

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

Dan McKibben, et al.,

Plaintiff,

v.

John McMahon, et al.,

Defendants.

Case No. EDCV 14-2171 JGB (SPx)

JUDGMENT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to the Order filed concurrently herewith, the Motion for Final Approval of Class Action Settlement is GRANTED. Thus, the Court:

- (1) GRANTS final approval of the Settlement Agreement and Injunctive Terms;
- (2) APPROVES payment of the ten late claims and any claims postmarked on or before February 11, 2019;
- (3) APPROVES Plaintiffs' request to deem Frederick Crocker, Joe Raymond Fierro, and Andrew Afoa to have filed a timely claim;
- (4) AWARDS Class Counsel attorneys' fees in the amount of \$1,100,000

(5) AWARDS Class Counsel costs in the amount of \$36,304.49;

(6) AWARDS the following amounts to the Named Plaintiffs:

NAME	INCENTIVE AWARD
Bryan Bagwell	\$5,000
Frederick Crockan	\$5,000
Pedro Guzman	\$3,000
Michael Aka Madison Hatfield	\$5,000
William Kennedy	\$3,000
Sean Lint	\$2,000
Anthony Oliver	\$5,500
Nick Ou	\$3,000
Kevin Aka Veronica Pratt	\$5,500
Steven Aka Lynn Price	\$3,000
Jonathan Robertson	\$3,000
Illich Vargas	\$5,500
Tim Walker	\$5,000
Taheash White	\$2,000
TOTAL	\$55,500.00

(7) ORDERS the payment of \$37,500.00 to the claims administrator;

(8) ENJOINS the Defendants as follows:

1. PREA-GBTI COMMITTEE

- 1.1. Purpose. The SBSB will operate a PREA-GBTI Committee (“the Committee”) whose purpose is to discuss the housing assignment, programming options, educational options, and employment options

for inmates who self-identify as a GBTI inmate.

1.2. Frequency. The Committee shall meet two times per month, subject to modification as needed. The default Committee schedule shall call for two regularly-scheduled meetings per month. At each meeting, the Committee shall conduct a review of the available housing, programming, education, and employment for all eligible inmates as defined in Section 1.4.

1.3. Committee Members. The Committee shall consist of seven representatives at each meeting, subject to excused absences.

1.3.1. Facility commander or designee;

1.3.2. Representative from Centralized Classification Unit / Population Management Unit;

1.3.3. Medical supervisor or designee;

1.3.4. Mental health supervisor or designee;

1.3.5. Representative from Inmate Services Unit (Programs/Education);

1.3.6. PREA/GBTI compliance manager; and

1.3.7. County-employed social worker with knowledge of issues impacting the GBTI community, who shall act as a GBTI advocate.

1.4. Inmates Subject To Review. At each meeting, the Committee shall review the housing, programming, education, and employment for the following eligible inmates:

1.4.1. All inmates who have been booked into the SBSB jails since the preceding Committee meeting and who have self-identified as GBTI.

1.4.2. All self-identified GBTI inmates who have been sentenced since the preceding Committee meeting.

1.4.3. If an inmate who would otherwise qualify as eligible under Section 1.4.1 opted to be housed outside of the designated GBTI

housing location upon initial booking, the inmate has the option of requesting a review from the Committee and shall be so informed. Absent such a request, the Committee shall not conduct a review of a

self-identified GBTI inmate who chose to be housed outside of the designated GBTI housing upon booking.

1.5. Committee Functions. At each meeting, the Committee shall perform the following functions:

1.5.1. The Committee will meet with all eligible-inmates as defined by Section 1.4.

The Committee will review the initial classification and intake forms for accuracy.

1.5.2. The Committee will ensure that GBTI inmates understand that housing in the GBTI unit is one of many housing options and that SBSB is committed to ensuring their safety throughout the facility, regardless of whether they opt to be housed in the GBTI unit or general population. SBSB shall take steps discussed with Plaintiffs' counsel to improve safety throughout the facility, including in general population and during transport, so GBTI inmates are safe in general population and any other housing or location. Potential changes could include housing GBTI individuals in general population cells closest to front the front of units where most accessible and visible to deputies and custodial assistants, managing blind spots, increased cameras and other steps that effectively counter risk of assault.

