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18 UNITED STATES DISTRICT COURT  
19 EASTERN DISTRICT OF CALIFORNIA  
20

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

23 Plaintiffs,

24 vs.

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

26 Defendant.  
27

Case No.

**CLASS ACTION COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF AND PETITION FOR WRIT OF  
HABEAS CORPUS**

1 Plaintiffs Charles Criswell, Levi Johnson, Samuel Camposeco, and Adam Ibarra, on behalf  
2 of a class of similarly situated incarcerated people in the custody of the Tulare County Sheriff's  
3 Office, and Plaintiff California Attorneys for Criminal Justice (collectively, "Plaintiffs") allege as  
4 follows:

5 **JURISDICTION AND VENUE**

6 1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
7 § 1331, because it arises under the Constitution and laws of the United States, specifically 28  
8 U.S.C. § 2241 and 42 U.S.C. § 1983. Plaintiffs allege that Defendant Michael Boudreaux, in his  
9 official capacity as Sheriff of Tulare County, has violated the First, Eighth, and Fourteenth  
10 Amendments to the United States Constitution. This Court has supplemental jurisdiction over  
11 Plaintiffs' claim under the Bane Act, Cal. Civ. Code § 52.1(b), because the state claim and federal  
12 claims derive from a common nucleus of operative facts.

13 2. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C.  
14 §§ 2201–02, by Federal Rules of Civil Procedure 57 and 65, and by the inherent equitable powers  
15 of this Court.

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

19 **INTRODUCTION**

20 4. Plaintiffs bring this action to prevent avoidable illness and death from COVID-19  
21 among people incarcerated at Tulare County Jails.<sup>1</sup> Plaintiffs challenge Defendant Sheriff Michael  
22 Boudreaux's callous indifference to their health and safety. And they challenge Defendant's  
23 callow attempts to prevent them from challenging his unconstitutional practices in court.  
24 Plaintiffs, like many Americans in this age of pandemic, simply want the opportunity to be safe, to  
25 protect themselves as best they can from a novel and frightening disease. But as long as Defendant  
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27 <sup>1</sup> The term "Tulare County Jails" refers to the five detention facilities managed by the Tulare  
28 County Sheriff's Office: Bob Wiley Detention Facility (BWDF), Main Jail, Men's Correctional  
Facility, Adult Pre-Trial Facility (APTF), and South County Detention Facility.

1 continues to ignore the widely-known risk of COVID-19 to Tulare County Jails, the lives of  
2 Plaintiffs, and the class they seek to represent, will remain imperiled.

3         5.         The rapid spread of COVID-19 has been met with alarm by the media, public  
4 health officials, and governments across the globe—and with good reason. COVID-19 is highly  
5 contagious and potentially deadly. For those who become infected, COVID-19 creates a  
6 significant risk of death or severe illness, which can include extreme chest pain and difficulty  
7 breathing. In some cases, treatment requires highly invasive and psychologically traumatic life-  
8 support measures. Even those who contract only a “mild” case experience unnecessary pain and  
9 suffering, which may linger or recur for weeks or months after the initial onset of symptoms. Nor  
10 do scientists yet know the long-term effects of contracting the disease.

11         6.         In correctional facilities, congregate living and unsanitary conditions facilitate  
12 rapid disease transmission. Public health officials have urged jails to ensure that incarcerated  
13 people can eat, sleep, and recreate while maintaining at least six feet of physical distance from  
14 others. They emphasize the importance of providing incarcerated people with masks, soap, and  
15 sanitizer, and explain that common areas and cells should be frequently disinfected. Because  
16 turnover is high, jails should quarantine newly-arrived people for at least 14 days before releasing  
17 them into the general population. And given the risk of asymptomatic transmission, experts  
18 recommend that quarantine be paired with testing of everyone in a facility. Those who fall ill  
19 should be identified and humanely isolated. And sick people must be given appropriate medical  
20 treatment responsive to their condition. Without these measures in place, the virus is likely to  
21 spread not only through the incarcerated population, but also the staff and then to the community  
22 living beyond its walls.<sup>2</sup>

23  
24 \_\_\_\_\_  
25 <sup>2</sup> That community is already struggling with a devastating outbreak. *See, e.g.,* Sheyanne N.  
26 Romero, *COVID-19 Update: Tulare County Case Levels Still ‘Extremely High,’ Hospitals Fill*,  
27 *Visalia Times-Delta* (July 23, 2020, 2:03 p.m.),  
28 <https://www.visaliatimesdelta.com/story/news/2020/07/23/tulare-county-case-levels-still-extremely-high/3288145001/> (explaining that “[p]ositive testing rates in the county are hovering between 12% and 14%, significantly higher than California’s threshold for the monitoring list at 8% positive rate”).

1           7.       It is critical that Tulare County Jails heed this public advice. As the COVID-19  
2 pandemic has spread, jails and prisons have been among the hardest-hit. By mid-May, 10 of the 15  
3 largest COVID-19 clusters had occurred in jails and prisons.<sup>3</sup> Across the United States, the  
4 number of known infections among people incarcerated in state prisons and correctional officers  
5 has surged by 45 percent since July 1.<sup>4</sup> The 13 largest known clusters of the virus in the United  
6 States, and 87 of the top 100, can be found inside correctional institutions.<sup>5</sup> Public health officials  
7 believe that the virus is introduced into correctional facilities by officers and other facility staff.<sup>6</sup>  
8 Prison outbreaks often occur in tandem with increases in infection in the surrounding  
9 communities.<sup>7</sup> Since the start of the pandemic, more than 100,000 people in prisons and jails have  
10 been reported infected, with more than 800 reported dead.<sup>8</sup> Given the lack of testing in many  
11 locations, the actual numbers are likely to be much higher.

12           8.       It would be difficult to live in America today and not know about the threat of  
13 COVID-19. Officials across the nation have repeatedly implored—and in some instances,  
14 required—Americans to practice “social distancing,” avoid congregating in groups, wash their  
15 hands and use hand sanitizer regularly, disinfect frequently touched surfaces, wear cloth face  
16 coverings, and seek prompt medical attention if symptoms develop. Officials have spent time,  
17 money, and political capital to bring these messages to the public for one simple reason: Without  
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20 <sup>3</sup> Daniel Fernandez, *There is Only One Way to Prevent Mass Deaths in Prisons: Let them Out*, The  
21 Nation (May 14, 2020), <https://www.thenation.com/article/activism/coronavirus-prison-danbury/>.

22 <sup>4</sup> New York Times, *A surge in U.S. prisons is hitting inmates and officers alike* (July 28, 2020),  
23 [https://www.nytimes.com/2020/07/28/world/coronavirus-covid-19.html?action=click&campaign\\_id=154&emc=edit\\_cb\\_20200728&instance\\_id=20725&module=Top+Stories&nl=coronavirus-briefing&pgtype=Homepage&regi\\_id=85528050&segment\\_id=34584&te=1&user\\_id=92006863350757aafcdd26d002680ab6#link-288d1535](https://www.nytimes.com/2020/07/28/world/coronavirus-covid-19.html?action=click&campaign_id=154&emc=edit_cb_20200728&instance_id=20725&module=Top+Stories&nl=coronavirus-briefing&pgtype=Homepage&regi_id=85528050&segment_id=34584&te=1&user_id=92006863350757aafcdd26d002680ab6#link-288d1535).

25 <sup>5</sup> *Id.*

26 <sup>6</sup> *Id.*

27 <sup>7</sup> *Id.*

28 <sup>8</sup> New York Times, *Coronavirus in the U.S.: Latest Map and Case Count*, (last visited July 28, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

1 these measures, the spread of COVID-19 will continue unabated, claiming countless lives in its  
2 wake.

3 9. Defendant knows about the risk of COVID-19. And he knows how important  
4 preventive measures are. On July 3, 2020, Defendant announced on Facebook a new campaign,  
5 “MASK UP Tulare County,” seeking to raise awareness about the importance of masks. As  
6 Defendant said, “The people of Tulare County have always taken care of each other. And we are  
7 asking you to continue to do that now, by wearing masks, practicing good hygiene, and, of course,  
8 social distancing.” Yet Defendant has categorically refused to extend that protection to the people  
9 incarcerated in his jails. His explicit policy forbids incarcerated people from wearing masks while  
10 in their housing units—even those with underlying medical conditions who are especially  
11 vulnerable to death and serious injury from COVID-19.

12 10. Defendant has also ignored calls from the judicial branch to take action to prevent  
13 the spread of COVID-19. On July 1, 2020, the Honorable Brett R. Alldredge, presiding judge of  
14 the Tulare County Superior Court, and Stephanie Cameron, Court Executive Officer, recognizing  
15 the threat of COVID-19 to the Court and the community, wrote a letter respectfully requesting that  
16 the county “immediately implement testing of all inmates in the county jail facilities and entry  
17 temperature checks for all shared county courthouse buildings open to the public.”<sup>9</sup> Defendant has  
18 flatly refused to implement even these simple procedures.

19 11. Defendant’s refusal to allow incarcerated people to wear cloth face coverings and  
20 to implement COVID-19 testing is part of a pattern of reckless disregard for the people in his care.  
21 Despite actual knowledge of public health directives and the grave risk posed by COVID-19,  
22 Defendant has failed to implement many basic procedures that other facilities commenced long  
23 ago: steps as simple as permitting incarcerated people to spread out where bed space is available  
24 and providing prompt medical attention to those who report COVID-19 symptoms. Defendant’s  
25 indifference has left incarcerated people with COVID-19 symptoms to suffer without proper  
26 medical care, quarantine, or monitoring. And it has left incarcerated people crammed into close  
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28 \_\_\_\_\_  
<sup>9</sup> Letter from Tulare County Superior Court (Ex. 1 at 1).

1 quarters despite available bed space, unable to practice social distancing or take other precautions.  
2 In short, Defendant has created conditions that virtually ensure COVID-19 will spread like  
3 wildfire in Tulare County facilities—if it has not already.

4 12. Even as he has failed to protect the health and lives of incarcerated people,  
5 Defendant has engaged in a concerted effort to stymie attempts by incarcerated people to protect  
6 themselves. Defendant has prevented incarcerated people from engaging in confidential attorney  
7 visits and has engaged in systematic intimidation and retaliation against incarcerated people who  
8 dared to pursue litigation challenging the unconstitutional conditions of confinement at Tulare  
9 County Jails. Numerous people have reached out to the American Civil Liberties Union of  
10 Northern California (ACLU) about conditions in the Jails. Defendant transferred one of those  
11 individuals to a high-security unit without explanation. He transferred another to a less desirable  
12 inmate work position. Others have been aggressively questioned about their attorney visits by  
13 armed deputies, despite a “no firearm” policy in the Jails. By threat, intimidation, and retaliation,  
14 Defendant has actively interfered with the constitutional right of Plaintiffs and the class they  
15 represent—all to avoid revealing his own unconstitutional activities.

16 13. Defendant also created a new legal visitation policy in response to Plaintiffs’  
17 counsel’s investigation. That policy was designed to frustrate Plaintiffs’ and prospective class  
18 members’ efforts to meet confidentially with civil rights attorneys about the appalling conditions  
19 in the jail—in violation of their constitutional right to access the courts under the First and  
20 Fourteenth Amendments.

21 14. On May 28, 2020, Defendant abruptly canceled ACLU’s confidential visits with  
22 incarcerated people at Tulare County Jails. The next day, on May 29, 2020, Defendant  
23 promulgated a new policy limiting confidential legal visits to those with attorneys who had  
24 already been designated as an incarcerated person’s “attorney of record.” Since the promulgation  
25 of the new policy, as supplemented on June 4, 2020, *no* potential class members have been  
26 afforded a confidential meeting with ACLU attorneys. And the policy has blocked at least some  
27 incarcerated people from meeting with their criminal defense attorneys. The new policy has not  
28 only frustrated potential class members’ right of access to the courts, in violation of the First and

1 Fourteenth Amendments, it is so overbroad as to infringe at least some class members' right to  
2 counsel in their criminal cases, in violation of the Sixth Amendment.

3 15. In short: Defendant has failed to take any meaningful action to prepare for COVID-  
4 19. In fact, he has actively interfered with incarcerated people's ability to protect themselves, both  
5 within the jail by failing to implement CDC-recommended virus response measures, and in court  
6 by blocking Plaintiffs' ability to petition the government to enforce their constitutional rights.  
7 What is worse: Defendant has created a real, material risk that the Jails will face the pandemic  
8 with absolutely no ability or preparation to address it.

