaurant for a meal.

More concerns

Beyond the medical concerns, the case may involve constitutional and professional violations. A taped interview by the county's attorney and a sheriff's department internal affairs officer was conducted without the permission or knowledge of McCoy's appointed attorney.

Monterey County Public Defender Jim Egar, who is representing McCoy on the misdemeanor charge that landed him in jail, declined comment because the case is ongoing.

Earlier this month, Egar won a continuance of a potential plea hearing in the case after he learned about the circumstances of the authorities' contact with his client. That followed a motion he filed in September, in which he challenged the admissibility of any statements his client made outside his presence.

Wills agreed. The judge said, "There are legitimate 6th Amendment concerns" regarding McCoy's right to counsel and said Egar could raise the issue in a pretrial motion.

Kirkbride said McCoy was offered and declined the presence of an attorney.

Canons clear

Chuck Warner, a veteran Monterey attorney and 2009 winner of the county bar association's top award, said, "The canons of professional conduct are pretty clear."

Happening Around Monterey

News & Business



John Devine
@JohnJDevine

+

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"You don't talk to somebody else's client, period," he said. "That's pretty much in-violate."

Sheriff's spokesman Cmdr. Mike Richards said the interview violated no professional standards because it was conducted in relation to an internal affairs investigation into what happened to McCoy and did not involve his criminal case.

Not so, said Richard Zitrin, adjunct professor of legal ethics at the University of California Hastings School of Law and founder of the Center for Applied Legal Ethics at the University of San Francisco's law school.

"One might argue that the prisoner didn't have a lawyer as to his civil claim against the county for its failures," he said, "but the matter is sufficiently related to the criminal matter that doing this without contacting his public defender, under these egregious circumstances, is inappropriate."

Zitrin also said it was unethical for the county to seek a waiver when McCoy was in its custody.

"This is taking unfair advantage of someone and getting that person to sign a release under duress," he said. "I believe any judge would set aside this purported settlement."

August arrest

McCoy's troubles started Aug. 29, when Salinas police Officer Edwin Cruz saw him in the driver's seat of a parked car with a friend, allegedly using a straw to snort drugs off a CD case. When Cruz knocked on the window, McCoy allegedly dropped the paraphernalia, and he and his friend both dropped their hands to their sides.

Cruz pulled his firearm and ordered them out of the car. When backup arrived, Cruz searched the men, as well as two other friends who arrived on the scene, and found no contraband. A search of the car turned up the CD case and what turned out to be the cartridge of pen, neither of which contained detectable traces of illicit drugs.

McCoy tested negative for drugs. He was arrested, however, for possession of a pair of brass knuckles Cruz found on the passenger side of the car.

That was a Saturday. McCoy, a Native American who lives on a reservation in Lake Havasu, Ariz., spent the weekend in Monterey County Jail. He was brought to court for arraignment on Sept. 1, a Tuesday. The Public Defender's Office was appointed to represent him and pleaded not guilty on his behalf. The judge denied his request to be released on his own recognizance, and McCoy was returned to the holding cell in the basement of the asbestos-plagued north wing to await transportation back to the jail.

At 7:30 the next morning, deputies opened the holding facility and found McCoy still inside. He was rushed to Natividad Medical Center where he was evaluated and then transferred to the jail infirmary. Two days later, after his meeting with Kirkbride, he was released on his own recognizance.

No mention

County Counsel Charles McKee and Kanalakakis did not mention McCoy's medical condition when first contacted about the incident this month. McKee confirmed that there had been a quick settlement and Kanalakakis confirmed he'd taken McCoy to In-N-Out after he found him standing on the corner looking lost after his release from jail.

On Friday, Kanalakakis said again that he had no idea who McCoy was when he stopped to offer him help and said he was "aghast that people would think that was some sort of set up."

He made clear, however, that he was made aware of an inmate being left at the courthouse the day McCoy was discovered and immediately called in the County Counsel's Office "to make it right with the young man."

"My feeling on it was one of outrage and disbelief myself when I first heard about it," Kanalakakis said. "I was very unhappy when I received that news."

Not unusual

Kirkbride said it is not unusual for counties to make on-the-scene settlements, such as when a deputy crashes into a civilian's car. But she said she has never conducted one herself and "can't think of a case in this county."

Kanakalakis said he also initiated an internal affairs investigation to determine what went wrong and took measures to ensure it won't happen again.

Sheriff's Cmdr. Richards declined to discuss details of the investigation, or any possible discipline

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"There were two opportunities to see he was not there," he said. "Checks that should have been done weren't done."

Specifically, Richards said, the department has protocols for counting heads on the inmate transportation bus and rosters for logging inmates in and out when they leave the jail for medical appointments or court hearings. Because inmates are sometimes returned from court late in the afternoon, he added, shift changes and dinner service can complicate the log-in process.

"It's a system that typically works," Richards said. "A series of mistakes was made on that particular day. The deputies that transported him missed him and somebody counting in the jail missed him."

Virginia Hennessey can be reached at 753-6751 or vhennessey@montereyherald.com

(vhennessey@montereyherald.com).

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Exhibit C

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Monterey County Jail safety scrutinized after high-profile Jesse Crow suicide

By VIRGINIA HENNESSEY
Herald Salinas Bureau

POSTED: 08/10/2010 01:33:46 AM PDT | UPDATED: 4 YEARS AGO

0 COMMENTS

The coroner's office confirmed late Monday that murder suspect Jesse Crow died from asphyxia due to hanging during a suicide.

Crow hanged himself in his cell at the Monterey County Jail early Saturday. His attorney, Monterey County Public Defender Jim Egar, said he was disturbed and incensed by the "stunning end to a really tragic story."

Egar said he had been warning Sheriff Mike Kanalakis and County Counsel Charles McKee for months about the risks of dangerous conditions at the jail. In the past year, at least four of his clients have been injured in custody.

"To get this call on top of it is an incredible blow," he said.

Crow was facing a possible death penalty if convicted of killing his wife, Ryann Bunnell Crow, 23, whose remains were found on the edge of San Francisco Bay on May 24. He was charged with shooting her to death for financial gain.

He should have been under closer scrutiny, Egar said.

"Here's a guy facing a potential capital case," he said, "someone who has been kept in isolation, who is left alone with the pieces that could be used to end his own life and he's not checked on for a long enough period of time for him to do this?"

Sheriff agrees

Kanalakis said he shares Egar's concerns about the jail, which was built in 1977, and has been asking for more staff and a new facility for years.

"Jails and prisons by their very nature are violent institutions and I've always said we need a new jail and more deputies," the sheriff said. "We're no different than any jail around the state. We all share the problem of overcrowding."

However, he said, "Nothing could have stopped what Jesse Crow did. He was very determined and it was very well thought out."

Sheriff's Cmdr. Mike Richards confirmed Monday that Crow used parts of his bed sheet to hang himself. He used the same sheets to tie his cell door closed to delay deputies who found him hanging. He waited until the early morning hours, when other inmates were sleeping, and hanged himself after a bed check.

Kanalakis and Richards said the jail was not designed to hold the number and "caliber" of prisoners it has.

"The jail was originally designed for incarceration of individuals who have committed misdemeanor crimes and will serve less than a year in jail," Kanalakis said. "We have become a

Happening Around Monterey


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court."

18 years since last suicide

Richards said the last suicide in Monterey County Jail was in 1992 and in the last five years the "exceptional staff" at the facility had prevented 60 suicides.

In Crow's case, he said, the jail staff met protocol. Crow was last checked at 2:07 a.m. and a deputy returned within an hour as required. Only inmates on suicide watch are denied bed sheets, he said, and Crow had given no indication he planned to kill himself.

Egar acknowledged the same, though he said the weeks Crow spent in an isolation cell had taken their toll.

Crow was placed in isolation shortly after his wife's remains were identified June 8. Suspects in "iso cells" have no contact with other inmates. They have no sense of time, even whether it's night or day, Egar said. They are removed from the cell for one hour each day.

A few weeks ago, he said, he was able to get Crow transferred to a single cell in D-Pod, where he was able to communicate with other prisoners. His client seemed to be adjusting.

Conditions caused concern

Nevertheless, Egar said, he has been distressed and vocal for months about conditions at the jail.

One of his clients, Elisha McCoy, was inadvertently left in the courthouse holding cell overnight and was hypothermic when deputies found him the next morning.

Two high profile inmates — convicted rapist Thomas Pollacci and Patrick Fousek, who is accused of trying to sell his baby — were beaten by other inmates in recent months. Another client, Egar said, was severely slashed by other alleged gang members, nearly severing his ear and requiring more than 100 stitches.

Changes were made

Kanalakis said it was that case that initiated "ongoing discussions" between him and Egar. Inmates were previously allowed to bring their police reports into the jail. Inmates in gang pods were requiring others to share the records to prove they're loyal and to identify informants. Violators were then attacked.

Richards said accused gang inmates are no longer allowed to bring their reports back to jail. He said Monterey County ranks below many in the state for the number of jail assaults.

Egar said that's not been his experience in the last year and warned that the county is opening itself to liability.

"It's open season in there," he said. "I hope the county uses this as an impetus to immediately correct and provide for the safety of accused people in their custody. Even though they are accused, they have fundamental rights."

Virginia Hennessey can be reached at 753-6751 or yhennessey@montereyherald.com (<mailto:yhennessey@montereyherald.com>).

Not a safe place

Several recent incidents have caused Monterey County Public Defender Jim Egar to question whether the Monterey County Jail is safe.

- June 17: Thomas Pollacci, who was convicted of rape, was assaulted by three inmates in a holding cell as he was awaiting transportation to the court for sentencing.
- June 24: Patrick Alan Fousek, who is accused of trying to sell his baby in a Walmart parking lot, suffered multiple injuries to his face and two cracked ribs after being jumped in an open dorm at the jail.
- Aug. 7: Jesse Crow hanged himself in his cell between bed checks.

