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14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA
16 SACRAMENTO DIVISION
17

18 DERRIL HEDRICK, DALE ROBINSON,
KATHY LINDSEY, MARTIN C. CANADA,
19 DARRY TYRONE PARKER, individually and
on behalf of all others similarly situated,

20 Plaintiffs,

21 v.

22 JAMES GRANT, as Sheriff of Yuba County;
23 Lieutenant FRED J. ASBY, as Yuba County
Jailer; JAMES PHARRIS, ROY LANDERMAN,
24 DOUG WALTZ, HAROLD J. "SAM"
SPERBEK, JAMES MARTIN, as members of
25 the YUBA COUNTY BOARD OF
SUPERVISORS,

26 Defendants.
27

Case No. 2:76-CV-00162-GEB-EFB

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION TO
ENFORCE CONSENT DECREE
AND FOR FURTHER REMEDIAL
ORDERS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Judge: Hon. Garland E. Burrell, Jr.
Date: November 21, 2016
Time: 9:00 a.m.
Crtrm.: 10, 13th Floor

Trial Date: None Set

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NOTICE OF MOTION

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 21, 2016, at 9:00 a.m., or as soon thereafter as the matter may be heard, Plaintiffs DERRIL HEDRICK, DALE ROBINSON, KATHY LINDSEY, MARTIN C. CANADA, and DARRY TYRONE PARKER, on behalf of themselves and the class they represent, will and hereby do move this Court to enforce the Consent Decree and issue further remedial orders based on serious ongoing constitutional violations at the Yuba County Jail.

This Motion is based upon this Notice of Motion and Motion to Enforce Consent Decree, the Memorandum of Points and Authorities in Support Thereon, the Declarations of Pablo Stewart, M.D., Phil Stanley, Gay Crosthwait Grunfeld, and Jennifer Stark, and the Proposed Order Granting Plaintiffs’ Motion to Enforce Consent Decree and for Further Remedial Orders, all filed herewith; all papers and pleadings on file in this action; and such other pleadings, oral argument and/or documentary evidence as may come before the Court upon the hearing of this matter.

Plaintiffs respectfully request that this Court issue the Proposed Order Granting Motion to Enforce and for Further Remedial Orders.

DATED: October 24, 2016

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/ Gay Crosthwait Grunfeld
Gay Crosthwait Grunfeld

Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

The Yuba County Jail in Marysville, California (the “Jail”) is a dangerous place, rife with constitutional violations. Most of the prisoners unfortunate enough to be confined there are pre-trial and immigration detainees who are not even serving a criminal sentence.

Decades after obtaining a Consent Decree and years after bringing ongoing problems to the attention of County Counsel, the Plaintiff class of prisoners seeks the Court’s intervention to stop the most harmful violations of their rights. These include the County’s deliberate indifference to suicide hazards, woefully inadequate medical and mental health care, segregation of the mentally ill including in unsanitary “rubber rooms” covered in blood and feces, and the lack of meaningful access to exercise and recreation. In the last 30 months alone, there have been at least forty-one suicide attempts at the Jail. In that same time period, prisoners with mental illness have been regularly placed in isolation cells with shuttered windows for days at a time and deprived of access to outdoor exercise for weeks on end. The Yuba County Grand Jury calls the oldest section of the Jail a “dungeon.” Seeking to rectify these and other serious conditions, Plaintiffs’ counsel wrote letters, provided expert recommendations, and conducted meetings to no avail. Plaintiffs’ counsel toured the Jail with highly regarded correctional and medical experts and interviewed hundreds of prisoners to no avail. Plaintiffs’ counsel presented a proposed remedial order to the County to no avail.

Every day, the men and women held at the Jail face intolerable and illegal risks to their lives and health. To address these harms, Plaintiffs ask the Court to review the evidence presented through this Motion and to enter an order requiring Defendants to adopt six remedial plans designed to remedy the most serious constitutional violations. The Proposed Order Granting Motion to Enforce and for Further Remedial Orders (“Proposed Order”), filed herewith, requires the prompt development and funding of an Intake Screening Plan, Health Care Implementation Plan, Suicide Prevention Plan,

1 Inpatient Care Plan, Staffing Plan, and Exercise and Recreation Plan. Unless the Jail
2 undertakes these serious remedial efforts, Plaintiffs will continue to be exposed to
3 unconstitutional and life-threatening conditions on a daily basis.

4 **I. YUBA COUNTY JAIL HAS A LONG HISTORY OF VIOLATING**
5 **PRISONERS' RIGHTS**

6 Yuba County Jail has a long history of violating prisoners' rights.¹ In March 1976,
7 Plaintiffs filed this action against the Sheriff of Yuba County, the Yuba County Jailer, and
8 members of the Yuba County Board of Supervisors ("Defendants"),² alleging that the Jail
9 subjected prisoners to cruel and unusual punishment and violated rights secured by the
10 First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the
11 United States. Declaration of Gay Crosthwait Grunfeld in Support of Plaintiffs' Motion to
12 Enforce Consent Decree and for Further Remedial Orders ("Grunfeld Decl."), filed
13 herewith, ¶ 2 & Ex. A. Among the violations identified by Plaintiffs were lack of exercise
14 and recreation, inadequate staffing, and inadequate medical and mental health care. *Id.*
15 Many of the claims alleged in 1976 ring true to this day. *See, e.g., id.*, Ex. A at ¶¶ 19, 22,
16 26, 30, 34, & 35.

17 In July 1976, the Court certified the Plaintiff class, consisting of "all prisoners at the
18 Yuba County Jail on March 24, 1976, or at any time during the pendency of this
19 lawsuit" Grunfeld Decl. ¶ 3, Ex. B at 1. On November 13, 1976, the Court granted

20
21 ¹ All types of arrestees, detainees, and inmates held at the Jail are hereinafter referred to as
"prisoners," "Plaintiffs," and/or "Class Members."

22 ² Rule 25(d) of the Federal Rules of Civil Procedure provides that when a public officer
23 being sued in his or her official capacity is replaced in his or her position, the officer's
24 successor is automatically substituted as a Defendant in the case. *See* Fed. R. Civ. P. 25(d).
25 Steven Durfor has replaced James Grant as Sheriff of Yuba County and therefore is a
26 Defendant in this case. Captain Brandon Barnes has replaced Lieutenant Fred J. Asby as
27 Yuba County Jailer and therefore is a Defendant in this case. Andy Vasquez, Jr., John
28 Nicoletti, Mary Jane Griego, Roger Abe, and Randy Fletcher have replaced James Pharris,
Roy Landerman, Doug Waltz, Harold J. "Sam" Sperbek, and James Martin as members of
the Yuba County Board of Supervisors and therefore are Defendants in this case.

1 Plaintiffs’ motion for a preliminary injunction related to Plaintiffs’ access to exercise and
2 recreation and motions for partial summary judgment, finding ongoing constitutional
3 violations. Grunfeld Decl. ¶ 91, Ex. TTT. In May 1979, the Court entered a
4 comprehensive consent decree (“the Consent Decree”) covering most aspects of the Jail’s
5 operations, including medical and mental health care, staffing, grievances, and exercise
6 and recreation, and providing for monitoring Jail conditions. Grunfeld Decl. ¶¶ 4-5 &
7 Ex. C.

8 In May 2013, Defendants filed a motion to terminate the Consent Decree pursuant
9 to the Prison Litigation Reform Act (“PLRA”), 18 U.S.C. § 3626(b)(1) & (b)(2). Dkt.
10 Nos. 95 & 96. On April 2, 2014, the Court issued an order denying the County’s motion to
11 terminate the Consent Decree, Dkt. No. 135, which was affirmed by the Ninth Circuit.
12 *Hedrick v. Grant*, 648 F. App’x. 715 (9th Cir. 2016). In upholding this Court’s decision,
13 the Ninth Circuit rejected Defendants’ argument that the Consent Decree was “flawed
14 because the court neither found any constitutional violation, nor stated that the remedy was
15 narrowly tailored.” *Id.* at 716. According to the Ninth Circuit: “This is incorrect. ... [A]t
16 a minimum, the Decree incorporates the Court’s earlier constitutional findings by citing
17 the decision which concluded that Defendants had violated Plaintiffs’ Fifth Sixth, Eighth,
18 and Fourteenth Amendment rights.” *Id.*

19 **II. CONDITIONS IN THE JAIL HAVE BECOME MORE DANGEROUS IN**
20 **RECENT YEARS WITH MISSION CHANGES, INCLUDING**
21 **REALIGNMENT AND THE LARGE NUMBER OF ICE DETAINEES IN**
22 **THE JAIL**

23 The Jail has a rated capacity of 426 beds. Grunfeld Decl. ¶ 67 & Ex. VV.³
24 Beginning in the 1990s, the Jail began renting beds to house immigration detainees. *Id.*

25 ³ According to California’s Board of State and Community Corrections (“BSCC”), in
26 December 2015, the most recent period available, the Jail’s highest count that month was
27 408 prisoners. The average daily population in December 2015 was 391 prisoners, of
28 which only 64 were sentenced and 327 were not serving a criminal sentence. Grunfeld
Decl. ¶ 1.

1 ¶ 7. Currently, these detainees make up approximately 50% of the Jail population. *See id.*
2 ¶ 9. Under the governing agreement between Immigration and Customs Enforcement
3 (“ICE”) and the County of Yuba, Defendants receive \$75.16 per detainee per day, resulting
4 in millions of dollars being paid to Defendants annually. *Id.* ¶ 8. In 2011, in response to
5 the United States Supreme Court decision in *Plata v. Brown* 563 U.S. 493 (2011),
6 California enacted AB 109, the Realignment Act of 2011, which re-allocated low-level
7 offenders to serve their commitment offenses in county jails across the state, including
8 Yuba’s. Realignment also provided for parole revocation terms to be served in county
9 jails. *Armstrong v. Brown*, 732 F.3d 955, 958-59 (9th Cir. 2013). According to the Yuba
10 County Grand Jury, the Jail that was “originally designed to house inmates for no more
11 than one year, is now housing some inmates for up to 5 years.” Grunfeld Decl., Ex. LLL
12 at 15. As a result of these developments, the Plaintiff Class includes pre-trial detainees,
13 prisoners sentenced to terms of incarceration in a county jail, parole violators, and
14 individuals held by ICE.