9 16. When it comes to COVID-19 in jails and prisons, everything goes well until it  
10 doesn't. San Quentin, for example, did not see its first COVID-19 case until May 31.<sup>10</sup> It is now  
11 dealing with the second worst outbreak in a California prison, seeing thousands infected and 13  
12 dead.<sup>11</sup> What caused the outbreak in San Quentin, from initial reports, is strikingly similar to what  
13 is happening in Tulare County right now: A failure to test new intakes, to release incarcerated  
14 people to allow for social distancing, and to quarantine those who may be infected.<sup>12</sup>

15 17. Tulare County's luck is already running out. Just weeks ago, the Jails saw their first  
16 cases of COVID-19. On June 26, 2020, Defendant reported on the Tulare County Sheriff's Office  
17 Facebook page that 11 incarcerated people had tested positive, out of "more than 200 total  
18 COVID-19 tests in the Tulare County Jail Facilities."<sup>13</sup> One month later, on July 28, 2020,  
19 Defendant reported that in fact 22 incarcerated people had tested positive for COVID-19 during

20 \_\_\_\_\_  
21 <sup>10</sup> Meredith Deliso and Meredith Longo, *California's San Quentin prison using tents, warehouse*  
22 *to treat inmates infected with COVID-19*, ABC News, (July 9, 2020, at 4:50 p.m.),  
[https://abcnews.go.com/US/californias-san-quentin-prison-tents-warehouse-treat-](https://abcnews.go.com/US/californias-san-quentin-prison-tents-warehouse-treat-inmates/story?id=71690138)  
23 [inmates/story?id=71690138](https://abcnews.go.com/US/californias-san-quentin-prison-tents-warehouse-treat-inmates/story?id=71690138)

24 <sup>11</sup> Colleen Shalby, *8<sup>th</sup> Death row inmate dies as COVID-19 surge continues in prison*, Los Angeles  
25 Times (July 22, 2020, at 11:53 a.m.), [https://www.latimes.com/california/story/2020-07-22/13th-](https://www.latimes.com/california/story/2020-07-22/13th-prisoner-at-san-quentin-dies-from-suspected-coronavirus)  
26 [prisoner-at-san-quentin-dies-from-suspected-coronavirus](https://www.latimes.com/california/story/2020-07-22/13th-prisoner-at-san-quentin-dies-from-suspected-coronavirus)

27 <sup>12</sup> Amy Maxmen, *California's San Quentin prison declined free coronavirus tests and urgent*  
28 *advice—now that it has a massive outbreak*, Nature (July 7, 2020),  
<https://www.nature.com/articles/d41586-020-02042-9>

<sup>13</sup> *Tulare County Sheriff's Office*, Facebook (June 26, 2020),  
<https://www.facebook.com/TulareSheriff/posts/3939122956158707>

1 the June testing cycle—out of only 139 total tests administered in late June.<sup>14</sup> Defendant also  
2 reported that 37 deputies have been tested for COVID-19, five of which have tested positive.  
3 Assuming that the most recent reported numbers are most accurate, if the test positivity rate—that  
4 is, the number of positive tests divided by the number of total tests administered; here, 15.8%—is  
5 applied to the Jails’ total population, there were likely more than 150 positive cases that went  
6 undetected during the June round of testing. Those undetected cases will continue to silently and  
7 unwittingly transmit the disease within the Jails.

8 18. The time to intervene is now. The warning signs could not be clearer. Tulare  
9 County—where the deputies, nurses, and arrestees who come into the Tulare County Jails live—is  
10 itself experiencing a COVID-19 outbreak, and its test positivity rates have skyrocketed to more  
11 than 12%. And the fall is fast approaching, with a renewed wave of COVID-19 infections  
12 predicted to hit at the same time as seasonal influenza, creating a devastating loss of life and  
13 further straining the healthcare system’s capacity.<sup>15</sup> Defendant is simply not prepared to handle a  
14 COVID-19 outbreak of any scale, and through his deliberate indifference and lack of action, has  
15 created a serious risk that one will occur.

16 **PARTIES**

17 19. Plaintiff-Petitioner Charles Criswell is currently in the custody of Defendant at the  
18 Main Jail, where he is at risk of death or serious injury if exposed to COVID-19. He is being held  
19 post-conviction.

20 20. Plaintiff-Petitioner Levi Johnson is currently in the custody of Defendant at the  
21 Main Jail, where he is at risk of death or serious injury if exposed to COVID-19. He is being held  
22 in pre-trial custody and is presumed innocent.

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24 <sup>14</sup> *Tulare County Sherriff’s Office*, Facebook (July 28, 2020),  
25 <https://www.facebook.com/TulareSheriff/posts/4081234765280858>. Defendant has not explained  
26 the discrepancy between the numbers he reported in June and those he reported a month later in  
27 July. The lack of transparency regarding the scope of Defendant’s testing efforts is yet another  
28 indication that Defendant is not being fully forthcoming with the public.

<sup>15</sup> Cory Stieg, *What a ‘Second Wave’ of Covid-19 Could Look Like and How to Prevent It*,  
CNBC.com (Jun. 28, 2020, 9:00 a.m.), <https://www.cnbc.com/2020/06/28/what-second-wave-of-covid-19-means-and-how-to-prevent-it.html>.





1 are 16.3 million confirmed cases of COVID-19, 650,805 confirmed deaths, and 216 countries,  
2 areas, or territories with confirmed cases.<sup>16</sup>

3 26. The Centers for Disease Control and Prevention (“CDC”) estimates that as of July  
4 28, 2020, there are 4.28 million confirmed cases of COVID-19 and 147, 672 confirmed deaths  
5 from the disease in all 50 states and the District of Columbia.<sup>17</sup>

6 27. Cases in California are surging: California now has more confirmed cases of  
7 COVID-19 than any other state in the nation.<sup>18</sup> As of July 28, 2020, there were at least 463,635  
8 confirmed cases in California, 8,550 reported deaths, and at least 470,762 confirmed cases in  
9 California, 8,679 reported deaths, and at least 8,862 confirmed cases and 172 reported deaths in  
10 Tulare County.<sup>19</sup>

11 28. Because these numbers include only laboratory confirmed cases, they likely  
12 understate the actual number of cases and deaths. Most medical and public health experts agree  
13 that the situation, which is already dire, will continue to worsen over the coming weeks to months.

14 29. COVID-19 is a highly contagious respiratory illness. It is transmitted between  
15 persons in close proximity (within about six feet) by airborne droplets released by infected  
16 individuals when they cough, sneeze, speak, or breathe.<sup>20</sup> The droplets can survive in the air for up  
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18 <sup>16</sup> See World Health Org., *Coronavirus disease (COVID-19) Pandemic* (last visited July 28, 2020)  
19 <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>.

20 <sup>17</sup> See Ctrs. Disease Control & Prevention, *Cases in U.S.* (last visited July 28, 2020),  
21 <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

22 <sup>18</sup> Luke Money, *California Has Most Covid-19 Cases in U.S., Surpassing New York, As Spike*  
23 *Continues*, Los Angeles Times (July 22, 2020, 9:53 a.m.),  
24 <https://www.latimes.com/california/story/2020-07-22/california-has-most-covid-19-infections-of-any-state-as-surge-continues>.

25 <sup>19</sup> Los Angeles Times, *Tracking coronavirus in California*,  
26 <https://www.latimes.com/projects/california-coronavirus-cases-tracking-outbreak/> (last visited July 28,  
27 2020, 4:12 p.m.); see also Johns Hopkins University COVID-19 Data Center,  
28 <https://coronavirus.jhu.edu/> (last visited July 28, 2020); Tulare County Health & Human Services  
Agency, COVID-19 (Novel Coronavirus) COVID Update July 28, 2020 as of 11:12 AM PDT,  
<https://tchhsa.org/eng/index.cfm/public-health/covid-19-updates-novel-coronavirus/> (last visited July  
28, 2020).

<sup>20</sup> Centers for Disease Control and Prevention, *Interim Infection Prevention and Control*  
Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19)

1 to three hours. It may also be possible for an individual to become infected by touching a surface  
2 or object that has the virus on it and then touching his or her own mouth, nose, or possibly eyes.  
3 Infected droplets can survive on surfaces for variable lengths of time, ranging from up to four  
4 hours on copper, to 24 hours on cardboard, to two to three days on plastic or stainless steel.

5 30. Signs and symptoms of COVID-19 may appear two to 14 days after exposure and  
6 may include fever, cough, and shortness of breath or difficulty breathing. Some individuals who  
7 have survived the illness—including those with so-called “mild” cases—have experienced fatigue  
8 so extreme they cannot get out of bed or walk to the bathroom, and a cough severe enough to  
9 prevent sleep. In more serious forms, the individual can experience excruciating pain, days or  
10 weeks of fever and chills, uncontrollable diarrhea and inability to keep down food or water, and  
11 extremely labored breathing requiring oxygen therapy.<sup>21</sup> The virus may lead to acute respiratory  
12 distress syndrome, in which fluid displaces the air in the lungs. The sensation of that illness is akin  
13 to being drowned.<sup>22</sup> The most severe forms require hospitalization and often artificial ventilation  
14 to preserve life. The artificial ventilation process is highly invasive.

15 31. Some patients are placed in medically induced comas for such treatment. Some do  
16 not survive. The overall case fatality rate has been estimated to range from 0.25 to 3.0%,<sup>23</sup> which  
17 is 2.5 to 30 times the fatality rate associated with influenza infection.

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19  
20 \_\_\_\_\_  
21 Pandemic (updated July 15, 2020), [https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Finfection-control%2Fcontrol-recommendations.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Finfection-control%2Fcontrol-recommendations.html).

22 <sup>21</sup> Leah Groth, *Is Diarrhea a Symptom of COVID-19? New Study Says Digestive Issues May Be*  
23 *Common With Coronavirus*, HEALTH, March 20, 2020, <https://www.health.com/condition/infectious-diseases/coronavirus/is-diarrhea-a-symptom-of-covid-19>  
24

25 <sup>22</sup> Lizzie Presser, *A Medical Worker Describes Terrifying Lung Failure From COVID-19 — Even in*  
26 *His Young Patients*, PROPUBLICA (March 21, 2020), <https://www.propublica.org/article/a-medical-worker-describes--terrifying-lung-failure-from-covid19-even-in-his-young-patients>.

27 <sup>23</sup> Centers for Disease Control and Prevention, Emerging Infectious Diseases, Case-Fatality Risk  
28 Estimates for COVID-19 Calculated by Using a Lag Time for Fatality, June 2020, <https://wwwnc.cdc.gov/eid/article/26/6/20-0320>, article (last visited July 16, 2020).

1           32.     In addition to the short-term risk of death posed by COVID-19, contracting the  
2 virus can lead to other serious long-term medical conditions, including cardiovascular disease,  
3 permanent reduction of lung function, and damage to organs, including permanent injury to the  
4 kidneys and neurologic injury.<sup>24</sup> Symptoms may persist for weeks or months after the initial  
5 infection.<sup>25</sup>

6           33.     A significant number of infected individuals do not exhibit symptoms. However,  
7 asymptomatic individuals—either before the onset of symptoms or because no symptoms will ever  
8 manifest—can nevertheless transmit the disease to others. According to the CDC, up to 25% of  
9 people infected with COVID-19 will remain asymptomatic. Similarly, infected individuals may  
10 experience only mild symptoms. These asymptomatic and mildly symptomatic individuals can,  
11 and do, transmit the virus, contributing to its rapid spread. Because of the high risk of transmission  
12 by asymptomatic individuals, in early April 2020, the CDC recommended everyone wear a mask  
13 in public. Citing similar concerns, on June 18, 2020, California Governor Gavin Newsom ordered  
14 all Californians to wear face coverings while in public or while in high risk settings. People who  
15 violate this order can be charged with a misdemeanor.<sup>26</sup>

16           34.     There is currently no medical treatment for COVID-19, other than supportive  
17 measures. Nor is there a vaccine. Recommended preventive measures to slow the transmission of  
18 COVID-19 include: social distancing (keeping persons separated by at least six feet), frequent  
19 handwashing, respiratory hygiene (e.g., covering mouth and nose when coughing or sneezing),  
20 wearing cloth face coverings, frequent cleansing of surfaces, isolating when ill, and tracing and  
21 isolating contacts of people who are infected.

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23 \_\_\_\_\_  
24 <sup>24</sup> Tian-Yuan Xiong et al., *Coronaviruses and the Cardiovascular System: Acute and Long-Term Implications*, *EURO. HEART J* (2020) 41, at pp. 1799-1800.

25 <sup>25</sup> Pam Belluck, *Here's What Recovery From Covid-19 Looks Like for Many Survivors*, *New York Times* (July 1, 2020), <https://www.nytimes.com/2020/07/01/health/coronavirus-recovery-survivors.html>.

