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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JOHN DOE #1, an individual;
JOHN DOE #2, an individual; and
JOHN DOE #3, an individual;

Plaintiffs,

vs.

ANDREW HALL, in his official
capacity as Chief of the Fresno Police
Department; and MARGARET MIMS,
in her official capacity as Fresno County
Sheriff,

Defendants.

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. This action challenges the discretionary, unauthorized, and injurious policies of the Fresno Police Department (“FPD”) and the Fresno County Sheriff’s Office (“FCSO”) that require persons required to register as a sex offender (“Registrants”) who are vulnerable to the COVID-19 virus to leave their homes and to appear in person at FPD and FCSO stations for their 30-day, 90-day, or annual registration updates

(hereinafter, “periodic updates”). The Sex Offender Registration Act, California Penal Code section 290.012, does not require in-person registration for periodic updates, and therefore does not authorize Defendants to subject vulnerable persons to a risk of significant physical harm, perhaps death, that is universally recognized by national, state, and local government – in violation of orders issued by those governments. In addition, the FPD and FCSO policies that require in-person registration during periodic updates infringe the life and liberty of Registrants in violation of the Fourteenth Amendment to the United States Constitution, the Eighth Amendment to the United States Constitution, as well as the California Sex Offender Registration Act, as more thoroughly pled herein.

2. This issue warrants the Court’s attention at this time because the extraordinary measures now being taken to slow the spread of the COVID-19 pandemic are undermined by Defendants’ requirement that Registrants continue to appear in person for periodic updates. Specifically, as of March 19, 2020, the Governor of California has ordered as follows: “**Everyone** is required to stay home except to get food, care for a relative or friend, get necessary health care, or go to an essential job.”¹ The Order contains no exception for Registrants or for registration updates.

3. Nor is such an exception mandated by law. Specifically, Sex offender registration is governed by the California Sex Offender Registration Act, codified at Penal Code section 290, *et seq.* (hereinafter, “Section 290” or “Act”). The text of the Act *does not* require Registrants to appear in person for any type of periodic update. See Cal. Penal Code § 290.012(a)-(c). Instead, the Act merely requires that Registrants be “Registered.” *Ibid.* In addition, there is no practical reason why Registrants must appear in person for a periodic update because the purpose of a periodic update is to *confirm information that registering agencies already possess*, or to provide information that can be transmitted through alternative means which pose little or no risk of exposure of

¹ <https://covid19.ca.gov/>, last visited March 23, 2020.

COVID-19, such as the telephone or video conferencing apps and programs. Use of this widely available technology provides law enforcement with effective methods to obtain the information necessary to complete periodic updates without subjecting the public, law enforcement personnel, and Registrants to potentially harmful in-person visits to locations where they could either contract or spread COVID-19.

4. On information and belief, many registering agencies throughout California, including the Los Angeles Police Department (“LAPD”), the agency with the largest population of Registrants in the state, are processing periodic updates over the telephone. The LAPD does not require Registrants to appear in person while the COVID-19 emergency measures are in place. Instead, the LAPD has placed signs, including those attached hereto as Exhibit A, on the exterior of its police stations confirming that the LAPD’s registration policy is currently “modified” to accommodate the COVID-19 emergency measures. (Exh. A.) Pursuant to the LAPD’s modified policy, Registrants “are not [] allowed in the station,” and “[the LAPD] will register [them] over the phone.” (Exh. A.)

5. Plaintiffs are three individual Registrants, Plaintiffs John Doe #1, John Doe #2, and John Doe #3, who are deemed vulnerable to infection by COVID-19 due to their age and/or chronic medical conditions. As pled more fully below, Defendants have directed all Registrants, including Plaintiffs John Doe #2 and John Doe #3, to appear in person for their periodic updates, and/or have refused to process the registration of Registrants, such as Plaintiff John Doe #1, who do not appear in person.

6. Defendants’ mandate that all Registrants, including those with high risk factors for COVID-19, appear in person forces Plaintiffs and all Registrants into a Catch-22. That is, they must either subject themselves to possible COVID-19 infection in violation of a state order, or violate Section 290 by failing to appear in person, thereby inviting arrest and custody in jail or prison – where the risk of COVID-19 infection is much greater. Either option constitutes irreparable injury warranting injunctive relief.

