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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION – RIVERSIDE

QUINTON GRAY, et al., on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

COUNTY OF RIVERSIDE,
Defendant.

Case No. EDCV13-0444 VAP (OP)

CLASS ACTION

**EMERGENCY MOTION TO
ENFORCE OR, IN THE
ALTERNATIVE, MODIFY
CONSENT DECREE**

Judge: Hon. Virginia A. Phillips
Date: To be determined
Time: To be determined
Courtroom: Telephonic

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NOTICE OF MOTION AND MOTION

TO THE PARTIES AND ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT as soon as the matter may be heard before
the Honorable Virginia A. Phillips, Plaintiffs move the Court to enforce the Consent
Decree to compel Defendants to meet their constitutional obligation to preserve life
and health in the Riverside County Jails during the coronavirus pandemic.

Given the urgency, Plaintiffs request that the Court set an expedited briefing

1 schedule and review this motion as soon as practicable.

2 The motion is based on this Notice of Motion and Motion, the accompanying
3 Memorandum of Points and Authorities, and the supporting declarations and
4 associated documents, filed herewith.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **INTRODUCTION**

7 Riverside County, like the rest of California and much of the country, is under
8 a state of emergency due to the spread of the novel coronavirus and COVID-19, the
9 deadly disease it causes. The County is bracing for the potentially catastrophic
10 ravages of this pandemic.

11 California's Governor has taken significant steps to flatten the curve of new
12 cases before hospitals are overwhelmed and the death toll skyrockets, as it has in
13 other states. Declaration of Sara Norman in Support of Plaintiffs' Emergency
14 Motion (Norman Decl.), filed herewith, Exh. A (Newsom March 19, 2020 Executive
15 Order N-33-20). The primary components of the Governor's actions have been to
16 require physical distancing to keep Californians at least six feet apart at all times and
17 to prepare hospitals and health care workers for the coming surge in cases.

18 Neither of these requirements can be implemented in the Riverside County
19 jails, however. Living conditions in the jails, with large dormitories so crowded that
20 people sleep on the floor, make it impossible to practice physical distancing and set
21 the stage for a disastrous spread of the virus. In addition, the jails lack medical
22 settings necessary to treat COVID-19 patients with serious complications, so all
23 such patients must be sent to outside hospitals, which already face a potentially
24 overwhelming influx of patients.

25 According to the former head of California's prison system, correctional
26 facilities are "a tinderbox of potential infection as you go forward, especially if you
27 are just watching what's going on around the world." Norman Decl., Exh. B at 2.

1 Another former corrections chief from Colorado sounded a similar warning: “I don’t
2 think people understand the gravity of what’s going to happen if this runs in a
3 prison.... You’re going to see devastation that’s unbelievable.” Norman Decl.,
4 Exh. C at 2.

5 Tragically, the pandemic has already taken a brutal toll at the jails. Two
6 Riverside Sheriff’s deputies have died of COVID-19, and at least 11 incarcerated
7 people have been hospitalized due to the virus. Norman Decl., Exh. D. But the
8 County faces far more severe illness and death if it fails to act now. The continued
9 spread of the virus, unchecked by physical distancing -- considered essential by the
10 Governor, the Court experts in this case, and public safety experts everywhere --
11 poses a dire threat to the nearly 4,000 people incarcerated there, as well as to the
12 deputies, health care staff, and other staff who move in and out of the jails every day
13 as they perform their essential jobs. Moreover, people housed at the jails are
14 released daily, returning to their homes and families, and anyone in the jails who has
15 to be hospitalized will be sent to a community hospital. This unavoidable
16 movement means that any COVID-19 outbreak in the jails will inevitably spread to
17 the community outside, further overwhelming health care resources and endangering
18 the larger community.

19 The Remedial Plan in this case is designed “to meet the minimum level of
20 health care necessary to fulfill Defendant’s obligations under the Eighth and
21 Fourteenth Amendments. . .” Consent Decree, June 7, 2016, ECF No. 173 (Consent
22 Decree), ¶ 9. Defendants’ failure to implement basic protocols to contain the spread
23 of COVID-19 in the jails clearly falls short of that obligation, as described by the
24 Court’s own experts. Accordingly, Plaintiffs seek to enforce the Consent Decree by
25 requiring the County to submit a plan to the Court to implement the Governor’s
26 order for physical distancing for all Californians housed in the jails and to provide
27 sanitation and other essential services generally accepted as necessary in
28

correctional facilities to provide for the basic health needs of incarcerated people.

The County has ample means to meet its constitutional obligation to contain the spread of this deadly infectious disease. The sanitation and educational components require some staff time and expenditure of funds but are not unmanageable. For physical distancing, the Sheriff has numerous options. There is a new jail in Indio that has not yet been activated; the Sheriff can use that space to transfer many of the people currently crowded into the other jails. He could further use his statutory authority pursuant to Government Code Section 8658 to relocate particularly vulnerable people to alternative secure settings in order to avert potentially deadly consequences and reduce the dire burden on County health care operations if vulnerable people remain inside to become infected. Other means are not necessary given these alternatives but are also available to reduce population density: the Sheriff can employ the population reduction measures he already has at his disposal to reduce the population density significantly in order to allow six feet of space between all people living in the jails. He can also do as other sheriffs have done, and exercise his emergency statutory authority pursuant to Government Code Section 8658 to release people to allow for physical distancing.

The Court should allow Defendant to develop a plan but should set the end goal: swift implementation of meaningful public health measures as recommended by the Court's own experts in this case. It is a matter of utmost urgency that the County implement such measures as will accomplish the goal of constitutional care, and the Court should order Defendant to produce a plan to that end.