26 <sup>26</sup> Phil Wilon, Hannah Fry & Luke Money, *Californians Must Wear Face Masks in Public under Coronavirus Order Issued by Newsom*, *L.A. TIMES* (June 18, 2020), <https://www.latimes.com/california/story/2020-06-18/california-mandatory-face-masks-statewide-order-coronavirus-gavin-newsom>.

1           **B. COVID-19 is Particularly Dangerous for Medically Vulnerable People**

2           35. While COVID-19 threatens everyone, certain individuals are at a heightened risk.  
3 Experts believe that older people and those suffering from certain underlying medical conditions  
4 are at a higher risk of serious illness or death from the disease.

5           36. According to the CDC, the risk of severe illness from COVID-19 increases with  
6 age, with older adults aged 65 and above at highest risk. This age is appropriately reduced to 55  
7 for people who are incarcerated. Experts widely agree that because of their high rates of chronic  
8 disease, poor previous health care, and histories of drug and alcohol abuse, incarcerated people are  
9 physiologically 10 years older than their chronological age. Incarcerated people aged 55 or older  
10 face a heightened risk of severe illness or death.

11           37. The CDC has identified people with the following medical conditions as being  
12 particularly vulnerable to severe illness from COVID-19, regardless of age: type 2 diabetes  
13 mellitus; chronic pulmonary disease; serious heart conditions; sickle cell disease; chronic kidney  
14 disease; immunocompromised state from solid organ transplant; and obesity.

15           38. Additionally, the CDC notes that people with the following conditions might be at  
16 an increased risk of severe illness from COVID-19: asthma; cerebrovascular disease; cystic  
17 fibrosis; hypertension or high blood pressure; immunocompromised state from blood or bone  
18 marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune  
19 weakening medicines; neurologic conditions, such as dementia; liver disease; pregnancy;  
20 pulmonary fibrosis; smoking; thalassemia; and type 1 diabetes mellitus.

21           39. By virtue of their conditions, people falling in any of the categories discussed in the  
22 preceding two paragraphs (collectively, the “Medically Vulnerable”) are particularly vulnerable to  
23 the dangers of COVID-19 and require precautionary measures responsive to their heightened risk.

24           **C. Correctional Facilities are Uniquely Primed for Viral Outbreak.**

25           40. The risk of exposure to and transmission of infectious diseases, as well as the  
26 potential harm to those who become infected, is significantly higher in jails than in the  
27 community, putting jail inmates and correctional staff at high risk of becoming ill with COVID-  
28 19.

1           41.       Correctional facilities like the Tulare County Jails face a significant risk for rapid  
2 and deadly spread of COVID-19. Several factors contribute to this risk. Correctional facilities are  
3 congregate environments where people live and sleep in close proximity. They are designed not  
4 for reducing infection, but for maximizing security by grouping many people into a confined  
5 space—an arrangement antithetical to social distancing. Correctional facilities often provide  
6 insufficient medical and hygiene supplies, such as soap, hand sanitizer, and face coverings.  
7 Incarcerated people are subject to frequent internal movement—between housing units, to  
8 congregate eating areas, through commissary, laundry, and medication lines, and even to and from  
9 other jails—which facilitates rapid disease transmission.

10           42.       Correctional officers, like sheriff’s deputies, and other correctional facility staff  
11 routinely have direct physical contact with incarcerated people, especially when handcuffing or  
12 removing handcuffs from incarcerated people who are entering, exiting, or moving throughout the  
13 facility. Staff also move around within the facility, which creates opportunities for transmission  
14 both among staff in different parts of the facility and transmission to and from incarcerated people  
15 in different parts of the facility.

16           43.       Additionally, compared to the general population, correctional facilities house a  
17 disproportionate number of Medically Vulnerable persons. Incarcerated populations have high  
18 rates of chronic illnesses such as diabetes, respiratory illness, and heart disease that increase the  
19 risk of serious illness from COVID-19. People often arrive at jails or prisons with poor or absent  
20 prior health care, alcohol or drug abuse, and other factors that further heighten the risk of  
21 contracting or dying from the disease. Thus, not only is COVID-19 more likely to spread in  
22 correctional facilities, but the consequences of viral outbreak are more severe than among  
23 healthier populations.

24           44.       Viral outbreaks in jails and prisons have serious public health ramifications, which  
25 extend far beyond the incarcerated population. Because people—staff, residents, contractors,  
26 community members, and others—constantly cycle in and out of correctional facilities, there is an  
27 ever-present risk that new carriers will bring the virus into the facility—or carry the virus from the  
28 facility into the surrounding communities. And incarcerated populations have high turnover, as

1 people are released while others are continuously admitted to the jail or prison. The revolving door  
2 creates an ever-present risk that persons, including asymptomatic carriers, will carry the virus into  
3 and out of the jail, spread infection, and trigger outbreaks both inside and outside the jailhouse  
4 walls. Thus, viral outbreaks in jails and prisons also pose a significant threat to the surrounding  
5 communities. Put simply: “Prison health is public health.”

6 45. Even if correctional institutions screen outsiders, including staff and visitors, for  
7 symptoms of COVID-19, that will not stop the introduction of COVID-19 from the outside  
8 because COVID-19 can be spread before an infected individual shows symptoms. Indeed, research  
9 suggests that up to 25% of people infected with COVID-19 will remain totally asymptomatic.

10 46. The devastating impact of COVID-19 on United States’ correctional facilities has  
11 already been felt throughout the country. Prisons in Iowa, Kentucky, and North Carolina are  
12 experiencing serious COVID-19 outbreaks. Outbreaks in the Cook County Jail in Chicago and at  
13 the Rikers Island Jail in New York were estimated to reflect the highest COVID-19 transmission  
14 rates observed anywhere in the world.<sup>27</sup> In Ohio, 78% of the approximately 2,500 prisoners at the  
15 Marion Correctional Institute tested positive. This outbreak was discovered through mass testing  
16 of the entire incarcerated population, suggesting that infection numbers in correctional facilities  
17 that have not implemented universal testing—such as the Tulare County Jails—may be far higher  
18 than reported.

19 47. In California, Avenal State Prison and North County Jail in Castaic have recently  
20 seen rapid increases in their COVID-19 cases: The *New York Times* reports that upward of 1,251  
21 people in Avenal and more than 1,376 people in North County Jail have tested positive for the  
22  
23  
24

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25 <sup>27</sup> See Alleen Brown, *Inside Rikers: An Account of the Virus-Stricken Jail from a Man Who*  
26 *Managed to Get Out*, Intercept (Apr. 21 2020 7:15 a.m.),  
27 <https://theintercept.com/2020/04/21/coronavirus-rikersisland-jail-nyc/>; Timothy Williams &  
28 Danielle Ivory, *Chicago’s Jail Is Top U.S. Hot Spot as Virus Spreads Behind Bars*, N.Y. Times,  
Apr. 8, 2020; updated Apr. 23, 2020), <https://www.nytimes.com/2020/04/08/us/coronaviruscook-county-jail-chicago.html>.

1 virus.<sup>28</sup> San Quentin prison is currently facing the third largest coronavirus outbreak in the United  
2 States. Since the first case of COVID-19 was reported in the prison nearly six weeks ago, 2,000  
3 people, more than half of the incarcerated people and staff, have tested positive for the virus, and  
4 at least ten have died. In the federal Lompoc prison complex, a recent outbreak of COVID-19 has  
5 killed four incarcerated people and infected more than 1,000 others.<sup>29</sup>

6 48. Officials and courts have recognized the need for drastic action to address the  
7 rapidly escalating crisis in prisons and jails. California Governor Gavin Newsom has directed the  
8 California Department of Corrections and Rehabilitation (“CDCR”) to release as many as 8,000  
9 California state prisoners in an unprecedented attempt to stop the spread of COVID-19 inside state  
10 prisons.<sup>30</sup> Many cities, including San Francisco, Chicago, Cleveland, and New York, are also  
11 releasing prisoners to reduce the risk of COVID-19.

12 49. Courts likewise continue to grapple with the acute and serious danger COVID-19  
13 poses in correctional facilities. On July 14, 2020, a judge on the United States District Court for  
14 the Central District of California ordered federal prison authorities to begin transferring Medically  
15 Vulnerable incarcerated people at Lompoc’s prison complex to home confinement to prevent  
16 further illness.<sup>31</sup> Courts in other jurisdictions have also issued orders requiring the release of  
17  
18

19 \_\_\_\_\_  
20 <sup>28</sup> New York Times, *Coronavirus in the U.S.: Latest Map and Case Count*,  
21 <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last visited July 28,  
2020).

22 <sup>29</sup> See Federal Bureau of Prisons: *COVID-19 Cases*, <https://www.bop.gov/coronavirus/> (last  
23 visited July 28, 2020); Richard Winton, *Judge Orders Release of Vulnerable Inmates at Lompoc*  
24 *Prisons Hit by Virus*, Los Angeles Times (July 22, 2020, 2:39 p.m.),  
[https://www.latimes.com/california/story/2020-07-22/judge-orders-release-some-lompoc-prison-](https://www.latimes.com/california/story/2020-07-22/judge-orders-release-some-lompoc-prison-inmates)  
[inmates](https://www.latimes.com/california/story/2020-07-22/judge-orders-release-some-lompoc-prison-inmates).

25 <sup>30</sup> See California to Release 8,000 Prisoners in Hopes of Easing Coronavirus Crisis, Los Angeles  
26 Times, July 10, 2020, [https://www.latimes.com/california/story/2020-07-10/california-release-](https://www.latimes.com/california/story/2020-07-10/california-release-8000-prisoners-coronavirus-crisis-newsom)  
[8000-prisoners-coronavirus-crisis-newsom](https://www.latimes.com/california/story/2020-07-10/california-release-8000-prisoners-coronavirus-crisis-newsom)

27 <sup>31</sup> See *Torres, et al. v. Milusnic, et al.*, Case No. CV 20-4450-CBM-PVC(x), 2020 WL 97285  
28 (C.D. Cal. July 14, 2020), Order re: Plaintiff-Petitioners’ Motion for Preliminary Injunction, and  
*Ex Parte* Application for Provisional Class Certification.



1 incarcerated people and major adjustments to facility protocols and practices in an effort to reduce  
2 the risk posed by COVID-19.<sup>32</sup>

3 **II. Defendant Has Failed to Address the Threat Posed by COVID-19, Subjecting People**  
4 **Incarcerated in Tulare County Jails to Imminent Danger of Serious Illness or Death**  
5 **from the Virus.**

6 **A. Defendant Has Failed to Provide Necessary Personal Protective Equipment to**  
7 **Staff and Incarcerated People.**

8 50. Incarcerated people are *not permitted* to wear masks while housed in Tulare County  
9 Jails. This policy is intentional and explicit: TCSO deputies have told incarcerated people  
10 specifically they cannot wear masks in Tulare County Jails.

11 51. Incarcerated people have not been given personal protective equipment, including  
12 masks, even after numerous requests. Nor are they permitted to wear masks of their own making.  
13 TCSO staff denied one individual's mask request while he was being treated in a medical facility  
14 in Defendant's custody, even though other patients near him had COVID-19. Others began  
15 repeatedly asking for masks after there were confirmed cases of COVID-19 in the Jails, but those  
16 requests likewise have been ignored.

17 52. Other individuals report being given masks before their court appearances. After  
18 court, however, TCSO deputies promptly collect the masks, warning that a failure to return the  
19 masks will result in disciplinary action. When one person tried to keep his mask, TCSO deputies  
20 took it and gave him a disciplinary infraction. As retaliation for trying to keep a mask, TCSO  
21 deputies now keep him locked in his cell all day.

22 53. Similarly, a TCSO deputy told Plaintiff Levi Johnson, who was returning from a  
23 medical appointment, that he had to throw his mask away. The deputy said "I wish I could allow  
24 you to keep your mask with you but they [superior officers] want you to throw them away."  
25

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26 <sup>32</sup> See, e.g., *Martinez-Brooks v. Easter*, Case No. 3:20-cv-00569 (MPS), 2020 WL 2405350 (D.  
27 Conn. May 12, 2020) (granting temporary restraining order requiring warden to speedily identify  
28 Medically Vulnerable prisoners appropriate for home confinement and compassionate release);  
*United States v. Salvagno*, Case No. 5:02-CR-051 (LEK), 2020 WL 3410601 (N.D.N.Y. Apr. 23,  
2020) (ordering release of Medically Vulnerable prisoner).

1           54.     When Plaintiff Adam Ibarra asked a TCSO nurse why incarcerated people were not  
2 being given masks, she responded that incarcerated people were not likely to get sick from  
3 COVID-19. After being refused a mask by deputies numerous times, Ibarra filed a grievance. In  
4 response, he was told “[d]ue to you not reporting any signs and/or symptoms [of COVID-19], your  
5 request for personal protective equipment is unapproved at this time.” Ibarra Grievance (Ex. 2 at  
6 3). He has not been permitted to wear a mask since, except while in court for court appearances.