15 Consistent with the Consent Decree and pursuant to California Penal Code
16 Section 919(b), the Yuba County Grand Jury reviews Jail conditions. As the Grand Jury
17 Report for 2014-2015 found: (1) “Longer periods of incarceration, due to ...
18 Realignment[’s] transfer of state prisoners to local facilities ... and the extended stay of
19 ICE prisoners ... have increased the medical and mental health needs of inmates”;
20 (2) “[t]he Mental Health Professional (psychiatrist) although available by phone, is on site
21 only one day per week mainly to evaluate incoming inmates and update prescriptions”;
22 (3) “[t]here are no non-emergency or ongoing mental health services available to the
23 inmates”; (4) “[i]nmates diagnosed as needing treatment at a state mental hospital wait for
24 months to transfer. Suicidal inmates can stay in padded cells, with little or no comforts,
25 for weeks”; (5) in-house support groups were suspended two years ago; (6) there is no RN
26 on staff, despite such a position being required by Consent Decree; and (7) “the physical
27 layout of the jail raises safety issues for the staff and the inmates, most notably the section
28 built in 1962 known by staff and inmates as the ‘dungeon.’” Grunfeld Decl. ¶ 85 &

1 Ex. NNN at 42-45.

2 In the more than two years since the Court denied termination, Plaintiffs' newly
3 appointed counsel have uncovered serious constitutional violations at the Jail, through
4 interviews and/or correspondence with over two hundred class members about their
5 experiences at the Jail, and review of thousands of pages of Jail records, third party
6 inspection reports and audits, grant applications, and responses to Public Records Act
7 requests. Grunfeld Decl. ¶ 14. Plaintiffs' counsel has also toured the Jail with corrections
8 and mental health experts on three separate occasions, identifying deficiencies and hazards
9 at the Jail that conflict with the requirements of the Consent Decree and the Constitution.
10 *Id.*

11 In written correspondence spanning the period from February 2015 to September
12 2016, as well as during in-person meetings on March 24, 2015 and August 19, 2015,
13 Plaintiffs' counsel has repeatedly informed Defendants of serious violations of the
14 Consent Decree and the Constitution, including Defendants' failure to provide adequate
15 medical and mental health care and adequate access to outside recreation and exercise. *See*
16 Grunfeld Decl. ¶¶ 15, 17, 18, 24, 25, 30 & Exs. F, H, I, K, L, N. In response to such
17 correspondence, as well as in meetings and public submissions to the Yuba County Board
18 of Supervisors, Yuba County Grand Jury, the Community and Corrections Partnership, and
19 the Board of State and Community Corrections, Defendants have acknowledged that many
20 of the problems identified by Plaintiffs exist. *See* Grunfeld Decl. ¶¶ 16, 19, 20-23, 26-28,
21 81-84, 86; Declaration of Pablo Stewart, M.D. in Support of Plaintiffs' Motion to Enforce
22 Consent Decree and for Further Remedial Orders ("Stewart Decl."),⁴ filed herewith, Ex. K.

23 _____

24 ⁴ Due to the highly confidential and sensitive nature of the medical information described
25 in the Stewart Declaration, including information about suicidal attempts, suicidal
26 behavior, and medical and mental health treatment, Plaintiffs have submitted herewith a
27 Request to Seal Documents pursuant to Eastern District of California Local Rule 141. If
28 granted, Plaintiffs will file a redacted version of the Stewart Declaration that omits Class
Members' names.

1 Despite more than two years of meeting and conferring with Defendants about
2 ongoing violations of the Consent Decree and the Constitution, Defendants have made
3 little progress in improving Jail conditions. On September 20, 2016, Plaintiffs' counsel
4 wrote to Deputy County Counsel Courtney Abril outlining the most serious constitutional
5 violations uncovered through the two-year investigation. Grunfeld ¶ 20 & Ex. N. In that
6 letter, Plaintiffs' counsel enclosed a Proposed Stipulated Order and asked that the parties
7 meet within 30 days to discuss entering into the Order. *Id.* Defendants declined, seeking
8 additional time, and then retained outside counsel. *Id.* ¶¶ 31-32.

9 As outlined below, Plaintiffs need meaningful relief now. Among the many
10 serious, system-wide problems at the Jail, this Motion focuses on the violations that
11 currently pose the greatest risk of harm to Plaintiffs. Plaintiffs intend to seek additional
12 relief on other issues in the near future.

13 ARGUMENT

14 **I. THE COURT SHOULD ENFORCE THE CONSENT DECREE AND ORDER 15 ADDITIONAL RELIEF TO REMEDY ONGOING CONSTITUTIONAL 16 VIOLATIONS AT YUBA COUNTY JAIL**

17 Defendants' current policies and practices are in direct violation of key provisions
18 of Sections III, IV, V, and XIV of the Consent Decree. The Court has jurisdiction and the
19 authority to enforce compliance with this decree. *See Hedrick v. Grant*, 648 F. App'x 715
20 (9th Cir. 2016); *see also Hook v. State of Ariz., Dept. of Corrections*, 972 F.2d 1012, 1013
21 (9th Cir. 1992) ("A district court retains jurisdiction to enforce its judgments, including
22 consent decrees."); *Nehmer v. U.S. Dep't of Veterans Affairs*, 494 F.3d 846, 860 (9th Cir.
23 2007) ("It is well established that the district court has the inherent authority to enforce
24 compliance with a consent decree that it has entered in an order, to hold parties in
25 contempt for violating the terms therein, and to modify a decree.").

26 The Court also has the power to remedy the ongoing constitutional violations at the
27 Jail. Defendants are violating the Eighth Amendment by incarcerating Plaintiffs under
28 conditions posing a substantial risk of serious harm to Plaintiffs' health or safety (the
objective prong of the governing Eighth Amendment standard), and acting with deliberate

1 indifference, that is, with conscious disregard for that risk (the subjective prong). *See*
 2 *Farmer v. Brennan*, 511 U.S. 825, 834, 839-40 (1994). Defendants are also violating the
 3 Fifth and Fourteenth Amendments by subjecting ICE detainees, who comprise
 4 approximately one-half of the Jail’s population, and pretrial detainees, who comprise
 5 approximately one-third of the Jail’s population, to conditions that constitute unlawful
 6 punishment without due process of law. *See City of Revere v. Mass. Gen. Hosp.*, 463 U.S.
 7 239, 244 (1983); *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); *Zadvydas v. Davis*, 533 U.S.
 8 678, 690 (2001). With respect to these detainees, Plaintiffs need only show that
 9 Defendants are recklessly indifferent to the substantial risk of serious harm caused by the
 10 Jail’s inadequate medical and mental health care system and lack of access to exercise and
 11 recreation. *See Castro v. County of Los Angeles*, 833 F.3d 1060, 2016 WL 4268955, *7
 12 (9th Cir. Aug. 15, 2016) (en banc); *see* Section IV, *infra*.

13 **II. DEFENDANTS ARE DELIBERATELY INDIFFERENT TO PLAINTIFFS’**
 14 **MEDICAL AND MENTAL HEALTH NEEDS**

15 “A prison that deprives prisoners of basic sustenance, including adequate medical
 16 care, is incompatible with the concept of human dignity and has no place in civilized
 17 society. If government fails to fulfill this obligation, the courts have a responsibility to
 18 remedy the resulting Eighth Amendment violation.” *Brown v. Plata*, 563 U.S. at 511.
 19 Prisoners have a right to adequate care for serious medical and mental health needs.
 20 *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (“deliberate indifference to serious medical
 21 needs of prisoners constitutes ‘unnecessary and wanton infliction of pain’ proscribed by
 22 the Eighth Amendment”) (citation omitted); *see also Hoptowit v. Ray*, 682 F.2d 1237,
 23 1252-54 (9th Cir. 1982) (“The Eighth Amendment requires that prison officials provide a
 24 system of ready access to adequate medical care.”), *abrogated on other grounds by Sandin*
 25 *v. Conner*, 515 U.S. 472 (1995).

26 Conditions that significantly affect a person’s daily activities or cause chronic and
 27 substantial pain constitute serious medical needs, even if they are not life-threatening. *See*,
 28 *e.g., Ahktar v. Mesa*, 698 F.3d 1202, 1213-14 (9th Cir. 2012). Unsafe conditions that

1 “pose an unreasonable risk of serious damage to [a prisoner’s] future health” may also
 2 satisfy the objective prong of the deliberate indifference standard and show violation of the
 3 Eighth Amendment, even if the damage has not yet occurred and may not affect every
 4 prisoner exposed to the conditions. *See Helling v. McKinney*, 509 U.S. 25, 35 (1993). As
 5 the Supreme Court stated in *Helling*, prison officials may not “ignore a condition of
 6 confinement that is sure or very likely to cause serious illness and needless suffering the
 7 next week or month or year,” merely because no harm has yet occurred. *Id.* at 33.

8 Deliberate indifference “may appear when prison officials deny, delay or
 9 intentionally interfere with medical treatment.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th
 10 Cir. 2006) (citations and internal quotation marks omitted). Further, “in class actions
 11 challenging the entire system of mental or medical health care, courts have traditionally
 12 held that deliberate indifference can be shown by proving either a pattern of negligent acts
 13 or serious systemic deficiencies in the prison’s health care program.” *Madrid v. Gomez*,
 14 889 F. Supp. 1146, 1256 (N.D. Cal. 1995). A jail must make “reasonable efforts to avoid
 15 depriving the detainee from obtaining or continuing necessary medical or mental health
 16 care the detainee would have obtained or continued outside of the Jail.” *Graves v. Arpaio*,
 17 48 F. Supp. 3d 1318, 1326 (D. Ariz. 2014); *amended* No. 77-00479, 2014 WL 6983316
 18 (D. Ariz. Dec. 10, 2014).

19 Defendants’ entire system of providing medical and mental health care is deficient.
 20 As set forth below, Defendants have acted—and continue to act—with deliberate
 21 indifference to Plaintiffs’ serious medical needs.

22 **A. Defendants Have Failed to Comply with the Consent Decree’s Medical**
 23 **Intake Requirements and Are Deliberately Indifferent to the**
 24 **Importance of Identifying Plaintiffs’ Medical and Mental Health Needs**

25 A minimally adequate jail mental health system requires a systematic program for
 26 screening and evaluating prisoners to identify those in need of medical and mental health
 27 care. *See Coleman v. Brown*, 938 F. Supp. 2d 955, 970, n.24 (E.D. Cal. 2013) (quoting
 28 *Coleman v. Wilson*, 912 F. Supp. 1282, 1298 n.10 (E.D. Cal. 1995)); *see also Gray v.*
County of Riverside, No. 13-00444, 2014 WL 5304915, at *9 (C.D. Cal. Sept. 2, 2014)

1 (“An adequate intake screening assessment is a recognized component of a constitutionally
 2 adequate health care delivery system.”); *Madrid v. Gomez*, 889 F. Supp. at 1256-58
 3 (finding that inadequate intake screening contributed to deficiencies of constitutionally
 4 inadequate health care system).

5 The Consent Decree also requires Defendants to properly identify individuals with
 6 urgent medical needs. Specifically, Section V.C. of the Decree requires Defendants to
 7 properly identify: (1) any arrestee “who is unconscious, unable to walk by himself or
 8 herself, in need of obvious medical attention, or in need of immediate mental health
 9 services”; (2) any “new arrestee with a communicable disease or condition”; (3) any class
 10 member who “regularly takes prescription drugs”; (4) “[a]ny woman arrestee who
 11 indicates that she is or may be pregnant”; and (5) any person who requires a special diet.
 12 In addition, Section V.A. of the Decree dictates that health care personnel shall make
 13 medical decisions when they are present at the Jail.⁵ *Id.* at 13; Grunfeld Decl. ¶¶ 4, Ex. C at
 14 14-15.

15 Defendants’ intake and booking process creates an excessive risk of harm, both to
 16 prisoners who enter the jail with chronic conditions and/or infectious diseases, serious
 17 mental illnesses, substance abuse disorders, and/or suicidal ideations, and for those who
 18 risk being exposed to people with these conditions. *See* Stewart Decl. ¶¶ 27-80; *see*
 19 *Helling*, 509 U.S. at 35.

20 In March 2015, correctional health expert Pablo Stewart, M.D., toured the Jail to
 21 evaluate its mental health and medical system. Since that time, Dr. Stewart has reviewed
 22 numerous medical records, client declarations, jail incident reports, safety cell logs,
 23 exercise logs, and additional third party reports about the Jail. Based on his inspection and
 24 record review, Dr. Stewart has found that Defendants’ intake/booking system “fail[s] to
 25 _____

26 ⁵ Title 15 further requires that, “a screening shall be completed on all inmates at the time of
 27 intake” and “shall include but not be limited to medical and mental health problems,
 28 developmental disabilities, and communicable diseases.” Cal. Code Regs. tit. 15, § 1207.