ARGUMENT

I. Procedural History

This case was filed on March 8, 2013. Plaintiffs alleged that the County of Riverside failed to provide minimally adequate medical and mental health care to the people incarcerated in its jails, in violation of the Eighth and Fourteenth

1 Amendments to the United States Constitution. (A Third Amended Complaint, filed
2 on November 24, 2015, added a claim of discrimination against certain people with
3 disabilities in violation of the Americans with Disabilities Act and Section 504 of
4 the Rehabilitation Act.) On September 2, 2014, the Court denied Defendant's
5 motion to dismiss and granted Plaintiffs' motion for class certification.

6 The Plaintiff class consists of "all prisoners . . . who are now, or will be in the
7 future, subjected to the medical and mental health policies and practices of
8 Riverside County." Consent Decree, ¶ 3. The medical subclass comprises "[a]ll
9 prisoners . . . who are now, or will in the future be, subjected to the medical care
10 policies and practices of the Riverside Jails"; the mental health subclass comprises
11 "[a]ll prisoners . . . who are now, or will in the future be, subjected to the mental
12 health care policies and practices of the Riverside Jails"; and the disabilities subclass
13 consists of "all prisoners who are now, or will in the future be, subjected to policies
14 and practices of the Riverside jails regarding specialized or sheltered housing for
15 prisoners due to their mobility impairments and need for assistive devices, and the
16 provision and confiscation of accommodations for prisoners with mobility
17 impairments." Third Amended Complaint, November 24, 2015, ECF No. 150.

18 In January 2015, the parties suspended regular and expert discovery for the
19 purpose of settlement negotiations and hired neutral experts "to determine whether
20 the health care currently provided poses a significant risk of serious harm to
21 prisoners confined in the Jails and, if so, to make recommendations for
22 improvements that will provide the minimum care guaranteed by the U.S.
23 Constitution." Consent Decree, ¶ 4. The parties jointly selected Dr. Scott Allen,
24 Professor of Medicine at the University of California-Riverside, as the expert on
25 medical care and Dr. Bruce Gage, Chief Psychiatrist of the Washington State
26 Department of Corrections, as the expert on mental health care. They submitted
27 their final reports to the parties on July 15, 2015.

1 The parties subsequently negotiated a Remedial Plan to address the identified
2 deficiencies and asked the Court to enter a Consent Decree to resolve Plaintiffs’
3 claims. The parties further agreed that the Court would retain jurisdiction to enforce
4 the terms of its judgment. Consent Decree, ¶ 30. The Consent Decree also
5 guarantees access to information for Plaintiffs and the experts and requires
6 Defendant, “in consultation and collaboration with Plaintiffs’ counsel, [to] develop
7 and implement appropriate and adequate plans, policies, and practices to ensure
8 compliance with the Remedial Plan.” *Id.*, ¶¶ 10, 15, 20.

9 Since that time, the experts have made numerous trips to the jails and issued
10 reports regarding their findings. Plaintiffs have done the same, engaging in fruitful
11 negotiations with County officials from the Sheriff’s Department as well as medical
12 and behavioral health leadership in the County, as the County has worked to
13 implement the Remedial Plan.

14 On March 16, 2020, Plaintiffs’ counsel spoke to Defendants’ counsel
15 regarding the County’s response to the COVID-19 threat in the jails, and followed
16 the conversation with a letter on the same day. Norman Decl., ¶ 6 and Exh. E.
17 Plaintiffs urged the County to adopt various measures in response to the virus,
18 including early release to lessen population density to prevent rapid transmission,
19 education of incarcerated people and staff, provision of hygiene supplies, and
20 precautions for particularly vulnerable populations. *Id.* Plaintiffs requested a
21 meeting with County officials and copies of any plans that cover any of the
22 measures Plaintiffs discussed in the letter. *Id.*, p. 4. Defendant responded in writing
23 on March 22, providing partial responses but no plan and no date for a meeting.
24 Norman Decl., Exh. F. Plaintiffs provided follow-up questions the same day,
25 Norman Decl., Exh. G, but to date have received no substantive response or
26 documents and have had no conversations with County officials. Norman Decl., ¶ 8.

27 On March 28, 2020, Plaintiffs proposed that the Remedial Plan be modified
28

1 on an emergency basis “to require (a) the release of enough people living in the jail
2 to allow for social distancing in all living spaces, and (b) the release of elderly and
3 high-risk patients to protect them from the dangers of the pandemic behind bars.”
4 Norman Decl., Exh. H. On March 30, 2020, Plaintiffs proposed an additional
5 modification: “to require the County to provide, in cases of public health
6 emergencies, ample free soap for personal use, cleaning supplies to sanitize cells
7 and common living areas, and public health education regarding handwashing,
8 sanitizing, and social distancing.” *Id.*, Exh. I. The modification proposal was made
9 pursuant to the Consent Decree, ¶ 11 (“Plaintiffs may seek to modify the Remedial
10 Plan if the plan does not effectively [ensure provision of constitutional care], or a
11 modification is necessary to ensure Plaintiff class members receive adequate
12 healthcare under the Eighth and Fourteenth Amendment to the United States
13 Constitution”).

14 Plaintiffs further requested on March 28 that if Defendant disagreed, the
15 parties would stipulate to waive the dispute resolution mechanism set forth in the
16 Consent Decree and agree to an expedited briefing schedule before the Court. *Id.*,
17 Exh. H. Defendant has not to date responded. Norman Decl., ¶ 10.

18 Also on March 28, Plaintiffs asked the Court experts to review the proposal
19 and provide a response as soon as possible. Norman Decl., Exh. H. Dr. Allen, the
20 medical expert, provided a Supplemental Report on March 30. Norman Decl.,
21 Exh. J (Supplemental Report of Scott Allen) (Allen Expert Report). Dr. Gage, the
22 mental health expert, provided a Supplemental Report on March 31. Norman Decl.,
23 Exh. K (Supplemental Report of Bruce Gage) (Gage Expert Report). *See* Consent
24 Decree, ¶ 27 (expert reports admissible at the request of either party).