1 Harris v. Bd. of Supervisors, 366 F.3d 754, 759, 766 (9th Cir. 2004). See also City of
2 Costa Mesa v. United States, 2020 U.S. Dist. LEXIS 33650 (C.D. Cal. Feb. 21, 2020)
3 (granting TRO against placement of COVID-19 patients within city because possible
4 exposure “threat[ens] immediate and irreparable injury”). Section 290 does not require
5 Plaintiffs and all Registrants to play Russian Roulette with their lives in order to confirm
6 information already in the possession of law enforcement.

7 7. Accordingly, Plaintiffs seek a temporary restraining order, preliminary
8 injunction, and permanent injunction directing Defendants to process 30-day, 90-day, and
9 annual updates without the additional, non-statutory requirement to appear in person until
10 the threat from COVID-19 ends. Plaintiffs further seek injunctive relief as well as a
11 declaratory judgment that Registrants are not required to appear in person for periodic
12 updates.

13 **JURISDICTION AND VENUE**

14 8. This court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331
15 [federal question], 1343(a) [federal question], and 2201 [declaratory judgment], as well
16 as 42 U.S.C. § 1983 [civil rights]. Specifically, jurisdiction under 28 U.S.C. §§ 1331 and
17 1343(a) exists because Defendants’ policies requiring in-person registration during the
18 COVID-19 pandemic constitute a deprivation of life and liberty within the meaning of
19 the Fourteenth Amendment in that: (i) in-person registration constitutes constructive
20 custody in which Registrants are exposed to a risk of bodily harm and death, in violation
21 of the Fourteenth Amendment; (ii) Exposing Registrants to risk of bodily harm and death
22 through in-person registration constitutes a state-created danger in violation of the
23 Fourteenth Amendment; and (iii) Exposing Registrants to risk of bodily harm and death
24 through in-person registration constitutes cruel and unusual punishment in violation of
25 the Eighth Amendment, as follows:

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Fourteenth Amendment: Deprivation of Life and Liberty

a. In-person registration at police and sheriff's stations constitutes constructive custody, thereby triggering a duty by Defendants to avoid deprivations of liberty within the meaning of the Fourteenth Amendment. That is, registration during periodic updates requires Registrants to be physically present in police and sheriff's stations for up to two hours, during which time Registrants are interviewed by law enforcement, are subject to interrogation concerning their offenses and present compliance with the law, are often photographed and finger printed, and must complete five or more pages of paperwork in the presence of law enforcement.

b. Under Defendants' policies, Registrants are not free to leave during in-person registration because doing so would result in criminal liability pursuant to the California Sex Offender Registration Act, Penal Code section 290, *et seq.*, as well as the federal Sex Offender Registration and Notification Act, 34 U.S.C. § 20901, *et seq.*

c. Therefore, Defendant's policies requiring in-person registration during the COVID-19 pandemic constitute a deprivation of life and liberty within the meaning of the Fourteenth Amendment by subjecting Registrants, law enforcement, as well as the general public, to a risk of infection by the highly contagious novel coronavirus that causes the life-threatening disease COVID-19.

Fourteenth Amendment: State-created Danger

d. In the context of the COVID-19 pandemic, requiring Registrants to appear in-person for periodic updates is an affirmative act which places Registrants in danger of possibly lethal infection by COVID-19.

e. In the context of the COVID-19 pandemic, the danger in which Defendants place Registrants is not a danger to which Registrants would otherwise be subject, and therefore constitutes a state-created danger.

f. In the context of the COVID-19 pandemic, the danger in which Defendants place Registrants is known and obvious at all levels of state and local

1 government, and is a danger to which Defendants are deliberately indifferent. Wood v.
2 Ostrander, 879 F.2d 583 (9th Cir. 1989); Pauluk v. Savage, 836 F.3d 1117 (9th Cir.
3 2016).