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Exhibit D

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY

THE PEOPLE OF THE STATE OF)	
CALIFORNIA,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO. SS071838A
)	
GALINDO, JAIMEN ROMERO,)	
)	EVIDENTIARY HEARING
Defendant.)	VOLUME I
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, MARCH 19, 2009

BEFORE THE HONORABLE ADRIENNE M. GROVER, JUDGE

APPEARANCES:

FOR THE PEOPLE:	DEAN D. FLIPPO
	DISTRICT ATTORNEY
	BY: GARY THELANDER
	DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT:	JAMES EGAR
	PUBLIC DEFENDER OF THE
	COUNTY OF MONTEREY
	BY: STEVE REASE
	DEPUTY PUBLIC DEFENDER

ALSO PRESENT:	REGINA GAGE
	CERTIFIED LAW STUDENT

REPORTED BY: PAMELA C. FERRY, CSR-13221
OFFICIAL COURT REPORTER
MONTEREY SUPERIOR COURT

W I T N E S S I N D E X

WITNESS	PAGE
JAIMEN ROMERO GALINDO	
Direct Examination	
BY: MS. GAGE	20
Cross-Examination	
BY: THE COURT	63
Cross-Examination	
BY: MR. THELANDER	67
Redirect Examination	
BY MS. GAGE	67
TIMOTHY ROUGEUX	
Direct Examination	
BY: MR. THELANDER	71
Cross-Examination	
BY: MR. REASE	102

E X H I B I T S

EXHIBITS	DESCRIPTION	ID	ADMITTED
A - F	Documents	12	70
G - P	Photos	12	70

EXHIBIT	JUDICIAL NOTICE TAKEN	PAGE
A, B	Defense Exh. A and B of Injunction, re Court decisions	70
C	Defense Exh. C of Injunction Re Court decisions	47

1 SALINAS, CA; THURSDAY, MARCH 19, 2009; 9:39 A.M.

2
3 P R O C E E D I N G S

4 THE COURT: Good morning. We are here in the
5 matter of Jaime Galindo. Mr. Galindo is present with
6 Mr. Rease and Ms. Gage, certified law student.
7 Mr. Thelander for the People.

8 We are here for an evidentiary hearing on the
9 defense motion for an order, finding an order that
10 incarceration or commitment to a State correctional
11 facility would be constitutionally inappropriate in
12 Mr. Galindo's particular case, given his paraplegic
13 status.

14 I'll note that the motion is made without
15 Mr. Galindo admitting any wrongdoing in the case, and I
16 understand that. This is just a situation where because
17 of the nature of the charges, they would mandate,
18 essentially, a State prison commitment. And so, in the
19 event of any finding or admission of guilt, this is a
20 question that counsel have identified as being
21 appropriate for some kind of preliminary examination.

22 But I do want to emphasize that I'm not
23 inferring anything, nor will the record reflect that
24 Mr. Galindo is in any way admitting any wrongdoing by
25 making this motion.

26 MR. REASE: Thank you.

27 THE COURT: I have had the opportunity to
28 speak briefly with counsel about today's hearing. As I

1 understand it, the People have subpoenaed two witnesses
2 to testify today, and Mr. Rease intends to present
3 testimony by Mr. Galindo.

4 We did address the order of witnesses, and I
5 think it will be appropriate that we hear from
6 Mr. Galindo first, followed by the People's witnesses.
7 Mr. Rease has requested the exclusion of witnesses, and
8 I will indicate that at least as to the People's
9 witness, they will be excluded while each of them
10 testifies. And as to their exclusion during
11 Mr. Galindo's testimony, I have made the observation
12 that I think there is some efficiency perhaps to be
13 obtained from the State's witnesses being able to hear
14 Mr. Galindo's testimony, and then be prepared directly
15 to address that either on direct or cross-examination;
16 however, Mr. Rease, nonetheless, notwithstanding any
17 efficiencies to be gained, has asked to be excluded even
18 during Mr. Galindo's testimony, and so over the People's
19 objection on balance, I will go ahead and grant that
20 motion, as well.

21 We do have experienced counsel here, who I'm
22 sure can accurately and clearly present the issues
23 raised in Mr. Galindo's testimony in their examination
24 of the State witnesses. So, that motion will be
25 granted.

26 Mr. Rease, as to one or both of the State
27 witnesses, however, you have a concern about the
28 timeliness of their disclosure to you, and I'll let you

1 fit my needs.

2 Q. And how often does your chair need some type
3 of maintenance or repair or adjustment?

4 A. I replace my wheels every two months.
5 Eventually, they do wear out, so every two months, I
6 then go ahead and make the replacements. Brakes.
7 Brakes, I'd say about every month or so, I'll make an
8 adjustment on the brakes. If anything breaks on it, or
9 the upholstery does become stretched, upholsteries are
10 replaced about every six months to a year. And just
11 daily -- you know, whenever it squeaks, I just oil it
12 then, so that's on a monthly basis.

13 Q. So, do you carry a tool kit or a patch kit?

14 A. Yes, I carry a patch kit with me all the time
15 in case I'm out of town, and I do get a flat, which has
16 happened before, I can then -- I'll transfer onto a
17 chair or to a bench or something, and make the repairs
18 right there.

19 Q. Now, I have some questions about your
20 experience in Monterey County jail as a wheelchair-bound
21 inmate: How long were you in Monterey County jail?

22 A. I was in Monterey County jail for five
23 months -- five-and-a-half months.

24 Q. And what happened initially when you were
25 first placed in Monterey County jail?

26 A. When I first arrive at the County jail, I was
27 placed on suicide watch, and they put me in a small
28 cell, removed all my clothes, and took away my leg bag

1 and my wheelchair, and I was left on the hard surface
2 for about 24 hours. I didn't want to move or make any
3 movements because since my leg bag was gone, I didn't
4 want to urinate on myself, so I stayed in one spot for
5 those full 24 hours, and I developed two pressure sores
6 on my ankles from sitting on the hard surface.

7 Q. So, was there a bathroom in the cell that you
8 could --

9 A. No, there was just a hole on the floor, and as
10 I shown earlier on Exhibit G, of my toilet seat, I would
11 need something -- I would need this toilet seat in order
12 to perform my bowel functions. So, when I came into
13 County, it had already been two days since I had used
14 the restroom for any bowel movements. And I was
15 complaining to the guards that I needed to use the
16 restroom, and they told me, well, there's the hole, use
17 that. But with no gloves, no KY jelly and no raised
18 toilet seat, I couldn't perform that function. So,
19 after the 24 hours and they gave me all my clothes back
20 and my leg bag and my wheelchair, I was still
21 complaining to them that I needed to use the restroom.
22 And finally, I just had a bowel movement from all the
23 pressure that was building up, and I then complained to
24 the nurse that was in the infirmary that I needed to be
25 cleaned up now.

26 Q. So, you were taken from the original cell
27 where you were held for 24 hours and put into another --

28 A. Yes, put into another holding cell before they

1 processed me in, and still complaining to them, that now
2 I've had a bowel movement -- and talked to the sergeant
3 on duty, and told him of my situation. And the nurse
4 had promised me that he was going to help me get cleaned
5 up, but they never did, and I stayed in my feces for
6 another day.

7 Q. Did anyone assist you with this --

8 A. Finally, after complaining some more, one of
9 the nurses -- it was another nurse from another shift,
10 she helped me get cleaned up.

11 Q. So, now this is the second day, you were in
12 the holding cell, and then what happened when you were
13 taken out of the holding cell?

14 A. I was then placed into one of the regular
15 dorms, and when I immediately got into the dorm,
16 I went to the restroom area to see if it was
17 wheelchair-accessible, and it was not. I could not get
18 near the toilets. They had little stalls with the
19 doors, and none of them were wide enough to get in. I
20 could not get into the shower area. There was a curve
21 that was probably be eight-inches high, and I couldn't
22 roll my wheelchair over that.

23 The beds that I was assigned to was very low.
24 It was probably about ten inches off the ground. Some
25 of the inmates, they came up with the idea, well, we'll
26 just stack some books underneath and raise the bed up.
27 So we got a bunch of paper bags and placed them
28 underneath the bed posts, and we brought it up to the

1 level where I could transfer in and out of the bed. But
2 it was very unsafe. There was one time when the bed did
3 shift while I was on it and fell off the books. But I
4 didn't sustain any injuries there, but I could have.

5 So, I kept complaining and complaining that I
6 can't use this restroom here, I can't, you know, get in
7 to either use a bowel movement or remove my leg bag, and
8 this went on for about seven days. Again, I was having
9 bowel movements because I was unable to use their
10 restroom facility. And I ended up writing a letter to
11 the commander explaining my situation, and I said, this
12 is a lawsuit that I'll file if I don't get some kind of
13 accommodations.

14 The director of the infirmary then came to me
15 and says, okay, how can we accommodate you. I said,
16 just give me a restroom that I can use that's accessible
17 to me that I can get my wheelchair next to the toilet
18 and use the restroom.

19 Q. And how quickly was their response to the
20 letter that you wrote?

21 A. It was a day turnaround.

22 THE COURT: And on what day was it that you
23 made your written request for accommodation?

24 THE WITNESS: After the -- I was already there
25 for seven days when I filed this letter.

26 BY MS. GAGE:

27 Q. So, prior to that, for seven days, you did not
28 have access to an adequate bathroom that allowed you to

1 perform normal bodily functions.

2 A. Yes.

3 THE COURT: And had you made any request for
4 accommodation before the eighth day?

5 THE WITNESS: First day I went into County, I
6 started making requests for the things I need. So,
7 finally, it was addressed, and the director of the
8 infirmary said, okay, how do you want to do this. And I
9 was like, I'll need to be taken to the infirmary every
10 day to use the restroom and to shower.

11 And it was decided that every evening after
12 dinner, one of the deputies would then escort me up to
13 the infirmary to where I could use their facilities.

14 BY MS. GAGE:

15 Q. Let me understand: Once a day after being
16 there for seven days, you were taken to the infirmary
17 where you could shower and take care of routine bodily
18 functions?