25 **II. People Housed in the Riverside County Jails Are at Profound Risk of**
26 **Serious Illness and Death from the COVID-19 Pandemic**

27 **A. COVID-19 is particularly dangerous in correctional settings**
28 COVID-19, the disease caused by the coronavirus, is spreading rapidly

1 around the United States. As confirmed cases worldwide approach one million,
2 U.S. cases have exceeded 300,000, with more than 7,500 deaths. Norman Decl., ¶
3 13. The disease is dangerous because it is a novel virus: the pre-existing immunity
4 that checks the spread of the common flu does not exist. Allen Expert Report, ¶ 3.
5 It further causes serious and sometimes deadly respiratory complications in some
6 patients, particularly those over 60 or with chronic medical problems. *Id.*, ¶ 4.
7 There is no vaccine for COVID-19, nor is there a treatment, other than supportive
8 care. Based on early data, it appears that about 20% of those infected will require
9 hospitalization, and 5% will require treatment in an Intensive Care Unit. *Id.*, ¶ 4.
10 Those requiring intensive treatment in a hospital setting will often require the use of
11 ventilators, which are now in short supply around the world. The overall case-
12 fatality rate “for those infected is estimated to be between 0.2% and 3%.” *Id.*

13 COVID-19 spreads primarily through person-to-person droplets. Thus people
14 in close proximity to each other are at highest risk for spreading the disease. The
15 rate of spread for COVID-19 appears to be as high or higher than that for influenza
16 or chicken pox. *Id.*, ¶ 9. Thus, experts recognize that to mitigate the risk of
17 infection and the impact of the virus, “physical distancing” is essential. *Id.*, ¶ 14.
18 That is why the Governor has ordered, and County officials have implemented,
19 physical distancing measures to keep Californians at least six feet from each other.
20 As a result, schools and businesses have closed, and parks and pools and
21 playgrounds and other places that people congregate in groups have shut down
22 because of the unacceptable risk of transmission of the virus.

23 This risk is particularly dangerous because “[t]raditional methods employed
24 by jails and prisons to slow or prevent the spread of infectious diseases,” including
25 immediate testing and quarantining, do not work for COVID-19. *Id.*, ¶ 10.
26 Currently, those methods are simply not available “because there is no rapid test
27 [readily available] and current testing is in limited supply and most individuals who
28

1 are infectious are without symptoms early on in the process (for up to two weeks).”
2 *Id.* Moreover, as explained further below, jails like Riverside’s that are at or over
3 capacity “will lack the flexibility required to successfully cohort or isolate
4 individuals or groups.” *Id.*

5 **B. The Riverside jails present extremely high risk for rapid,**
6 **uncontained spread of the disease**

7 Congregate living facilities, including nursing homes, universities and cruise
8 ships, all are at serious risk from the coronavirus, but “jails carry an even higher risk
9 because jail settings have even closer living quarters.” *Id.*, ¶ 15. This is true of
10 Riverside County jails, where detainees share bunk areas, dining facilities and
11 bathroom facilities in extremely close quarters.

12 Currently, Riverside jails hold hundreds of people in dormitory settings. Two
13 of the five jails – Indio Jail and Blythe Jail – consist almost entirely of congregate
14 dorm housing. Norman Decl., Exh. L (Gage expert report, September 2019) at 25
15 (“Almost all inmates at both these facilities are in dormitory style units”). There are
16 multiple dorms at the other jails: Robert Presley Detention Center (Presley), Cois
17 Byrd Detention Center (Byrd), and Larry D. Smith Correctional Facility (Smith).
18 *See* Norman Decl., Exh. M (Gage expert report, December 2017) at 29 (noting a 40-
19 bed dorm); Norman Decl., Exh. N (Gage expert report, June 2018) at 17 (noting that
20 housing units 12A and 14G are dorm settings); Norman Decl., Exh. O (Board of
21 State and Community Corrections, 2018-2020 Biennial Inspection of Riverside
22 County Sheriff’s Office Jail and Court Holding Facilities).

23 In addition, the jails house too many people: Indio’s dorms were at 150% of
24 capacity in December 2019, according to the Board of State and Community
25 Corrections inspection, and people were sleeping on the floor at Presley, Byrd, and
26 Smith. Norman Decl., Exh. O at 2-3.

27 The dorms at Indio Jail, in particular, are crowded and unsanitary. As
28 Plaintiffs wrote in the February 2017 report,

1 We are concerned about prisoners spending long periods of time in the
2 extremely crowded and close quarters of Housing Unit 15 and other
3 similar units at Indio (Units 13 and 14). These housing units consist of
4 a small dayroom with a shower on the other side of a small divider. The
5 cells are just behind the dayroom. The dayroom is off a dark hallway
6 which is behind a locked door separating it from the mail jail corridors;
7 there is no fresh air. We saw more than 20 people crowded into the
8 dayroom, which is their entire living space while they are awake....The
9 ventilation is minimal and the shower frequently in use. One prisoner
described how difficult and dangerous it is to experience withdrawal
from opiate addiction in those extremely close quarters, with frequent
vomiting and uncontrolled bowel movements. Other prisoners
described the experience of being in a small, unventilated space where
often two or more people are going through withdrawal. People
universally described it as extremely unhygienic, unsafe, and stressful,
with the lack of movement or programming compounded by the
inescapable sights, sounds, and smells of people in extreme distress.

10 Norman Decl., Exh. P (Pltfs' February 2017 report), at 2-3. As of December 2019,
11 these conditions had not materially changed. Norman Decl., ¶ 18. As Dr. Gage
12 explains, the dirty conditions in the jail provide a vector for disease: "[t]he jails are
13 operationally challenged to conduct cleaning and sanitization at the frequency and
14 level needed to prevent the spread of the virus through contact with surfaces having
15 live virus." Gage Expert Report, ¶ 7.