4 **Eighth Amendment: Cruel and Unusual Punishment**

5 g. In-person registration at local police and sheriff's stations constitutes
6 constructive custody, thereby triggering a duty by Defendants to avoid cruel and unusual
7 punishment within the meaning of the Eighth Amendment. That is, registration during
8 periodic updates requires Registrants to be physically present in police and sheriff's
9 stations for up to two hours, during which time Registrants are interviewed by law
10 enforcement, are subject to interrogation concerning their offenses and present
11 compliance with the law, are often photographed and finger printed, and must complete
12 five or more pages of paperwork in the presence of law enforcement.

13 h. Under Defendants' policies, Registrants are not free to leave during
14 in-person registration because doing so would result in criminal liability pursuant to the
15 California Sex Offender Registration Act, Penal Code section 290, *et seq.*, as well as the
16 federal Sex Offender Registration and Notification Act, 34 U.S.C. § 20901, *et seq.*

17 i. Requiring Registrants to appear in-person for periodic updates at
18 police and sheriff's stations, and thereby exposing them to lethal infection by COVID-19,
19 constitutes cruel and unusual punishment in violation of the Eighth Amendment.

20 9. Under 28 U.S.C. § 1391(b), venue is proper in this Federal district because
21 the events giving rise to the claims have occurred and continue to occur in this district.
22

23 **PARTIES**

24 10. Plaintiff John Doe #1, aged 71, is a Registrant who resides within the
25 jurisdiction of the FCSO. Plaintiff John Doe #1 is required to update his registration with
26 the FCSO within five working days of his birthday pursuant to California Penal Code
27 section 290.012. Plaintiff John Doe #1 is vulnerable to infection by COVID-19 due to
28

1 his advanced age, as determined by state and national health care agencies. In April
2 2020, agents, officers, and officials of the FSCO told Plaintiff John Doe #1 and his
3 counsel that his periodic update will not be processed, completed, or sent to the
4 California Department of Justice unless he appears in person at his local FCSO station.

5 11. Plaintiff John Doe #2, aged 68, is a Registrant who resides within the
6 jurisdiction of the FCSO. Plaintiff John Doe #2 is required to update his registration with
7 the FCSO within five working days of his birthday pursuant to California Penal Code
8 section 290.012. Plaintiff John Doe #2 is vulnerable to infection by COVID-19 due to
9 his advanced age, as well as his chronic medical conditions that include hypertension, as
10 determined by state and national health care agencies.

11 12. Plaintiff John Doe #3 is a Registrant who resides in the City of Fresno,
12 within the jurisdiction of the FPD. Plaintiff John Doe #3 is required to update his
13 registration with the FCSO within five working days of his birthday pursuant to
14 California Penal Code section 290.012. Plaintiff John Doe #3 is vulnerable to infection
15 by COVID-19 due to chronic medical conditions that include asthma, a respiratory
16 disease, as determined by state and national health care agencies.

17 13. Defendant Andrew Hall (“Hall”) is Chief of the Fresno Police Department,
18 the registering agency responsible for implementing the Sex Offender Registration Act
19 within the City of Fresno. In his official capacity as Chief of the FPD, Defendant Hall is
20 responsible for decisions and policies challenged in this action. Defendant Hall is sued in
21 his official capacity.

22 14. Defendant Margaret Mims (“Mims”) is Sheriff of Fresno County, and the
23 chief executive of the FCSO, the registering agency responsible for implementing the Sex
24 Offender Registration Act within Fresno County. In her official capacity as Sheriff,
25 Defendant Mims is responsible for decisions and policies challenged in this action.
26 Defendant Mims is sued in her official capacity.

15. Defendants Price and Mims are collectively referred to herein as “Defendants.”

FACTS

16. Plaintiffs reallege and incorporate herein, as though fully set forth, each and every, all and inclusively, paragraphs 1 through 15.