1.5.3. The Committee will ensure that GBTI inmates are fully informed of their housing options, available programming, and work assignments.

1.5.4. The Committee will formally discuss, evaluate, and make decisions on inmate housing assignments. The Committee will take into consideration any specific request from the

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3 GBTI inmate to ensure they feel safe and fully understand the
4 consequences of a specific housing location. The inmate
5 request will not be dispositive but will be given serious
6 weight.

7 1.5.5. The Committee will identify the most appropriate housing
8 location for transgender and intersex inmates. The housing
9 assessment will be individualized and gender identity will be
10 taken into consideration. Housing based upon and consistent
11 with gender identity will be discussed and evaluated as a
12 housing option.

13 1.5.6. The Committee will also discuss and manage issues of
14 searches, shower privacy, transition-related care as discussed in
15 Section 7. The parties will work together to create a form that
16 will capture information about the person's gender identity,
17 appropriate name and pronoun, preferences as to the gender of
18 the person(s) who search them, housing preferences, and
19 cellmate preferences, if any.

20 1.5.7. The Committee will evaluate and make decisions for GBTI
21 inmates specifically related to work assignments (if
22 applicable) and available program/education opportunities.

23 1.5.8. The Committee will identify, evaluate, and monitor any
24 ongoing mental health or medical care issues or concerns.

25 1.5.9. The Committee will endeavor to come to a consensus but the
26 Facility Commander will have ultimate decision-making
27 authority. The Committee will maintain notes of these meetings.
28 The Committee will document any disagreements over the
housing/programming plan, and document any rationale for
housing a GBTI inmate in housing different than their preferred
choice. The inmate will be informed of the Committee's
decisions and disagreements in a manner that allows the inmate
to grieve the Committee's decision.

1.5.10. The Committee will review GBTI grievances that deal with
housing, programs, work assignments or other confinement

issues. The Committee shall not review any grievance that alleges misconduct on behalf of staff. Those grievances shall continue to be investigated and reviewed by the commander or designee.

2. HOUSING & CLASSIFICATION ISSUES

2.1. Renaming Unit. The housing location at West Valley Detention Center currently known as the Alternative Lifestyle Tank (“ALT”) shall be renamed the GBTI unit.

2.2. Range of Housing Options. Inmates who self-identify as GBTI shall have the following housing options:

2.2.1. General population, based on classification score;

2.2.2. GBTI Unit at WVDC, based on classification score;

2.2.3. For transgender and intersex inmates, housing based upon and consistent with gender identity, if approved by the PREA-GBTI Committee (for the period of time commencing with the meeting specified in Section 1.4.1 of this Agreement) or the Centralized Classification Unit (CCU) (for the period of time prior to the meeting specified in Section 1.4.1 of this Agreement).

2.2.4. Protective Custody housing, if the inmate needs protection from other inmates based on protective custody protocol and for reasons other than their sexual orientation or gender identity.

2.3. Factors to Consider. The following factors shall be considered in determining the housing assignment of a GBTI inmate:

2.3.1. Individual determination of safety with the jail, unit or segment;

2.3.2. Taking into consideration the inmates own view of safety and a housing location, which will be given serious weight;

2.3.3. The location that maximizes access to program, work or other

activities;

2.3.4. GBTI inmates will not be automatically assigned to the GBTI unit, protective custody or restrictive housing;

2.3.5. The PREA/GBTI committee will review and approve housing locations; and,

2.3.6. The SBSB reserves the right to relocate any inmate(s) based on construction, inmate population needs, changes in classification, medical/mental health concerns, etc. In other words, SBSB does not guarantee that all GBTI inmates will be housed in one specific location (e.g. Unit One). They could be moved to other units as necessary. There will remain a GBTI unit unless this agreement is modified.

3. INMATE WORKER OPTIONS

3.1. Eligibility. Nothing in this proposal shall alter the standard requirements for inmate worker-eligibility. This agreement shall only impact inmates who self-identify as GBTI and whose housing location in the GBTI unit may have been the sole basis for making them ineligible for employment.