7           55.     Plaintiff Samuel Camposeco also filed a grievance after being denied a mask. The  
8 answer he received was even more direct: “At this time no inmates are being provided PPE  
9 masks.” Camposeco Grievance (Ex. 3 at 1). On appeal, Camposeco received the same response as  
10 Ibarra: “[d]ue to you not reporting any signs and/or symptoms [of COVID-19], your request for  
11 personal protective equipment ... is unapproved at this time.” *Id.* at 2.

12           56.     In response to Defendant’s utter refusal to provide protective masks or other  
13 protective equipment, Camposeco and others have begun making their own masks. But as soon as  
14 the deputies spot them, the masks are whisked away. Camposeco has sometimes been given masks  
15 to wear in court, but those masks are quickly confiscated following his court appearance. TCSO  
16 deputies have continued to tell Camposeco that incarcerated people are not allowed to wear masks  
17 in Tulare County Jails.

18           57.     TCSO deputies have taken masks away from the Medically Vulnerable, including  
19 Plaintiff Levi Johnson. Moreover, there have been many instances in which TCSO staff (including  
20 deputies, nurses, and food workers) and outside volunteers have interacted with incarcerated  
21 people, including the Medically Vulnerable, without wearing masks.

22           58.     Nor do the deputies themselves regularly wear masks while working in the Jails.  
23 When one individual told Defendant’s deputies that they should be wearing masks, the deputies  
24 mimicked coughing noises at him.

25           59.     Even kitchen workers have been refused the use of masks while they work. When  
26 these incarcerated food workers pass out meal trays, their faces come in close contact to the food  
27 and dishware. One individual asked a deputy for a grievance form to report this issue. The deputy  
28 told him that the issue was not grievable and refused to give him a form.

**B. Defendant Refuses to Provide COVID-19 Tests—Or Timely Medical Care—  
To People Incarcerated in Tulare County Jails.**

60. Defendant has refused to test incarcerated people for COVID-19 in Tulare County Jails, including the Medically Vulnerable. It is difficult even in the best of times for people incarcerated in Tulare County Jails to get a medical appointment. Merely securing a sick call slip—the form to request a medical visit—requires multiple requests to the nursing staff. Once that’s done, it can take up to a week to get a medical appointment—which then typically lasts only a few minutes. Nothing has improved since the pandemic began, and incarcerated people do not have access to necessary COVID-19 testing or medical treatment.

61. When incarcerated people request a COVID-19 test, the deputies and nursing staff refuse them. Jail staff have denied COVID-19 testing requests even if the incarcerated person making the request has exhibited COVID-19 symptoms, or has been in close contact with other incarcerated people who have exhibited COVID-19 symptoms.

62. When people ask Tulare County Jails’ nursing staff why they cannot be tested for COVID-19 despite exhibiting symptoms or suffering a likely exposure, the nurses reply that Defendant does not test incarcerated people in Tulare County Jails.

63. For example, in late May, Plaintiff Camposeco began to feel sick. He became concerned when others on his unit also developed flu-like symptoms—he was surrounded by a daily din of coughing. Yet despite the obvious need in the unit, TCSO staff refused to give him a coronavirus test. When Camposeco filed a grievance in protest, deputies appeared more troubled with how he’d found the form than with the egregious lack of testing.

64. Another person reported having flu-like symptoms since the beginning of July, including chills, a cough, body aches, and a likely fever—although without access to a thermometer, he cannot be sure. When he sought care from TCSO nursing staff, the nurse did nothing but check his tonsils and give him a couple of Tylenols. She categorically refused a coronavirus test. Despite continuing to experience symptoms, he has received no further medical care.

1           65.     Yet another person, who cleaned cells in one of the Jails' intake units, repeatedly  
2 asked for COVID-19 testing due to his increased exposure to newly-booked individuals—  
3 including those who tested positive for the virus. He was told that he would have to wait for his  
4 release to be tested for COVID-19.

5           **C.     Defendant Refuses to Quarantine New Intakes or Implement Appropriate**  
6           **Quarantine Measures in the Housing Units**

7           66.     Defendant does not quarantine people newly booked into Tulare County Jails upon  
8 their admission to the jail. Sick people with obvious flu-like symptoms are sent straight to the  
9 regular housing units after booking. One individual reports that while he was incarcerated, newly-  
10 booked individuals—including those with a cough or a sore throat—were assigned straight to his  
11 housing unit, without any quarantine period (or testing) whatsoever.

12           67.     Similarly, incarcerated people who show COVID-19 symptoms in their cramped  
13 housing units often remain in their units, unquarantined, where they mingle with other  
14 incarcerated people in their cells or dorms, on the yard, in the showers, or in other common areas.  
15 These individuals, if positive, continue to expose others in their unit—including the Medically  
16 Vulnerable—to COVID-19.

17           68.     Nor does Defendant quarantine individuals before transferring them to new housing  
18 units. Plaintiff Campseco reports that significant numbers of people have been transferred into his  
19 unit in Bob Wiley Detention Center from units all over the jail—without any quarantine period  
20 between moves. Now, he says, his unit is almost completely full, crowded with individuals of  
21 unknown prior exposure.

22           **D.     Defendant's Policies Actively Prevent Incarcerated People from Practicing**  
23           **Social Distancing.**

24           **i.     Despite Available Space, Incarcerated People are Crammed Together**  
25           **in Crowded Housing Units.**

26           69.     It is nearly impossible for incarcerated people in Tulare County Jails to socially  
27 distance in their cells, units, or both.  
28

1           70.     In one Bob Wiley women’s unit, for example, bunk beds are placed only three feet  
2 apart, with approximately three feet between the top bunk and the lower bunk. Every lower bunk  
3 is occupied, meaning each person sleeps only three feet apart from the next. This layout makes it  
4 impossible for anyone to maintain more than three feet of distance—at the most—from anyone  
5 else. What’s worse, the unit is only half-full, but rather than spacing people out across the unit so  
6 individuals could sleep more than three feet apart, Defendant closed four of the eight total  
7 “houses,” and crowded everyone into the remaining four.

8           71.     Plaintiff Charles Criswell is housed in Main Jail Unit 222, a dorm-like setting with  
9 15 other incarcerated people housed in bunk beds. Each double bunk bed is about two feet away  
10 from the next, and all the beds are full. He spends nearly all of his time in close proximity to the  
11 other people in his unit. No one can socially distance in this setting. Many other incarcerated  
12 people, housed in units across Tulare County Jails, report similar conditions: closely-spaced bunks  
13 and full or nearly-full units, despite the fact that the Jails themselves are below-capacity.

14           72.     Others report being housed together in a nearly-full men’s unit, stocked with two-  
15 person cells that make it impossible for cellmates to socially distance from one another. Cellmates  
16 share a common bunk bed, toilet, and sink. Every day, deputies line up all the people housed in the  
17 unit next to each other—so close they are nearly touching—for a routine search. Even in non-  
18 dormitory settings, Defendant’s policies make it effectively impossible for the individuals  
19 incarcerated in his Jails to practice responsible social distancing.

20                   **ii.     Incarcerated People Also Cannot Practice Social Distancing When**  
21                   **They Leave Their Cells or Housing Units**

22           73.     Whether on the yard or in a dayroom, it is impossible as a practical matter for  
23 individuals to practice social distancing. Not only are those spaces small and cramped, the phones  
24 are close together, meaning the lines to speak are tightly packed. The phones are not cleaned  
25 between uses.

26           74.     Programs run by non-incarcerated volunteers have continued to operate in Tulare  
27 County Jails during the COVID-19 pandemic, but Defendant has failed to provide any policy on  
28 social distancing with respect to these programs. For example, incarcerated people who

1 participated in a volunteer-run religious program during the pandemic sat side-by-side on a picnic-  
2 like table in a small room.

3 75. When incarcerated people are searched or transported to work sites, court, or both,  
4 they are placed in small holding cells and crowded trailers and vans with incarcerated people from  
5 other units and Jails, sometimes elbow-to-elbow. Not only has Defendant refused to implement a  
6 plan for social distancing among incarcerated people, but his policies make it impossible for them  
7 to do so of their own accord.

8 **E. Tulare County Jails Remain in Filthy Condition Because Defendant has Failed**  
9 **to Provide Proper Cleaning and Hygiene Supplies.**

10 76. Defendant has not implemented an adequate sanitation policy in Tulare County  
11 Jails. Despite the well-known importance of sanitation to combat the COVID-19 virus,  
12 incarcerated people have not been given adequate amounts of personal hygiene or other cleaning  
13 supplies in Tulare County Jails.

14 77. Individuals incarcerated in Tulare County receive only one small bar of soap a  
15 week—at best, every few days—for all their sanitation needs. These small bars of soap do not last  
16 more than a day, which means people regularly go without soap several days a week. Nor does  
17 Defendant provide hand sanitizer, or other personal disinfectants.

18 78. Showers are communal, shared by numerous people who all must bathe one after  
19 the other. In one women’s unit, for example, there are only three showers, shared by 30 people.  
20 Twelve people share a single toilet.

21 79. Defendant has also failed to provide incarcerated people with a consistent supply of  
22 cleaning materials to disinfect their cells and other surfaces. When rats, birds, and insects  
23 inevitably make their way into the already-unclean units, the floors, drinking fountains, and other  
24 areas become crusted with feces and refuse. Despite the pandemic, many incarcerated people have  
25 not been able to keep their units clean and sanitized, due to Defendant’s refusal to consistently  
26 provide adequate cleaning supplies.

27 80. Outside of the incarcerated people’s units, common spaces like dayrooms, attorney  
28 meeting rooms, holding rooms, and phone booths, including the phones themselves, are not

1 disinfected regularly or between uses, and incarcerated people are not given cleaning supplies to  
2 clean these common spaces and surfaces themselves.

3 81. Deputies do not observe appropriate hygiene when interacting with incarcerated  
4 people. Deputies will pat down several different incarcerated people in a row, all with the same  
5 pair of rubber gloves. Others will handcuff several different people with the same pair of  
6 handcuffs without disinfecting the handcuffs in between uses.

7 82. What's more, incarcerated people have not been educated on how to prevent the  
8 spread of COVID-19. There are no signs or flyers in the jail instructing incarcerated people on  
9 how to protect themselves from the virus. Worse, when the TV news begins broadcasting stories  
10 or information about COVID-19, TCSO deputies turn off the television. Deputies have also cut  
11 out articles about COVID-19 from newspapers before delivering them to incarcerated people.

12 **F. Defendant Has Retaliated Against Incarcerated People Who Challenge the**  
13 **Unconstitutional Conditions of Confinement at Tulare County Jails.**

14 83. It is not enough for Defendant to leave people incarcerated in his jails helpless to  
15 protect themselves from COVID-19. Defendant has also embarked on a retaliation campaign  
16 against those individuals who have looked to outside counsel for help.

17 84. Incarcerated people have filed grievances regarding Defendant's refusal to provide  
18 masks to incarcerated people or to require his staff to wear masks; to test incarcerated people for  
19 COVID-19; to provide adequate soap, hand sanitizer, and cleaning supplies; and to release any  
20 incarcerated people to home confinement to prevent the spread of COVID-19.

21 85. In many cases, TCSO staff simply do not respond. Often, staff refuse even to  
22 provide incarcerated people with grievance forms. And TCSO deputies have retaliated against and  
23 intimidated those incarcerated people who have filed grievances, making them and others unlikely  
24 to file grievances in the future.

25 86. One individual was moved to a maximum security unit after talking to an ACLU  
26 investigator. He asked the deputies several times for a grievance form so that he could challenge  
27 the retaliatory move. The deputies asked him why he wanted the form, and he responded that he  
28 wanted to grieve his classification and security level changes. Yet the deputies refused to give him

1 a grievance form. They told him that his security level change was not a grievable issue even  
2 though security classification is a well-established grievable issue.<sup>33</sup>

3 87. When another individual asked for a grievance form to report deputies' practice of  
4 patting down incarcerated people without changing gloves, he was told that issues about COVID-  
5 19 in Tulare County Jails were not grievable. He was informed that if he grieved the COVID-19  
6 response, he would be given a disciplinary infraction or have this security classification raised.

7 **III. Despite the Clear and Obvious Danger That COVID-19 Poses to Incarcerated People**  
8 **in Tulare County Jails, Defendant Has Refused to Protect Them.**

9 **A. Defendant Not Only Refuses to Provide Face Coverings to Incarcerated**  
10 **People, His Policy Explicitly Forbids Incarcerated People from Wearing Face**  
11 **Coverings in the Housing Units.**

12 88. Experts recommend that people, including incarcerated people, wear cloth face  
13 coverings to prevent the spread of COVID-19.