The California Sex Offender Registration Act Does Not Require In-person Periodic Updates

17. In the words of Fresno Mayor Lee Brand, “conditions of extreme peril to the safety of persons and property have arisen with respect to the international COVID-19 pandemic.”² Extraordinary measures have been implemented by governments at every level to address this pandemic.³ On March 16, 2020, the Fresno City Council declared a Local Emergency throughout the City of Fresno due to the COVID-19 pandemic.⁴ Subsequently, the Fresno County Board of Supervisors declared a similar Local Emergency the next day.⁵

18. Most notably, on March 19, 2020, the Governor of California issued an order calling upon all 40 million residents of the state to remain in their homes, with limited exceptions for essential travel (hereinafter, the “Order”).⁶ Specifically, the Governor’s Order directs “all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying->

² <https://www.fresno.gov/cityclerk/wp-content/uploads/sites/9/2020/03/Proclamation.pdf>

³ <https://www.fresno.gov/news/mayor-announces-state-of-emergency-for-coronavirus/>

⁴ <https://www.fresno.gov/coronavirus/>

⁵ <https://www.co.fresno.ca.us/Home/Components/News/News/545/1556?backlist=%2F>

⁶ <https://covid19.ca.gov/stay-home-except-for-essential-needs/>

critical-infrastructure-during-covid-19.”⁷ Sex offender registration is not listed among the exceptions to the Order, and violation of the Order can result in penalties and punishment.

19. The Order emphasizes that persons within specific vulnerable populations must self-isolate and remain in their homes. As reflected in the Order, the Center for Disease Control and the California Department of Health Care Services declare the following persons are at “higher risk” for contracting COVID-19:^{8,9}

- a. Persons aged 65 and older;
- b. Persons with HIV/AIDS or compromised immune systems; and
- c. Persons with chronic serious medical conditions, including asthma and hypertension.

20. The California Sex Offender Registration Act does not require initial registration, annual updates, 90-day updates, or 30-day updates (i.e., “periodic updates”) to be in person. Instead, the Act only requires that periodic updates occur, without specifying how a Registrant is to provide the required information to the registering agency. E.g., Cal. Penal Code § 290.012(a) (“Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subdivision (b) of Section 290. At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in paragraphs (1) to (4), inclusive, of

⁷ <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>

⁸ <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>

⁹ <https://covid19.ca.gov/what-you-can-do/#symptoms-risks>

subdivision (a) of Section 290.015. The registering agency shall give the registrant a copy of the registration requirements from the Department of Justice form.”)

21. Notably, the Act specifies only three occasions on which in-person registration or in-person updates are required. Specifically, in-person registration and updates are required only for:

a. **Transient Registrants “who move[] of out state.”** Cal. Penal Code § 290.011(f) (“A transient who moves out of state shall inform, in person, the chief of police in the city in which he or she is physically present, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, within five working days, of his or her move out of state.”)

b. **Registrants who change their residence address, whether within the jurisdiction in which they are currently registered or to a new jurisdiction outside California.** Cal. Penal Code § 290.013 (a) (“A person who was last registered at a residence address pursuant to the Act who changes his or her residence address, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state, shall, in person, within five working days of the move, inform the law enforcement agency or agencies with which he or she last registered of the move, the new address or transient location, if known, and any plans he or she has to return to California.”)

c. **Registrants who legally change their names.** Cal. Penal Code § 290.014 (a) (“If any person who is required to register pursuant to the Act changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days.”)

22. The Legislature’s decision to expressly require in-person updates in certain limited situations but no other situations confirms that the Legislature did not intend to require personal appearance at initial registration, annual updates, 90-day updates, or 30-day updates. See, e.g., Wilson v. City of Laguna Beach, 6 Cal. App. 4th 543, 554 (1992). On information and belief, the California Department of Justice and various local registering agencies are able to, and do in fact, process registrations when a Registrant does not appear in person, such as when a Registrant is hospitalized or otherwise incapacitated. Accordingly, Defendants have, but unlawfully refuse to exercise, discretion to process periodic updates without requiring Registrants to appear in person. Defendants’ refusal places Registrants in danger of exposure to COVID-19.