16 In addition to their dismal housing conditions, many people are routinely held
17 in crowded holding tanks with 10-20 other people, sometimes for several days. By
18 their accounts, people held in the Riverside jails often spend time in large holding
19 cells in close proximity to other people when they are first processed into the jails,
20 when transferring between jails for court dates or alternate housing, or when leaving
21 for or returning from outside medical appointments. On every tour of the jails,
22 Plaintiffs hear reports of stays of several days in these holding cells, often under
23 extremely crowded, unsanitary, and dangerous conditions. Plaintiffs have
24 repeatedly reported these incidents to the County. For example, the most recent
25 reports included the following accounts:

26 -- One patient "reported he was held in a holding cell for four days at
27 RPDC when he was booked on September 13 [2019]; he said he slept
28 on the floor and on benches. He said there were no sheets, blankets,
grooming supplies, or showers, and the number of people in the tank

1 varied between seven and 15.” Norman Decl., Exh. Q (Pltfs’ December 2019 report) at 4.

2 -- another patient “reported that he spent more than three days in a
3 holding cell in intake at RPDC ...[in September 2019]... while waiting
4 for housing assignment. He said he was going through heroin
5 withdrawal and there were 16-20 people in the holding cell, with one
6 toilet and one sink. He thought several others in the cell were also
7 going through withdrawal. He reports he spent another four days in
8 intake one month later after he was rehoused at RPDC, and this time
9 there were about 15 people in the cell. He said that three weeks later he
10 spent three days in a holding cell again after he was again rehoused. At
11 that point, he estimates there were about 12 people in the holding cell
12 with him.” *Id.*

13 -- another patient “reported he spent three days in a holding cell in Cois
14 Byrd following surgery on his foot for a staph infection at the Riverside
15 University Medical Center. He said he had an open wound but no
16 dressing change, medications, or facilities to clean the wound for that
17 entire time. He said there were usually 10-11 other people in the cell
18 with him....” *Id.*

19 -- another patient “said that at Smith, the week prior to the tour [in
20 January 2019], he spent two to three days in a holding cell at intake
21 with seven or eight other people, sleeping on the floor.... He was
22 shortly thereafter found to have staph or MRSA in his finger and sent to
23 the emergency room. The long-term stay in extremely close quarters is
24 clearly a public health concern, given his condition; although staff
25 could not have known of it at the time, this situation illustrates why
26 such practices present a risk of harm to people’s health.” Norman
27 Decl., Exh. R (Pltfs’ January 2019 report) at 3.

28 In addition to living space problems, health care space in the jails is also
inadequate even under ordinary conditions. The most serious deficiency is the lack
of an infirmary that can provide any complex care. According to the Court’s
medical expert, this means that the only access incarcerated people have to a higher
level of care is through community emergency rooms or the County hospital.
Expert Report of Scott Allen, M.D., November 25, 2015, ECF No. 152-1, at 22.

29 **C. Despite repeated pleas, the County has provided minimal**
30 **information regarding preparation for the pandemic and there is**
31 **no indication that essential population density reduction measures**
32 **have been instituted**

33 As noted in the Section I, *supra*, Plaintiffs have made repeated requests for
34 information, plans, and meetings regarding Defendant’s response to the looming
35 COVID-19 threat in the jails. Plaintiffs requested plans on March 16 and have to

1 date received none. Norman Decl., ¶ 8 and Exhs. E, G, H, and I. Plaintiffs asked to
2 speak with County officials on March 16, 22, 25, 28, and 31, and April 1 and 3, but
3 have never had a telephone call. *Id.*, ¶ 8 and Exhs. E, G, H, T, U, and V.

4 The one substantive communication provided to Plaintiffs, on March 22,
5 contained broad generalizations and no concrete data or information. *Id.*, Exh. F.
6 Plaintiffs' follow-up questions of the same date have gone unanswered. *Id.*, ¶ 8.

7 **D. Time is of the essence to prevent COVID-19 from exacting a deadly**
8 **toll in the Riverside jails as well as the Riverside Community**

9 The conditions in the Riverside jails create a tinderbox for rapid spread of the
10 virus, imperiling the people who live there, the staff who work there, and the
11 community at large. Allen Expert Report, ¶ 13. The harm is not speculative –
12 people are already dying of COVID-19 in the Riverside jails. Norman Decl., Exh.
13 D. The stakes could not be higher.

14 Rapid response is critical because under the existing conditions, a large
15 number of incarcerated people are likely to become sick within a short period.
16 When that happens, a substantial number will require medical intervention at local
17 hospitals, “thus increasing the risk of infection to the public at large and
18 overwhelming treatment facilities.” Allen Expert Report, ¶ 12. Dr. Allen explains,

19 As local hospital systems become overwhelmed by the patient flow from jail
20 outbreaks, precious health resources will be less available for people in the
21 community. To be more explicit, a detention center with a rapid outbreak
22 could result in multiple detainees—five, ten or more—being sent to the local
23 community hospital where there may only be six or eight ventilators over a
24 very short period. As they fill up and overwhelm the ventilator resources,
25 those ventilators are unavailable when the infection inevitably is carried by
26 staff to the community and are also unavailable for all the usual critical
27 illnesses (heart attacks, trauma, etc.).

28 *Id.*, ¶ 13.

The County must be ordered to meet its constitutional obligation to prevent
the spread of infectious illness, including through implementation of physical
distancing and stringent hygiene measures. The County can achieve this by moving

1 detainees out of congregate living facilities. By so doing, “the tinderbox scenario of
2 a large cohort of people getting sick all at once is less likely to occur, and the peak
3 volume of patients hitting the community hospital would level out.” *Id.* By
4 flattening the curve of the new infections, Riverside can avoid the crisis of
5 overloaded community resources. “In the first scenario, many people from the jail
6 *and the community* die unnecessarily for want of a ventilator. In the latter, survival
7 is maximized as the local mass outbreak scenario is averted.” *Id.* (emphasis in
8 original).