19 A. Yes.

20 Q. And is this the procedure for all the inmates?

21 A. No, that was just the procedure for me.

22 Q. Because of your --

23 A. My disability.

24 Q. So, was there a specific time, or just
25 approximately after dinner?

26 A. Just approximately after dinner when the
27 deputies then did their routine, getting all their stuff
28 settled down, then when they had a moment, they would

1 take me up.

2 Q. And did they comply with their agreement that
3 they would come every day at approximately the same
4 time?

5 A. Well, they complained about it, and I --

6 MR. THELANDER: Objection. Nonresponsive to
7 the question.

8 THE COURT: Sustained.

9 BY MS. GAGE:

10 Q. Did they come around dinner every day?

11 A. Yes.

12 Q. Did you ever have an accident prior to them
13 coming approximately the same time every day?

14 A. No, but I was going through some symptoms
15 called dysreflexia.

16 Q. Dysreflexia?

17 A. Yes. That's when you don't empty out your
18 bladder or you don't empty out your bowels, you tend to
19 go into a cold sweat, headaches; your blood pressure
20 rises, and when it gets to that point, it's getting
21 pretty serious. And that's when I started knocking at
22 the door and says, I need to go now before I have an
23 accident.

24 Q. So, once they took you to the infirmary where
25 you were allowed to take care of bodily routines --

26 A. Yes.

27 Q. -- did they wait for you? Did they return you
28 in a timely fashion?

1 A. No, they didn't. There were times, they would
2 just drop me up at the infirmary; they would lock me in
3 where the shower area was, and I would then just take
4 care of my business. But after I would use the restroom
5 and take a shower. And the nurses would come around and
6 help me get dressed, and I would have to wait for a
7 deputy; there would be times where it would be like two,
8 three hours before they'd come around to, you know,
9 escort me back to the C dorm.

10 Q. So, you were in the shower at this time, or
11 you had already gotten dressed at this time?

12 A. I had already gotten dressed, and I would be
13 waiting for them to return me back to my dorm.

14 Q. Did anyone else offer assistance?

15 A. No.

16 Q. Inmates or other jail personnel?

17 A. Well, yeah, inmates would offer assistance
18 helping me transferring in and out of bed. There was a
19 time when I did have a bowel movement, one of the
20 inmates did help me clean up because the nurses didn't
21 want to touch me. So I had to ask one of the inmates if
22 he could help, but at the same time, I had to pay them
23 back for their services.

24 Q. Pay the inmates back?

25 A. Well, we would use the chips and the cookies
26 as money since we didn't have money in there, and that's
27 how we would pay individuals, you know, paying for
28 services.

1 Q. Did a lot of other inmates rely on other
2 inmates for assistance or help?

3 MR. THELANDER: I would object at this point.

4 THE COURT: Sustained. I'm basing that on
5 relevance.

6 BY MS. GAGE:

7 Q. Mr. Galindo, how did you feel, relying on the
8 other inmates to assist you?

9 MR. THELANDER: Same objection.

10 THE COURT: Ms. Gage, how are Mr. Galindo's
11 subjective feelings about his experience in the Monterey
12 County jail relevant to your motion?

13 MS. GAGE: Well, your Honor, I think because
14 of his physical condition, I would think that he's
15 already in a vulnerable state in society, and then being
16 in Monterey, he's seemingly dependent on other inmates.

17 THE COURT: How is that relevant to your
18 motion about his placement in a CDCR facility and their
19 ability to accommodate his needs?

20 MS. GAGE: Well, I think it's relevant because
21 there has been no court action against the Monterey
22 County jail, whereas there has been with the California
23 Department of Corrections. And if the County jail he's
24 depending on inmates for assistance, and it's made him
25 vulnerable and somewhat helpless, what can we expect in
26 the California Department of Corrections.

27 THE COURT: Because I don't know what we can
28 expect, it's also inviting speculation. I'll sustain

1 Q. Mr. Galindo, as a disabled individual, could
2 you speak about your sense of vulnerability and
3 dependence on others.

4 A. Yes. Well, being in an area that wasn't
5 accessible, I had to rely on everybody else to -- my
6 cellmates that were near me.

7 THE COURT: Mr. Galindo, again, I'm asking for
8 just a brief and general comment from you about your
9 sense of vulnerability. And I don't want to hear about
10 your specific experiences during your incarceration in
11 the Monterey County jail at this point.

12 THE WITNESS: Sorry, your Honor. So, I feel
13 that it's inadequate, that prison guards or so forth --

14 MR. THELANDER: Objection. Nonresponsive.

15 THE COURT: Sustained. And you'll need to
16 listen to Ms. Gage's question very carefully, and I'll
17 ask that you answer just the question that she's asking
18 you.

19 BY MS. GAGE:

20 Q. Mr. Galindo, please offer us an answer, a
21 brief answer about your emotional response to being
22 dependent and reliant on others because of your physical
23 disability.

24 THE COURT: Since 1985.

25 BY MS. GAGE:

26 Q. Thank you, your Honor.

27 -- since 1985 in our society.

28 A. Well, it's devastating to me. It's just that

1 I have to rely on people to help me, day in and day out.
2 I'm a very proud man, but I -- I have to ask for help,
3 which I do not like. So --

4 Q. And the emotional impact that that has had on
5 you for the past 25 years?

6 A. It's been very stressful, very painful, the
7 ordeals that I have to go through, the humiliation that
8 I have to face. Is that brief?

9 THE COURT: Well, it's brief. I appreciate
10 that.

11 BY MS. GAGE:

12 Q. I have one more question, Mr. Galindo: You
13 understand if you're convicted of the crimes for which
14 you are accused, that the law requires you to pay a
15 price. It isn't your position that you are absolved
16 from punishment because of your physical disability, is
17 it?

18 A. That's correct.

19 Q. If you are convicted of paying a price, are
20 you asking for special treatment because of your
21 physical disability?

22 A. I'm asking for equal --

23 MR. THELANDER: Objection as to the form of
24 the question: If you are convicted, of paying a price.

25 MS. GAGE: I'm sorry, if you are convicted of
26 a crime. Excuse me, your Honor.

27 THE COURT: Thank you. Go ahead.

28 MS. GAGE: I'll rephrase that.

1 BY MS. GAGE:

2 Q. If you are convicted for the crimes for which
3 you are charged, and as the law dictates, there is a
4 price for those crimes, are you asking for special
5 accommodations because of your physical disability?

6 A. I'm just asking for equal rights, like the
7 inmates who are in the dorm that I was in in County
8 jail; they can go to the restroom any time they want;
9 they can shower any time they want -- except for me. I
10 had to wait once a day, once a day in the evening. And
11 if I was lucky, I would go right after supper, and
12 again, everybody else had -- they're free to move around
13 the dorm, except for me.

14 THE COURT: So, Mr. Galindo, is it your
15 opinion then that the accommodation offered to you by
16 the Monterey County jail with regard to showering and
17 using infirmary facilities for your bowel program, is it
18 your position that that was an unreasonable
19 accommodation?

20 THE WITNESS: Yes.

21 MS. GAGE: Thank you. I don't have any other
22 questions. Thank you.

23 THE COURT: Any questions, Mr. Thelander?

24 MR. THELANDER: No, your Honor.

25 THE COURT: Then I'll follow up, then, with
26 one of my own just on that most recent question.

27 EXAMINATION BY THE COURT

28 BY THE COURT:

1 Q. Since it's your position that the
2 accommodations offered by the Monterey County Jail were
3 unreasonable, what, in your opinion, would be a
4 reasonable accommodation for access to showering and
5 accessible toileting facilities?

6 A. Yes, that's just basically it, it's just
7 accessible toilets to where I could maneuver and get my
8 wheelchair into and transfer and use the facilities.

9 Q. Again, Mr. Galindo, my question is when you
10 say that the accommodation at the jail was unreasonable,
11 what would be reasonable?

12 A. That the facility would follow ADA
13 compliances.

14 Q. Okay, I'm not making myself clear.

15 How about this: What was it that was
16 unreasonable about the accommodation? Do you concur
17 that they did offer an accommodation?

18 A. They did offer accommodations.

19 Q. And what was unreasonable, in your opinion,
20 about that?

21 A. For instance, the toilet, I had to sit on this
22 chair with a hole on it, and I had to, you know, relieve
23 myself into a bucket. And to me, that was humiliating.
24 But that's all they had.

25 We tried to use my toilet seat to their
26 toilets, but the brackets wouldn't fit over it.

27 Q. So, they did make that attempt and were
28 willing --

1 A. They did make an attempt, right.

2 Q. Wait. We can only talk one person at a time,
3 and unless you hear my question --

4 A. I'm sorry, your Honor.

5 Q. -- your answer might not make sense.

6 So, the Monterey County jail was willing to
7 attempt to have your personal toilet seat, which is one
8 of our photographic exhibits, used by you at the jail,
9 but that was just unsuccessful in terms of fitting it to
10 the toilet that they had?

11 A. That's correct.

12 Q. Okay. So, any other aspects of the
13 accommodation that they offered that in your mind was
14 unreasonable?

15 A. The shower facilities were confined,
16 constricted, to maneuver my wheelchair in there, and
17 that was -- there was an incident where I did fall from
18 transferring out of their seat to my wheelchair.

19 Q. And was that because of the dimensions of the
20 shower stall?

21 A. Yes.

22 Q. So, different dimensions, a larger opening,
23 and larger internal dimensions of a shower stall would
24 have improved the situation for you?

25 A. Yes.

26 Q. Anything else about the jail's accommodation
27 that was unreasonable?

28 A. The eating area, they all had seats welded to

1 the tables, and there was no room for me to pull into a
2 table and eat, so I would have to eat off my lap.

3 Q. Let me just understand, because I'm not in
4 your position, so I want to understand how that is an
5 unreasonable accommodation.

6 A. Well, again, I should be able to pull up into
7 a table and eat with the rest of the inmates, and I was
8 unable to. I had to place the tray on my lap and eat
9 off of that.