1 accomplish the basic, necessary functions of an effective intake/booking process and, as a
2 result, place[s] prisoners at substantial risk of serious harm.” *Id.* ¶ 39.

3 According to Dr. Stewart, one of the most dangerous aspects of the Jail’s intake and
4 booking process is that it assigns custody officers to conduct the initial intake screening,
5 and therefore authorizes them to act as medical and mental health gatekeepers despite their
6 lack of any specialized medical or mental health training. *See* Grunfeld Decl., Exs. LL &
7 NN (YCJ Manual Order Nos. B-201 & C-155); *see also* Stewart Decl. ¶¶ 40-51
8 (discussing the dangers of permitting custody officers wide discretion to make crucial
9 medical and mental health decisions based on little more than cursory observations).
10 Declaration of Phil Stanley in Support of Plaintiffs’ Motion to Enforce Consent Decree
11 and for Further Remedial Orders (“Stanley Decl.”), filed herewith, ¶¶ 57-58 (describing
12 greater honesty between prisoners and medical and mental health staff than between
13 prisoners and custody officers). This is particularly dangerous because there are large gaps
14 in time when no trained medical staff is even at the Jail to consult with correctional staff
15 about admissions questions. Grunfeld Decl. ¶ 80 & Ex. III.

16 The Jail’s intake/booking process is also deficient in that it fails to use any specific
17 mental health screening forms or formal suicide risk assessment tools to identify
18 vulnerable individuals. Instead, the Jail uses general intake and booking forms which rely
19 heavily on prisoners’ self-reporting, do not sufficiently elicit information regarding a
20 prisoner’s mental health history, and allow individuals with mental illnesses,
21 developmental disabilities, substance abuse disorders, and suicidality to evade detection.
22 Stewart Decl. ¶¶ 53, 54, 55, 58 (providing examples of instances when the current
23 intake/booking process failed to properly identify individuals with mental illnesses,
24 substance abuse disorders, and individuals at risk of attempting to commit suicide).

25 The Jail also fails to refer and conduct timely medical and mental health
26 evaluations. *See, e.g.*, Grunfeld Decl. ¶ 61, Ex. PP. (Psychiatric Services, Health &
27 Human Services Policy No. CMS-001-031) (failing to include any specific period of time
28 during which the Jail psychiatrist must evaluate a new prisoner). Prisoners are frequently

1 forced to wait days or even weeks to see a jail psychiatrist, if they ever see a psychiatrist at
 2 all. Stewart Decl. ¶ 62. In addition, the Jail fails to refer and conduct timely medical
 3 evaluations of individuals at risk of suffering from a drug and/or alcohol overdose or from
 4 severe withdrawal. Stewart Decl. ¶ 63. Finally, there is no process for referring or
 5 implementing comprehensive suicidal evaluations by trained professionals. Stewart Decl.
 6 ¶ 65. This is highly dangerous because approximately one-third of suicides in jail facilities
 7 occur within the first 48 hours. *Id.* ¶ 31.

8 Finally, the Jail's intake/booking processes fail to elicit an accurate exchange of
 9 information due to the restricted space and lack of confidentiality in which these
 10 screenings take place. *See* Stewart Decl. ¶¶ 66-72.

11 Defendants are well aware of the importance of an accurate initial medical
 12 screening in ensuring timely medical assessment and treatment, as reflected by their
 13 policies and procedures. *See, e.g.*, Grunfeld Decl. ¶ 58 & Ex. MM (Y CJ Manual Order #
 14 C-101) (“[T]he intake screening process is an important cursory step that allows staff to
 15 identify risks or special needs that might immediately affect facility security or
 16 inmate/staff safety.”); *id.*, ¶ 59 & Ex. NN (Y CJ Manual Order No. C-155) (recognizing
 17 that individuals “who are intoxicated or under the influence of drugs are common in jails
 18 and are at more risk of death than most any other category of prisoner”). The fact that
 19 Defendants occasionally involve medical staff in intake screenings shows that they know
 20 trained staff can more effectively identify serious medical or mental health needs. *See,*
 21 *e.g.*, Grunfeld Decl. ¶ 57 & Ex. LL (Y CJ Order # B-201).

22 Defendants are also well aware of the deficiencies in the intake and booking
 23 process. Grunfeld Decl., ¶¶ 16, 21 & Exs. G, J. The Behavioral Health Director of
 24 Defendants' own mental health care provider, Sutter-Yuba Behavioral Health
 25 (“SYBH”), Tony Hobson, stated publically that: “[t]hrough a settlement Sutter County
 26 learned the need for mental health and general medical services to be on the same page and
 27 communicate regularly. Part of that is through conducting evaluations and screenings
 28 when they come into the jail.” Stewart Decl., Ex. K. Recognizing Yuba County's

1 vulnerability, Mr. Hobson recommended getting “a therapist to conduct screenings in the
2 Yuba County jail to help detour any settlements for Yuba County.” *Id.* Mr. Hobson
3 discussed these issues with the Sheriff and has acknowledged that some of the greatest
4 problems with mental health care at the Jail stem from the fact that “there isn’t a mental
5 health assessment/screening,” the Jail only refers prisoners to the jail psychiatrist if they
6 “look[] like they have a mental illness,” and, even then, “Dr. Zil ... is there only one day a
7 week on the weekends for a limited amount of time.” *See* CCP Minutes from October
8 2014, Stewart Decl., Ex. K. As a result, Mr. Hobson noted, “We are not catching folks
9 who might meet the needs of a mental health therapist.” *Id.*

10 A Special Monitor was appointed by the Central District of California in *Franco-*
11 *Gonzalez v. Holder*, No. 10-02211 (C.D. Cal.), to safeguard the rights of immigration
12 detainees with mental illness. She criticized the Yuba County Jail’s initial screening
13 process, stating: “At Yuba, new detainees are first screened by a booking officer, **not a**
14 **medical professional**, who performs a basic assessment for urgent medical needs,
15 including mental health needs. If that officer finds no indicia of urgent medical needs, the
16 detainee’s first contact with a medical professional generally takes place several days after
17 arrival, at the 14-day exam stage. To the Monitor’s knowledge, **at all of the other**
18 **facilities ... new detainees are screened by a registered nurse or other medical**
19 **professional within 12 hours of arrival.**” Grunfeld Decl. ¶ 66; & Ex. UU (emphasis
20 added).

21 Further, in March of 2015, in response to Plaintiffs’ concerns regarding inadequate
22 screening and evaluation, Sheriff Durfor simply wrote: “[W]e do not have staffing that
23 permits medical and mental health professionals to conduct intake screenings.” Grunfeld
24 Decl. ¶ 13, Ex. G. However, “jail officials show deliberate indifference to serious medical
25 needs if prisoners are unable to make their medical needs known to the medical staff.”
26 *Cabrales v. Cnty. of Los Angeles*, 864 F.2d 1454, 1461 (9th Cir. 1988), *vacated and*
27 *remanded*, 490 U.S. 1087 (1989), *reinstated*, 886 F.2d 235 (9th Cir. 1989) (internal
28 quotation marks and citation omitted).

1 By failing to adequately screen incoming prisoners for infectious diseases and
2 chronic conditions, mental illnesses and developmental disabilities, individuals who are at
3 risk of drug/alcohol overdose or in physical danger due to withdrawal, and individuals who
4 are at risk of suicide, Defendants are deliberately indifferent to Plaintiffs' serious medical
5 needs. *Lareau v. Manson*, 651 F.2d 96, 109 (2d Cir. 1981) (failure to adequately identify
6 individuals' medical and mental health needs at the time of intake can violate the Eighth
7 Amendment "since it represents an '(omission) sufficiently harmful to evidence deliberate
8 indifference to serious medical needs.'" (quoting *Estelle*, 429 U.S. at 106)); *see also*
9 *Hernandez v. County of Monterey*, 110 F. Supp. 3d 929, 942-43 (N.D. Cal. 2015)
10 (defendant jail's screening process, which involved corrections officers conducting health
11 screenings at intake that were "well beyond their ability to perform" and created "an
12 excessive risk of harm to all inmates").

13 Due to Defendants' deliberate indifference, Plaintiffs have suffered serious harm.
14 For example, one class member who is HIV-positive and has been diagnosed with several
15 mental health conditions including Bipolar Disorder, Borderline Personality Disorder, and
16 Mild Mental Retardation, was not identified as having HIV or any mental illness at the
17 time of intake/booking, did not receive a mental health assessment from a Jail psychiatrist
18 for almost two months after he was admitted to the Jail, and did not receive adequate
19 psychiatric medication for three and a half months, despite filing multiple grievances. *See*
20 Declaration of Jennifer Stark in Support of Plaintiffs' Motion to Enforce Consent Decree
21 and for Further Remedial Orders ("Stark Decl."),⁶ filed herewith, ¶ 8 & Ex. F; Stewart
22 Decl. ¶ 69. Prior to finally receiving appropriate psychiatric medication, this Plaintiff had
23 several outbursts and acts of self-harm—including cutting his wrists, banging his head on
24 _____

25 ⁶ Due to the highly confidential and sensitive nature of the medical records and incident
26 reports describing suicide attempts, suicidal behavior, and medical and mental health
27 treatment attached to the Stark Declaration, Plaintiffs have submitted herewith a Request
28 to Seal Documents pursuant to Eastern District of California Local Rule 141. If granted,
Plaintiffs will file the Stark Declaration under seal.

1 the wall, and having seizure-like symptoms requiring that he be taken to Rideout Memorial
2 Hospital for emergency medical care, which he attributed to being denied his psychiatric
3 medications. *Id.*

4 Another Plaintiff attempted suicide in October 2014 by hanging himself in the H-
5 tank shower. At the time of this Plaintiff's intake in June 2014, the Plaintiff reported
6 anxiety problems and depressive symptoms but was not flagged as any sort of suicide risk,
7 despite the fact that his mother called the same day and expressed concern about her son's
8 mental health, and that Plaintiffs' chief complaint in his previous psychiatric evaluation
9 was that his brother committed suicide by hanging himself the previous year. Stewart
10 Decl. ¶ 58; Stark Decl. ¶ 14 & Ex. L.

11 Unfortunately, the psychiatric distress, acts of self-harm, and risk of life-threatening
12 complications to which these Plaintiffs were subjected are just a few of many examples of
13 class members being placed in substantial risk of serious harm by virtue of the
14 deficiencies in the Jail's intake and booking process. Stewart Decl. ¶¶ 40-80. Defendants'
15 failure to implement robust intake and screening procedures, performed by trained medical
16 professionals in confidential settings, has and continues to put Plaintiffs' lives in jeopardy.

17 **B. Defendants Have Failed to Comply With the Consent Decree's Suicide**
18 **Prevention and Emergency Response Provisions, and Are Deliberately**
19 **Indifferent to Prisoners' Risk of Suicide and Self-Harm**

20 The risk of suicide in local jails like Yuba County Jail is more than three-and-a-half
21 times higher than the suicide rate for the general population. *See* Stewart Decl. ¶ 81 &
22 Ex. E. Suicide rates and incidents of self-harm "are much higher for people in segregation
23 than those in the general prison population." Grunfeld Decl. Ex. YY at 17; Stewart Decl.
24 ¶ 96.

25 "To state the obvious, 'suicide is a serious harm.'" *Coleman*, 938 F. Supp. 2d at
26 975 (quoting *Estate of Miller ex rel. Bertram v. Tobiasz*, 680 F.3d 984, 989 (7th Cir.
27 2012)). Officials at facilities where there are known suicide risks "are required to take all
28 reasonable steps to prevent the harm of suicide." *Id.* at 975 (finding ongoing deliberate

1 indifference for failure to improve suicide prevention); *cf. Plata*, 563 U.S. at 520
 2 (describing evidence of two suicides by hanging that occurred in cells “identified as
 3 requiring a simple fix to remove attachment points that could support a noose”).