Defendants’ Discretionary In-person Registration Requirement Threatens Vulnerable Registrants and Forces Them to Violate State and Local COVID-19-Related Orders

23. Plaintiffs are vulnerable to COVID-19 infection because of their age, and/or certain chronic medical conditions and co-morbidities that are known to be associated with fatalities in COVID-19 patients such as asthma and hypertension. In addition, Plaintiffs are currently subject to the Governor of California’s Order, which requires them to remain at home except for “essential” travel pursuant to the terms of that Order.

24. On information and belief, the locations at which Registrants are required to register in person within the jurisdiction of the FPD and the FCSO are often unsanitary, crowded, and do not allow for “social distancing” and other preventative measures mandated by state and local government. In addition, Registrants are forced to enter, sit in, touch, and otherwise interact with unsanitary, and often narrow and cramped, physical environments while registering. Those environments, as well as, the registration procedures employed by Defendants require repeated and prolonged contact with potentially virus-ridden surfaces and objects such as countertops, clip boards, various papers, pens, pen chains, ink pads, chairs, door handles, water fountains, and Livescan

1 and other fingerprinting machine. These unsanitary surfaces are touched by many other
 2 Registrants, as well as other visitors to the station and employees of the registering
 3 agencies.

4 25. Plaintiffs are gravely afraid of contracting COVID-19 should they be forced
 5 to register in person at FPD and FCSO stations. As one District Court recognized,

6 COVID-19 is a type of highly contagious novel coronavirus that is thought
 7 to be “spreading easily and sustainably in the community.” Experts believe
 8 that it can live on some surfaces for up to 72 hours after contact with an
 9 infected person. A simple sneeze or brush of the face without washing your
 10 hands is now known to easily spread the virus, which generally causes fever,
 cough, and shortness of breath. How Coronavirus Spreads, Centers for
 Disease Control[,], at 15.

11 *Thakker v. Doll*, 2020 U.S. Dist. LEXIS 59459, at *10-*12 (M.D.Pa. Mar. 31,
 12 2020). The County of Fresno has likewise warned that COVID-19 “is a contagious
 13 disease that takes advantage of close contact and poor hygiene, so please do your
 14 part in maintaining at least six feet of distance with your peers This health
 15 crisis will require everyone to play a role during this challenging time.”¹⁰

16 26. Many courts have recognized that placing persons in close proximity to
 17 potentially infected persons and surfaces constitutes a risk of harm that warrants
 18 injunctive relief. E.g., Castillo v. Barr, No. 20CV00605-TJH, 2020 U.S. Dist. LEXIS
 19 54425, at *4 (C.D. Cal. Mar. 27, 2020) (“Coronavirus is spread between people who are
 20 in close contact . . . through respiratory droplets produced when an infected person
 21 coughs or sneezes. . . . Moreover, studies have established that the coronavirus can
 22 survive up to three days on various surfaces.”). For this reason, the Ninth Circuit *sua*
 23 *sponte* ordered the immediate release of an immigration detainee with a pending petition
 24 for review of her removal order “[i]n light of the rapidly escalating public health crisis,
 25 which public health authorities predict will especially impact immigration detention
 26

27 ¹⁰ <https://www.co.fresno.ca.us/departments/public-health/covid-19>
 28

centers.” Xochihua-Jaimes v. Barr, No. 18-cv-71460, 2020 U.S. App. LEXIS 9069, (9th Cir. Mar. 24, 2020). See also Castillo, 2020 U.S. Dist. LEXIS 54425 (ordering release of certain immigration detainees due to the COVID-19 pandemic). Although in-person registration involves shorter durations of time than other custodial settings, that difference is not significant within the context of the COVID-19 pandemic because COVID-19 infection occurs quickly, and transmission can easily take place within the time period that Registrants are present in person at police and sheriff’s stations. E.g., Ortuño v. Jennings, No. 3:20-cv-02064, 2020 U.S. Dist. LEXIS 62030, at *6 (N.D. Cal. Apr. 8, 2020) (rejecting argument that threat of infection by COVID-19 is speculative because such infections “are rapidly increasing in the United States, including California, and, when introduced into a confined space, such as a nursing home, a cruise ship, and, recently, a naval aircraft carrier, it can rapidly spread. Indeed, it has quickly spread in a number of jails and prisons”); Perez v. Wolf, 2020 U.S. Dist. LEXIS 65450, *35 (N.D. Cal. Apr. 14, 2020) (“The mere fact that no cases have been reported in the Aurora Facility is irrelevant – it is not a matter of if COVID-19 will enter the facility, but when it will be detected there.”) See also Helling v. McKinney, 509 U.S. 25, 33 (1994) (“It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.”)