10 Q. Did you get the same food?

11 A. Yes.

12 Q. At the same time.

13 A. Yes.

14 Q. But, you were not able to eat from a table
15 surface; it was from your lap.

16 A. Yes.

17 Q. Okay. Anything else?

18 A. The sleeping facilities, the beds, again, it
19 was too low for me to transfer in and out.

20 Q. And you have testified on that, and I did take
21 notes on that. Anything else?

22 A. No, your Honor, that's it.

23 Q. I'm just needing to understand on a more
24 detailed level what the concerns were, so I appreciate
25 your answers to my questions.

26 THE COURT: Any followup, Miss Gage?

27 MS. GAGE: No, your Honor.

28 THE COURT: Mr. Thelander?

Exhibit E



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April 15, 2013

VIA FEDEX

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Re: Remedying the Illegal Conditions in the Monterey County Jail
Our File No. 1187-6

Dear Sheriff Miller and Monterey County Supervisors:

We write on behalf of prisoners housed in Monterey County Jail (“the Jail”). Rosen Bien Galvan & Grunfeld LLP and the Monterey County Public Defender’s Office have been investigating the conditions in the Jail for some time. Though our investigation is still ongoing, we have already identified serious violations of federal and California law.

The County of Monterey (“the County”) and the Monterey County Sheriff’s Office (the “Sheriff’s Office”), through their operation of the Jail, violate the civil rights

The Honorable Scott Miller
 Monterey County Supervisors
 April 15, 2013
 Page 2

of prisoners by failing to provide reasonable accommodations to prisoners with disabilities, by failing to operate an adequate medical and mental health care system, and by failing to protect prisoners from violence and injury at the hands of other prisoners. The illegal conditions prevailing at the Jail are the direct result of the County's inadequate policies and practices. In particular, the County refuses to take common sense, cost-effective, safety enhancing steps to ameliorate the overcrowding in the Jail, which is a root cause of many of the violations of federal and state law we have identified.

The conditions in the Jail cause very real harm to the more than 1100 prisoners in the Jail. From a deaf signer who has been repeatedly denied sign language interpretation in medical and due process settings to mentally ill prisoners forced to spend time in revolting rubber rooms covered with feces to an extremely ill prisoner whose colonoscopy has been poorly handled to a mobility impaired prisoner who has failed to receive adequate medical care and accommodations for the nerve injury he sustained when he was attacked by another prisoner, to a prisoner with serious mental health and medical issues (including diabetes, bone cancer, and fibromyalgia) who has not once been evaluated by a doctor in the six weeks she has been at the Jail, the conditions of the Jail and the harm they cause shock the conscience.

At the conclusion of this letter, we propose a framework for remedying the conditions in the Jail and avoiding the expense and delay of protracted litigation. If, however, the County does not agree by May 16, 2013 to a framework for resolving the grave problems described below, we will have no choice but to file a lawsuit to protect the rights of prisoners in the Jail.

I. The Jail Fails to Provide Adequate Accommodations to Prisoners with Disabilities Under Federal and State Law

Our investigation has uncovered widespread violations of Title II of the Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act, the California Disabled Persons Act, California Government Code § 11135, and relevant regulations interpreting those laws. *See* 42 U.S.C. § 12131 *et seq.*; 29 U.S.C. § 794; 28 C.F.R. § 35.101 *et seq.*; Cal. Civ. Code § 54 *et seq.*; Cal. Gov't Code § 11135. The ADA and similar laws apply with full force to all correctional facilities, including the Jail. *See, e.g., Pierce v. County of Orange*, 526 F.3d 1190, 1214 (9th Cir. 2008) (citing *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 209-10 (1998)). Put simply, the County lacks policies and practices necessary to ensure the accommodation of prisoners with disabilities, and, as a result, routinely discriminates against prisoners with disabilities in violation of state and federal law.

The Honorable Scott Miller
Monterey County Supervisors
April 15, 2013
Page 3

To begin with, the Jail does not adequately screen incoming prisoners to determine whether they have disabilities that require accommodations. In addition, the Jail does not maintain a central list, electronic or otherwise, of prisoners with disabilities and the accommodations they require. *See Armstrong v. Davis*, 275 F.3d 849, 876 (9th Cir. 2001) (prison system's lack of disability tracking system violates the ADA). The Jail's failure to identify and track prisoners with disabilities contributes to pervasive violations of prisoners' rights under federal and state disability laws.

The Jail has no mechanism for providing notice to prisoners of their rights under the ADA, as required by federal regulation. *See* 28 C.F.R. § 35.106. The Jail also lacks an adequate grievance procedure for prisoners to request accommodations while incarcerated, as required by 28 C.F.R. § 35.107(b). Prisoners have reported problems obtaining grievance forms, which are controlled by staff. Our interviews with prisoners and review of custody files indicate that even when prisoners are able to submit a grievance about disability-related issues, they frequently receive delayed or incomplete responses or no response at all.

The Jail routinely fails to provide accommodations to prisoners with hearing, vision, speech, and other impairments that affect communication. *See* 28 C.F.R. § 35.160. Specifically, the Jail rarely, if ever, provides prisoners with sign language interpreters, hearing aids, or other auxiliary aids to ensure that prisoners with disabilities can effectively communicate with custody and medical staff. This failure to ensure effective communication affects access to nearly every program and service offered by the Jail, including the booking process, telephones, disciplinary proceedings, religious services, recreational programs, medical and mental health care, and educational and vocational programs. For example, at a medical appointment for a hearing impaired prisoner who primarily communicates using American Sign Language, medical staff not only refused his request for a sign language interpreter, but also refused the prisoner's alternative request to communicate using written notes. Instead, the staff member forced the prisoner to read lips, which the prisoner is unable to do, leaving him unable to understand most of what the staff member conveyed during the medical visit and placing the prisoner at a significant risk of misdiagnosis and harm. This same prisoner was also found guilty of a disciplinary infraction and sanctioned at a hearing in which he was unable to effectively participate because he was denied a sign language interpreter.

In the course of the investigation, we learned that the Jail, in violation of 28 C.F.R. § 35.152, frequently fails to provide prisoners with disabilities with safe and accessible housing. Only a few areas of the Jail have accessible showers and toilets. The Jail lacks adequate policies and practices to ensure that prisoners who require such facilities are placed and retained in these accessible housing units. For example, a wheelchair-bound

The Honorable Scott Miller
Monterey County Supervisors
April 15, 2013
Page 4

prisoner who was assigned to a housing unit that lacked toilets and showers with grab bars fell repeatedly trying to take care of his basic needs and hygiene. Moreover, the exercise yard for the Rotunda, all of the Pods, the clinic, and the Women's Section of the Jail can only be accessed by traveling up one long flight and then down a shorter flight of stairs. The Jail routinely houses prisoners with mobility impairments in these units even though these architectural barriers deny such prisoners access to the yard.

The Jail often refuses to provide assistive devices—including but not limited to wheelchairs, walkers, crutches, canes, braces, tapping canes, hearing aids, and pocket talkers—to prisoners with disabilities. Without such accommodations, prisoners are unable to move around the Jail and access the Jail's programs and services, in violation of the ADA. *See* 28 C.F.R. § 35.130. As an example, one prisoner, who required, but was denied, a wheelchair, was forced to have other prisoners carry him to and from the toilet and shower.

The Jail's woefully inadequate program for accommodating prisoners with disabilities not only denies prisoners access to programs and services, it threatens their safety and well-being. Prisoners with unidentified and unaccommodated disabilities are at greater risk of harm in the case of emergencies, including fires, alarms, and earthquakes. Such prisoners are also at increased risk of exploitation by other prisoners as a result of their need to rely upon other prisoners for assistance to access basic services.

II. The Jail Fails to Provide Adequate Health Care to Prisoners

The Eight and Fourteenth Amendments to the United States Constitution and Article I, Sections 7 and 17 to the California Constitution, require the County to provide adequate health care to all prisoners in the Jail. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *see also In re Alva*, 33 Cal. 4th 254, 291 (2004). Our investigation has uncovered distressing evidence of a manifestly unconstitutional health care system, in which the County is deliberately indifferent to the medical and mental health care needs of its prisoners.¹

¹ It is our understanding that the County contracts with California Forensic Medical Group ("CFMG") to provide medical and mental health care to prisoners in the Jail. The County is nonetheless liable for all constitutional violations suffered by prisoners, whether those violations were caused by County personnel or employees of CFMG. *West v. Atkins*, 487 U.S. 42, 56 (1988).

The Honorable Scott Miller
Monterey County Supervisors
April 15, 2013
Page 5

“A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.” *Brown v. Plata*, 131 S. Ct. 1910, 1928 (2011).

A. Inadequate Mental Health Care

The County violates prisoners’ rights under the federal and state constitutions by failing to provide adequate mental health care. The minimum elements of a constitutional mental health system are:

- (1) a systematic program for screening and evaluating inmates to identify those in need of mental health care; (2) a treatment program that involves more than segregation and close supervision of mentally ill inmates;
- (3) employment of a sufficient number of trained mental health professionals; (4) maintenance of accurate, complete and confidential mental health treatment records; (5) administration of psychotropic medication only with appropriate supervision and periodic evaluation; and
- (6) a basic program to identify, treat, and supervise inmates at risk for suicide.

Coleman v. Brown, S-90-520 LKK/JFM, 2013 U.S. Dist. LEXIS 50900, at *55-56 (E.D. Cal. Apr. 5, 2013) (quoting *Coleman v. Wilson*, 912 F. Supp. 1282, 198 n.10 (E.D. Cal. 1995), citing *Balla v. Idaho*, 595 F. Supp. 1558 (D. Idaho 1984)).

The mental health care system in Monterey County Jail falls far short of these minimum standards. The Jail’s screening and evaluation processes fail to identify numerous prisoners with serious mental illness. From our interviews and review of custody and medical files, it appears that mental health care treatment in the Jail consists almost entirely of medication. Therapy, on either a group or individual basis, is nearly non-existent. Contrary to law, prisoners with mental illness are segregated from the general population and placed in the A and B Pods for men and the R and S Pods for women. Prisoners in these Pods are frequently denied access to programs and services—including day room access and yard—from which other prisoners benefit. Though medication constitutes the primary mechanism of treatment in the Jail, all medications, including psychotropic medications, are provided to prisoners in an inconsistent manner; medications are frequently changed or discontinued without medical justification.