4 The Consent Decree also contains several provisions that require Defendants to
 5 minimize the risk of prisoners committing suicide or engaging in acts of self-harm at the
 6 Jail. For example, Section V.R. of the Consent Decree requires a mental health counselor
 7 “to take steps to assure the safety of an inmate who indicates that he or she may attempt to
 8 commit suicide or to harm another.” Grunfeld Decl. ¶ 4 & Ex. C at 26. Section V.G. of
 9 the Consent Decree requires that “[e]mergency ... medical[] and psychiatric care ... be
 10 available twenty-four hours per day” and that “Jailors must be familiar with these
 11 guidelines and also must be available to provide first-aid care and cardiopulmonary
 12 resuscitation.” *Id.* at 20. In addition, Section V.J. requires that the Jail “be maintained in a
 13 safe and sanitary condition,” which includes the elimination of safety hazards. *Id.* at 22.

14 **1. Defendants Are Deliberately Indifferent to Suicide Hazards** 15 **Throughout the Jail**

16 The Old Jail—which was constructed in 1962 and consists primarily of rows of
 17 linear tanks/cells with metal bars and virtually no windows—is rife with suicide hazards.
 18 These suicide hazards include significant access points, exposed beams, metal bars, and
 19 fixtures that could be used to attempt suicide. Stewart Decl. ¶ 133; Declaration of Phil
 20 Stanley in Support of Plaintiffs’ Motion to Enforce Consent Decree and for Further
 21 Remedial Orders (“Stanley Decl.”), filed herewith, ¶¶ 44-46. The new portion of the Jail,
 22 which was constructed in the mid-1990s, also contains rampant suicide hazards. For
 23 example, “there is a lack of accountability regarding the issuance of razor blades, the
 24 availability of plastic cutlery, and access to toxic chemical cleaning solution, all of which
 25 pose serious risks for prisoners’ self-harm.” Stewart Decl. ¶ 143. In addition, there are
 26 several blind spots out of the Jail’s normal area of observation, particularly in the
 27 administrative segregation units and medical cells. *See* Stewart Decl. ¶ 141 & Ex. Q; *id.*
 28 ¶ 144 & Ex. R; Grunfeld Decl. ¶ 82 & Ex. KKK, § 5 at 6-7. Consequently, individuals

1 have managed to commit significant acts of self-harm, even in the holding cells and the so-
2 called “safety cells,” through bringing razor blades into the cells, using plastic cutlery to
3 cause self-harm, or attempting to inflict self-harm through running into walls and doors or
4 use bed sheets, socks, or pieces of the wall for strangulations and/or hanging. Stewart
5 Decl. ¶¶ 129, 145-147. Defendants recognize the high risk of suicide in the Jail.
6 Defendants’ counsel has written: “[c]ertainly suicide prevention and emergency response
7 is a major concern in our Jail, as it is in any penal institution. Jails receive people who are
8 often substance abusers, the emotionally or mentally unstable, and who can be at low
9 points in their lives.” Grunfeld Decl. ¶ 19 & Ex. J at 2. Nevertheless, Defendants have
10 taken few steps to eliminate suicide hazards throughout the old and new portions of the
11 Jail.

12 In the last two years, multiple class members have attempted to hang themselves
13 from exposed beams in the shower and bathroom area in the H-tank of the Old Jail. *See*
14 Stewart Decl. ¶¶ 134-135 & Ex. P; Stark Decl. ¶¶ 14, 17, 29, 35 & Ex. L, O, AA, GG;
15 Stanley Decl. ¶ 46. Yet, Defendants still have not eliminated all tie off points in the
16 shower area, made it fully-suicide resistant, or made any other modifications to the shower
17 areas in the G, I, J, K, or L tanks. Stewart Decl. ¶ 137; Stanley Decl. ¶ 46 & Exs. E, F.
18 Further, Defendants concede that each of the barred cells in the Old Jail could be used by
19 prisoners wishing to hang themselves, yet have made no efforts to reduce this risk. *See*
20 Grunfeld Decl. ¶ 19 Ex. J; Stewart Decl. ¶ 137; Stanley Decl. ¶ 47. There have been at
21 least 41 suicide attempts at the Jail in the last 30 months. Stark Decl. ¶ 29. Moreover,
22 Defendants’ system of indirect supervision of prisoners throughout the Old Jail continues
23 to cause delays in emergency responses as it takes several minutes for deputies to travel
24 from the New Jail to the Old Jail. Stewart Decl. ¶ 168. When responding to someone who
25 has attempted to commit suicide, seconds matter. *Id.*

26 Defendants also have not taken adequate steps to reduce access to razor blades,
27 toxic cleaning supplies, and other items that prisoners’ at risk of committing suicide might
28 use to inflict serious self-harm. All of these dangers are made worse by the fact that Jail

1 policy requires that custody staff conduct health and welfare checks only once every hour.
 2 *See* Stewart Decl. ¶ 142. The policy also does not mandate that the security checks be
 3 conducted at intermittent and unpredictable times. *Id.* As a result of Defendants’ acts and
 4 omissions, Plaintiffs continue to be at risk of committing serious acts of self-harm and/or
 5 suicide.

6 **2. Defendants Are Deliberately Indifferent to the Risk of Suicide**
 7 **and Self-Harm Caused by Placing Plaintiffs with Mental Illnesses**
 8 **in Administrative Segregation**

8 Federal courts have repeatedly recognized the severe risk of harm to seriously
 9 mentally ill prisoners housed in segregation or isolation. *See, e.g., Madrid*, 889 F. Supp. at
 10 1265-66 (“For [seriously mentally ill] inmates, placing them in [segregation] is the mental
 11 equivalent of putting an asthmatic in a place with little air to breathe.”); *see also Coleman*
 12 *v. Brown*, 28 F. Supp. 3d 1068, 1099 (E.D. Cal. 2014) (“[P]lacement of seriously mentally
 13 ill prisoners in the harsh, restrictive and non-therapeutic conditions of California’s
 14 administrative segregation units for non-disciplinary reasons for more than a minimal
 15 period ... violates the Eighth Amendment.”).

16 The conditions in the Jail’s administrative segregation units—which include the A-
 17 pod for men and the S-tank for women—as well as the medical isolations cells (“M-cells”)
 18 (hereinafter collectively referred to as “administrative segregation”) are isolating and
 19 dangerous for all prisoners, but especially for prisoners with mental illnesses. Individuals
 20 in the Jail’s administrative segregation units are generally subjected to extreme conditions
 21 of solitary confinement—that is, confinement in a cell for 23 or more hours each day with
 22 limited social interaction and environmental stimulation—often for weeks or months at a
 23 time. Stewart Decl. ¶ 92, 92; Stanley Decl. ¶ 42. In the men’s administrative segregation
 24 cells, there are no exterior windows. Stewart Decl. ¶ 91 & Ex. L. In the women’s
 25 administrative segregation cells, the few windows are opaque and fail to allow for any
 26 natural light. *Id.* ¶ 91 & Ex. M. There is no dayroom so women are confined to a dark,
 27 dank, narrow hallway with only a small shower and telephone. *Id.*, ¶ 94 & Ex. M. In the
 28 medical holding cells, there is no day room, the only windows are generally covered and,

1 even when uncovered, look into a narrow hallway illuminated only by fluorescent lights.
2 *Id.* ¶ 91.

3 Subjecting individuals to administrative segregation such as this “produces a litany
4 of negative impacts, including: hypersensitivity to stimuli, distortions and hallucinations,
5 increased anxiety and nervousness, diminished impulse control, severe and chronic
6 depression, appetite loss and weight loss, heart palpitations, talking to oneself, problems
7 sleeping, nightmares, self-mutilation, difficulties with thinking, concentration, and
8 memory, and lower levels of brain function” Stewart Decl. ¶ 96; Grunfeld Decl. ¶ 70
9 & Ex. YY at 17. The harmful effects of segregation are “compounded for people with
10 mental illness, who make up one-third to one-half of all incarcerated people in segregated
11 housing.” *Id.*

12 According to Dr. Stewart, “mentally ill prisoners are especially vulnerable to
13 isolation and stress-related regression, deterioration, and decompensation that worsens
14 their psychiatric conditions and intensifies their mental health-related symptoms and
15 maladies (including depression, psychosis, and self-harm).” Stewart Decl. ¶ 106. For
16 these reasons, professional health organizations have called for the end of solitary
17 confinement of the seriously mentally ill, or, at a minimum, to limit its use to a last resort,
18 and only under strict controls with enhanced monitoring and significant out-of-cell time.
19 *See* Grunfeld Decl. ¶ 71 & Ex. ZZ; Stewart Decl. ¶ 105.

20 Defendants are well aware of the risks presented by housing individuals with mental
21 illnesses in administrative segregation. On February 10, 2015, Plaintiffs’ counsel sent a
22 letter to Defendants describing the dangers of the Jail’s segregation practices, and attached
23 a July 2, 2014 letter sharing recommendations made to Sutter County following the
24 settlement of a lawsuit relating to the death of a mentally ill prisoner in segregation.
25 Grunfeld Decl. Ex. F. In response, Sheriff Durfor acknowledged this issue, stating: “On
26 the subject of inmates with mental illness being placed in segregated cells, **I agree that**
27 **such inmates should not be segregated whenever possible.**” Grunfeld Decl. ¶ 16 &
28 Ex. G at 2 (emphasis added). Similarly, Defendants’ counsel has conceded:

1 You raise an issue concerning the “administrative segregation” of inmates
 2 with mental health issues. We are certainly aware of this issue and it goes
 3 hand in hand with ... the difficulty in getting mentally ill inmates into some
 4 more suitable facility. In keeping with the “we do the best we can with what
 5 we’ve got” philosophy, the Jail staff does its best to accommodate the mental
 6 health needs of an inmate, but keeping in mind other issues of the safety of
 7 the inmate, the safety of other inmates, the safety of the staff, and physical
 8 resources. **Yes, there have been occasions where a floridly mentally ill
 9 inmate has been held in a single cell ..., but only as a last resort where
 10 those safety concerns take paramount importance.**

11 Grunfeld Decl. ¶ 19 & Ex. J at 3 (emphasis added).

12 Defendants’ awareness of the dangers of placing individuals with mental illnesses
 13 in segregation is further reflected by the fact that, in 2015, Defendants revised their policy
 14 of **requiring** that all individuals with mental illnesses be segregated. *See* Grunfeld Decl. ¶
 15 69 & Ex. WW (YJC Order No. D-401, Rev’d Aug. 13, 2014). Instead of requiring
 16 segregation, the revised policy states only that an individual’s developmental disability or
 17 mental illness is an explicit factor that “should be **considered** when identifying
 18 housing.” *Id.* (Rev’d June 12, 2015) (emphasis added). However, it does not appear that
 19 the Jail has revised its other policies that call for mandatory segregation of individuals with
 20 mental illnesses or developmental disabilities. *See, e.g.,* Grunfeld Decl. ¶ 58 & Ex. MM (YJC
 21 Order No. C-101) (“Mentally disordered inmates **shall** be housed separate from other
 22 inmates”); *id.*, ¶ 72 & Ex. AAA (YJC Manual, Medical Isolation, Order No. D-211 § IX)
 23 (“Mentally disordered persons **shall** be segregated.”).