27. On or about April 6, 2020, Plaintiff John Doe #3, through counsel, telephoned the FPD to inquire whether Plaintiffs and other Registrants are required to appear in person for periodic updates despite the Governor’s Order as well as the common-sense directives of health care authorities. An FPD registration official confirmed that all Registrants are required to appear in person for periodic updates, regardless of their vulnerability due to one or more high-risk COVID-19 factors.

28. On or about April 15, 2020, Plaintiffs John Doe #1 and John Doe #2, through counsel, telephoned the FCSO to inquire whether Plaintiffs and other Registrants

1 are required to appear in person for periodic updates despite the Governor's Order as well
2 as the common-sense directives of health care authorities. An FCSO registration official
3 confirmed that all Registrants are required to appear in person for periodic updates,
4 regardless of their vulnerability due to one or more high risk COVID-19 factors.

5 29. In addition to being discretionary and neither required nor authorized by
6 Penal Code Section 290, Defendants' ongoing decision to require in-person registration
7 for periodic updates forces Plaintiffs and all Registrants to contravene the public safety
8 measures imposed by state and local government upon all residents of California,
9 including the current Order by the Governor of California. Defendants' decision
10 requiring in-person registration therefore threatens both vulnerable Registrants as well as
11 the larger population with which those Registrants interact, including the public, law
12 enforcement personnel, and their families.

13 30. On information and belief, there are registering agencies throughout
14 California, including the Los Angeles Police Department (LAPD), the agency with the
15 largest population of Registrants in the state, that are currently processing periodic
16 updates over the telephone. That is, the LAPD has completely stopped requiring
17 Registrants to register in person while the COVID-19 emergency measures are in place.
18 Instead, the LAPD has placed signs, including those attached hereto as Exhibit A, on the
19 exterior of its police stations confirming that the LAPD's registration policy is currently
20 "modified" to accommodate the COVID-19 emergency measures. (Exh. A.) Pursuant to
21 the LAPD's modified policy, Registrants "are not [] allowed in the station," and "[the
22 LAPD] will register [them] over the phone." (Exh. A.)
23

24 **FIRST CLAIM**

25 **(42 U.S.C. § 1983 – Fourteenth Amendment – Due Process)**

26 31. Plaintiffs re-allege paragraphs 1 through 30 of this Complaint as though
27 fully set forth herein.
28

1 32. Neither the California Sex Offender Registration Act, the federal Sex
2 Offender Registration and Notification Act, nor any other provision of law requires
3 Registrants to appear in person for periodic updates pursuant to California Penal Code
4 section 290.012.

5 33. Plaintiffs are required by Defendants to appear in person for periodic
6 updates pursuant to the policies challenged in this action. The requirement of in-person
7 registration place Registrants in constructive custody, thereby triggering Defendant's
8 duty to prevent restraints upon or injury to Plaintiffs' life and liberty pursuant to the
9 Fourteenth Amendment. That is, registration during periodic updates requires the
10 Registrant to be physically present in police and sheriff's stations for up to two hours,
11 during which time Registrants are interviewed by law enforcement, interrogated
12 regarding their offense and their present compliance with the law, frequently
13 photographed and finger printed, and must complete five or more pages of paperwork in
14 the presence of law enforcement. Under the policies of Defendants challenged herein,
15 Registrants are not free to leave during in-person registration because doing so would
16 result in criminal liability pursuant to the California Sex Offender Registration Act, Penal
17 Code section 290, *et seq.*, as well as the federal Sex Offender Registration and
18 Notification Act, 34 U.S.C. § 20901, *et seq.*