Most troublingly, the Jail’s program for supervising prisoners at risk of suicide is patently deficient. Among the most shocking discoveries is the Jail’s regular placement of prisoners in mental health care crisis (and for that matter, prisoners who are simply

The Honorable Scott Miller
Monterey County Supervisors
April 15, 2013
Page 6

misbehaving) in “rubber rooms.” These “rubber rooms,” which lack any furniture or features save for a grate in the floor which serves as the toilet, are punitive, anti-therapeutic, disgusting, and inhumane. The floors (on which prisoners sleep, urinate, and defecate) and walls of the “rubber rooms” are frequently covered in feces.

The shortcomings in the Jail’s mental health care system have had tragic consequences. Over the past three years, there have been two completed and more than a dozen attempted suicides. The rate of completed suicides at the Jail significantly exceeds the national average for local jails.

In addition, many prisoners in the Jail suffer from obvious, untreated psychiatric problems. One prisoner, who had been found incompetent to stand trial because of his mental illness, did not receive any medications for his first 10 days in the Jail; as a result, he became depressed and began to hear voices. Another prisoner simply asked to see a mental health clinician, and was placed naked in a rubber room for a significant period of time. Other prisoners we interviewed were floridly psychotic during our meetings and clearly were not receiving adequate mental health care treatment.

B. Inadequate Medical Care

The County routinely and systemically violates the federal and state constitutional rights of prisoners by failing to provide minimally adequate medical care.

The Jail’s screening process is inadequate for identifying prisoners with serious and chronic medical issues; as a result, many prisoners receive no treatment for serious conditions for significant periods of time (if ever) after being booked into the jail. Even when the Jail identifies a new prisoner with chronic or serious medical concerns, the Jail frequently refuses to continue the prescribed treatment the prisoner was receiving. In particular, the Jail employs a remarkably punitive “detox protocol” for prisoners who arrive at the Jail, refusing to provide prisoners with pain medication prescribed by their outside doctors. *See Hamilton v. Endell*, 981 F.2d 1062, 1066-67 (9th Cir. 1992), *abrogated in part on other grounds by Ford v. Ramirez-Palmer (Estate of Ford)*, 301 F.3d 1043, 1045 (9th Cir. 2002) (deliberate indifference to ignore outside doctors without medical justification). Prisoners placed on the “detox protocol” suffer from intense, untreated pain as well as powerful, dangerous, and unnecessary withdrawal symptoms.

The Jail also has a systemic practice of delaying necessary treatments until prisoners are released in order to avoid the expense of treatment. This is particularly true when the care required by a prisoner involves referral to an outside medical provider.

The Honorable Scott Miller
Monterey County Supervisors
April 15, 2013
Page 7

These and other practices violate established precedent governing adequate medical care. *See LeMarbe v. Wisneski*, 266 F.3d 429, 440 (6th Cir. 2001).

Prisoners have difficulty requesting assistance through the sick call procedure, and often experience substantial delays before being seen by an appropriate medical provider. *See Hoptowit v. Ray*, 682 F.2d 1237, 1253 (9th Cir. 1982) (medical care is deficient when prisoners are unable to make their needs known to medical and mental health care staff). As a result, medical issues often go untreated for weeks or months. *See Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (deliberate indifference “may appear when prison officials deny, delay or intentionally interfere with medical treatment”) (quotation marks and citations omitted). It is our understanding that the inability of patients to be seen in a timely manner is both a product of the Jail’s overcrowding (discussed below) as well as the County’s refusal to hire sufficient health care workers. *See Anderson v. Atlanta*, 778 F.2d 678, 685-89 (11th Cir. 1985) (deliberate indifference where insufficient number of medical professionals employed to provide care).

When prisoners are able to meet with medical staff, staff routinely fail to address the prisoners’ concerns or fail to provide care when care is medically indicated. *See Jett*, 439 F.3d at 1098 (deliberate indifference where correctional facility refused to provide medically indicated treatment).

These policies and practices have resulted in significant harm to numerous prisoners. We are aware that the Jail has been prone to several outbreaks of infectious disease, including scabies, measles, and staph infections. At least three prisoners with colostomies did not receive appropriate supplies or follow-up treatment, including reversal procedures, while at the Jail. Prisoners who arrive at the Jail with serious chronic medical issues, including ulcerative colitis, a rare stomach fungus, and high blood pressure, consistently reported delays or lack of appropriate treatment. Other prisoners reported that the Jail was refusing to provide them with prescribed medications, some of which the prisoners had been taking for years to manage chronic issues. Many prisoners described patently insufficient treatment for traumatic injuries; for example, one prisoner, who had his collar bone fractured by a Jail deputy, received no treatment for his injury other than an ice pack for four days. Another prisoner received no treatment for vaginal bleeding that occurred for two months. A number of prisoners received grossly inadequate treatment after being released from the hospital back to the Jail.

The Honorable Scott Miller
Monterey County Supervisors
April 15, 2013
Page 8

III. The Jail Fails to Protect Prisoners from Harm

Pursuant to the Eighth and Fourteenth Amendments of the U.S. Constitution and Article I, Sections 7 and 17 of the California Constitution, the County must “take reasonable measures to guarantee the safety of the inmates.” *Farmer v. Brennan*, 511 U.S. 825, 832 (1970). The County violates the constitutional rights of inmates because it “knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.” *Id.* at 847.

Prisoners housed in Monterey County Jail face a constitutionally unacceptable risk of violence from other prisoners. Our review of Monterey County Jail Incident Reports for January 2011 to September 2012 indicates that scores of prisoners are attacked and injured by other prisoners. Most of the incidents require medical attention for at least one of the participants, either at the Jail or the local hospital. These incidents occur in almost every area of the Jail, including housing units, the kitchen, infirmary, and visiting area. Violent incidents take place among male prisoners and female prisoners at approximately the same rate. Jail staff almost never intervene to stop incidents of prisoner violence before they are complete. Moreover, in many cases, Jail staff never identify the assailants.

Rather than take steps to mitigate the risk of violence, Jail officials, through their deliberate policy choices, create the environment in which violence flourishes. The County has elected to operate the Jail with an insufficient number of officers, accepting the risk that its staff will not be able to monitor and protect all prisoners. As is discussed in more detail below, the Jail is extraordinarily overcrowded, which makes it considerably more difficult for the County to protect prisoners from violence. The Jail itself is a patchwork of makeshift spaces, thrown together to keep up with Monterey’s fast-growing Jail populations. Consequently, throughout the housing units and other spaces, there are numerous blind spots where staff cannot safely monitor prisoners. And finally, the Jail does not adequately classify and assign prisoners to housing locations in the Jail where they will be safe from injury and violence. Prisoners who are incompatible, including because of rival gang memberships and/or histories of assaultive behaviors, are regularly housed together in the Jail.

IV. The County Refuses to Utilize Available Solutions to Reduce Overcrowding in the Jail

Each of the constitutional and statutory violations discussed above are caused, at least in part, by the severely overcrowded conditions in the Jail. As the United States Supreme Court has explained:

The Honorable Scott Miller
Monterey County Supervisors
April 15, 2013
Page 9

Crowding ... creates unsafe and unsanitary living conditions that hamper effective delivery of medical and mental health care.... Cramped conditions promote unrest and violence, making it difficult for prison officials to monitor and control the prison population.... [O]vercrowding may prevent immediate medical attention necessary to avoid suffering, death, or spread of disease.... Living in crowded, unsafe, and unsanitary conditions can cause prisoners with latent mental illnesses to worsen and develop overt symptoms. Crowding may also impede efforts to improve delivery of care.

Plata, 131 S. Ct. at 1933-34 (citations omitted).

These conditions prevail in the Jail; as Monterey County Civil Grand Jury concluded, “[t]he County Jail is suffering a condition of gross overcrowding.” The Jail has a rated capacity for 829 prisoners, but has in the recent past housed as many as 1200 prisoners, nearly 150 percent of capacity. Some areas of the Jail are considerably more overcrowded than the Jail as a whole, especially in the Women’s Section.

County officials have repeatedly acknowledged the severity of the Jail’s overcrowding problem. For many years now, Monterey County has applied on a monthly basis to the Superior Court for the County of Monterey for an order to release prisoners on an accelerated basis pursuant to California Penal Code section 4024.1. To support the applications, the former Chief Deputy Sheriff for the County has sworn on multiple occasions that unless the Jail is able to release some inmates, the overcrowding in the Jail would “compromise[] the inmate classification plan as well as the safety and security of the detention facilities.” In support of the applications, Dr. Taylor Fithian, Director of CFMG, “advised that the excessive number of inmates housed in the Jail compromises the health of the inmates and the staff working at the facility.” As recently as late 2012, Sheriff Miller stated that “[o]vercrowding has been a serious problem at the jail for many years, creating a dangerous situation for inmates, jail staff and the community.”

Despite the profound and persistent overcrowding, the County has not availed itself of all opportunities to reduce the Jail population. In particular, the County fails to utilize any form of pre-trial risk assessment for all but a handful of detained defendants, refuses to expand capacity for its existing work release program for sentenced individuals, and has failed to investigate opportunities for collaboration between agencies to expand its capacity to supervise individuals on mandatory community supervision as part of a split sentence. If the County used these policies and programs to reduce the Jail’s census, the population in the Jail would quickly fall below the Jail’s rated capacity without harm to public safety.

The Honorable Scott Miller
Monterey County Supervisors
April 15, 2013
Page 10

Instead, the County has unwisely decided to try building its way out of its overcrowding problem. In the fall, the County announced plans to expand the Jail at a cost of more than \$40 million; this project will not be completed until 2017 at the earliest. And most recently, Sheriff Miller announced that the County was planning to send as many as 50 prisoners to be housed in Alameda County Jail because the Monterey County Jail is too overcrowded; this program will cost a minimum of \$1.5 million annually. These proposed expenditures amount to a needless waste of public funds. Moreover, they will do little to alleviate the illegal conditions in the existing Jail facilities.