3.2. GBTI Inmates in Standard General Population. GBTI inmates who are housed in standard general population housing shall be eligible for jobs without regard to their GBTI status.

3.3. Inmates in the GBTI Unit. Inmates housed in the GBTI Unit at WVDC who are otherwise-eligible for and selected for an assignment can become inmate workers in one of two ways:

3.3.1. An inmate in the GBTI Unit who has requested an inmate job can remain living in the GBTI Unit while on a wait list and then transfer to a work-based housing assignment once selected for an inmate job. Alternatively, an inmate in the GBTI Unit who is work-eligible can choose to remain the GBTI Unit and opt to be matched with an inmate job that has been approved for inmates

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3 in the GBTI Unit.

4 3.3.2. Pursuant to Policy 13.170, inmate workers are housed in
5 inmate worker units. Staff will ensure that the GBTI inmate
6 understands the following. The request must come from the
7 inmate. There is no actual guarantee of a specific job, as there
8 are very few jobs available based on the inmate population.
9 GBTI inmates will have to wait for a job opening just like non-
10 GBTI inmates. The Committee will inform inmates who are
11 eligible to work of the jobs available and the current wait list
12 and location of those jobs. The wait list is determined in
13 chronological order of an inmate's application to the wait list
14 when work eligible. The length of the wait list shall be shared
15 with the inmates, and there will be different wait lists for
16 different jobs so that there is an informed choice as to whether
17 to go on one with a long wait list.

18 3.3.3. The SBSB will ensure that a minimum of three jobs for
19 inmates who elect to remain in the GBTI unit can be
20 accommodated at a given time. In addition to the law library
21 position, the SBSB will identify and select two additional jobs
22 that can be provided to eligible inmates from the GBTI Unit.
23 Should a situation arise where more than three GBTI unit
24 inmates need a job at the same time, the SBSB will in good
25 faith attempt to identify and fill the additional jobs.

26 3.3.4. All inmate workers must adhere to facility guidelines for job
27 assignments. The PREA-GBTI Committee will coordinate and
28 ensure that GBTI inmates are afforded every opportunity and
equal access to a work assignment with the understanding that
no inmate is guaranteed a job.

3.3.5. GBTI inmates will have the same opportunities to have
volunteer positions as other general population inmates at
WVDC.

3.4. Job Postings. In addition to the information provided to GBTI

inmates during their meetings with the PREA-GBTI Committee, the SBSB shall post information about inmate jobs.

3.5. Credits. Any sentencing credits will be rewarded without regard to sexual orientation, gender identity, or housing placement in the GTI Unit.

3.6. Work and HIV Status. The SBSB policies do not discriminate based on HIV status. Therefore, HIV status does not disqualify an otherwise-eligible inmate from working.

4. PROGRAMMING

4.1. In-Person. If an in-person program is offered to inmates at Glen Helen or general population at WVDC, then that program will be offered in the GTI Unit or a suitable classroom at WVDC. Courses offered at WVDC will use the same eligibility, pre-requisites, and scheduling rationale used at GHRC. Courses offered at WVDC will use the same eligibility, pre-requisites, and scheduling rationale used at GHRC.

4.2. Remote Access. If a program is offered via remote access (such as online, journalist, or tablets) to inmates at Glen Helen or other general population units at WVDC, the inmates in the GTI Unit at WVDC will also be eligible to participate in the program via remote access.

4.3. Religious Providers. The SBSB will work with Plaintiffs in an effort to find security- eligible religious providers who are willing to provide religious services in the GTI Unit and will provide chaplains and group religious services in the same manner they do for other general population units at WVDC, including possible services in spaces outside of the day room.

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3 4.4. Credits. Any sentencing credits for programming, including drug
4 rehabilitation or any other program for which credit is given by the
5 Court or SBCJ will be rewarded without regard to sexual orientation,
6 gender identity, or placement in the GBTI Unit.

7 4.5. Programming and HIV Status. The SBSB policies do not
8 discriminate based on HIV status. Therefore, HIV status does
9 not disqualify an otherwise-eligible inmate from programming.