19 34. The state violates the rights of individuals when it subjects them to risk of
20 physical harm and disease during required interactions with law enforcement. E.g.,
21 Helling v. McKinney, 509 U.S. 25, 33 (1994) ("It would be odd to deny an injunction to
22 inmates who plainly proved an unsafe, life-threatening condition in their prison on the
23 ground that nothing yet had happened to them."). By virtue of their age and/or chronic
24 medical conditions including asthma and hypertension, Plaintiffs face an elevated risk of
25 death due to infection by COVID-19. Defendants' policies requiring in-person
26 registration during the COVID-19 pandemic constitute a deprivation of life and liberty
27 within the meaning of the Fourteenth Amendment by subjecting Plaintiffs and
28

1 Registrants, as well law enforcement and the general public, to a risk of infection by a
2 highly contagious and potentially deadly disease.

3 35. Furthermore, in the context of the COVID-19 pandemic, requiring
4 Registrants to appear in-person for periodic updates is an affirmative act which places
5 Plaintiffs and all Registrants in danger of possibly lethal infection by COVID-19, a
6 danger to which they would not otherwise be subject, a danger which is known and
7 obvious at all levels of state and local government, and to which Defendants are
8 deliberately indifferent. Wood v. Ostrander, 879 F.2d 583 (9th Cir. 1989); Pauluk v.
9 Savage, 836 F.3d 1117 (9th Cir. 2016). The risk of infection from COVID-19 in
10 custodial settings has been noted by District Courts, including one which noted that law
11 enforcement “[f]acilities are plainly not equipped to protect Petitioners from a potentially
12 fatal exposure to COVID-19. While this deficiency is neither intentional nor malicious,
13 should we fail to afford relief to Petitioners we will be a party to an unconscionable and
14 possibly barbaric result.” Thakker v. Doll, 2020 U.S. Dist. LEXIS 59459, at *27-*28
15 (M.D. Pa. Mar. 31, 2020)

16 36. Defendants commit these unconstitutional acts under color of authority of
17 law. Plaintiffs face the immediate threat of irreparable injury, for which no legal remedy
18 will suffice, by being deprived of their Fourteenth Amendment rights. Costa Mesa v.
19 United States, 2020 U.S. Dist. LEXIS 33650 (C.D. Cal. Feb. 21, 2020) (granting TRO
20 against placement of COVID-19 patients within city because possible exposure
21 “threat[ens] immediate and irreparable injury”). Thakker, 2020 U.S. Dist. LEXIS 59459,
22 at *21 (“Indeed, courts have even specifically held that COVID-19 constitutes an
23 irreparable harm that supports the grant of a TRO.”)

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SECOND CLAIM

(42 U.S.C. § 1983 – Eighth Amendment – Cruel and Unusual Punishment)

37. Plaintiff re-alleges paragraphs 1 through 36 of this Complaint as though fully set forth herein.

38. Plaintiffs are required by Defendants to appear in person for periodic updates pursuant to the policies challenged in this action. The requirement of in-person registration places Plaintiffs and all Registrants in constructive custody, thereby triggering Defendant's duty to prevent cruel and unusual punishment pursuant to the Eighth Amendment. That is, registration during a periodic update requires the Registrant to be physically present in police and sheriff's stations for up to two hours, during which time Registrants are interviewed by law enforcement, interrogated regarding their offense and their present compliance with the law, frequently photographed and finger printed, and must complete five or more pages of paperwork in the presence of law enforcement. Under the policies of Defendants challenged herein, Registrants are not free to leave during in-person registration because doing so would result in criminal liability pursuant to the California Sex Offender Registration Act, Penal Code section 290, *et seq.*, as well as the federal Sex Offender Registration and Notification Act, 34 U.S.C. § 20901, *et seq.*

39. COVID-19 is a highly infectious and potentially lethal disease that is easily transmitted in the community through contact with infected persons, or through contact with surfaces on which the virus can live for days or weeks. Persons infected with COVID-19 can transmit the coronavirus to their family members and to the general public without knowing they are infected. Infection by COVID-19 can produce severe and long-lasting respiratory symptoms that require hospitalization. Requiring Registrants to appear in person for periodic updates, and thereby subjecting them to possibly lethal infection by COVID-19, and rendering them carriers of the disease that may potentially infect their family members and anyone in the general public, constitutes cruel and unusual punishment in violation of the Eighth Amendment.