V. Framework for Ameliorating the Illegal Conditions in the Jail

The violations of state and federal law we have identified must be remedied, and the unnecessary suffering of prisoners in the Jail must come to an end. To achieve that end without the need for costly and protracted litigation, we propose entering into an enforceable agreement with certain minimum criteria.

First and most importantly, the agreement would provide for a process of retaining mutually agreeable neutral experts to review the Jail's practices with respect to accommodations for prisoners with disabilities, medical and mental healthcare, overcrowding, and violence. Within 120 days of the appointment of the experts, they would issue reports proposing standards and remediation for conditions found to be below the minimum federal and state standards.

Second, at the same time that the experts are reviewing Jail policies and practices, county officials must agree to engage in serious efforts consistent with law and public safety to reduce crowding at the jail, including implementing pre-trial services and alternatives to incarceration for the individuals who present the lowest risk and stand to benefit significantly from accessing employment, education, substance abuse treatment, and other services only available in the community. The county should also investigate the possibility of utilizing split sentencing to a greater extent. These and other measures would be expected to reduce the jail population significantly over the next six to nine months.

Third, the settlement process must ultimately result in a settlement agreement filed with the court and over which the court retains continuing jurisdiction. The agreement would require that the County, where necessary to comply with state and federal law, revise policies and procedures, implement a system for quality control, and permit outside monitoring of conditions.

The Honorable Scott Miller
Monterey County Supervisors
April 15, 2013
Page 11

Please let us know as soon as possible whether the County is open to pre-litigation discussions consistent with this letter. If we do not agree on a framework for resolution by May 16, 2013, we will have no choice but to file a complaint seeking declaratory and injunctive relief to ameliorate the illegal conditions in the Jail.

Very truly yours,

ROSEN BIEN
GALVAN & GRUNFELD LLP

MONTEREY COUNTY OFFICE OF
THE PUBLIC DEFENDER

/s/ Gay Crosthwait Grunfeld

/s/ James Egar

By: Gay Crosthwait Grunfeld

By: James Egar

GCG:amc

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Joshua Claypole, Monterey stabbing suspect, pronounced dead

Man accused of killing taxi driver hanged himself in jail

By JULIA REYNOLDS and LARRY PARSONS

Herald Staff Writers

POSTED: 05/09/2013 03:42:12 PM PDT | UPDATED: 12 MONTHS AGO

8 COMMENTS

The Big Sur man accused of fatally stabbing a taxi driver last week in Monterey was taken off life support and died early Thursday, the Monterey County District Attorney's Office reported.

Joshua Claypole, 20, was declared dead after the staff at a San Jose hospital took him off life-sustaining equipment about 9:30 a.m. Relatives said three organs were harvested for donation.

Claypole was found hanging in his cell at the Monterey County Jail as officers made routine rounds about 2:30 p.m. Saturday.

He is accused of killing Daniel Garcia Huerta, 44, in his cab on the afternoon of May 1, soon after Huerta picked up Claypole at a Carmel shopping center.

Huerta was a father of two from a family of Salinas taxi drivers who preferred to work in Monterey, believing it was safer than Salinas.

His wife, Alma Huerta, has called for an end to violence that plagues the region, while his brother Saul Huerta has asked companies for better safety protections for taxi drivers.

"What happened, no one can know," Daniel's brother Jorge Huerta said in an earlier interview. "He was working for his family. He left two daughters without a father and parents who are suffering great pain."

The attack happened as the taxi pulled into a parking lot on Del Monte Avenue, where, said Claypole's mother, her son wanted to rent a car because he needed to pick up his own vehicle after a DUI arrest in Redwood City.

Witnesses said Claypole stabbed Huerta multiple times. Claypole then hijacked a nearby pickup and was arrested a short distance away in Seaside. He was arraigned Friday, when he pleaded not guilty to charges of murder and carjacking.

Claypole's mother, Silvia Guersenzvaig, said she was told by his attorney that he didn't remember stabbing Huerta or any of the surrounding events. Guersenzvaig said she believed her son was in a confused state and only fully realized what he had done at his arraignment.

"He was incapable of hurting people unless he was in an altered state," she said Thursday. "Deep inside, I know the reason he committed suicide. He realized what he'd done. I think he couldn't live with that fact."

Guersenzvaig said she sympathized with the family of the victim.

"I really feel for the family that loved a husband and father," she said.

Claypole's attorney, John Klopfenstein, said he was "saddened by the whole situation."



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Klopfenstein said he met with Claypole for about 20 minutes the morning after his arrest and later that evening.

The attorney said he asked jail employees to put his client on suicide watch and was assured they would.

He said Claypole wasn't "making any sense" at those meetings and did not appear to comprehend "the full extent" of his role in the murder case.

"I assume by Saturday he had," Klopfenstein said, referring to the day Claypole was found hanging in his jail cell.

Klopfenstein said that before his death, Claypole asked about getting his prescription medication clonazepam, which is used to treat panic disorders and anxiety.

On Saturday, Guersenzvaig went to the jail to visit her son but was told he had been moved and visitation for the new jail section wouldn't be until Friday. She gave the medicine she brought to a nurse, who she said promised to give the drug to her son "immediately" and would tell him his mother loved him.

About an hour after Guersenzvaig left, Claypole was found hanging in his single cell. What may now remain forever unclear is what role Claypole's mental health played in the murder — and his suicide.

Klopfenstein said he previously erroneously reported that methamphetamine was found in Claypole's car. It was actually a prescribed drug, Adderal, used to treat attention deficit hyperactivity disorder, he said.

He said based "on overall circumstances," he had been considering an insanity defense for Claypole. Klopfenstein said the young man was under treatment by a psychiatrist, and he wanted that doctor to examine him.

The police reports didn't indicate investigators "knew a motive" for the fatal stabbing of the taxi driver.

"Who knows what state of mind Mr. Claypole was in ... or what happened in the cab," Klopfenstein said. "I have no idea."

Guersenzvaig said detectives confirmed to her that Claypole left a note and said that at some point they will give it to her.

Klopfenstein reiterated his earlier criticism that Claypole wasn't on suicide watch on the day of his attempt to take his life.

The District Attorney's Office is wrapping up its investigation of the hanging, just as the jail faces a federal lawsuit over its medical and mental health care conditions, including concerns over a higher than average suicide rate.

The jail staff said Claypole was initially placed under suicide watch but later was taken off.

By late Thursday, May 2, the staff said he was not under the special watch and was housed in a regular, single-man cell. A jail commander said he was not placed in the usual two-man cell for safety reasons because of the severity of his charges and the notoriety of the case, which has received significant news coverage.

Terry Spitz, chief assistant district attorney, said his office's investigation into Claypole's attempted suicide is down to a few more witnesses.

The Sheriff's Office asked the District Attorney's Office to handle the investigation to assure the public "that an outside agency was looking at it."

Spitz said the results will be forwarded to District Attorney Dean Flippo for his determination about whether more work is needed and how much of it would be publicly disclosed.

One thing the District Attorney's Office is looking at is what the jail procedures are and "whether they were followed."

Spitz said if criminal charges result, there naturally would be public disclosure of what the investigation turned up. But if it boils down to a personnel investigation, Spitz said, "it would be up to the sheriff to make the call" on public disclosure.

He said victim's assistance workers were meeting with the families of Claypole and Huerta.

An autopsy on Claypole was to be conducted Thursday or Friday in Monterey County at the

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"We're not expecting a surprise," Spitz said.

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jreynolds@montereyherald.com).

1 **Larry Parsons** can be reached at 646-4379 or lparsons@montereyherald.com

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Monterey County inmate deaths bring accusations against Sheriff's Office

Sheriff's Office accused of neglect

By JULIA REYNOLDS

Herald Staff Writer

POSTED: 01/23/2014 07:55:12 PM PST | UPDATED: 3 MONTHS AGO

3 COMMENTS

After two inmates recently died while in custody at the Monterey County Jail, relatives and an attorney have accused the Sheriff's Office of neglecting to provide timely medical care.

Pacific Grove resident Jacob Parenti, 33, died Jan. 15 after he was found unresponsive.

His sister Amy Parenti said her brother had tried to get medical attention for flu-like symptoms but was left unattended to the point he was coughing up blood the night before his death.

Saying the jail is operating under "systemic and deep levels of corruption," she said inmates have told her family that deputies responded only when they called "man down" and tried to apply CPR the morning of his death.

Jail staff who spoke on condition of anonymity said they believe Parenti died of a drug overdose, possibly from heroin smuggled into the jail.

Sheriff Scott Miller said he has referred the case to the District Attorney's Office for investigation, a step he said he routinely takes when an inmate dies while not under a doctor's care.

"Any loss of life is tragic, and when it occurs in our facility from natural or other causes, it is just as tragic," Miller said.

Miller said the case was personally tragic because he knew Parenti when he was a talented youth in Pacific Grove.

"I knew him as a good kid," he said. "I've known him since his days of playing basketball."

Parenti was a Pacific Grove High School graduate and was known as a skilled athlete. In his early teens he was a championship golfer, playing in Junior World Golf Championships. According to relatives, he once met the emperor of Japan while competing overseas.

Later, he developed a drug addiction, his sister said, but "had really changed his life. It's very ironic that he died of the flu in the county jail."

He was in jail after admitting to mail theft in a plea deal, a charge his sister said was the result of a mix-up in mail delivery.

He was on probation last year when officers pulled him over and found a marijuana joint in his car, she said.

He was serving about a year in jail for violating probation and was expecting to be released in the fall, she said.

Amy Parenti said the county coroner is testing her brother's blood for drugs, but isn't checking for exposure to swine flu.



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Larry Parsons
@LParsons69

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"I'm concerned that they're calling it a drug overdose. ... I've been told they're not testing for swine flu and not examining for the (coughed) blood," she said.

She said she was also told her brother had never requested a doctor's visit, although inmates she spoke to said they saw her brother coughing blood several days before his death and said he had asked for medical help.

District attorney's investigator Ryan McGuirk said he could not comment on Parenti's case or cause of death.

"Typically, we investigate in-custody deaths at the request of the sheriff," he said. His office would be looking for evidence of possible crimes associated with a death, which could include criminal negligence.