24 Further, as a matter of practice, Defendants appear to continue housing Plaintiffs
 25 with the most serious mental illnesses and who are most clinically unstable in segregation
 26 units **because** of their mental illness. *See* Stark Decl. ¶ 30 & Ex. BB; Stewart Decl. ¶ 115
 27 (listing nine examples since May of 2016 in which custody officers have placed Plaintiffs
 28 in segregation specifically due to their mental health issues). Even in instances in which
 the Jail recognizes that an individual with mental health issues should be housed with other
 people, the Jail still often places the person in segregation. *See* Stewart Decl. ¶ 116; Stark
 Decl. ¶ 30, Ex. BB. Plaintiffs are also frequently held in administrative segregation for
 prolonged periods of time. *See, e.g.,* Grunfeld Decl. Ex. GG (prisoner held in A-pod for

1 approximately 5 months); Stewart Decl. ¶¶ 265 (describing prisoner who was “quickly
2 and repeatedly pacing back and forth in his medical isolation cell while appearing actively
3 psychotic and agitated” who had been held in a medical isolation cell for several months).
4 Rather than seek to protect prisoners from the risks posed by administrative segregation,
5 Defendants appear to use it in ways that markedly increase the risk that prisoners will harm
6 themselves. Defendants persist in their constitutionally intolerable scheme, despite being
7 well aware of the resultant substantial risks of serious harm to the Plaintiff Class.

8 Defendants also fail to engage in practices known to reduce the risks created by
9 administrative segregation, such as providing adequate structured and unstructured out-of-
10 cell time and utilizing a suicide risk assessment tool. *See* Section III, *infra*; Stewart Decl.
11 ¶¶ 52, 107-110; Stanley Decl. ¶ 42. According to Dr. Stewart, “[t]his lack of access to
12 exercise for individuals in administrative segregation is particularly troubling for
13 individuals with mental illnesses, as depriving individuals with mental illness of
14 opportunities to leave their cell and exercise exacerbates symptoms of mental illness and
15 feelings of hopelessness, isolation, and despair.” Stewart Decl. ¶ 109.

16 As a result of Defendants’ deliberate indifference, numerous Plaintiffs subjected to
17 administrative segregation have experienced a worsening of their mental health symptoms
18 and committed serious, life-threatening acts of self-harm including slitting their wrists,
19 banging their head against the walls, ingesting poisonous chemicals, and attempting to
20 hang themselves. *See* Stewart Decl. ¶¶ 98, 143; Grunfeld Decl. ¶ 43 & Ex. X at 2; Stark
21 Decl., Exs. U, X, AA. For example, Russell Ross, a 42-year old man who self-reported
22 that he suffers from depression and schizophrenia was held in administrative segregation
23 during his entire five month stay at the Jail (aside from when he was held in a safety cell),
24 despite the fact that Mr. Ross requested to transfer out on several occasions. Grunfeld
25 Decl. ¶ 52, Ex. GG. According to Mr. Ross, being subjected to administrative segregation
26 made him “feel extremely isolated ... and lonely ... more depressed.” *Id.* ¶ 16. On July
27 18, 2014, he attempted to commit suicide by slitting his wrists and drinking an ice pack.
28 *Id.* ¶ 10. Another Plaintiff contacted a deputy in an act of desperation stating, “I feel like

1 hurting myself,” and explained that “he could not stand being in A-pod anymore and
2 needed to [be moved to] B-pod because he felt like he would han[g] himself in A-pod.”
3 Stark Decl. ¶ 31 & Ex. CC. Approximately two weeks later, this Class Member attempted
4 to commit suicide by hanging himself in administrative segregation. Stark Decl. ¶ 29 &
5 Ex. AA.

6 **3. Defendants Are Deliberately Indifferent to the Risk of Suicide**
7 **and Self-Harm Caused by Placing Prisoners in Isolation Cells**

8 The Jail’s only suicide-safe housing consists of two padded isolation/“safety cells”
9 that are approximately 7 feet by 7 feet. *See* Grunfeld Decl. ¶ 67 & Ex. VV. Prisoners
10 colloquially refer to each isolated “safety cell” as a “rubber room” because of each cell’s
11 padded walls and padded floor. The Jail’s “safety cells” are extraordinarily anti-
12 therapeutic and punitive. They do not have any features (i.e., bed, sink, desk) save for a
13 grate in the ground into which prisoners are expected to relieve themselves. *See* Stewart
14 Decl. ¶ 121 & Ex. N. Prisoners are forced to sleep, sit, and eat on the same floor on which
15 they must use the bathroom. *Id.*

16 Defendants are aware of the risks presented by placing individuals in a “safety cell.”
17 In fact, the Jail’s Safety Cell policy explicitly states that, “[e]ach year a significant number
18 of inmates throughout the country die in safety cells. Individuals who are placed in safety
19 cells are one of the highest risk groups for in custody death due to a suicide or medical
20 emergency.” Grunfeld Decl. ¶ 69 & Ex. XX (YCJ Manual Order No. C-154, § IX).

21 Prisoners placed in the safety cells are denied nearly all privileges and human
22 contact. Stewart Decl. ¶ 122. They are not provided with showers, any out of cell time,
23 exercise, or property. *Id.* Their only connection to the outside world is through a small
24 slot in the wall that is connected to the deputies’ office area—through which deputies can
25 conduct safety checks without having any direct interaction with a prisoner—and a small
26 window that looks onto the hallway, but is often covered by metal shutters. *Id.* According
27 to Dr. Stewart, “[w]hen these shutters are closed, the cells are effectively turned into
28 sensory deprivation boxes.” *Id.* In addition, these isolation cells can be quite unsanitary,

1 as they are also frequently covered in feces and/or blood. Stewart Decl. ¶ 126.

2 As explained by Dr. Stewart, “[t]he punitive nature of the ‘safety cells’ increases
3 the risk of suicide in two very dangerous ways. First, the conditions increase prisoners’
4 suicidality, which thereby increases the risk that prisoners who are already expressing
5 suicidal ideations will follow through on their suicidal feelings. Second, punitive
6 conditions in the ‘safety cells’ increase the likelihood that a suicidal individual will not
7 report feelings of suicidality in order to avoid being placed in a ‘safety cell’ or to be
8 released from a ‘safety cell.’” *Id.* ¶ 127. Both of these dynamics have manifested in class
9 members committing acts of self-harm. *See, e.g.*, Grunfeld Decl. ¶ 45 & Ex. Z
10 (Declaration of Xavier Esquivel explaining that when he was placed in the safety cell, he
11 was so afraid that he started banging his head against the wall again and again, trying to
12 kill himself); *see also* Stark Decl. ¶ 4 & Ex. B (showing that class member sliced his left
13 inner arm with a hidden razor blade while in a safety cell and proceeded to draw on all four
14 walls with his blood).

15 Despite Defendants’ recognition of the serious dangers to which Plaintiffs are
16 exposed by virtue of being placed in “safety cells,” Defendants place no limit on the
17 amount of time that a prisoner may be held in an isolation cell. As a result, safety cell logs
18 and medical records show that individuals are regularly held in “safety cells” for more than
19 24 hours at a time, and are frequently even held in “safety cells” for several days at a time
20 or more than a week. Stewart Decl. ¶ 154; Grunfeld Decl. Ex. XX; *see, e.g.*, Stark Decl.
21 ¶ 32 & Ex. DD. According to Dr. Stewart, “placement of an individual in a safety cell for
22 more than 24 hours, particularly if that person is experiencing suicidal ideations, has a
23 serious mental illness, or is gravely disabled, increases a patient’s risk of decompensation
24 and places patients at substantial risk of serious harm.” Stewart Decl. ¶ 155.

25 Defendants’ safety cell policy also permits a suicidal prisoner to be kept in a “safety
26 cell” for up to 24 hours without any evaluation by mental health care staff, *see* Grunfeld
27 Decl., Ex. XX (YCJ Order No. C-154, §§ III & V.B.), and up to 12 hours without a
28 medical assessment, *id.* at § V.A. However, according to Dr. Stewart, “safety cell”

1 placements should be treated as a medical or mental health emergency because the
2 behavior that prompts safety cell placement may be symptomatic of serious life-
3 threatening medical problems. Stewart Decl. ¶ 156.

4 The Jail’s “safety cell” policy does not specify what level provider is authorized to
5 provide a mental health evaluation “for treatment or retention” in a “safety cell” when such
6 evaluations are eventually provided, nor does it specify whether evaluations must be in in-
7 person or can be conducted over the telephone. Stewart Decl. ¶ 158. In practice,
8 unlicensed crisis counselors without direct supervision are frequently given the authority to
9 recommend placement in, or removal from, “safety cells.” *Id.*; Stark Decl. Ex. EE.
10 According to Dr. Stewart, “[b]y permitting low-level providers to recommend, evaluate,
11 and discharge suicidal prisoners from ‘safety cells,’ the Jail places suicidal prisoners at risk
12 of serious harm.” Stewart Decl. ¶ 159.

13 The Jail’s safety cell policy does not direct mental health staff to offer any form of
14 mental health treatment to individuals being held in a “safety cell,” despite the fact that
15 prisoners held in a “safety cell” are often in the greatest degree of crisis and need as much
16 contact and therapeutic intervention by trained mental health staff as possible. Stewart
17 Decl. ¶ 160. The lack of mental health treatment at a time when prisoners are most
18 vulnerable can further exacerbate thoughts of self-harm.

19 Instead of relying on “safety cells,” the Jail should develop more effective suicide
20 prevention and emergency response policies and transfer class members to inpatient care
21 when their needs surpass what the Jail can provide. Defendants lack a policy or protocol
22 for suicide watch, which is necessary to ensure that certain acutely suicidal prisoners do
23 not engage in self-harm. *See* Stewart Decl. ¶ 150. The Jail also does not have any policy
24 requiring that an individual who is identified as a suicide risk be seen by a mental health
25 professional within a certain period of time and provided mental health treatment.
26 Although YCJ Order No. D-204, which deals with “treatment of ill or injured prisoners,”
27 states that, if a psychiatric emergency arises, SYBH should be contacted so that they can
28 make arrangements for care, and Section III of the Jail’s Safety Cell Policy states that

1 “[i]nmates found unable to be cared for adequately within the jail shall be transferred to
2 Yuba Sutter Mental Health as soon as possible,” it does not appear that class members are
3 ever actually transferred to SYBH for evaluation and treatment. Grunfeld Decl.,
4 Exs. XX & BBB (YCJ Manual Order Nos. C-154 and D-204); Stewart Decl. ¶ 152.
5 Finally, the Jail fails to take adequate measures to ensure that deputies are able to respond
6 to emergencies as quickly and effectively as possible. *See* Stewart Decl. ¶¶ 170-171;
7 Stanley Decl. ¶ 62.

8 Accordingly, Defendants’ acts and omissions, which include failing to eliminate
9 known safety hazards throughout the Jail, placing individuals with mental illnesses in
10 administrative segregation without taking into account their particular mental health needs,
11 placing individuals in crisis in punitive, counter-therapeutic safety cells for excessively
12 long periods of time, and failing to develop adequate suicide prevention and emergency
13 response policies constitutes deliberate indifference to Plaintiffs’ risk of suicide and self-
14 harm at the Jail.

15 **C. Defendants Are Deliberately Indifferent to Plaintiffs’ Need for Adequate**
16 **Outpatient Medical and Mental Health Care**

17 “[P]rison officials must ‘provide a system of ready access to adequate medical
18 care,’ including mental health care, that provides access to medical staff who are
19 competent to examine inmates, diagnose illnesses, and treat medical problems or refer
20 inmates to those who can.” *Graves*, 48 F. Supp. 3d at 1335 (*quoting Hoptowit*, 682 F.2d
21 at 1253). In addition, “the Eighth Amendment prohibits deliberate indifference not only to
22 an inmate’s current health problems, but also to conditions of confinement that are very
23 likely to cause future serious illness and needless suffering.” *Id.* (citing *Helling v.*
24 *McKinney*, 509 U.S. at 33. The Consent Decree specifically requires that prisoners at the
25 Jail be provided “outpatient physical health care” and “inpatient and outpatient mental
26 health care as needed.” Grunfeld Decl. ¶ 4 & Ex. C at 12, § V.A.3.