9 **III. The County Has Acted with Deliberate Indifference to the Imminent**
10 **Risk that People in its Custody are Likely to Fall Severely Ill or Die**
11 **Because of COVID-19.**

12 Under the terms of the Consent Decree, the County must provide
13 constitutionally adequate medical care to the people living in its jails: “The
14 Remedial Plan is designed to meet the minimum level of health care necessary to
15 fulfill Defendant’s obligations under the Eighth and Fourteenth Amendments. . . .”
16 Consent Decree, ECF No. 173, ¶ 9. In the face of the current public health crisis,
17 the County has failed to live up to that commitment.

18 It is well established that “[a] prison official’s ‘deliberate indifference’ to a
19 substantial risk of serious harm to an inmate violates the Eighth Amendment.”
20 *Farmer v. Brennan*, 511 U.S. 825, 828 (1994); *see Parsons v. Ryan*, 754 F.3d 657,
21 677 (9th Cir. 2014) (same). Specifically, the Supreme Court has recognized that
22 officials may not be “deliberately indifferent to the exposure of inmates to a serious,
23 communicable disease.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993). This is true
24 even when “the complaining inmate shows no serious current symptoms.” *Id.*; *see*
25 *also Hutto v. Finney*, 437 U.S. 678, 682 (1978) (finding Eighth Amendment
26 violation and noting incarcerated people were placed in conditions where infectious
27 diseases could spread easily). By failing to act meaningfully and decisively to
28 prevent the rapid spread of COVID-19 in its jails, the County has violated the

1 Consent Decree and failed to fulfill its obligations under the U.S. Constitution.¹

2 **A. People in the jails are at substantial risk of severe illness or death**
3 **due to COVID-19.**

4 “To establish unconstitutional treatment of a medical condition . . . a prisoner
5 must show deliberate indifference to a ‘serious’ medical need.” *Doty v. Cty. of*
6 *Lassen*, 37 F.3d 540, 546 (9th Cir. 1994); *see also Estelle v. Gamble*, 429 U.S. 97,
7 104-05 (1976). “A medical need is serious if failure to treat a prisoner’s condition
8 could result in further significant injury or the unnecessary and wanton infliction of
9 pain.” *Peralta v. Dillard*, 744 F.3d 1076, 1081 (9th Cir. 2014) (en banc) (citation
10 omitted). Indicators of a serious medical need include: whether “a reasonable
11 doctor or patient would find important and worthy of comment or treatment; the
12 presence of a medical condition that significantly affects an individual’s daily
13 activities; or the existence of chronic and substantial pain.” *McGuckin v. Smith*, 974
14 F.2d 1050, 1059-60 (9th Cir. 1992) (overruled on other grounds).

15 COVID-19 is an undeniably serious threat for people living in the Riverside
16 jails for several reasons. First, many people in the jails are elderly and have
17 underlying medical conditions that make them particularly vulnerable to severe
18 complications or death from the virus. Allen Expert Report, ¶ 19. Second,
19 everyone who lives in the jails is at an unnecessary and disproportionate risk of

20 ¹ Many members of the Plaintiff class are pre-trial and are thus protected by the
21 Fourteenth Amendment’s Due Process Clause. *See Bell v. Wolfish*, 441 U.S. 520,
22 533-37 (1979); *Pierce v. Cty. of Orange*, 526 F.3d 1190, 1205 (9th Cir. 2008).
23 Under the Fourteenth Amendment, pretrial detainee are not required to prove that an
24 official knew of and disregarded an excessive risk to their health or safety; instead,
25 they need only prove that the official “did not take reasonable available measures to
26 abate that risk, even though a reasonable official in the circumstances would have
27 appreciated the high degree of risk involved.” *Gordon v. Cty. of Orange*, 888 F.3d
28 1118, 1125 & n.4 (9th Cir. 2018). Accordingly, deprivations of health care that
violate the rights of the convicted population *a fortiori* violate the rights of those
who are pretrial. *See City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983)
(holding that the protections of the Due Process clause “are at least as great as the
Eighth Amendment protections available to a convicted prisoner”); *Jones v. Blanas*,
393 F.3d 918, 931 (9th Cir. 2004) (noting that the Fourteenth Amendment is “more
protective”). Because the County’s actions plainly violate the Eighth Amendment,
Plaintiffs rely primarily on cases interpreting the Eighth Amendment in this motion.

1 contracting COVID-19 because it is transmitted primarily person-to-person and the
2 fundamental prevention technique -- physical distancing -- is impossible in many of
3 the crowded dormitories in the County's jails. *See supra*, Section II.B. Finally,
4 access to cleaning supplies has been a chronic problem in many areas of the jails,
5 with general cleanliness a problem in several jail facilities. *See supra*, Section II.B;
6 Gage Expert Report, ¶ 7. Failure to clean and sanitize frequently also places people
7 at enhanced risk of infection. *Id.*

8 The Court's own experts have made it abundantly clear that crowded
9 congregate living quarters, inadequate cleaning, and the disproportionate presence
10 of vulnerable populations makes the jails ripe for the rapid spread of COVID-19 and
11 thus potentially very dangerous to the people locked inside them during the
12 pandemic as well as the staff and surrounding communities. Allen Expert Report,
13 ¶¶ 9-10, 14-16 Gage Expert Report, ¶¶ 5-10. There is clear consensus among public
14 health experts, including the Centers for Disease Control and Prevention, on these
15 points. *See* Allen Expert Report, ¶¶ 10, 16. Tragically, two Riverside sheriff's
16 deputies have already died of the virus and numerous people living in the jail have
17 tested positive. Norman Decl., Exh. D. It is only a matter of time before the death
18 toll increases.