"That's along the lines of something we would look into," McGuirk said.

Miller said Parenti's relatives and inmates who were witnesses should contact the District Attorney's Office with any information about his death.

"We want to remain outside the investigation," he said.

David Stevens

Three days before Parenti's death, accused child molester and pornographer David Stevens, 58, was taken to Natividad Medical Center with flu-like symptoms.

He died Monday at the hospital, where he had been treated for more than a week, officials said.

His attorney, Miguel Hernandez, said he visited Stevens a few days before his client was hospitalized, when Stevens told him he had filled out several written requests to see a doctor.

Hernandez said he offered to make sure his client would be seen, but said Stevens told him he would just put in another request that day and wanted to wait and see what happened.

"He had no reason to lie to me" about asking for a doctor, Hernandez said, "because I was offering to help. I checked in a couple of days later and he was unconscious in the hospital."

He said deputies may have ignored his client's requests because he was an accused molester.

"I strongly suspect it was mostly because of the charges against him," Hernandez said.

Responding to that allegation, Miller said, "I'd certainly hope not. I'm not referring to Mr. Stevens, but we deal with all sorts of heinous criminals and I would hope that they are treated as human beings."

Stevens' case is not being investigated by the district attorney because he was under a doctor's care when he died and not in the jail.

Nonetheless, Miller said he would look into Hernandez's claims.

Federal lawsuit

The county jail is the focus of an unprecedented federal lawsuit spearheaded by county public defender Jim Egar over medical and mental health care, which is provided under contract by Monterey physician Taylor Fithian's California Forensic Medical Group.

"They've been with the county for just about 30 years and we rely on them to provide the care," Miller said.

Amy Parenti said her brother's case is now part of the federal lawsuit, which was filed by Rosen, Bien, Galvan and Grunfeld, the San Francisco law firm whose prison mental health care lawsuit helped spawn the state's massive prisoner realignment now underway.

The goal of that action is to push for a plan to remediate the problems, which Miller said is being negotiated now.

"We're working on that issue as we speak," he said. The jail has already taken some steps to improve the process for inmate grievances, he said.

For Amy Parenti, that's not enough.

"Jacob will be part of the case to change the system," she said. "That's the No. 1 goal for our family." The second goal, she said, is to find out exactly what happened to her brother and "stop the cover-up."

Hernandez said the jail's current practice, in which inmates turn in a slip of paper requesting a

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"They should have a system so the inmate has a copy," he said. "Otherwise, what proof is there later on? The way the system is set up is it's set up for abuse."

Julia Reynolds can be reached at 648-1187 or jreynolds@montereyherald.com (jreynolds@montereyherald.com).

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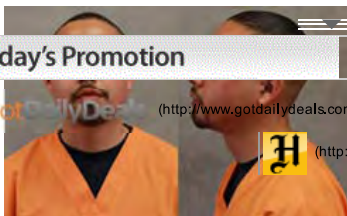


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Exhibit H

A lawsuit against the Monterey County Jail is about to get bigger – here's a look at what the Public Defender and the ACLU say is wrong with medical care at the facility.

Posted: Thursday, April 10, 2014 12:00 am

The last time Amy Parenti spoke to her brother Jacob was over the phone, like they did every week. There wasn't anything special about the conversation. He wanted to wish her husband good luck on the first day of a new job, and he wondered about Otto, her new puppy.

As always, she says, "we told each other we loved each other at the end."

He was dead about a week later.

The call took place over a monitored phone from the Monterey County Jail. That's where the 33-year-old Jacob Parenti died last Jan. 15. He'd been serving a two-year sentence for a drug violation, in addition to an eight-month sentence for possession of stolen property.

Before Jacob's death, Amy was a Santa Cruz stay-at-home mom. Now she's a passionate voice in a multi-pronged battle against the jail. She believes the jail – because of neglectful medical care – contributed to her brother's death.

She's not the only one concerned about care at the facility. Last May, the Monterey County Public Defender's Office partnered with the American Civil Liberties Union (ACLU) and the San Francisco-based law firm Rosen Bien Galvan and Grunfeld, to file a federal lawsuit against Monterey County, the jail and the jail's contract medical provider, California Forensic Medical Group (CFMG).

It's a horror-show list of allegations being claimed. In one case, the suit alleges, the jail deprived a diabetic prisoner of insulin. In other cases, jail doctors delayed referring inmates to specialists. In another, an inmate was kept in a cell and not given food for 38 hours.

"My brother was not given a death sentence by the courts," Amy says. "This jail staff sentenced him to death."

She slams her finger on the table.

"His future was robbed from him and he was robbed from us," Amy says. "There will never be an end to our anguish, to our horror. Never."

After Jacob died in January, Sheriff Scott Miller asked the District Attorney's office to investigate, a standard procedure in questionable jail deaths. Amy says her brother died from flu-like complications that could have been avoided with more attentive care. But an official coroner's report says Jacob died from a drug overdose. It's a fate not unheard of for

incarcerated addicts, who can access smuggled drugs.

Miller was also struck by Jacob's death personally: Jacob was a playmate of his own children when they were growing up. But on the facts of his death, Miller remains resolute. "He didn't die from the flu," Miller says. "I don't know what the source of [Amy's] information is. It seems most isn't true."

Whatever the case – and in more than just this case – something's up at the jail. At least two recent deaths, not including Jacob's, have been scrutinized by attorneys. In one of those cases, a mentally ill murder suspect committed suicide in his cell just days after his arrest. His mother has filed a claim that's a precursor to a lawsuit.

Though the jail has constantly been under fire for poor conditions, officials maintain the situation is, overall, getting better. But opinions differ over whether real change is coming.

For Public Defender Jim Egar, the answer is no, at least not yet. By April 11, Egar, the ACLU and the San Francisco law firm will file an amended complaint seeking class-action status for any prisoner ever harmed by inadequate medical care at the Monterey County Jail.

• • •

For years there's been trouble at the jail. And for years the Monterey County Public Defender's Office has been trying to get to the bottom of it.

"It's been a process of peeling an onion," Egar says. "I was not aware of the deficiencies in medical care until I started looking at it in closer detail."

There have been criticisms of chronic overcrowding, violence among inmates and insufficient staff, but these aren't problems known only in the county's law enforcement and policy circles. In 2006, the *Weekly* ran a cover story called "Hell Hole: The Monterey County Jail is an overcrowded pit of violence and despair. There is no plan to fix it."

The public defender's lawsuit claims the jail and county have failed on four measures: protecting prisoners from violence, providing adequate medical care, providing adequate mental health care and providing reasonable accommodations to prisoners with disabilities. Between suicides and deaths, 13 prisoners have died in the jail's custody since 2005.

Also named in the suit is the Monterey-based California Forensic Medical Group. The private business is the jail's medical service provider, contracted by the county to provide medical, mental and dental services.

By most accounts, CFMG is successful. It started in 1984 with a contract in Monterey County for adult and juvenile facilities, and has expanded to 65 facilities in 27 counties in California. The company is responsible for about 16,000 inmates; many counties have maintained contracts for more than a decade.

A 2011 letter of recommendation from Solano County Sheriff Gary Stanton says that after years

of trying to hire a qualified physician and staff of nurses to provide medical services, the county hired CFMG in 2004.

“For any custody program struggling to provide comprehensive and cost-effective medical, dental and mental health services,” Stanton says in the letter, “I highly recommend contracting as a means of improving service, reducing liability and containing costs.”

In 2012, according to information from a *Santa Cruz Sentinel* article, Santa Cruz hired CFMG to “address ongoing problems with the county-run jail medical program, including recruitment difficulties and high turnover.”

The shift was to save the county \$600,000.

Several Monterey County officials – including Eggar, District Attorney Dean Flippo, and Robert Jackson, the program manager of the county-owned Mental Health Unit at Natividad Medical Center – provided letters of recommendation as part of the company’s bid for the contract. But those recommendations may have been premature.

Eggar, who has been the county’s public defender since 2006, says he wrote his recommendation as a courtesy, before learning about the alleged deficiencies.

Says the lawsuit: “CFMG... provides deficient medical care in nearly every respect... [prisoners] fail to receive timely or appropriate treatment, resulting in unnecessary and prolonged pain, suffering, worsening of their conditions, and sometimes even death.”

• • •

The Monterey County Jail was built piecemeal from the 1970s through the '90s as the need to house inmates grew. Expansion hasn’t tamed overcrowding. The lawsuit says for the past few years, the jail has routinely housed more than 1,100 inmates, though it’s built for 825.

One morning in March, Sheriff’s Commander Lisa Nash led a photographer and me on a tour through the facilities. Judging by descriptions in articles written years ago, our tour could have taken place any time in the last decade.

Here are some words used to illustrate the facility: “a portrait of institutional decay,” the *Weekly* wrote in 2006.

We walk from the lobby through a heavy door into the jail. Wires jut out of the ceiling, where a panel is missing.

Jail staff aren’t shy about the challenges of the facility. They are well aware of the limitations – and threats – of the environment.

“Jails, no matter where you go, are not the cleanest, healthiest places,” says Chief Deputy Sheriff Edward Lavarone. “You have people who are homeless, who have nasty drug or alcohol habits.”

Signs of wear are evident everywhere. Lavarone compares it to a car: Even if it's new, if you drive it 24 hours a day, it'll soon have problems.

Much of the jail is filled with violent inmates, some gang members awaiting trial and prison. According to jail stats, 7.4 percent of the unsentenced population is awaiting trial for murder.

The lawsuit says there were more than 150 violent prisoner episodes between January 2011 and September 2012. Fights can be exacerbated by weapons, from shanks to a "tomahawk" made from a razor and a long copper pipe. Most of the incidents required medical treatment; in 13 cases, inmates had to go to the hospital.

Even so, proper care isn't always given, the lawsuit says. Dennis Guyot, who was beaten by another group of inmates in March 2013, filed 26 sick slips requesting medical care before he was taken to a neurologist for concussion symptoms. He started filing the slips on March 31, and wasn't seen by a neurologist until June 7.