27 Defendants are well aware that the Jail’s health care system is deficient in numerous
28 ways. Defendants have stated that, while “conceptually the County of Yuba agrees with

1 [Plaintiffs] ... that consistent and responsive health care” is a “good thing[],” Defendants
2 claim that their limiting factor is budget. Grunfeld ¶ 23 & Ex. J at 4. However, inadequate
3 funding is not a valid defense to a claim for prospective relief of Eighth and Fourteenth
4 Amendment violations. *Peralta v. Dillard*, 744 F.3d 1076, 1083 (9th Cir. 2014).

5 **1. Defendants’ Medication Practices Place Plaintiffs At Risk of**
6 **Serious Harm**

7 Defendants’ policies and practices regarding medications are deficient and
8 dangerous in a number of harmful ways. As Dr. Stewart found in his review of patient
9 records, Defendants frequently delay and/or deny the continuation of community-
10 prescribed medications without a face-to-face evaluation and a documented clinical
11 justification, resulting in life-threatening emergency situations and unnecessary suffering.
12 Stewart Decl. ¶ 198; *see also id.* ¶¶ 189-191; Stark Decl. Exs. A, C; Grunfeld Decl. ¶ 50 &
13 Ex. EE. Defendants also appear to engage in a dangerous 30-day detoxification process
14 for prisoners who arrive at the Jail intoxicated or with a history of drug or alcohol abuse.
15 Stewart Decl. ¶ 194. It also appears that prisoners have a difficult time obtaining
16 prescription medications if there has been any gap in their taking this medication while in
17 the community. *Id.* ¶ 197. According to Dr. Stewart, “[t]hese deficiencies are
18 tremendously dangerous because, for prisoners who were taking psychotropic medications
19 in the community, any interruption of medication can cause a prisoner to mentally
20 decompensate, may result in a permanent worsening of their underlying mental illness, and
21 may make future treatment more difficult and potentially less efficacious.” *Id.* ¶ 198.
22 “Similarly, for prisoners who were taking prescription medication for chronic conditions
23 and other medical problems in the community, any interruption of medication can interfere
24 with a prisoner’s management of his or her condition or recovery and, for certain
25 medications, place prisoners in grave danger.” *Id.* ¶ 198.

26 Defendants’ systematic failure to continue Plaintiffs’ community-prescribed
27 medication in a timely manner constitutes deliberate indifference. *Lavender v. Lampert*,
28 242 F. Supp. 2d 821, 842 (D. Or. 2002) (“Deliberate indifference may occur when prison

1 officials deny, delay, or intentionally interfere with medical treatment.”); *see also Graves*
2 *v. Arpaio*, No. CV-77-00479, 2008 WL 4699770, at *32 (D. Ariz. Oct. 22, 2008).

3 Defendants also lack an adequate system of timely monitoring the efficacy of
4 prisoners’ medications and adequately responding to ineffective medications. For
5 example, the Jail’s medication policies fail to include time frames within which a Jail
6 physician or psychiatrist is required to follow-up with patients after prescribing new
7 medication or after a prisoner has refused or missed medication to evaluate if the person’s
8 medication is working and whether the person is experiencing any side effects. *See*
9 *Stewart Decl.* ¶ 199; *Grunfeld Decl.*, ¶ 77 & Ex. FFF (YCJ Medical Manual No. A-3;
10 Health & Human Services Policy Number CMS-002-07). It appears that the Jail
11 psychiatrist will, at times, continue psychiatric medication without a clinical justification,
12 despite reports from a patient that the medication is not working. *Stewart Decl.* ¶ 201;
13 *Stark Decl. Ex. B.* As a result, a prisoner with a known history of serious mental illness
14 and prior suicide attempts at the Jail refused medication and attempted to commit suicide.
15 *See id.*

16 Defendants’ failure to maintain a system of timely monitoring the efficacy of
17 prisoners’ medications and adequately responding to ineffective medications also
18 constitutes deliberate indifference. *Balla v. Idaho State Bd. of Corrections*, 595 F. Supp.
19 1558, 1577 (D. Idaho 1984) (“[P]rescription and administration of behavior-altering
20 medications in dangerous amounts, by dangerous methods, or without appropriate
21 supervision and periodic evaluation, is an unacceptable method of treatment.” (citation
22 omitted)), *rev’d in part on other grounds*, 869 F.2d 461 (9th Cir. 1989). The lack of timely
23 follow-up for prisoners in need of effective medication has deprived prisoners of the
24 means of treating uncomfortable and, at times, torturous symptoms and directly
25 contributed to prisoners’ subsequent acts of self-harm and/or aggression toward others.
26 *See, e.g., Stewart Decl.* ¶¶ 200-201; *Stark Decl.* ¶¶ 4, 17 & Exs. B, O.

27 Defendants’ acts and omissions, which are reflected in the Jail’s policies and
28 practices, have caused Plaintiffs needless pain and suffering and exposed them to serious

1 risk of harm. *See* Stewart Decl. ¶¶ 183-202. According to Dr. Stewart, these practices are
 2 dangerous because “[p]atients who are not prescribed appropriate medications, or who do
 3 not receive their medications as prescribed, will not improve and will almost always
 4 deteriorate, often to a point of being a danger to themselves and others, or becoming
 5 gravely disabled.” Stewart Decl. ¶ 183. “In a jail setting, the need for proper medication
 6 prescription and administration is all the more crucial as a patient is entirely dependent on
 7 the jail medical staff to prescribe, obtain, and timely deliver the medications necessary to
 8 treat his/her mental illness or other medical condition.” *Id.*

9 **2. Defendants Are Deliberately Indifferent to Plaintiffs Suffering**
 10 **From Known and Unknown Suspected Alcohol and Drug**
 11 **Withdrawal**

12 According to a report issued by the U.S. Department of Justice, drug/alcohol
 13 intoxication was the cause of 8.2% of all deaths in local jails in 2011. Stewart Decl.,
 14 ¶ 30 & Ex. F, Tbl. 2. Nevertheless, the Jail has utterly failed to implement a reliable
 15 system to identify, treat, and safely house persons suffering from withdrawal.

16 Both opiate and alcohol withdrawal are serious medical needs in the Eighth
 17 Amendment deliberate indifference inquiry. *See Hernandez*, 110 F. Supp. 3d at 948; *see*
 18 *also Foelker v. Outagamie County*, 394 F.3d 510, 513 (7th Cir. 2005) (opiate withdrawal
 19 amounts to a serious medical need); *Gonzalez v. Cecil County*, 221 F. Supp. 2d 611, 616
 20 (D. Md. 2002) (heroin withdrawal is a serious medical need); *Stefan v. Olson*, 497 F.
 21 App’x 568, 577 (6th Cir. 2012) (alcohol withdrawal is a serious medical need); *Caiozzo v.*
 22 *Koreman*, 581 F.3d 63, 72 (2d Cir. 2009) (same); *Lancaster v. Monroe County*, 116 F.3d
 23 1419, 1427 (11th Cir. 1997) (same). Prisoners suffering from withdrawal must receive
 24 appropriate medical care under the Eighth Amendment. *See, e.g., M.H. v. County of*
 25 *Alameda*, No. 11-02868, 2014 WL 1429720, at *20-21 (N.D. Cal. Apr. 11, 2014)
 26 (deliberate indifference after defendant was “subjectively aware of the risk of alcohol
 27 withdrawal, but failed nevertheless to fill out a CIWA form, initiate the CIWA protocol, or
 28 otherwise ensure [plaintiff] would receive medical help”); *Hernandez*, 110 F. Supp. 3d at
 948-49 (deliberate indifference where Defendants entrusted custody staff with primary role

1 in identifying and treating prisoners in withdrawal); *Harper v. Lawrence County*, 592 F.3d
2 1227, 1237 (11th Cir. 2010) (delayed or inadequate treatment of alcohol withdrawal is
3 “unlawful”); *Liscio v. Warren*, 901 F.2d 274, 275-77 (2d Cir. 1990) (deliberate
4 indifference when staff-ordered withdrawal regimen was inadequate because provider
5 failed to examine prisoner suffering from alcohol and heroin withdrawal for three days),
6 *overruled in part on different grounds by Caiozzo*, 581 F.3d 63; *Morrison v. Washington*
7 *Cnty.*, 700 F.2d 678, 686 (11th Cir. 1983) (a deliberate indifference finding could be made
8 where a chronic alcoholic kept in jail without any medical supervision when Defendants
9 are aware he is suffering from alcohol withdrawal).

10 Prisoners suffering from withdrawal also must receive appropriate medical care
11 pursuant to Section V.Q. of the Consent Decree, *see* Grunfeld Decl. ¶ 4 & Ex. C at 25, and
12 Title 15, which provides: “[F]acilities without medically licensed personnel in attendance
13 shall not retain inmates undergoing withdrawal.” Cal. Code Regs. Tit. 15, § 1213. Yet
14 Defendants regularly house prisoners undergoing withdrawal even though the Jail does not
15 have twenty-four-hour medical coverage. *See* Stewart Decl. ¶¶ 64, 204, 207, 208; Stark
16 Decl. ¶¶ 16, 24, 27(a), 37 & Exs. N, V, Y, II.

17 Defendants are well-informed of the importance of identifying and treating
18 substance abuse addiction and withdrawal. Defendants’ policy on “Intoxicated Persons
19 and use of Sobering Cells,” Order Number C-155, specifically recognizes that prisoners
20 under the influence of drugs or alcohol “are at more risk of death than most any other
21 category of prisoner” and should receive prompt medical care. Grunfeld Decl. ¶ 59 &
22 Ex. N.

23 Defendants’ acts and omissions demonstrate their deliberate indifference to
24 Plaintiffs’ medical needs. Defendants’ intake policies increase the likelihood that
25 Plaintiffs’ substance abuse addictions or withdrawal symptoms will go unnoticed, which
26 delays necessary treatment. Defendants rely on nonmedical staff to screen Plaintiffs for
27 substance abuse issues at intake, even though there is no assurance that either a deputy or
28 supervisor will assess a prisoners’ intoxication level correctly. Stewart Decl. ¶¶ 45, 204;

1 Stanley Decl. ¶ 59. Defendants’ contrary practices prolong Plaintiffs’ suffering and cause
2 unreasonable risk of serious or even mortal harm. *See, e.g.*, Stewart Decl. ¶ 47 (providing
3 examples in which intoxicated individuals have been accepted into the Jail and placed in a
4 holding cell or general housing only to need to be sent to the emergency room
5 subsequently).