19 **B. The County's Failure to Take Adequate Steps to Protect Against**
20 **the Spread of COVID-19 Constitutes Deliberate Indifference.**

21 “A showing of deliberate indifference . . . requires a showing that the
22 defendant knew of an excessive risk to inmate health or safety that the defendant
23 deliberately ignored.” *Grenning v. Miller-Stout*, 739 F.3d 1235, 1239 (9th Cir.
24 2014); *see also Farmer*, 511 U.S. at 839-40 (adopting subjective recklessness as the
25 test for deliberate indifference under the Eighth Amendment). Failure to prevent the
26 spread of a contagious illness constitutes deliberate indifference to a serious medical
27 need. *See Hutto*, 437 U.S. at 682; *Gates v. Collier*, 501 F.2d 1291, 1300, 1303 (5th
28 Cir. 1974) (holding plaintiffs entitled to relief under Eighth Amendment due to,

1 among other conditions, allowing “inmates with serious contagious diseases . . . to
2 mingle with the general prison population”). It is well established that the
3 Government may not “ignore a condition of confinement that is sure or very likely
4 to cause serious illness.” *Helling*, 509 U.S. at 33. *See Brown v. Plata*, 563 U.S. 493,
5 508-09, 519-20 (2011) (affirming population reduction order and citing findings that
6 “[o]vercrowding had increased the incidence of infectious disease” in California
7 prisons, and that crowded living quarters “where large numbers of prisoners may
8 share just a few toilets and showers [were] ‘breeding grounds for disease’”).

9 The County is well aware of the risk posed by COVID-19. *See Allen Expert*
10 *Report*, ¶ 17; Norman Decl., Exhs. E, G, H, I, T, U, and V. The County’s response
11 to these warnings has been opaque, with a consistent failure or refusal to provide
12 meaningful information about any steps taken. Norman Decl., Exhs. F, T, U, and V.
13 As a result, Plaintiffs can have no confidence that any meaningful steps have been
14 taken to mitigate the deadly potential of the disease. Specifically, significant
15 improvements in access to soap, disinfectant, and other hygiene measures are
16 necessary, but there is no clear plan aside from a general assurance that the County
17 “follow[s] public health guidelines to maintain hygiene for the inmates,” which
18 includes “soap and access to water” and “access to cleaning supplies.” Norman
19 Decl., Exh F. Plaintiffs’ follow-up questions have gone unanswered, so Plaintiffs
20 can have no confidence that soap is available free of charge, for example, and that
21 the cleaning supplies include disinfecting agents demonstrated to be effective
22 against the coronavirus. *See Norman Decl.*, ¶ 8.

23 Moreover, population density in the dorms presents a serious risk of harm but
24 Defendant has provided no plan to address it in a concrete way, including whether
25 people with high risk of morbidity and mortality have been included in any density
26 reduction measures. Norman Decl., Exh. F. This gap occurs despite ample
27 authority regarding the urgency to take action, including clear direction from the
28

1 Court's experts, appointed to advise Defendant and the Court regarding essential
2 steps to reach constitutional levels of care. In particular, the County has apparently
3 not elected to spread out the population in the jails, which is the most effective
4 means to prevent the rapid spread of the virus and to protect the medically
5 vulnerable. Allen Expert Report, ¶ 10; Gage Expert Report, ¶ 8.

6 **C. The Court Should Enforce the Consent Decree**

7 The Consent Decree grants the Court "the power to enforce the agreement
8 through specific performance and all other remedies permitted by law." Consent
9 Decree, ¶ 30. Plaintiffs seek enforcement of the following provisions of the Consent
10 Decree: first, the requirement that Defendant, "in consultation and collaboration
11 with Plaintiffs' counsel," must "develop and implement appropriate and adequate
12 plans, policies, and practices to ensure compliance with the Remedial Plan," and
13 second, the requirement that "Defendant shall provide Plaintiffs with access to
14 information, including all Riverside Jail facilities, documents, records, and staff, that
15 Plaintiffs believe in good faith is necessary to monitor Defendant's compliance with
16 the Remedial Plan," and that such information shall be provided "within 15 calendar
17 days of their request." *Id.*, ¶¶ 10, 20. Plaintiffs' requests for plans and further
18 information from Defendant of March 16 and 22 have gone unanswered.² Norman
19 Decl., ¶ 8.

20 Plaintiffs request that the Court exercise its authority under the Consent

21
22 ² Plaintiffs recognize that the Consent Decree sets forth a dispute resolution process:
23 the parties shall negotiate any dispute in good faith, may request reports from the
24 Court experts in an attempt to resolve the disagreement, and shall then attempt to
25 resolve the matter through mediation with Judge Raul Ramirez prior to filing a
26 motion for relief to the Court. Consent Decree, ¶¶ 27-19. The first two
27 requirements have been met. Norman Decl, ¶ 6, Exhs. E-I, T-V. Given the urgent
28 nature of the proceedings, Plaintiffs request the Court modify the Consent Decree to
allow for urgent appeal for enforcement directly to the Court.

1 Decree to order Defendants to submit a plan for compliance with the Court Expert's
2 recommendations by April 10, 2020. In particular, the plan must address the need
3 for ready access to hygiene materials and physical distancing in the jails and detail
4 the steps the County will take to achieve it. Dr. Allen has already provided
5 Defendant with an example of a plan. Allen Expert Report, ¶ 17.