14 89. The CDC recommends that all staff and incarcerated people in correctional  
15 facilities be encouraged to wear a mask as frequently as possible.<sup>34</sup> The CDC also recommends  
16 that correctional facilities provide masks at no cost, and recommends that facilities launder masks  
17 regularly. The CDC recommends that correctional facilities explain policies regarding the use of  
18 masks to staff and incarcerated people, including when more protective gear may be appropriate.

19 90. Defendant has released no public policies on masks or other personal protective  
20 equipment ("PPE") in Tulare County Jails. Experiences of people incarcerated in Tulare County  
21 show that Defendant has no evidence-based, updated, and comprehensive policies on masks or  
22 other PPE in Tulare County Jails.

23  
24  
25 <sup>33</sup> See, e.g., *In re Martinez*, 242 Cal. App. 4th 299, 307 (2015) (sustaining habeas corpus challenge  
26 to classification as a gang member).

27 <sup>34</sup> CDC, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in*  
28 *Correctional and Detention Facilities* (updated July 22, 2020),  
[https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-  
correctional-detention.html](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html)



1 91. In fact, Defendant has explicitly *forbidden* incarcerated people from wearing  
2 masks. His policy persists to this very day, despite the CDC’s recommendation—in *April*—that all  
3 people wear masks when they leave their home, and Governor Newsom’s June mandate requiring  
4 all Californians to do so.

5 92. Defendant apparently understands the virtues of masking for the non-incarcerated  
6 population. Indeed, he has extolled the virtues of mask-wearing to the general public: On July 3,  
7 2020, Defendant announced on Facebook a new campaign, “MASK UP Tulare County,” seeking  
8 to raise awareness about the importance of masks. The campaign directs TCSO deputies to  
9 provide masks and an educational pamphlet whenever they see people in public without masks.<sup>35</sup>  
10 As Defendant said, “The people of Tulare County have always taken care of each other. And we  
11 are asking you to continue to do that now, by wearing masks, practicing good hygiene, and, of  
12 course, social distancing.” Defendant has categorically refused to extend that protection to the  
13 people incarcerated in his jails.

14 93. As Defendant himself recognizes, masks are necessary to combat COVID-19  
15 effectively. For Californians outside of Tulare County Jails’ walls, it is a crime *not* to wear a mask  
16 in public. Inside, wearing a mask is grounds for discipline. Defendant’s refusal to provide personal  
17 protective equipment, including masks, to the people incarcerated in his Jails demonstrates a gross  
18 and deliberate indifference to their health.

19 **B. Defendant Has No Coherent Testing Policy, Despite an Active Outbreak of**  
20 **COVID-19 in the Jails.**

21 94. Experts warn that “[i]n the absence of an effective vaccine, one of the most  
22 powerful tools we have in containing the spread of COVID-19 within facilities is testing.”  
23 “[T]esting is critical for COVID-19 prevention and control” because “it allows people who are  
24 diagnosed with COVID-19 to be medically isolated.”

25  
26 \_\_\_\_\_  
27 <sup>35</sup>*Tulare County Sherriff’s Office: Mask Up Tulare County!*, Facebook (July 3, 2020, 11:29 a.m.)  
28 [https://www.facebook.com/TulareSheriff/videos/3207308699315349/?comment\\_id=3971952246209111](https://www.facebook.com/TulareSheriff/videos/3207308699315349/?comment_id=3971952246209111)

1           95.     The CDC recommends testing for all symptomatic individuals, and all  
2 asymptomatic individuals who are close contacts of symptomatic individuals.<sup>36</sup>

3           96.     The CDC recommends that correctional and detention facilities consider testing all  
4 newly incarcerated people before they join the facility's population and all people who have left  
5 the facility and have since returned.<sup>37</sup> Other recommended approaches for testing in correctional  
6 and detentions facilities include an initial test of everyone who resides or works in the facility and  
7 regular (or weekly) testing of all people living or working in that facility.

8           97.     Testing is important because relying simply on symptoms offers an incomplete  
9 picture of the prevalence of COVID-19. Many symptoms related to COVID-19 are not easily  
10 observable, and incarcerated people may not be aware that they are experiencing symptoms of  
11 COVID-19. Moreover, many individuals who are asymptomatic are still carriers of the virus,  
12 meaning any symptom-based screening protocols will fail to identify them.

13           98.     Defendant has released no public testing policies for COVID-19 in Tulare County  
14 Jails. Nor have Plaintiffs observed from within the Jails any sort of comprehensive testing plan.  
15 Defendant apparently has *no* evidence-based, up-to-date, comprehensive COVID-19 testing  
16 policies for the Tulare County Jails. Any limited policies that Defendant may have are not only  
17 inadequate to address—or even assess—the scale of the problem, but they also are only  
18 sporadically enforced.

19           99.     Defendant is well aware of the dire need for testing in Tulare County Jails. In fact,  
20 on July 1, 2020, the Presiding Judge of the Tulare County Superior Court wrote a letter to the  
21 Tulare County Board of Supervisors asking the County, among other things, to test all  
22 incarcerated people in Tulare County Jails. Presiding Judge Alldredge emphasized that widespread  
23 testing was necessary to gauge the spread of the virus in the Jails, given the at least twelve  
24  
25

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26 <sup>36</sup> CDC, *Interim Considerations for SARS-CoV-2 Testing in Correctional and Detention Facilities*  
27 (updated July 7, 2020), [https://www.cdc.gov/coronavirus/2019-ncov/community/correction-  
detention/testing.html](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/testing.html).

28 <sup>37</sup> *Id.*

1 individuals in the Jails who had already tested positive and the “alarming rate” of new COVID-19  
2 deaths in Tulare County.<sup>38</sup>

3 100. In keeping with Defendant’s approach, the County flatly refused to conduct  
4 widespread testing in the Jails.<sup>39</sup>

5 101. Defendant’s refusal to implement reasonable testing policies ignores a potentially  
6 deadly risk of infection to incarcerated people in Tulare County Jails and constitutes deliberate  
7 indifference to the serious medical needs of Plaintiffs and the class they seek to represent. And it  
8 places the Medically Vulnerable in an especially precarious position, making it impossible for  
9 them to identify and isolate from potential carriers.

10 **C. Defendant has Prevented Incarcerated People from Practicing Social**  
11 **Distancing, One of the Most Important and Simplest Methods of Preventing**  
12 **the Spread of COVID-19.**

13 102. Social distancing has been defined by the CDC as the “cornerstone of reducing  
14 transmission of respiratory diseases such as COVID-19.” While true social distancing is nearly  
15 impossible in correctional facilities, the CDC recommends certain strategies for keeping  
16 incarcerated people safe from COVID-19.<sup>40</sup> Defendant has implemented none of them.

17 103. Defendant has refused to take even limited steps to ensure the health and safety of  
18 incarcerated people. For example, in-unit, Defendant can reassign and rearrange bunk beds to  
19 provide 6 feet of space; arrange bunk beds so that individuals sleep head to toe; and schedule  
20 movements to limit the mixing of people.<sup>41</sup> Outside the unit, Defendant can rearrange common

21 \_\_\_\_\_  
22 <sup>38</sup> Ex. 1 at 1. We now know, based on more recent reports, that the number of positive tests was  
23 even higher: 22 incarcerated people tested positive for COVID-19, out of only 139 total tests. *See*  
24 *Tulare County Sherriff’s Office*, Facebook (July 28, 2020),  
<https://www.facebook.com/TulareSheriff/posts/4081234765280858>.

25 <sup>39</sup> *Id.* at 3.

26 <sup>40</sup> CDC, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in*  
27 *Correctional and Detention Facilities* (updated July 22,2020),  
[https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html)  
[correctional-detention.html](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html)

28 <sup>41</sup> *Id.*

1 areas to create increased space between people, limit the size of group activities, stagger meal  
2 times, and modify work details.<sup>42</sup>

3 104. On April 30, 2020, Defendant acknowledged that “the population in the jails is at  
4 almost half of the total capacity.” Yet Defendant has refused to implement the measures, outlined  
5 above, that would increase the protective space surrounding incarcerated people, citing budget  
6 constraints. Instead, Defendant has insisted on closing down certain dormitories and cells within  
7 the units, leaving those that remain in use at their full, packed capacity.

8 105. The ongoing crowding in the Jails makes clear that Defendant has no  
9 comprehensive policy on social distancing—despite it being one of the simplest and most effective  
10 strategies to prevent COVID-19 transmission. Prioritizing cost savings over the lives and health of  
11 incarcerated people is deliberate indifference to the real threat that COVID-19 poses to their  
12 health.

13 **D. Defendant Does Not Adequately Screen Incarcerated People or Staff for**  
14 **COVID-19 Symptoms, and Does Not Quarantine Newly-Booked Individuals,**  
15 **Increasing the Risk that COVID-19 Will Spread Undetected Through Tulare**  
16 **County Jails.**

17 106. The CDC recommends that all staff working in correctional facilities undergo daily  
18 verbal symptom screenings and temperature checks when arriving at work.<sup>43</sup>

19 107. The CDC recommends that if any incarcerated people or staff members are found  
20 positive for COVID-19 *anywhere* in a facility, officials should consider performing regular  
21 symptom screenings and temperature screenings on *all* employees and incarcerated people—even  
22 if they are located in housing units where infections have not yet been identified.<sup>44</sup>

23  
24 \_\_\_\_\_  
25 <sup>42</sup> *Id.*

26 <sup>43</sup> CDC, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in*  
27 *Correctional and Detention Facilities*(updated July 22, 2020),  
[https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html)  
[correctional-detention.html](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html)

28 <sup>44</sup> *Id.*

1 108. On information and belief, Defendant has not implemented any CDC-compliant  
2 screening policies, whether for staff or incarcerated people. Indeed, as reports from incarcerated  
3 people show, when they do exhibit symptoms they are refused testing and sent back to their cells  
4 without meaningful medical treatment.

5 109. CDC guidelines recommend testing and quarantining newly incarcerated people for  
6 a period of 14 days before introducing them to the general population.<sup>45</sup>

7 110. Similarly, experts agree that new intakes should not be introduced into the general  
8 population until they have been quarantined for a period of 14 days. If single cells are not  
9 available, experts recommend cohorting new arrivals by arrival date in a setting where they can  
10 maintain social distancing.

11 111. Reports from incarcerated people show that, despite well-publicized CDC  
12 guidelines, Defendant continues to introduce newly booked individuals directly into the general  
13 population.

14 112. The failure to institute symptom screening mechanisms for staff and incarcerated  
15 people, and quarantine protocols for newly-booked individuals, allows the virus to spread through  
16 the Jails undetected, carried by symptomatic and asymptomatic individuals alike.

17 **E. Defendant Has Not Provided Incarcerated People With Adequate Hygiene**  
18 **Supplies and Has Not Maintained Sanitary Conditions.**

19 113. Aggressive decontamination and cleaning strategies are a crucial part of combating  
20 COVID-19.

21 114. At a minimum, incarcerated people must be provided with cleaning supplies and  
22 personal hygiene equipment. This includes, under the CDC recommendations, a free supply of  
23 liquid soap where possible (liquid soap is more effective than bar soap).<sup>46</sup>

24  
25  
26  
27 \_\_\_\_\_  
<sup>45</sup> *Id.*

28 <sup>46</sup> *Id.*

1 115. Defendant has no policy requiring that incarcerated people be provided with the  
2 supplies that they need to combat the spread of COVID-19. Defendant's policies and measures are  
3 not adequate to maintain sanitary conditions in the Jail.

4 **F. Despite Defendant's Refusal to Implement Social Distancing Measures,**  
5 **Defendant Has Opposed Releases at Every Turn.**

6 116. Releases are a crucial part of any COVID-19 response strategy. Overcrowding in  
7 jails and prisons makes implementing crucial protective measures in prisons difficult. Releases are  
8 necessary to reduce populations to a point where protective measures can be implemented.  
9 Depopulation is an evidence-based and effective strategy at reducing the incidence of COVID-19  
10 in a detention setting.