5. GBTI UNIT TIER TIME

10 5.1. Two Segments. Provided that a minimum of 20 inmates opt to be
11 housed in the GBTI Unit, then the GBTI Unit will be divided into
12 two segments.

13 5.2. GP-3 to GP-5. One segment of the GBTI Unit shall consist of
14 inmates with classifications of GP-3, GP-4, and GP-5. Inmates in
15 this segment shall receive half tier time. If in the future general
16 population inmates with classifications of GP-3, GP-4, and GP-5
17 start receiving more than half tier time, then similar increases will be
18 applied to the GBTI Unit with GP-3, GP-4, and GP-5 inmates.

19 5.3. GP-6 to GP-7. One segment of the GBTI Unit shall consist of
20 inmates with classifications of GP-6 and GP-7. Inmates in this
21 segment shall receive full tier time.

22 5.4. Contingency for Single Segment. Should the population of the
23 GBTI Unit fall below 20 inmates, the SBSB reserves the right to
24 consolidate the GBTI Unit into a single segment. If the GBTI Unit is
25 consolidated into a single segment under this provision, the Watch
26 Commander or his/her designee can decide to give less tier time
27 based on security considerations and the classification scores of the
28 inmates in the GBTI Unit but no less than half tier time. The Watch
Commander or his/her designee can also decide to keep tier time at
the same level in their discretion. The decision will be documented.

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4 5.5. Exceptions. Any exception to the default tier time designated in
5 Sections 5.2, 5.3, and 5.4 must be approved by the Watch Commander
and must be documented in the shift log.

6 5.6. Recreation Time. All inmates in the GBTI Unit shall receive
7 outside recreation time as required by Title 15.

8 **6. TRAINING**

9 6.1. Staff Training. The SBSB will provide comprehensive training for
10 staff, contractors, and volunteers who have contact with inmates on
11 GBTI and PREA issues prior to the assignment of the staff,
12 contractor, or volunteer to any position involving contact with
inmates.

13 6.2. Training Topics. The mandatory training shall cover the following
14 topics at minimum:

15 6.2.1. The Prison Rape Elimination Act;

16 6.2.2. The department's zero tolerance policy regarding
sexual abuse and sexual harassment;

17 6.2.3. Common reactions of sexual abuse and sexual harassment victims;

18 6.2.4. Detection and response to signs of sexual abuse;

19 6.2.5. Inmates right to be free from sexual abuse and sexual harassment;

20 6.2.6. Inmates and staff members right to be free from retaliation
when reporting sexual abuse or sexual harassment incidents;

21 6.2.7. How to effectively and professionally communicate with
inmates including lesbian, gay, bisexual, transgender,
22 intersex or gender non-conforming inmates (LBGTI);

23 6.2.8. How to comply with all relevant laws related to mandatory
reporting of sexual abuse to outside authorities;

24 6.2.9. Impact of discrimination against LBGTI inmates; and

25 6.2.10. Classification, housing, programming, education, work
opportunities and integration of LBGTI inmates in the
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3 prison setting.

4 6.3. Refresher Training. All staff, contractors, and volunteers shall
5 receive refresher training on the issues described in Sections 6.1
6 and 6.2 at least once every two years.

7 6.4. Training Records. Initial and refresher training shall be
8 documented using the Acknowledgment of PREA training
9 form. Training compliance records will be computerized.

10 6.5. Educating Inmates. Materials designed to educate inmates on GBTI
11 and PREA issues shall be made available to all inmates in the jail
12 system. The materials shall identify the SBSD's zero tolerance
13 policy regarding sexual harassment and how to report incidents or
14 suspicion of sexual abuse or sexual harassment. Inmates shall
15 receive this information during the intake process. Information will
16 be posted in housing areas and readily visible to inmates. Plaintiffs'
17 counsel will endeavor to work with experts to obtain quality videos
18 and materials to be used for inmate education, which will be
19 provided to the SBSD. Absent an articulable objection from the
20 SBSD to the materials provided by Plaintiffs' counsel, the SBSD
21 will provide these materials to the inmates during orientation and
22 make these materials available for viewing by all inmates at other
23 appropriate times.