6 After intake, Defendants continue to rely on underqualified medical staff to identify
7 and treat Plaintiffs with even serious withdrawal symptoms. Defendants’ staffing
8 shortages mean that care is often unavailable for prisoners undergoing withdrawal. *See,*
9 *e.g.*, Stewart Decl. ¶ 204; Stark Decl. ¶ 37 & Ex. II (class member forced to wait more than
10 three hours in the middle of the night to be evaluated by medical staff despite experiencing
11 significant withdrawal symptoms including chest pain and seizures). Treatment often falls
12 to custody officers, who regularly house intoxicated prisoners in sobering cells. Grunfeld
13 Decl. ¶ 59 & Ex. NN (YCJ Manual Order No. C-155, § I.D) (permitting staff to place
14 intoxicated inmates in sobering cell if they can walk with “minimal assistance”). This
15 policy exposes Plaintiffs to additional injury risks. *See, e.g.*, Stark Decl. ¶ 27(f) & Ex. Y
16 (intoxicated prisoner placed in sobering cell gashed head open after more than five hours
17 inside, requiring hospitalization); Stanley Decl. ¶ 60 (noting danger of housing prisoners
18 going through withdrawal even though the Jail lacks twenty-four-hour medical coverage).
19 The policy also does not require Defendants to treat a class member in a sobering cell—
20 that is only required after six hours. Stewart Decl. ¶¶ 63, 64; Grunfeld Decl. ¶ 59 &
21 Ex. NN (YCJ Manual Order No. C-155, § II.B). The policy ignores that a person suffering
22 from withdrawal can “deteriorate rapidly” in six hours. *Id.*

23 Defendants’ withdrawal protocols also place prisoners at unreasonable risk of harm.
24 First, Defendants’ protocols may not be evidence-based. Stewart Decl. ¶ 209. Defendants
25 preclude medical assistance for prisoners with mild or moderate alcohol or heroin
26 withdrawal. *Id.* at ¶¶ 205-208. Defendants lack withdrawal protocols for benzodiazapene
27 and psychostimulants. *Id.* at ¶¶ 210-211. These policies (or absence thereof) expose
28 Plaintiffs to serious harm. *See, e.g., id.* ¶ 207; Stark Decl. ¶ 16 & Ex. N (Defendants

1 underestimated symptoms of man undergoing heroin withdrawal); Stewart Decl. ¶ 208;
2 Stark Decl. ¶¶ 24, 37 & Exs. V, II (showing multiple incidents in which Defendants
3 provided no medical assistance to Plaintiffs experiencing severe withdrawal symptoms,
4 including hallucinations and seizures).

5 **3. Defendants Fail to Provide Plaintiffs With Adequate Access to**
6 **Psychosocial Treatment**

7 Another essential component of a constitutional mental health care system and an
8 explicit requirement of the Consent Decree is the provision of psychosocial treatment. *See*
9 Grunfeld Decl. ¶ 4 & Ex. C at § V.R. (requiring assessment and treatment services); *see*
10 *also id.* (requiring that any inmate who was receiving mental health services from the Bi-
11 County Mental Health Department prior to incarceration continue to receive it at the Jail);
12 C.D. § V.A.4. (requiring that the Jail have sufficient staffing “to assess the mental health of
13 inmates, provide inpatient and outpatient treatment as indicated, and provide consultation
14 to jailors and other health care personnel.”); *see also Coleman*, 938 F. Supp. 2d at 970 n.24
15 (quoting *Coleman*, 912 F. Supp. at 1298 n.10) (a constitutional mental health system
16 requires, in part, “a treatment program that involves more than segregation and close
17 supervision of mentally ill inmates.”).

18 At the time of Dr. Stewart’s inspection in March of 2015, there were no mental
19 health staff members that were “both capable of and d[id] provide one-on-one or group
20 psychosocial treatment to prisoners with mental illnesses.” Stewart Decl. ¶ 176. Without
21 such staff, the Jail relied on untrained crisis counselors to fill the gaps in mental health
22 treatment. *Id.* ¶¶ 227-229. These crisis counselors did not provide any “treatment” for
23 suicidal or mentally ill Plaintiffs and conducted little supervision. *Id.*; *see also id.* ¶ 128.

24 Recently, the Jail has added a mental health therapist to the staff. *See* Grunfeld.
25 Decl. ¶¶ 26, 83 & Exs. M, LLL. Nonetheless, the 2015-2016 Grand Jury found that the
26 “treatment of mental health issues appears to be inadequate for the number of inmates
27 potentially requiring care” and specifically recommended that the Sheriff’s Department
28 hire “a full-time psychiatrist that could allow the Jail to work on a mental health treatment

1 and care plan.” Grunfeld Decl. ¶ 83 & Ex. LLL at 31 & 33. Defendants refuse to hire
 2 such additional mental health staff. *Id.* ¶ 84 & Ex. MMM at 3. Further, Defendants
 3 concede that the Jail lacks the physical space to facilitate individual and group
 4 psychosocial treatment. *See id.* ¶ 82 & Ex. KKK at §5 at 1-3, 8-9. Defendants’ failure to
 5 provide prisoners with meaningful access to individual or group therapy places prisoners at
 6 serious risk of harm, “particularly those individuals who are not taking psychiatric
 7 medications and/or those who are accustomed to receiving psychosocial services as a
 8 means of coping with their mental illness.” Stewart Decl. ¶ 182.

9 **4. Defendants Are Deliberately Indifferent to Regular Delays and**
 10 **Outright Denials in the Provision of Medical Care**

11 Defendants’ system of providing Plaintiffs with prompt and effective medical
 12 attention is broken. Defendants perpetually delay or deny responding to sick call requests,
 13 which creates a system in which Plaintiffs are forced to file grievances in order to be seen
 14 by medical staff, often for serious medical needs, after they completed medical requests.
 15 *See, e.g.,* Stark Decl. ¶ 6 & Ex. D (severe stomach pain believed to be due to pancreatic
 16 cancer); *id.* ¶ 36(a) & Ex. HH (regarding lack of treatment for his back and loss of hearing
 17 after being assaulted); *id.* ¶ 36(b) & Ex. HH (awaiting test results from cancer center); *id.*
 18 ¶ 36(c) & Ex. HH (concerns regarding high blood pressure and risk of heart attack); *id.*
 19 ¶ 36(d) & Ex. HH (difficulty breathing); *id.* ¶ 36(e) & Ex. HH (lack of access to proper
 20 psychiatric medication); *id.* ¶ 36(f) & Ex. HH (urinary problems, failure to have an MRI,
 21 and grieving “all of C-pod[’s] ... unhapp[iness] with the medical care provided by [the]
 22 medical unit”).

23 When Plaintiffs finally see medical staff, Defendants regularly deny necessary
 24 medical care or provide woefully inadequate care. For example, Defendants have denied
 25 or delayed treatment to prisoners with a pre-existing condition and potential sexually
 26 transmitted disease, *see* Grunfeld Decl. ¶ 49 & Ex. DD ¶¶ 3-4, a painful, swollen back
 27 abscess, *see id.* ¶ 42 & Ex. W; Stark Decl. ¶ 9 & Ex. G, and a beeping implanted
 28 defibrillator, *see* Grunfeld Decl. ¶ 37 & Ex. S; Stark Decl. ¶ 7 & Ex. E. In other cases,

1 Defendants have denied Plaintiffs necessary care based on impermissible cost excuses.
 2 *See, e.g.*, Grunfeld Decl. ¶ 46 & Ex. AA ¶ 4 (Defendants refused to provide a filling to ICE
 3 detainee, resulting in intense tooth pain). At times it appears that Defendants threaten to
 4 transfer ICE detainees to different facilities after the detainees make ordinary medical
 5 requests. *See, e.g.*, Stark Decl. ¶ 40 & Ex. LL at 2.

6 As a result of Defendants' willful delay in providing medical and mental health
 7 care, some prisoners' untreated injuries are now permanent. *See, e.g.*, Grunfeld Decl.
 8 ¶ 51 & Ex. FF at 5 (prisoner's thumb is permanently dislocated because LVN did not
 9 permit prisoner to see doctor for injuries sustained in attack by white supremacists); *id.*
 10 ¶ 54 Ex. II ¶¶ 4-11; Stark Decl. ¶ 25 & Ex. W (prisoner may have lost full use of arm
 11 because Jail medical staff denied prisoner x-ray and failed to diagnose fracture for several
 12 weeks after prisoner reported injury). Intentionally denying or delaying access to medical
 13 care may constitute deliberate indifference. *See Estelle*, 429 U.S. at 104-05.

14 **5. Defendants Fail to Provide Adequate Confidentiality and** 15 **Language Interpretation for Medical and Mental Health** 16 **Treatment**

17 Defendants are also deliberately indifferent to Plaintiffs' serious medical needs by
 18 virtue of failing to provide treatment in confidential spaces and adequate language
 19 translation services. Confidentiality violations can be evidence of a constitutional
 20 violation. *See, e.g., Graves*, 48 F. Supp. 3d at 1328 (noting confidential medical and
 21 mental health assessment areas with approval); *Plata v. Schwarzenegger*, No. 01-01351,
 22 2005 WL 2932253, at *12 (N.D. Cal. Oct. 3, 2005) (identifying "failure to provide any
 23 semblance of confidentiality in the medical examining rooms" as part of unconstitutional
 24 intake system).

25 The Jail fails to provide confidentiality both in the booking process and when
 26 providing medical and mental health treatment. During the initial booking process, all
 27 booking and classification questions are asked in the central booking area, at an open
 28 booking counter, where other custody officers and new prisoners are just a few feet away
 and can hear anything that is discussed. *See Stewart Decl.* ¶ 68. When providing mental

1 health treatment, Defendants fail to have any dedicated mental health treatment space.
2 Grunfeld Decl. ¶ 82 & Ex. KKK at 5.1 (“Mental Health Treatment Needs”). As a result,
3 Defendants currently “provid[e] mental health services in hallways, sallyports and open
4 holding rooms,” which Defendants recognize “is unsafe and also not in the best interest of
5 the confidentiality for the service provider, or the inmate.” *Id.* at 3. Defendants also
6 provide medical care in a small exam room that “is frequently used by other service
7 providers when not being used by medical staff” and in a nurses’ station that, according to
8 Defendants, is “crowded, undersized, and not conducive to a therapeutic environment.” *Id.*
9 The nurses’ station is used for multiple purposes, including “paperwork and computer data
10 entry, ... blood draws, PPD tests and insulin injections.” *Id.* at 3-4. Further, “[w]hen
11 inmates require radiology services, YCJ must utilize the waiting room adjacent to Booking
12 ... [which] lacks privacy, causing staff to displace and lockdown inmates in the booking
13 area, introducing security concerns.” *Id.* at 4-5.

14 Conducting important medical-related interviews in non-confidential spaces
15 increases the likelihood that prisoners will fail to accurately report medical issues,
16 including psychiatric symptoms, mental health history, and substance abuse history.
17 Stewart Decl. ¶ 68; Stanley Decl. ¶ 57. In addition, other prisoners will often prey upon or
18 manipulate prisoners who are mentally ill or have developmental disabilities, making it
19 crucial to protect such information. Stewart Decl. ¶ 68. According to Dr. Stewart,
20 “[w]ithout ensuring confidentiality to prisoners with highly sensitive information that
21 could expose them to censure, manipulation, or retaliation by other prisoners, the Jail fails
22 to provide prisoners with meaningful access to mental health care.” *Id.* ¶ 216.

23 Defendants know that their current failure to provide confidentiality in the booking
24 process and when providing mental health treatment is unsafe. Defendants responded to
25 Plaintiffs’ concerns regarding the lack of confidentiality at the Jail by stating that: “We
26 certainly agree that confidentiality or privacy in the booking process is better than having it
27 done in front of other inmates. ... the Jail staff is looking at both the policy and procedure
28 and the physical layout of the booking area to enhance the confidentiality of the booking

1 process.” Grunfeld Decl. ¶ 21 & Ex. J at 3. However, to this day, Defendants do not
 2 appear to have made any improvements to the confidentiality of the intake and booking
 3 area or to the provision of mental health treatment more generally. *See* Stewart Decl.
 4 ¶¶ 213-216; Stanley Decl. ¶ 57. The lack of confidentiality in the booking process and
 5 when providing mental health treatment more generally exposes vulnerable Plaintiffs to
 6 harassment or other dangers. *See* Stewart Decl. ¶¶ 68-69, 216.