11 117. Recognizing the important role that releases play in COVID-19 prevention efforts,  
12 jurisdictions around the world and in the United States have taken decisive action to save lives in  
13 correctional facilities and in the community at large. Germany released "1,000 prisoners who are  
14 close to the end of their sentences"; Canada released "1,000 inmates in the state of Ontario"; and  
15 Iran "temporarily release[d] 85,000 prisoners, with 10,000 of them being granted pardons."<sup>47</sup>

16 118. Closer to home, Governor Gavin Newsom has ordered the release of as many as  
17 8,000 state prisoners to address COVID-19's devastating impact in the state's prisons.<sup>48</sup> And  
18 California is not alone in its efforts. As early as March, the New Jersey Supreme Court entered an  
19 order releasing as many as 1,000 people from its jails, and New York City also began releasing  
20 more than 1,000 people from its jails.<sup>49</sup> Cuyahoga County, Ohio, announced plans to rapidly

21 \_\_\_\_\_  
22 <sup>47</sup> Luke Baker., *Lock 'Em Up or Let 'Em Out? Coronavirus Prompts Wave of Prisoner Releases*,  
23 REUTERS (March 25, 2020), <https://www.reuters.com/article/us-health-coronavirus-prisoners-released/lock-em-up-or-let-em-out-coronavirus-prompts-wave-of-prisoner-releases-idUSKBN21C38R>.

24 <sup>48</sup> See John Myers, *California to Release 8,000 Prisoners in Hopes of Easing Coronavirus Crisis*, Los  
25 Angeles Times (July 10, 2020), <https://www.latimes.com/california/story/2020-07-10/california-release-8000-prisoners-coronavirus-crisis-newsom>.

26 <sup>49</sup> Tracey Tully, *1,000 Inmates Will Be Released From N.J. Jails to Curb Coronavirus Risk*, N.Y.  
27 Times (March 23, 2020) <https://www.nytimes.com/2020/03/23/nyregion/coronavirus-nj-inmates-release.html?action=click&module=Latest&pgtype=Homepage>; *NYC to Release More Than 1,000  
28 Prison Inmates Due to Coronavirus Concerns*, Assoc. Press (March 25, 2020),

1 release around 600 people from the county jail just two days after President Trump declared a  
2 national emergency; Washington County, Oregon, released more than 120 people from the local  
3 jail; the Iowa Department of Corrections began to release 700 people from state prisons; Mercer  
4 County, Pennsylvania, released 60 of 308 people in their jail.<sup>50</sup>

5 119. These depopulation efforts save lives: Corrections experts recognize that major  
6 population reductions, together with aggressive, responsive prevention measures, are necessary to  
7 protect incarcerated people, correctional officers, and the community at large from COVID-19.  
8 Despite actual knowledge of the risk posed by COVID-19 and the appropriate responses available  
9 to mitigate that risk, Defendant has failed to take these common sense and necessary steps—and  
10 he has loudly decried efforts to reduce populations in jails and prisons. In Defendant’s simplistic  
11 view: “Those inmates in our facilities are in there for a reason.”<sup>51</sup>

12 120. If a municipality cannot provide, or cannot afford to provide, adequate social  
13 distancing in Jails, it should release people—at the very least, it should consider releasing those in  
14 greatest danger from the virus, the Medically Vulnerable, to home confinement—until social  
15 distancing becomes possible. Failure to do so is deliberate indifference.

16 121. California law provides Defendant clear authority to implement this lifesaving  
17 measure. California Government Code section 8658 expressly authorizes him to protect  
18 incarcerated people “endanger[ed]” by the COVID-19 pandemic by “remov[ing] them to a safe  
19 and convenient place” for the duration of the emergency. Gov’t Code § 8658.

20  
21  
22 [https://www.syracuse.com/coronavirus/2020/03/nyc-to-release-more-than-1000-prison-inmates-  
23 due-to-coronavirus-concerns.html](https://www.syracuse.com/coronavirus/2020/03/nyc-to-release-more-than-1000-prison-inmates-due-to-coronavirus-concerns.html).

24 <sup>50</sup> Kimberly Kindy et al., ‘Disaster Waiting to Happen’: Thousands of Inmates Released as Jails  
25 and Prisons Face Coronavirus Threat, Washington Post (Mar. 25, 2020, 3:00 a.m. PDT),  
26 [https://www.washingtonpost.com/national/disaster-waiting-to-happen-thousands-of-inmates-  
27 released-as-jails-face-coronavirus-threat/2020/03/24/761c2d84-6b8c-11ea-b313-  
28 df458622c2cc\\_story.html](https://www.washingtonpost.com/national/disaster-waiting-to-happen-thousands-of-inmates-released-as-jails-face-coronavirus-threat/2020/03/24/761c2d84-6b8c-11ea-b313-df458622c2cc_story.html)

<sup>51</sup> Reggie Ellis, *State Rule Allows Inmates to Walk Free for Free*, Sun Gazette (April 22, 2020,  
7:52 a.m.), [https://thesungazette.com/article/news/2020/04/22/state-rule-allows-inmates-to-walk-  
free-for-free/](https://thesungazette.com/article/news/2020/04/22/state-rule-allows-inmates-to-walk-free-for-free/).

1 122. Defendant is aware of his authority under Section 8658. On April 14, 2020, Edward  
2 Medrano, Chief Division of Law Enforcement for the California Department of Justice, issued a  
3 memorandum to all County Sheriffs, including Defendant, reminding them of their Section 8658  
4 authority.<sup>52</sup> The memorandum notified Sheriffs that Section 8658 applies to the COVID-19  
5 pandemic and provides a tool for responding to the risk of viral outbreak within confinement  
6 facilities.

7 123. Defendant has conceded that incarcerated people cannot practice social distancing  
8 in Tulare County's Jails. But although Defendant has the power to protect Medically Vulnerable  
9 incarcerated people by releasing them to home confinement for the duration of the pandemic, he  
10 has vehemently and staunchly refused to consider any releases, including any releases pursuant to  
11 Section 8658.

12 124. In April, the Tulare Superior Court ordered Defendant to release a few dozen  
13 nonviolent offenders. Although Defendant ultimately complied with the order, he did so with  
14 marked reluctance. On social media, Defendant expressed strong opposition to releases in any  
15 form because of COVID-19. A spokeswoman for Defendant said: "[r]eleasing inmates is not Sheriff  
16 Boudreaux's first line of defense against the coronavirus."<sup>53</sup> And in May, Defendant accused those  
17 who support releasing incarcerated people due to COVID-19 of advancing a political agenda  
18 "beyond the scope of need."<sup>54</sup>

19 125. Defendant's failure even to consider the release of Medically Vulnerable people  
20 constitutes deliberate indifference to a substantial risk to the health and safety of the Medically  
21 Vulnerable subclass that Plaintiffs seek to represent.

22 **G. Defendant's Response to COVID-19 Lacks Any Transparency.**

23 \_\_\_\_\_  
24 <sup>52</sup> Information Bulletin from Edward Medrano to All County Sheriffs and Probation Officers  
(April 14, 2020), <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/2020-dle-05.pdf>?

25 <sup>53</sup> Daniel Gligich, *Tulare Co. Sheriff clarifies he won't be forced to release inmates quietly*, The  
26 San Joaquin Sun (April 6, 2020), <http://sjvsun.com/news/visalia/tulare-co-sheriff-clarifies-he-wont-be-forced-to-release-inmates-quietly/>.

27 <sup>54</sup> *Boudreaux expresses his COVID-19 views on Facebook*, The Porterville Recorder (May 1,  
28 2020), [https://www.recorderonline.com/news/boudreaux-expresses-his-covid-19-views-on-facebook/article\\_5ec608fa-8bec-11ea-8a40-cb107b5bb2c2.html](https://www.recorderonline.com/news/boudreaux-expresses-his-covid-19-views-on-facebook/article_5ec608fa-8bec-11ea-8a40-cb107b5bb2c2.html).



1 126. CDC guidelines emphasize the importance of transparency in responding to  
2 COVID-19: because “limited outside information is available to many incarcerated/detained  
3 persons, unease and misinformation regarding the potential for SARS-CoV-2 to spread may be  
4 high, potentially creating security and morale challenges.” The guidelines recommend that  
5 facilities “create and test communications plans to disseminate critical information to  
6 incarcerated/detained persons, staff, contractors, vendors, and visitors as the pandemic  
7 progresses.”<sup>55</sup>

8 127. Experts emphasize the importance of transparency in responding to COVID-19.  
9 Without transparency and accurate reporting, it is impossible to tell whether any policies that exist  
10 are actually working.

11 128. Transparency is crucial not only to incarcerated people living in the Jails, but also  
12 to the surrounding community and individuals seeking to evaluate the efficacy of the Jail’s  
13 response to COVID-19.

14 129. Tulare County seemingly recognizes the importance of transparency for non-  
15 incarcerated people. Tulare County reports on its website the total number of people who have  
16 tested positive for COVID-19 in the general public.<sup>56</sup> Tulare County has a website with  
17 comprehensive COVID-19 resources for people, including sections providing resources for  
18 businesses, workers, people experiencing homelessness, and others.<sup>57</sup>

19 130. In comparison, Defendant has provided no public information about his COVID-19  
20 response within the Tulare County Jails. The County website does not mention incarcerated  
21 people or provide resources for understanding conditions in Tulare County Jails. Defendant has  
22

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23 <sup>55</sup> CDC, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in*  
24 *Correctional and Detention Facilities* (updated 7/22/2020),  
25 [https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html)  
[correctional-detention.html](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html) (last visited July 28, 2020).

26 <sup>56</sup> Tulare Cty. Health & Human Servs. Agency, *COVID-19 (Novel Coronavirus) COVID -19*  
27 *Update* (July 28, 2020 as of 11:12:43 AM PDT), [https://tchhsa.org/eng/index.cfm/public-](https://tchhsa.org/eng/index.cfm/public-health/covid-19-updates-novel-coronavirus/)  
[health/covid-19-updates-novel-coronavirus/](https://tchhsa.org/eng/index.cfm/public-health/covid-19-updates-novel-coronavirus/) (last visited July 28, 2020).

28 <sup>57</sup> *Tulare County Coronavirus (COVID-19) Response*, <https://covid19.tularecounty.ca.gov/> (last  
visited July 28, 2020).

1 not published an outbreak control plan, nor has he published information concerning current  
2 testing data and COVID-19 response efforts within the Jails. And he has not shared information  
3 about the Jail's response to the pandemic—or any COVID-19 educational materials—with  
4 incarcerated people. At every turn, Defendant has obfuscated and hidden from public scrutiny any  
5 information about his (lack of a) COVID-19 response.

6 **IV. Defendant has Actively Interfered with Incarcerated People's Access to the Courts.**

7 **A. Defendant's Staff Have Retaliated Against Individuals Seeking to Shed Light**  
8 **on Defendant's Apathetic Response to the Threat of COVID-19 in Tulare**  
9 **County Jails.**

10 131. Since counsel began investigating conditions at Tulare County Jails, Defendant has  
11 engaged in an intentional campaign to prevent incarcerated people from retaining and  
12 confidentially meeting with attorneys to develop a challenge to unconstitutional conditions of  
13 confinement in the Jails. Confidential legal visits are crucial to incarcerated people's ability to  
14 exercise their right to meaningfully access the courts and pursue legal recourse. Defendant has  
15 actively worked to deny incarcerated people confidential legal visits in violation of their right to  
16 access the courts under the First and Fourteenth Amendments.

17 132. In mid-May 2020, an ACLU investigator met with Jeffery Nunes, who at the time  
18 was incarcerated at the Adult Pre-Trial Facility. Nunes told the investigator his concerns about the  
19 possible spread of COVID-19 in Tulare County Jails. At the end of the conversation, the  
20 investigator told Nunes that he would schedule another legal visit to speak with him about his  
21 concerns. Shortly afterward, on May 28, 2020, one of the deputies took Nunes out of his cell to  
22 question him about his legal visit. The deputy told Nunes that he was cancelling all future legal  
23 visits.

24 133. Later that night, another deputy hauled Nunes out of his housing unit to speak with  
25 a supervising deputy. Nunes saw that the supervising deputy was wearing a firearm—a fact that  
26 concerned Nunes, as it was his understanding that Defendant's deputies do not carry firearms in  
27 the Tulare County Jails. The supervising deputy interrogated Nunes about what he spoke to the  
28 ACLU investigator about, whether Nunes had any upcoming meetings scheduled with ACLU staff

1 or attorneys, and whether Nunes had encouraged other incarcerated people to talk to the ACLU.  
2 The supervising officer asked Nunes for the names of other incarcerated people who had talked or  
3 were trying to talk to the ACLU. Under duress, Nunes told the supervising deputy that he spoke  
4 with the ACLU about conditions in Tulare County Jails. He refused to tell the supervising deputy  
5 anything else. This questioning was retaliation, an intimidation tactic employed to interfere with  
6 Nunes' attempt to remedy conditions in Tulare County Jails.

7 134. Following this incident, Nunes became more reluctant to speak to the ACLU. He  
8 feared for his safety. He also worried that Defendant's deputies would retaliate against him,  
9 including by finding a way to increase the length of his incarceration.