24 7. TRANSGENDER ISSUES

25 7.1. Orientation. It is understood that the appropriate correctional
26 approach to the housing and protection of transgender inmates is a
27 relatively new and rapidly developing area of both correctional
28 practices and the law. San Bernardino County Sheriff's Department
is committed to an ongoing assessment of the special needs and best
correctional practices for transgender inmates, and to developing
appropriate policies to address those issues.

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3 7.2. Housing. Transgender women and intersex people assigned to
4 men's facilities shall be housed based upon the recommendation of
5 the PREA-GBTI Committee, considering the range of housing
6 options in Section 2.2 and the factors in Section 2.3. Plaintiffs and
7 SBSB will discuss, in developing this policy, whether the same
8 range of housing options and process should be made available to
9 transgender men, whether assigned to men's or women's facilities.
- 10 7.3. Searches. Transgender and intersex inmates shall advise the PREA-
11 GBTI Committee of the preferred gender for deputies who will
12 perform searches of the inmates. The SBSB shall honor the
13 inmates' request subject to certain narrow exceptions that shall be
14 identified in a written policy. Plaintiffs will work with SBSB to
15 devise a specific question or gender preference search form.
- 16 7.4. Shower Privacy. Transgender and intersex inmates will have the
17 opportunity to shower, perform bodily functions, and change clothes
18 in private, away from the view of other inmates and cross-gender,
19 non-medical staff (staff with a gender different than the gender the
20 inmate identifies as). This may be accomplished through housing
21 and classification, shower curtains, privacy screens, or other
22 methods. Medical Issues. Correctional Health Services staff
23 including Qualified Mental Health Professionals shall assess,
24 diagnose, and establish a documented individual treatment plan for
25 inmates including, but not limited to, those inmates identified with
26 DSM diagnosis Gender Dysphoria. Qualified Mental Health
27 Professional Providers shall order treatment as clinically indicated
28 including, but not limited to, gap hormone medication.
- 7.5. Transport. Transgender inmates will not be cuffed, tied or otherwise
placed in immediate proximity to inmates of a different gender
identity during transport, including but not limited to bus transport
to and from court. Transgender inmates who so request will be
transported, if feasible, in individual protective 'cages,' or, where

that is not feasible,
will be accorded special protections to ensure that they are not
harmed by other inmates during transport.

8. GENERAL PREA ISSUES

8.1. Zero Tolerance Policy for Harassment.

8.1.1. SBSB policy and employee bulletins will clearly prohibit harassment and discrimination against GBTI inmates or those perceived to be GBTI. This policy will have zero tolerance for anti-LGBTIQ statements in SBSB facilities. Deputies shall be subject to discipline for committing harassment and discrimination, including name calling.

8.1.2. SBSB will have a zero tolerance policy regarding the intentional misgendering of transgender and intersex inmates by staff. All staff will use the name and pronouns specified by the transgender or intersex inmate. Consistent use of the incorrect name and pronoun will be considered and handled as sexual harassment. Nothing in this section shall prohibit medical staff from complying with regulations or laws governing the dispensing of pharmaceuticals and the use of an inmate's legal name.

8.2. PREA Pre-Audit. Within six months of the Court's final approval of the settlement, the SBSB agrees to conduct a PREA pre-audit at West Valley Detention Center using a trained PREA auditor, based on a list of approved auditors provided by the United States Department of Justice. Following the pre-audit, the SBSB will meet and confer with Plaintiffs' counsel regarding the findings, and what actions taken by SBSB based on the findings. The SBSB shall conduct an assessment addressing the issues identified in the PREA pre-audit after the meet and confer and will inform Plaintiffs' counsel of actions taken in response to the pre-audit and the meet and confer. Nothing in this

agreement shall impose an affirmative obligation on the SBSB to comply with the recommendations of the PREA pre-audit. Nothing in this agreement shall require the SBSB to allow the auditor to review or access materials protected under California law by California Penal Code § 832.5 *et. seq.* or California Evidence Code § 1040 *et. seq.* The pre-audit will not be forwarded to the United States Department of Justice. However, nothing in this agreement shall limit Plaintiffs' counsel's ability to report any PREA violations that are not rectified by the SBSB in response to the pre-audit or any future violations of PREA. Hotlines. The SBSB agrees to have working and anonymous PREA hotlines.