6 Such steps need not involve release of prisoners or reduction of the jail
7 population. The empty jail at Indio provides the readiest means by which
8 population density may be reduced and lives saved. *See, e.g.*, Gage Expert Report,
9 ¶¶ 8-9; Allen Expert Report, ¶ 10. It is within the Court's power to direct transfers
10 of people from one correctional facility to another in order to maintain minimum
11 constitutional health standards. *Plata v. Brown*, No. 01-cv-1351-TEH, 2013 WL
12 3200587, at *1 (N.D. Cal. June 24, 2013). Further, Section 8658 of the California
13 Government Code grants Defendant the power when faced with emergencies like
14 COVID-19 to relocate vulnerable populations:

15 In any case in which an emergency endangering the lives of inmates of
16 a state, county, or city penal or correctional institution has occurred or
17 is imminent, the person in charge of the institution may remove the
18 inmates from the institution. He shall, if possible, remove them to a
safe and convenient place and there confine them as long as may be
necessary to avoid the danger, or, if that is not possible, may release
them.

19 *See also* Cal. Penal Code § 4012 (“When a pestilence or contagious disease breaks
20 out in or near a jail, and the physician thereof certifies that it is liable to endanger
21 the health of the prisoners, the county judge may, by a written appointment,
22 designate a safe and convenient place in the county, or the jail in a contiguous
23 county, as the place of their confinement.”); Cal. Health & Safety Code §§ 101029
24 & 120155 (granting the Sheriff authority to enforce public health orders “issued for
25 the purpose of preventing the spread of any contagious, infectious, or communicable
26 disease”).

27 Counties across California have invoked these statutes to prevent the spread
28

1 of COVID-19 in their jails.³ The California Department of Corrections and
2 Rehabilitation has taken the significant step of releasing early approximately 3500
3 people who are within 60 days of release. Norman Decl., Exh. S. Other states and
4 counties around the country have similarly worked to reduce population density to
5 give people inside prisons and jails a fighting chance against the virus.⁴ Defendant

6
7 ³ See, e.g., Request for Judicial Notice, filed herewith, Exhs. 1-5: Order Authorizing
8 Sacramento County Sheriff's Department to Grant Release (Cal. Super. Ct.
9 Sacramento Cty. Mar. 25, 2020) (granting the Sheriff authority to release 421 people
10 from county jail "because the parties agree that it is in the best interest of public
11 health to reduce the population of the Sacramento County Jail System"); General
12 Order Releasing Named Persons from Santa Rita Cty. Jail Due to COVID-19
13 Pandemic, *In re: List of 247 Persons in Santa Rita County Jail* (Cal. Super. Ct.,
14 Alameda Cty. Mar. 19, 2020) (ordering the release of 247 sentenced people from the
15 Alameda County jails "in light of the COVID-19 pandemic"); Local Rule 4.115,
16 Emergency Rule Adopting Temporary Emergency Bail Schedule, (Cal. Super. Ct.,
17 Alameda Cty.) (suspending the Uniform Bail Schedule and adopting an emergency
18 bail schedule "[d]uring the COVID-19 crisis) (effective April 3, 2020); Standing
19 Order of the Court Deferring Sentence Surrender Dates and Permitting Sheriff to
20 Authorize Credit for Participation in the Sheriff Work Program (Cal Super. Ct.,
Santa Clara Cty. Mar. 18, 2020) (recognizing that people who live or work in the jail
"are at a particular risk to COVID-19 due to the confined nature of the jail
environment" and that "[r]educing the jail population is a critical preventative
measure for inmates and staff," and so continuing all surrender dates for 60 days and
authorizing extended credit for sheriff's work program, pursuant to agreement
between the People and the defense); Ruling re: Authorizing Release of Sentenced
Inmates Pursuant to Gov. Code Section 8658, *In re the Application of Orange
County Sheriff's Dep't*, (Cal. Super. Ct., Orange Cty. Mar. 27, 2020) (finding that
"inmates in the Orange County Jail live, work, eat and recreate within a close
environment in which it is not feasible to maintain six (6) feet of distance between
each inmate," which "heightens the potential for COVID-19 to spread," and so
clarifying the Sheriff's authority to release people "in this time of crisis" under
Government Code Section 8658).

21 ⁴Request for Judicial Notice, filed herewith, Exhs. 6-9: Consent Order, *In re Request*
22 *to Commute or Suspend County Jail Sentences*, Docket No. 084230 (N.J. Mar. 22,
23 2020) (ordering the release of a large class of people incarcerated in county jail "in
24 light of the Public Health Emergency" caused by COVID-19); *Committee for Public*
25 *Counsel Servs. v. Chief Justice of the Trial Ct.*, Case No. SJC-12926 (Mass. April 3,
26 2020) (Slip. Op.) (recognizing "that the situation is urgent and unprecedented, and
27 that a reduction in the number of people who are held in custody is necessary," and
28 so ordering courts to hold expedited bail hearings with a rebuttable presumption of
release for many pretrial detainees, and ordering the prisons and jails to provide
daily reports regarding COVID-19 to defense attorneys); Amended Order, *In re*
Statewide Response by Washington State Courts to the COVID-19 Public Health
Emergency, No. 25700-B-607 (Wash. Mar. 20, 2020) (ordering courts to "hear
motions for pretrial release on an expedited basis" and "find[ing] that for those
identified as part of a vulnerable or at-risk population by the Centers for Disease

1 also has the ability to “continually look[] at early releases and conduct them most
2 days,” with “criteria for early release” that are “fluid and changes upon our daily
3 needs,” and is thus able to “consider all sentences with less than 18 months
4 remaining.” Norman Decl., Exh. F at 2. Despite these options, Defendant has
5 deliberately failed to provide a plan in accordance with the direction from the
6 Court’s experts.