10 135. Nunes' fears were confirmed in early June 2020. In retaliation for his conversation  
11 with the ACLU investigator, Nunes was moved from his prior job working on the farm at the  
12 Adult Pre-Trial Facility to working in the Pre-Trial intake unit as a unit cleaner. The Pre-Trial  
13 intake unit is where almost all newly booked incarcerated people in Tulare County Jails are  
14 processed. As described above, they are not quarantined. Suddenly, Nunes was put at significantly  
15 higher risk of contracting COVID-19.

16 136. Mario Escobar had an initial conversation with an ACLU investigator on May 27,  
17 2020. Again, Defendant's deputies engaged in intimidation and retaliation against Escobar for his  
18 effort to exercise his right to access the courts. After his conversation with the ACLU, Defendant's  
19 deputies took Escobar out of his housing unit and demanded to know why he was talking to the  
20 ACLU. They pressed him to reveal what he was talking to the ACLU about, including whether  
21 they spoke about conditions in Tulare County Jails. Escobar refused to answer their questions.  
22 Later, the deputies tried again, pulling Escobar out of his housing unit and questioning him about  
23 his conversations with ACLU staff. These multiple rounds of questioning were part of an effort to  
24 intimidate Escobar and to prevent him from seeking to remedy issues related to COVID-19 in  
25 Tulare County Jails.

26 137. Following his initial conversation, Escobar has tried several times to meet with  
27 ACLU staff to discuss his concerns about conditions in Tulare County Jails. But his confidential  
28 legal visits have been consistently cancelled by TCSO staff. Escobar has not been able to speak

1 with ACLU staff except for a few minutes a day on a recorded and non-confidential phone line.  
2 Escobar would like to work with ACLU staff on a civil rights case to remedy the unsafe conditions  
3 in Tulare County Jails, but Defendant has prevented him from taking his case any further.

4 138. In late May 2020, Brandon Alford scheduled a confidential legal visit with ACLU  
5 staff to discuss Defendant's COVID-19 response. He, too, was met with intimidation from  
6 Defendant's staff. Before Alford had even had a chance to meet (by video) with counsel, TCSO  
7 staff took Alford out of his housing unit and interrogated him about what he planned to say to the  
8 ACLU. Deputies told Alford that because he refused to talk to the TCSO sergeant about his  
9 upcoming confidential legal visit, the video visit was cancelled.

10 139. Shortly after, Alford was transferred to a high-security housing unit with  
11 incarcerated people facing far more serious charges than he. There, he was allowed out of his cell  
12 for only one hour per day—whereas in his previous non-high security unit, he could spend  
13 multiple hours per day outside of his cell. Neither Defendant nor his staff ever told Alford why he  
14 had been transferred to a high-security unit. Alford has since been transferred out of the high-  
15 security housing unit, but he still has the same high-security classification.

16 140. Alford's transfer to the high-security unit was retaliation for attempting to speak  
17 with the ACLU about conditions in Tulare County Jails. Since being moved out of the high-  
18 security unit, Alford has not been able to speak with ACLU staff.

19 141. Plaintiffs Adam Ibarra and Samuel Camposeco have also struggled to meet with  
20 their retained civil attorneys. On May 18, 2020 and May 28, 2020, Ibarra spoke with an ACLU  
21 investigator about his concerns. Not long after the second interview, one of the TCSO sergeants  
22 took Ibarra out of his housing unit, ostensibly to speak with a TCSO investigator about his  
23 conversations with the ACLU. Ibarra refused to speak with the investigator and was returned to  
24 his cell.

25 142. Since then, Ibarra has not been able to meet confidentially with ACLU staff.  
26 Ibarra's only contact with ACLU attorneys takes place over recorded, non-confidential phone  
27 lines. And those conversations are constrained by his limited out-of-cell time.

28

1 143. Defendant’s restrictions on Ibarra’s ability to have confidential legal visits with  
2 ACLU staff have hindered his ability to report his concerns about the dangerous conditions in  
3 Tulare County Jails and to protect his civil and constitutional rights.

4 144. In early June 2020, Plaintiff Camposeco called an ACLU investigator to whom  
5 Camposeco had previously sent a letter regarding conditions in Tulare County Jails. The ACLU  
6 investigator, however, has not been able to schedule a legal visit with Camposeco because  
7 Defendant has cancelled his confidential legal visits. Since then, Camposeco has not been able to  
8 meet with the ACLU in a confidential setting. Camposeco can only write letters or call the ACLU  
9 attorneys and staff on a non-confidential line during the brief time he spends outside his cell each  
10 day. These restrictions have made it very difficult for Camposeco to contact ACLU attorneys and  
11 staff about the spread of COVID-19 in the Jails.

12 **B. Defendant Issued a New Policy Designed to Frustrate Incarcerated People’s**  
13 **Ability to Participate in Confidential Legal Visits in the Jails.**

14 145. On June 4, 2020, in an attempt to further impede incarcerated people from pursuing  
15 legal action to challenge the unconstitutional conditions in Tulare County Jails, Defendant issued a  
16 memo outlining new restrictions on confidential professional visits.<sup>58</sup> Defendant’s new policy  
17 makes it extremely difficult for attorneys to schedule confidential legal visits with incarcerated  
18 people. The policy narrowly limits confidential legal visits to “attorneys of record,” on its face  
19 interfering with the attorney-client privilege at the most critical stage, *i.e.* the first meeting before  
20 an attorney has even entered an appearance on behalf of a client.

21 146. ACLU attorneys have been blocked from meeting confidentially with incarcerated  
22 people in Tulare County Jails since the policy was implemented—and criminal defense attorneys  
23 have also found their clients’ access cut off. The new policy, in concert with the systemic  
24 harassment and retaliation faced by incarcerated people who attempt to speak with attorneys,  
25 violates Plaintiffs’ right to access the courts under the First and Fourteenth Amendments and their  
26 right to counsel under the Sixth Amendment.

27  
28 \_\_\_\_\_  
<sup>58</sup>Tulare County Sheriff’s Office Visitation Guidelines (Ex. 4).

1 147. On Wednesday, July 8, 2020, an ACLU attorney scheduled confidential attorney  
2 video visits with three incarcerated people in Tulare County Jails. After becoming aware of  
3 Defendant's June 4 memo regarding new procedures for confidential video visits on Thursday,  
4 July 9, 2020, the attorney emailed Defendant's representative with all the required information and  
5 documentation to request a professional account to enable confidential attorney video visits with  
6 incarcerated people in Tulare County Jails.

7 148. On Thursday, July 9, 2020, the attorney attempted to conduct a confidential  
8 attorney video visit with Ronald Howard, an incarcerated person in one of the Tulare County Jails.  
9 A prominent message displayed at the top of the video noted that the conversation was being  
10 recorded. At the beginning of the conversation, the attorney identified herself as an attorney with  
11 the ACLU and stated that she did not consent to the recording of the visit, which was a  
12 confidential attorney-client communication. However, because the message prominently indicated  
13 that the visit was recorded and not confidential, the attorney and Howard, a client, did not speak  
14 about confidential matters and cut the visit short.

15 149. On Friday, July 10, 2020, an ACLU attorney received an email from Tulare County  
16 Jails canceling a confidential attorney video visit with a then-incarcerated person, Jack Ward. No  
17 explanation for the cancellation was included in the email. The attorney tried to contact  
18 Defendant's representatives by phone and email, but received no response.

19 150. Later that same day, the attorney attempted a second time to speak confidentially  
20 with Ward. But no one appeared on the video feed—the screen remained blank. After  
21 approximately three minutes, the visit abruptly ended, and the attorney was not able to re-enter the  
22 video feed. The attorney called Defendant's representative shortly after. This time, the attorney  
23 was told that the visits were cancelled because the attorney was not yet set up for confidential  
24 visits. Defendant's representative told the attorney that she would probably be approved on  
25 Monday, July 13, 2020, and would receive an email and phone call to let her know. But the  
26 attorney heard nothing from TCSO on Monday, July 13, 2020.

27 151. On Tuesday, July 14, 2020, the attorney called Defendant's representative to  
28 inquire about the status of her professional account. She left a voicemail with her information and

1 requested a call back to follow up on the status of the confidential attorney video visits. On  
2 Wednesday, July 15, 2020, the attorney called Defendant’s staff again and left a voicemail in the  
3 “video visitation” mailbox to inquire about the status of her professional account. On Thursday,  
4 July 16, 2020, the attorney called Defendant’s representative for a third day in a row and left a  
5 voicemail in the “video visitation” mailbox to inquire about the status of her professional account.  
6 On Friday, July 17, 2020, the attorney emailed Defendant’s representative to inquire about the  
7 status of her professional account.

8 152. The attorney called Defendant’s representative again on July 21, 2020, and again  
9 left a voicemail in the “video visitation” mailbox. Later that afternoon—twelve days after the  
10 initial request—the attorney finally received an email from TCSO stating that her account had  
11 been confirmed, and that she was approved to schedule confidential legal visits with two clients,  
12 Adam Ibarra and Samuel Camposeco. (She remains unapproved to visit seven others.)

13 153. That evening, the attorney attempted to schedule visits with Ibarra and Camposeco.  
14 But for every date or time she selected in the online form, she received an error message, stating:  
15 “No stations available.” As of the filing of this complaint—more than two weeks after the initial  
16 request—the attorney still has not been able to conduct a confidential legal visit with any of her  
17 clients in Tulare County Jails.

18 154. The only way the ACLU attorney has been able to communicate with incarcerated  
19 people in Tulare County Jails is if they call her on a recorded line. At the beginning of every call,  
20 she hears a message indicating the conversation is being recorded. At the beginning of each  
21 conversation, the attorney identifies herself as an attorney with the ACLU, and states that she and  
22 her client do not consent to the recording of their confidential attorney-client communication.

23 155. The deleterious impact of Defendant’s policy extends beyond meetings with ACLU  
24 attorneys. It has prevented incarcerated people at Tulare County Jails from speaking confidentially  
25 with their criminal defense attorneys, thus impeding their constitutional right under the Sixth  
26 Amendment to present a thorough case in their defense against criminal charges. Indeed, a defense  
27 attorney who practices in the county has not been able to confidentially visit a single incarcerated  
28 client at Tulare County Jails since Defendant implemented the new legal visiting policy. Plaintiffs

1 Ibarra and Camposeco have not been able to meet with *any* attorneys confidentially, criminal or  
2 civil, since the promulgation of Defendant's new legal visitation policy.

3 156. Defendant's legal visitation policy threatens to chill incarcerated people's assertion  
4 of claims challenging the currently-unlawful conditions of their incarceration. Indeed, short of an  
5 outright ban on speaking with a prospective attorney, it is hard to imagine a restriction better  
6 calculated to discourage the formation of attorney client relationships relating to claims  
7 concerning unlawful conditions of imprisonment, or more harmful to the vindication of the  
8 substantive legal rights in question.

9 157. Defendant has violated—and continues to violate—the constitutional rights of  
10 Plaintiffs and potential class members to access the courts under the First and Fourteenth  
11 Amendments and to defense counsel under the Sixth Amendment. Immediate injunctive relief is  
12 crucial to restore confidential legal visits at Tulare County Jails and to cease Defendant's ongoing  
13 constitutional violations.

14 **V. Tulare County Jails are on the Brink of Disaster.**

15 158. It is clear that Defendant's policies are not adequate to prevent the spread of  
16 COVID-19 in the jails, or to protect Medically Vulnerable people. Defendant refuses to test  
17 currently incarcerated people or to quarantine them upon arrival. He actively prevents incarcerated  
18 people from wearing masks. And although the jail currently has space for incarcerated people to  
19 spread out, Defendant has prioritized costs over implementing necessary social distancing in the  
20 housing units. He has not provided adequate sanitation supplies, and has said, over and over again,  
21 that he will not consider releases. He has done this while hiding from public scrutiny at every turn,  
22 including through interfering with incarcerated people's right to access counsel and the courts.

23 159. Defendant has violated—and continues to violate—the rights of Plaintiffs and the  
24 class they seek to represent under the First, Sixth, Eighth, and Fourteenth Amendments to the  
25 United States Constitution. These violations have already resulted in 11 people becoming ill with  
26 COVID-19 in Tulare County Jails, and risk causing even more avoidable pain, illness, and death.  
27 Immediate action by this court is required to prevent this possibility from occurring.

28



1 160. Because of Defendant's ongoing, systemic violations of Plaintiffs' constitutional  
2 rights, Plaintiffs seek class-wide relief requiring Defendant to join other jurisdictions in enlarging  
3 some portion of the current population to home confinement and to implement other basic policies  
4 and procedures that would mitigate the risks of COVID-19 to Plaintiffs' health and safety.  
5 Plaintiffs also seek class-wide relief requiring Defendant to allow incarcerated people at Tulare  
6 County Jails meaningful access to legal counsel.