Soon we reach a safety cell, described as a "rubber room" in the lawsuit, although "rubber" is something of a misnomer. When Nash raps on it with her knuckles, it makes a knocking noise. This is the room where prisoners who might try to hurt themselves are kept.

There's no bed or chair. The only thing in the room is a metal grate, the size of a floor tile, in the center of the room: the toilet. The lawsuit cites an alleged incident in which a man was put in the room with "feces on the walls and floors of the room" and "forced... to eat and sleep on the same floor where the toilet grate is located."

The suit says during the 38 hours he was in the room, the jail's own documents say that no meal was provided and water was only offered three times.

The bare room, Nash explains, is so inmates can't harm themselves. But the suit says the conditions are traumatic to the mentally ill.

As we continue there's more blight. Windows to some holding cells are cracked, like a car windshield struck by a baseball. We walk down a long, overhead hallway, lined with windows for viewing inmates below. Some have removed their shirts, revealing large tattoos. They live in dorm-style settings that went from single bunks to doubles to triples. Dorms designed for 48 now hold 70, Nash says.

Some of the windows are obscured by a thick layer of what looks like fungus. Spitballs, Nash says. Inmates get bored.

In the jail I meet James Russell Scott, an inmate who's about halfway through a seven-year jail sentence for drug violations. With good behavior, he only has to serve about half the full sentence.

"I'm really disappointed with the medical services here," he says. "It seems like their remedy for everything is aspirin or 'See me tomorrow.'"

The lawsuit mentions one case in which a patient was "provided with only ibuprofen to manage severe and mobility-impairing pain." Scott says one guy he knows broke his hand and it was a week before he was sent to the hospital.

If inmates do want medical care, Scott says, the best bet is to call their lawyer.

"I've been practicing for 38 years. I've been in that jail hundreds, if not thousands of times," says Miguel Hernandez, a Salinas criminal defense attorney. "In those years I've had clients complain they're sick over and over again."

Hernandez says he's had to go to the jail's head doctor, Taylor Fithian, who he's known professionally for decades, dozens of times to ensure his clients are treated.

The attorney, though, defends Fithian: "I'd never accuse him of not treating or undertreating inmates who need medical attention." Nevertheless, he acknowledges there's a problem somewhere.

The lawsuit, 107 pages long, has dozens of examples of alleged inadequacies: There doesn't seem to be a policy for maintaining records of sick slips; staff isn't trained to provide adequate and timely care; inmates don't get treatment because CFMG says they'll soon be released or transferred; medical facilities are so small, care has to be provided in the hallway.

Hernandez sums it up: "The system seems horrific. I've never had this problem in other counties or jails."

• • •

California Forensic Medical Group is headquartered on Monterey's Garden Road, a stretch of office complexes near the airport. It's on the first floor of a boxy building with wide, empty hallways.

CFMG was founded two decades ago by Fithian and Elaine and Dan Hustedt, who all still manage it.

None of them returned my calls. I dropped by the office, but a receptionist said they were all in a meeting.

According to its website, CFMG has served six counties – including Monterey County – for more than two decades, and 14 counties for more than a decade.

Monterey County's current contract runs from 2012 to 2015. The county pays the company at least \$4.8 million annually, in addition to \$4.02 each day for each prisoner exceeding a population of 1,065.

The website also says the company has voluntarily gone through 102 successful accreditation processes for adult jails through the Institute of Medical Quality (IMQ), a nonprofit subsidiary of the California Medical Association. That gives it the most IMQ accredited programs in the state, though – according to a comparison of IMQ's website and CFMG's website – just 18 of the 65 facilities CFMG contracts with are currently accredited.

The Monterey jail was recently accredited by IMQ, but the two-year accreditation expired in 2011. The outdated IMQ certification plaque hangs prominently in the jail's lobby. CFMG contacted the accreditation agency in 2013 to request a re-accreditation survey.

Over the past decade, California has been in serious trouble over how it handles medical and mental health care in correctional facilities. Lawsuits about the care of inmates in state prisons led to the massive reforms that are now forcing jam-packed prisons to uncrowd.

In 2005, state prison medical care was put under the supervision of a court-appointed receiver because, the court found, the system was "broken beyond repair" causing "an unconscionable degree of suffering and death."

That was under a government-run system. But states with privatized health-care operations have also come under scrutiny. One report from an Arizona advocacy group says 50 Arizona prisoners died in the first eight months of 2013 – soon after the state's prison health care system was privatized. That's compared to 37 deaths in the previous two years.

Egar, Monterey County's public defender, says whether care is county-run or contracted, the responsibility remains: "However the county wants to do it, it [has to] be done at an adequate level."

• • •

Sheriff Scott Miller has a different view: Things *are* getting better. In terms of staffing and overcrowding, he has a point.

He wouldn't speak about the lawsuit because it's still ongoing, but he did talk about several of the issues surrounding it.

For one, he says, the Sheriff's Office has hired – or is in the process of hiring – more than 60 staff members. One of those new positions is an ombudsman, a middleman between inmates and administration, including CFMG.

The position, Miller says, will ensure inmates have a voice and that their grievances are "given proper weight."

The jail has also reduced its population. They've been running with less than 1,000 inmates since October, according Sheriff's Commander Jim Bass. That addresses one issue in the lawsuit: an excessive number of inmates, which compromises the health of everyone, including staff.

"When I took over as sheriff the average daily inmate population was running above 1,200," Miller says. "With the steps we've taken it's running in the low 900s."

In February, the jail got \$89 million to build a facility to house up to 576 additional inmates. It's on track to be completed in 2018.

"By the end of the year," Miller says, "we should be good in terms of staffing and population."

That means at least some of the lawsuit's claims might be resolved. The jail and CFMG are working with the Public Defender's Office to figure out a solution without going to trial. But either way, says Egar, change is going to come. Talks, so far, haven't been successful.

"Whether we have to do it the hard way, through litigation, or the easy and less costly way through agreement, we won't stop," he says.

• • •

Three high-profile inmates, including Parenti, have died in the jail's custody in the past year. Some aren't the most sympathetic characters. David Stevens was the subject of a nationwide manhunt; he was arrested in Salinas last May for allegedly making child pornography and sexually abusing a child in the garage of his Salinas home. Joshua Claypole was accused of

stabbing a cab driver to death in an attack police called random and unprovoked.

The appalling nature of an inmate's crime, defense attorney Hernandez suspects, is why some don't get care in the first place. "My personal belief is that... if you have a compassionate, humane correctional officer on the front line, [an inmate] will get their treatment," he says. "You get a guy who's a skeptic – hard nosed, jaded, doesn't give a rat's ass – they'll just shine [the inmate] on."

Hernandez was the attorney for Stevens, who died Jan. 23. Stevens, 59, told Hernandez he put in several sick slips without being seen. The coroner's report, though, says Stevens was seen for a pre-existing condition, Hernandez says.

Comments on local news stories reveal how the public felt when his death was announced: "Now this is extreme karma," wrote one commenter on the KSBW website. "Good riddance." "I am so angry that this pig got the easy way out!" writes another. "The families did not get justice!"

The other case is that of Claypole, the 20-year-old Big Sur man accused of killing cab driver Daniel Huerta in Monterey.

When Claypole died, his attorney, John Klopfenstein, said CFMG evaluated Claypole's mental state and then allowed him to go into the jail's general population. He was put in a single cell, but didn't get increased monitoring. He was found hanging from torn bedding tied to a vent.

Claypole's mother and Amy Parenti have both retained the services of Lori Rifkin, an Oakland-based civil rights attorney, for possible litigation.

Despite the horrific nature of some inmates' offenses, officials say proper treatment is crucial. The sheriff has a story that brings him a little closer than most to the subject: His son, Jacob Miller, is currently incarcerated on drug charges.

"I can personalize what kind of treatment we provide to inmates," Miller says. "I speak with him on the phone almost every day."

He says jails aren't meant to release people in worse shape than they came in: "We know they'll be back if they're not better than they were – if we haven't managed to make any kind of connection and meet minimal requirements as human beings."

The lawsuit asks for 16 things, including ensuring medical staff is properly trained, prisoners get timely medical care and appropriate suicide prevention practices are in place. The parties were set to make initial appearances in federal court April 8.

"This doesn't mean discussions will not continue," says Egar. "It's my hope that discussions with the county and CFMG will result in specific and enforceable remedies. But thus far we have not reached that point."

Exhibit I

From: Taylor Fithian [<mailto:Taylor@cfmg.com>]
Sent: Monday, October 28, 2013 3:08 PM
To: Davis, Deana x3054
Subject: Re:

He is compliant on the medicine he returned on these from the state hospital: Risperidone, Seroquel and Lithium. He is still very crazy it appears and he was at best fragile when he returned end on 6/16/13. I've asked that Dr. Finnberg follow up with him. It is not ideal for inmates to return from the state hospital and have to wait for long periods of time before returning to trial. Four months in a lock down pod even on meds is not anywhere near the same as being in a hospital, even ASH. Sorry Deana. Taylor

Sent from my iPhone

On Oct 28, 2013, at 1:06 PM, "/o=CFMG/ou=first administrative group/cn=Recipients/cn=Taylor" <Taylor@cfmg.com> wrote:

Deana will have record pulled and follow up with your issues. I've heard nothing about him so I'm hoping he is okay. There are "black holes" everywhere. Best, Taylor

From: Davis, Deana x3054 [<mailto:davisd1@co.monterey.ca.us>]
Sent: Monday, October 28, 2013 10:35 AM
To: Taylor Fithian
Subject:

Taylor,

1368 client has fallen into a black hole. He was at Metropolitan and was returned on June 14, 2013. He has not been to court. Thankfully his mother contacted me as to why he has not been to court.

Mom says that he is again speaking about his delusions. I am afraid that since his return there have been medication issues. Can you please do a check in with _____ ? Has he been taking same things he took at Metropolitan, or has he refused?

I need to figure out if we can proceed with him now, or if he needs to go back to hospital.

Deana Davis
Deputy Public Defender
111 W. Alisal
Salinas, Ca. 93901