7 **IV. In the Alternative, the Court Should Modify the Remedial Plan to**
8 **Include Basic Measures to Protect Class Members against the Threat of**
9 **COVID-19**

10 If this Court finds this motion warrants a remedy outside the scope of the
11 Consent Decree, Plaintiffs request the Court modify the Remedial Plan to direct
12 such action. *See* Consent Decree, ¶ 11 (“Plaintiffs may seek to modify the Remedial
13 Plan if the plan does not effectively [ensure provision of constitutional care], or a
14 modification is necessary to ensure Plaintiff class members receive adequate
15 healthcare under the Eighth and Fourteenth Amendment to the United States
16 Constitution”). In particular, the Remedial Plan should include basic measures to
17 protect class members against the threat of COVID-19, to allow for meaningful
18 physical distancing in the dorms and essential sanitation measures.

19 This Court “retains the authority, and the responsibility, to make further
20 amendments to [an] existing order or any modified decree it may enter as warranted
21 by the exercise of its sound discretion.” *Plata*, 563 U.S. at 542; *see also Kelly v.*
22 *Wengler*, 822 F.3d 1085, 1098 (9th Cir. 2016) (“Courts have long had inherent
23 power to modify court orders in changed circumstances.”); *cf. Parsons v. Ryan*, 949
24 F.3d 443, 454 (9th Cir. 2020) (affirming district court’s power to issue injunctions

25 _____
26 Control, COVID-19 is presumed to be a material change in circumstances”);
27 General Order Bond for Certain Offenses (Tex. Crim. Dist. Ct. Trial Div. Mar. 21,
28 2020) (ordering “the immediate release of people arrested and charged with certain
non-violent state jail felony offenses).

1 and enforcement orders to enforce prison conditions settlement agreement).
2 Specifically, under Federal Rule of Civil Procedure 60(b)(5), this Court may modify
3 “a final judgment, order, or proceeding” if “applying it prospectively is no longer
4 equitable.” As prospective relief “is drafted in light of what the court believes will
5 be the future course of events, . . . a court must never ignore significant changes in
6 the law or circumstances underlying an injunction lest the decree be turned into an
7 instrument of wrong.” *Salazar v. Buono*, 559 U.S. 700, 714-15 (2010) (citations
8 omitted).⁵

9 A party seeking modification must show that “a significant change in
10 circumstances warrants revision of the decree. If the moving party meets this
11 standard, the court should consider whether the proposed modification is suitably
12 tailored to the changed circumstance.” *Rufo v. Inmates of Suffolk County Jail*, 502
13 U.S. 367, 383 (1992). The court should apply a “flexible approach,” *id.* at 381, in
14 recognition that the parties could not “anticipate every exigency that could
15 conceivably arise during the life of a consent decree,” *id.* at 385. A “flexible
16 approach” is particularly important in institutional reform cases like this one
17 because these cases “reach beyond the parties involved directly in the suit and
18 impact on the public’s right to the sound and efficient operation of its institutions.”
19 *Id.* at 381 (citations omitted). In such cases, the “ability of a district court to modify

21 ⁵ Rule 60(b)(5) applies to *all* orders and judgments with prospective application.
22 See *Armstrong v. Brown*, 768 F.3d 975, 986 (9th Cir. 2014) (upholding the
23 modification of a stipulated injunction, and holding that “[t]he ongoing, intractable
24 nature of this litigation affords the district court considerable discretion in
25 fashioning relief”); *Bellevue Manor Assocs. v. United States*, 165 F.3d 1249, 1255
26 (9th Cir. 1999) (holding that “*Rufo* sets forth a general, flexible standard for all
27 petitions brought under the equity provision of Rule 60(b)(5)” and applying *Rufo* to
28 court-ordered injunction in a private commercial case); *Valdivia v. Schwarzenegger*,
599 F.3d 984, 986, 994 (9th Cir. 2010) (discussing *Rufo*’s application to motion to
modify injunction arising out of parties’ stipulation).

1 a decree in response to changed circumstances [is] all the more important . . .
2 [b]ecause such decrees often remain in place for extended periods of time, [and] the
3 likelihood of significant changes occurring during the life of the decree is
4 increased.” *Id.* at 380-81.

5 **A. The Global Pandemic Constitutes a Changed Circumstance**

6 The degree to which the coronavirus global pandemic has impacted every
7 aspect of life in the United States and around the world cannot be overstated. At the
8 time of this writing, over a hundred million Americans, and all Californians, have
9 been ordered to shelter in their homes except for essential needs. There have been
10 hundreds of thousands of cases and at least 7,500 deaths reported in the United
11 States. Norman Decl., ¶ 13. Health care facilities around the world have
12 experienced or are bracing for an extraordinary influx of patients, as the virus
13 sweeps through populations and strikes the most vulnerable as well as many others.
14 *See* Section II.A, *supra*.

15 **B. The Relief Requested Would Directly Address the Needs of the**
16 **Medically Vulnerable Population and Those Living in Congregate**
17 **Settings and Would Therefore Be Tailored to the Changed**
Circumstances

18 Plaintiffs request relief closely tailored to the recommendations of the Court’s
19 own experts, who agree that the County must modify the Remedial Plan to allow for
20 physical distancing and to provide for basic sanitation needs for people incarcerated
21 in the jails.

22 The enforcement sought is directly tailored to the risk of harm to the Plaintiff
23 classes in the current coronavirus pandemic.

24 **CONCLUSION**

25 For the foregoing reasons, Plaintiffs respectfully ask the Court to enforce the
26 Consent Decree by ordering Defendant to submit a plan for compliance with the
27 Court Experts’ recommendations and respond to Plaintiffs’ information requests by
28

1 April 10, 2020. In the alternative, Plaintiffs seek an order modifying the Remedial
2 Plan to require the County to fully implement the Governor's order for physical
3 distancing for all Californians housed in the jails and to provide sanitation and other
4 essential services generally accepted as necessary in correctional facilities to protect
5 basic health of incarcerated people.

6
7 Dated: April 6, 2020

PRISON LAW OFFICE

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9 By: /s/ Sara Norman
10 SARA NORMAN
11 Attorneys for Plaintiffs
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