THIRD CLAIM

(28 U.S.C. §2201 – Declaratory Relief)

40. Plaintiff re-alleges paragraphs 1 through 39 of this Complaint as though fully set forth herein.

41. An actual controversy exists between Plaintiff and Defendants regarding the constitutionality of the policies of Defendants challenged in this action, as well as the interpretation of California Penal Code section 290.012. Specifically, the California Sex Offender Registration Act neither requires nor authorizes 30-day, 90-day, or annual registration updates to be completed in person. Therefore, Defendants lack authority to require Registrants to appear in person for periodic updates pursuant to California Penal Code section 290.012.

42. Plaintiffs are informed and believe and thereon allege that Defendants, as well as their deputies, officials, officers, agents, and employees, have failed to comply and continue to fail to comply with the law, and have abused and are continuing to abuse their discretion under the law, by requiring Registrants in vulnerable populations as defined by national and state health care authorities to appear in person for their periodic registration updates amidst the COVID-19 pandemic, as pled herein

43. Plaintiffs therefore seek a declaration of their rights under California and federal law, as well as a declaration of Defendants' duties under the Sex Offender Registration Act, California Penal Code section 290, *et seq.*, and of the scope of Defendants' discretion under that Act.

PRAYER FOR RELIEF

Based on the foregoing claims, Plaintiffs seek judgment against Defendants as follows:

a. That Defendants be presently and permanently enjoined from requiring persons required to register as a sex offender from appearing in person for 30-day, 90-

1 day, and annual updates (“periodic updates”) pursuant to California Penal Code sections
2 290.011 and 290.012 until the threat of COVID-19 has ended;

3 b. For a judgment declaring that California Penal Code sections 290.011 and
4 290.012 and other applicable law do not require persons required to register as a sex
5 offender to appear in person to complete periodic updates;

6 c. That Plaintiffs recover from the Defendants, under 42 U.S.C. § 1988, all of
7 Plaintiffs’ reasonable attorneys’ fees, costs and expenses of this litigation; and

8 d. That Plaintiffs recover such relief as the Court deems just and proper.
9
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11 Dated: April 28, 2020

LAW OFFICE OF JANICE M. BELLUCCI

13 By: /s/ Janice M. Bellucci
14 Janice M. Bellucci
15 Attorney for Plaintiffs
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EXHIBIT A

MODIFIED SEX REGISTRATION

CALL 818-374-9675

WE WILL REGISTER YOU OVER THE PHONE.

YOU WILL NOT BE ALLOWED IN THE STATION.

INSCRIPCIÓN DE DELINCUENTE SEXUAL

290PC

**DEVIDO AL CORONA VIRAL, INSCRIPCION PARA
DELIQUENTES SEXUAL SERA POR TELEFONO
NADA MAS! NADIE SERA PERMETIDO EN LA
ESTACION DE POLICIA. PUEDEN LLAMAR AL
NUMERO:**

(818) 374-9675

CIVIL COVER SHEET

Case 1:20-cv-00600-NONE-JDP Document 1-2 Filed 04/28/20 Page 1 of 2

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DOE #1, JOHN, an individual;
DOE #2, JOHN, an individual; and
DOE #3, JOHN, an individual

(b) County of Residence of First Listed Plaintiff Fresno
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Janice M. Bellucci, SBN 108911 - JMBellucci@aol.com
1215 K Street, 17th Floor
Sacramento, CA 95814

DEFENDANTS

Fresno Police Department, HALL, ANDREW, Chief; and
Fresno County Sheriff's Office, MIMS, MARGARET, Sheriff

County of Residence of First Listed Defendant Fresno
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1331 (federal question); 2201 (declaratory judgment)

Brief description of cause:

Violation of 14th Amend (Due Process clause), 8th Amend (cruel/unus. punish), and supplemental state law claim

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/28/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Janice M. Bellucci

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Case 1:20-cv-00600-NONE-JDP Document 1-2 Filed 04/28/20 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.