8.3. Victim Counseling. Mental health counseling, by counselors trained in rape and sexual assault consistent with PREA regulations 115.53 and 115.82-83, shall be available for all inmate victims of sexual assault.

8.4. Not Relocating Victim. Following the reporting of a sexual assault in the jails, the general rule is that the victim of the assault shall not be moved to another housing location. Instead, the alleged perpetrator shall be moved to another housing location. Exceptions to this general rule shall exist. Victim inmates may be moved out of a housing segment for his/her own protection. Victim inmates shall be reassessed for a different housing assignment by the Central Classification Unit (CCU) and/or PREA- GBTI Committee.

8.5. Screening. The SBSB shall continue PREA screening. The SBSB recognizes that not all GBTI inmates should be designated as PREA-vulnerable. The parties will jointly develop an appropriate screening mechanism that will be utilized by the PREA-GBTI Committee to facilitate appropriate housing, work and programming choices.

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3 8.6. Compliance Manager. All type II jail facilities that house GBTI
4 or PREA-vulnerable inmates will have a PREA-GBTI
5 compliance manager. The compliance manager shall be
6 responsible for the facility's efforts to comply with PREA-GBTI
7 policies and procedures. The PREA-GBTI compliance manager
8 shall be responsible for and ensure compliance with the Bureau
9 Policies. The PREA-GBTI Compliance Manager shall also serve
10 on the PREA-GBTI Committee.

11 8.7. PREA Requirements. Nothing in this agreement shall
12 otherwise alter any PREA requirements that may be
13 applicable to SBSD.

14 9. ENFORCING THE AGREEMENT

15 9.1. Policies. The parties will negotiate the language of any SBSD
16 policies that shall be necessary to implement this agreement.

17 9.2. Production. For three years after the Court's final approval of the
18 agreement, the SBSD shall produce the following documents on
19 an annual basis:

20 9.2.1. A computerized spreadsheet that lists all initial and
21 refresher training courses presented to staff, contractors and
22 volunteers as well as a copy of each unique training. The
23 spreadsheet will document the date of each course and
24 compliance with section 6.2 (Training topics). The
25 spreadsheet will certify that all required personnel are in
26 compliance pursuant to this injunctive relief item.

27 9.2.2. A computerized spreadsheet that lists the housing locations
28 for all inmates who openly identify during classification as
GBTI. A computerized spreadsheet that lists all inmates housed
in the GBTI segments. The spreadsheet shall include the
inmates full name, booking number, classification rating, arrest
date, sentencing date (if applicable), release date, and housing

location.

9.2.3. A computerized list of all educational, vocational, rehabilitation or other programming courses during the year provided to general population inmates.

9.2.4. A computerized list of all inmates housed in the GBTI segments who requested and also who received educational or programming courses during the year. The list shall contain the type of educational or programming course, date, etc.

9.2.5. Copies of the individual inmate PREA-GBTI Committee forms (includes housing options for each inmate).

9.2.6. Computerized list of GBTI inmates who requested jobs and also a computerized list of GBTI inmates who are inmate workers and their job. This includes inmates housed in the GBTI segments and those who transferred to general population.

9.2.7. Annual average of tier time afforded to inmates housing in the GBTI segments.

9.2.8. Annual report that provides statistics on sexual assault and sexual harassment of inmates.

9.2.9. Nothing in this section shall require the SBSB to provide materials protected under California law by California Penal Code § 832.5 *et. seq.* or California Evidence Code § 1040 *et. seq.*

9.3. Meet and Confer. The parties will meet and confer before any party seeks judicial enforcement of the settlement agreement.

9.4. Expense. All parties shall be responsible for their own costs and fees incurred after the Court's final approval of the settlement; except that if the Court finds a material violation or issues a remedial order, Plaintiffs will be entitled to fees.

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3 (9) DISMISSES the Complaint WITH PREJUDICE.
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6 Dated: February 28, 2019
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10 THE HONORABLE JESUS G. BERNAL
11 United States District Judge
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