7 **CLASS ALLEGATIONS**

8 161. Pursuant to Federal Rule of Civil Procedure 23(b)(1) and 23(b)(2), Plaintiffs bring  
9 this action as a class consisting of all people who are now, or in the future will be, incarcerated in  
10 Tulare County Jails, including as subclasses: (i) persons confined pre-trial, (ii) persons confined  
11 pursuant to a judgment of conviction, and (iii) Medically Vulnerable persons confined pre-trial  
12 and pursuant to a judgment of conviction. Plaintiffs reserve the right to amend the class definition  
13 or establish additional subclasses as appropriate if discovery or further investigation reveals the  
14 class should be expanded or otherwise modified.

15 162. Numerosity: The class is so numerous that joinder is impracticable. Based upon  
16 information and belief, the size of the class is at least 1,900 people and is therefore so numerous  
17 that joinder is inherently impracticable for that reason alone. Joinder is also inherently  
18 impracticable for other, independent reasons. The class includes unnamed, future class members  
19 who cannot by definition be joined. Further, proposed class members are highly unlikely to file  
20 individual suits on their own, as all are incarcerated and many are indigent, and thus have limited  
21 access to their retained or court-appointed counsel due to Defendant's policies, are currently  
22 incarcerated, fear retaliation from filing suits against Defendant, and lack access and financial  
23 resources to obtain qualified counsel to bring such suits.

24 163. Commonality: The claims of the class share common issues of fact and law,  
25 including but not limited to whether Defendant's policies regarding health and hygiene as relevant  
26 to the COVID-19 pandemic—policies that systemically affect all proposed class members—  
27 violate the Eighth and Fourteenth Amendments to the United States Constitution, and whether  
28 Defendant's policy regarding access to counsel violates the First and Fourteenth Amendments to

1 the United States Constitution. The resolution of these questions will drive the outcome of the  
2 litigation.

3 164. Typicality: The claims of Plaintiffs are typical of those of the class as a whole,  
4 because each Plaintiff is currently in Defendant’s custody and Plaintiffs’ claims arise from the  
5 same policies and procedures (or lack thereof) that provide the basis for all proposed class  
6 members’ claims.

7 165. Adequacy: Plaintiffs are adequate class representatives who meet all of the  
8 requirements of Rule 23(a)(4). They have no conflicts of interest in this case with other class  
9 members. They will fairly and adequately represent the interests of the class, and each understands  
10 the responsibilities of a representative. Counsel for Plaintiffs will vigorously prosecute the  
11 interests of the class and include attorneys with extensive experience with the factual and legal  
12 issues involved in representing jail and prison inmates, in asserting constitutional rights, and/or in  
13 pursuing class actions.

14 **CAUSES OF ACTION**

15 **FIRST CLAIM FOR RELIEF**

16 **42 U.S.C. § 1983—FOURTEENTH AMENDMENT**

17 166. The Fourteenth Amendment to the United States Constitution guarantees pretrial  
18 detainees the right to be free from punitive conditions of confinement.

19 167. Defendant is violating Plaintiffs’ and the proposed class members’ Fourteenth  
20 Amendment rights because he “recklessly failed to act with reasonable care to mitigate the risk  
21 that the condition posed to the pretrial detainee even though the defendant-official knew, or should  
22 have known, that the condition posed an excessive risk to health or safety.” *Darnell v. Pineiro*,  
23 849 F.3d 17, 35 (2d Cir. 2017).

24 168. Defendant is also violating Plaintiffs’ and the proposed class members’ Fourteenth  
25 Amendment rights because “the challenged governmental action is not rationally related to a  
26 legitimate governmental objective or that it is excessive in relation to that purpose.” *Kingsley v.*  
27 *Hendrickson*, 576 U.S. 389, 398-99 (2015).

28

1 169. Defendant has recklessly failed to act with reasonable care to mitigate the risk of  
2 COVID-19 to Plaintiffs and proposed class members.

3 170. Defendant knew, or should have known, about the substantial risks COVID-19  
4 poses to Plaintiffs and the proposed class members' health and safety, yet he disregarded those  
5 risks.

6 171. Defendant has acted with deliberate indifference towards Plaintiffs and proposed  
7 class members by failing adequately to safeguard their health and safety.

8 172. Defendant has exposed Plaintiffs and proposed class members to a substantial—  
9 indeed grave—risk of serious harm, including death.

10 173. Defendant has subjected Plaintiffs and proposed class members to conditions of  
11 confinement that increase their risk of contracting COVID-19, for which there is no known  
12 vaccine, treatment, or cure.

13 174. Defendant's continued detention of Plaintiffs and proposed class members fails to  
14 protect them adequately from the risks of contracting COVID-19.

15 175. As a result of Defendant's unconstitutional actions, Plaintiffs and the proposed  
16 class are suffering irreparable injury.

17 **SECOND CLAIM FOR RELIEF**

18 **42 U.S.C. § 1983—EIGHTH AMENDMENT**

19 176. The Eighth Amendment to the United States Constitution protects Plaintiffs and  
20 proposed class members from cruel and unusual punishment.

21 177. To amount to the infliction of cruel and unusual punishment, (1) jail or prison  
22 conditions must pose “an unreasonable risk of serious damage” to a prisoner's health (an objective  
23 test), and (2) prison officials must have acted with deliberate indifference to the risk posed (a  
24 subjective test). *Helling v. McKinney*, 509 U.S. 25, 33–35 (1993).

25 178. Plaintiffs and proposed class members are subject to a risk of harm that today's  
26 society does not tolerate.

27 179. Society does not tolerate the risk of exposure to COVID-19 to which Defendant's  
28 policies and procedures (or lack thereof) have subjected Plaintiffs and proposed class members.

1 180. Plaintiffs and proposed class members suffer a substantial risk of serious harm to  
2 their health and safety due to the presence of, and spread of, COVID-19.

3 181. Defendant has acted with deliberate indifference to the risks posed to Plaintiffs and  
4 proposed class members by COVID-19.

5 182. Defendant at all times knew, or should have known, of the risks that COVID-19  
6 poses to Plaintiffs and proposed class members.

7 183. The risk of COVID-19 was, and is, obvious to Defendant.

8 184. Defendant's response to COVID-19 has not been reasonable.

9 185. As a result of Defendant's actions, Plaintiffs and proposed class members are  
10 suffering irreparable injury.

11 **THIRD CLAIM FOR RELIEF**

12 **42 U.S.C. § 1983—FIRST AND FOURTEENTH AMENDMENTS**

13 186. The First Amendment to the United States Constitution protects the rights of  
14 Plaintiffs and the proposed class members “to petition the government for a redress of  
15 grievances,” a right that requires meaningful access to the courts. Plaintiffs and proposed class  
16 members also have a right to meaningfully access the courts under the Fourteenth Amendment to  
17 the United States Constitution.

18 187. Through his policies and practices, Defendant has actively interfered with the  
19 ability of Plaintiffs and proposed class members to exercise their right to meaningfully access the  
20 courts.

21 188. As a result of Defendant's actions, Plaintiffs and proposed class members are  
22 suffering an actual injury.

23 **FOURTH CLAIM FOR RELIEF**

24 **42 U.S.C. § 1983—SIXTH AMENDMENT**

25 189. The Sixth Amendment to the United States Constitution protects the right of  
26 Plaintiffs and proposed class members to the assistance of counsel for defense against criminal  
27 charges.

28

1 190. Through his policies and practices, Defendant has actively interfered with the  
2 ability of Plaintiffs and proposed class members to exercise their right to access the assistance of  
3 counsel for their defense against criminal charges.

4 191. As a result of Defendant's actions, Plaintiffs and proposed class members are  
5 suffering an actual injury.

6 **FIFTH CLAIM FOR RELIEF**

7 **BANE ACT (Cal. Civ. Code § 52.1(b))**

8 192. The Bane Act allows an individual to bring a civil action for injunctive and other  
9 appropriate relief "[i]f a person or persons, whether or not acting under color of law, interferes by  
10 threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion with  
11 the exercise or enjoyment by any individual or individuals of rights" secured by the constitutions  
12 or laws of the United States or California. Cal. Civ. Code § 52.1(b).

13 193. Defendant has interfered or attempted to interfere by threat, intimidation, or  
14 coercion with the right of Plaintiffs and proposed class members to meaningful access to the  
15 courts guaranteed by the First and Fourteenth Amendments to the Constitution, the right of  
16 Plaintiffs and proposed class members to access defense counsel under the Sixth Amendment, and  
17 the right of Plaintiffs and proposed class members to initiate civil actions as plaintiffs under  
18 California Penal Code § 2601(d).

19 194. As a result of Defendant's actions, Plaintiffs and proposed class members are  
20 suffering an actual injury.

21 **RELIEF REQUESTED**

22 WHEREFORE, Plaintiffs and proposed class members respectfully request that the  
23 Court:

- 24 **A. Certify the proposed class and subclasses;**  
25 **B. Enter a temporary restraining order, preliminary injunction, and permanent**  
26 **injunction and/or a writ of habeas corpus requiring Defendant to:**  
27

- 1           1.       Immediately take all actions within his power to release Medically Vulnerable  
2           people incarcerated at the Tulare County Jails absent proof of judicially-recorded  
3           findings by clear and convincing evidence that the individual poses such a serious  
4           risk of flight or danger to others that no other conditions can mitigate. This  
5           includes, but is not limited to, releasing as many Medically Vulnerable people as  
6           possible to home confinement pursuant to California Government Code § 8658;
- 8           2.       Appoint an expert under Federal Rule of Evidence 706 to make recommendations  
9           to the Court regarding how many and which class members to order released so as  
10          to ensure that the number of prisoners remaining at the Tulare County Jails can be  
11          housed consistently with CDC guidance on best practices to prevent the spread of  
12          COVID-19, including the requirement that prisoners be able to maintain six feet of  
13          space between them and further order that such recommendations take into account  
14          CDC guidance concerning health factors that put individuals at elevated risk of  
15          death from COVID-19;
- 17          3.       Conduct COVID-19 testing of all incarcerated people and staff at Tulare County  
18          Jails facilities;
- 19          4.       Provide access to unmonitored, confidential legal calls and video visits with  
20          retained and prospective counsel;
- 22          5.       Facilitate video conferencing and telephonic conferencing, when requested, as an  
23          alternative to in-person court appearances;
- 24          6.       Develop a Jails-specific policy for contact tracing in the event of an outbreak;
- 25          7.       Ensure that each incarcerated person receives, free of charge, an individual supply  
26          of hand soap, sufficient to allow frequent hand washing; cloth face coverings; paper  
27          towels; toilet paper; running water; and facial tissue;
- 28

- 1 8. Ensure that all incarcerated people, when not in cells with access to hand soap and  
2 running water, have access to hand sanitizer containing at least 60% alcohol;
- 3 9. Provide access to daily showers for each incarcerated person and daily access to  
4 clean laundry, including clean personal towels and washrags after each shower;
- 5 10. Require that all Tulare County Jails staff wear personal protective equipment,  
6 including masks and gloves, when interacting with visitors and incarcerated people  
7 or when touching surfaces in common areas;
- 8 11. Provide an anonymous mechanism for residents to report staff who violate these  
9 guidelines so that appropriate corrective action can be taken to ensure staff  
10 compliance;
- 11 12. Take each incarcerated person's temperature daily (with a functioning and properly  
12 operated thermometer) to identify potential COVID-19 infections;
- 13 13. Clean and disinfect frequently touched surfaces with disinfectant products effective  
14 against the virus that causes COVID-19 (at the manufacturer's recommended  
15 concentration), as well as surfaces in common areas, every two hours during  
16 waking hours, and at least once during the night;
- 17 14. Ensure that individuals identified as having COVID-19 or having been exposed to  
18 COVID-19 are properly quarantined in a non-punitive setting, with continued  
19 access to showers, recreation, mental health services, reading materials,  
20 commissary, phone and video visitation with loved ones, communication with  
21 counsel, and personal property;
- 22 15. Respond to all emergency (as defined by the medical community) requests for  
23 medical attention within an hour; and  
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16. Appoint an independent monitor with medical expertise to ensure compliance with these conditions, and provide the monitor with unfettered access to medical units, confidential communication with detained individuals in and out of quarantine, and surveillance video of public areas of the facilities; and

**C. Award such further relief as this Court deems appropriate.**

DATED: July 29, 2020

MUNGER, TOLLES & OLSON LLP

By:           /s/ Sara A. McDermott            
Sara A. McDermott  
Attorneys for Plaintiffs