7 Defendants also fail to provide adequate language interpretation for medical and
 8 mental health treatment, making it even more difficult for Plaintiffs who do not speak
 9 English or who have hearing disabilities to receive adequate care. *See* Stewart Decl. ¶ 220.
 10 At the time of Dr. Stewart’s jail inspection, there was only one medical staff member
 11 certified to speak Spanish. *Id.* ¶ 218. Defendants have stated that “[p]resent staffing
 12 considerations prevent the county from guaranteeing that Spanish speaking staff are on
 13 duty 24/7, but there is at least one Spanish speaker on duty most of the time and the Jail
 14 has available, and uses, telephonic translation services.” Grunfeld Decl. ¶ 23 & Ex. J at 4.
 15 Several incident reports confirm Defendants’ frequent use of custody officers as translators
 16 as well as a telephonic translation service known as the “language line.” *See* Stewart Decl.
 17 ¶ 218; Stark Decl. ¶ 38 & Ex. JJ. However, using custody staff as translators violates
 18 HIPAA requirements and increases the chances that a patient will “self-censor or alter his
 19 or her communications with the provider, depriving the provider of critically important
 20 information.” Stewart Decl. ¶ 218. In addition, language services provided over the
 21 telephone can be highly cumbersome, disruptive, and unable to make subtle assessments,
 22 “such as whether a patient is paranoid or attending to internal stimuli, and whether his or
 23 her thoughts are tangential.” *Id.* ¶¶ 219-220.

24 **D. Defendants are Deliberately Indifferent to Dangerous Mental Health**
 25 **and Medical Understaffing**

26 Prisoners have a constitutional right “of ready access to competent medical staff.”
 27 *Coleman*, 912 F. Supp. at 1307 (emphasis added). Intentional medical understaffing may
 28 be evidence of deliberate indifference. *Cabrales*, 864 F.2d at 1461. Moreover, “[a]ccess

1 to ... medical staff has no meaning if the medical staff is not competent to deal with the
2 prisoners' problems." *Hoptowit*, 682 F.2d at 1253. Further, jails "must ensure that pretrial
3 detainees with serious medical or mental health conditions are seen face-to-face by
4 providers [and] providers personally diagnose and plan treatment for pretrial detainees
5 with serious medical or mental health conditions." *Graves*, 48 F. Supp. 3d at 1326.

6 The Consent Decree requires that "[t]he Jail must be staffed at a level sufficient to
7 fully comply with the terms of the Consent Decree," Grunfeld Decl. ¶ 4 & Ex. C at C.D.
8 § IV, which include providing outpatient physical health care and inpatient and outpatient
9 mental health treatment as indicated. *Id.* at C.D. § V.A.4.

10 As noted previously at the time of Dr. Stewart's inspection of the Jail, no mental
11 health employees were present at the Jail, despite there being numerous prisoners in need
12 of mental health care. Stewart Decl. ¶ 230. Currently, it appears that the Jail has only one
13 part-time, on-site psychiatrist. This psychiatrist, Dr. Zil, works at the Jail for only a few
14 hours at a time on Sunday mornings and, according to the 2015-2016 Grand Jury Report,
15 works "primarily ... with inmates being screened for their competency to stand trial."
16 Grunfeld Decl. ¶ 83 & Ex. LLL at 23.

17 Recently, the Jail also hired a part-time psychiatrist who is scheduled to meet with
18 patients for approximately eight hours on Wednesdays using telemedicine. *Id.* However,
19 according to the American Psychiatric Association ("APA") and the American
20 Telemedicine Association ("ATA"), some patients are not suitable for telemedicine,
21 including "some patients with cognitive disorders, intoxication, language barriers,
22 emergency situations that warrant escalation to an ER visit or 911," as well as "those for
23 which an in-person visit is required to evaluate the patient due to the severity of presenting
24 symptoms, the necessity of haptic [in person] information, the need for protocol-driven
25 procedures, or the need for aggressive interventions." Stewart Decl. ¶ 234, Ex. V at 8. As
26 noted by Dr. Stewart, "[i]f Dr. Zil only works at the Jail one day per week for
27 approximately four hours, and during that time he is mostly performing competency
28 evaluations, it is unclear how patients in need of initial in-person evaluations, patients in

1 mental health crises, with language barriers, and others for whom telepsychiatry is not
2 appropriate are receiving the mental health care that they require.” *Id.* ¶ 235.

3 The extreme deficiencies in the mental health staffing at the Jail recently prompted
4 the Sheriff’s Department and SYBH to seek to hire a forensic mental health therapist. As
5 Sheriff Durfor wrote in a funding request to the Yuba County Board of Supervisors:

6 The current staffing pattern for mental health services in the jail consists of a
7 Crisis Counselor and a contract Psychiatrist. ... Since the implementation of
8 AB 109, the demographics of the county jail inmate population have evolved
9 and now includes many inmates who previously would have served their
10 sentences in the state prison and who are serving considerably longer
11 sentences than was previously the norm for county jails. As a result, **mental
12 health services in the county jail must evolve to meet the ongoing mental
13 health needs of the current inmate population.**

14 Grunfeld Decl. ¶ 81 & Ex. JJJ.

15 While the Jail did recently hire a mental health therapist, it is unclear whether this
16 therapist is actually able to provide all of the mental health services that Sheriff Durfor has
17 identified as necessary “to meet the ongoing mental health needs of the current inmate
18 population” *Id.* Based on numerous incident reports, it appears that that the Jail still
19 heavily relies on “crisis counselors”—both at the Jail and available by telephone—to fill
20 large gaps in mental health treatment. Stewart Decl. ¶¶ 227, 231, 237; Stark Decl. ¶ 42 &
21 Ex. NN. Yet, as noted by Dr. Stewart, “crisis counselors are [not] educationally and
22 professionally trained to provide any level of therapeutic psychosocial treatment, to
23 develop treatment plans, to evaluate whether an individual presents a grave suicide risk, or
24 to decide whether an individual should be placed in or removed from a ‘safety cell.’”
25 Stewart Decl. ¶ 228. They also lack “clinical sophistication and proper supervision.” *Id.*
26 ¶ 229. By permitting low level providers to take on roles for which they are not qualified,
27 such as recommending, evaluating, and discharging suicidal prisoners from “safety cells,”
28 the Jail places suicidal prisoners at risk of serious harm. *See* Stewart Decl. ¶ 159.

When no mental health staff is available at the Jail, the Jail frequently uses a “crisis
line” run by SYBH crisis counselors who answer this 24-hour telephone service.
According to Dr. Stewart, “a non-confidential telephone call to an unlicensed counselor is

1 not an appropriate form of mental health care or crisis counseling for a prisoner in distress
2 at a Jail.” *Id.* ¶ 231. “That these counselors, based on mere telephone consultations, are
3 making treatment decisions for patients is extraordinarily dangerous and puts the patient
4 and institution at great risk.” *Id.*

5 The shortages in mental health staffing at the Jail are compounded by shortages of
6 other health care staff, such as physicians and nurses. Based on a September 2016 staffing
7 schedule, it appears that the Jail only has a part time physician at the Jail for approximately
8 11 hours a week. Grunfeld Decl. ¶ 80 & Ex. III. While the Jail has recently added a Nurse
9 Practitioner, it appears that the Jail still lacks a Registered Nurse. *See id.* Without
10 sufficient medical staff, Plaintiffs are regularly subjected to delays in receiving adequate
11 medical attention. Notably, the Grand Jury recently found that a full time medical doctor
12 should be hired to “reduce the pressure on the medical staff and decrease the times it takes
13 to see a doctor or the Family Nurse Practitioner.” *Id.* ¶ 83 & Ex. LLL. But Sheriff Durfor
14 rejected the Grand Jury’s recommendation. *Id.* ¶ 84 & Ex. MMM.

15 The Jail does not appear to have **any** medical staff on duty from 12:00 a.m. until
16 5:00 a.m. *Id.* ¶ 79 & Ex. III. In addition, there are no doctors or nurse practitioners on
17 staff at the Jail from 6:00 p.m. until 6:00 a.m. Monday through Friday and at all on
18 Saturday and Sunday. *Id.* Therefore, there is **no** medical staff present for more than 20%
19 of the time every day and no licensed physicians, physician assistants, nurse practitioners,
20 or registered nurses qualified to deliver health care services for even larger portions of the
21 day. *Id.*; Stewart Decl. ¶ 243. However, “[m]edical emergencies, suicide attempts,
22 psychotic breaks, and numerous other situations which can occur at any time of day or
23 night are extremely time sensitive and can frequently determine the difference between life
24 and death for a patient. Stewart Decl. ¶ 243; *see also* Stanley Decl. ¶ 53 (noting that
25 intakes in the early morning hours more frequently present critical medical issues).

26 Defendants’ failure to ensure that the Jail has adequate medical and mental health
27 staff has resulted in Plaintiffs being exposed to an unreasonable risk of harm when no
28 qualified medical staff or mental health staff were on duty. *See, e.g.,* Stewart Decl. ¶ 244;

1 Stark Decl. ¶ 41 & Ex. MM (arrestee determined to be threat to self during intake and
 2 placed in isolation cell around 12:09 a.m., when there was no medical staff on duty);
 3 Stewart Decl. ¶ 244; Stark Decl. ¶ 37 & Ex. II (with no medical staff on duty, custody
 4 officers ignored Class Member’s obvious withdrawal symptoms, including pain and
 5 seizures, from 2:40 a.m., to 4:30 a.m., and then moved her to a holding cell where she was
 6 forced to wait until an LVN arrived at 6:00 a.m.); Stewart Decl. ¶ 244; Stark Decl. ¶ 41 &
 7 Ex. MM (with no medical staff on duty at 12:35 a.m., custody officers “were unable to
 8 distribute ... medication to” immigration detainee in sobering. At approximately 4:20
 9 a.m., the prisoner had a seizure, but was not assessed until 7:45 a.m.); *id.* (Defendants
 10 placed immigration detainee in booking at 1:00 a.m., “[d]ue to no medical staff being on
 11 duty,” even though immigration detainee had difficulty breathing and was coughing up
 12 blood).

13 Defendants have long known that their current level of medical and mental health
 14 staffing often leaves Plaintiffs’ serious medical needs in the hands of custody officers or
 15 non-competent medical staff. *See, e.g.,* Grunfeld Decl. ¶ 16 & Ex. G (“W]e do not have
 16 staffing that permits medical and mental health professionals to conduct intake
 17 screenings.”); *id.* (“The lack of staffing, specifically an R.N., is an issue we recognize and
 18 have been working to remedy.”); *id.* at ¶ 26, Ex. M at 3 (Yuba County Sherriff stating that
 19 the County “continue[s] to work toward th[e] goal” of 24/7 medical coverage”). For years,
 20 Defendants have failed to adequately address the risks that their understaffing creates.

21 Defendants’ failure to staff the Jail with sufficient numbers of mental health and
 22 medical staff to provide adequate mental health and medical care to Plaintiffs constitutes
 23 deliberate indifference. *See, e.g., Estate of Prasad, et al. v County of Sutter, et al.*, 958 F.
 24 Supp. 2d 1101, 1112 (E.D. Cal. 2013) (finding, in recent lawsuit against Sutter County Jail
 25 pursuant to 42 U.S.C. § 1983 and California’s wrongful death law, that the Sutter County
 26 Sheriff, Jail Division Commander, and Jail Corrections Lieutenant could be found
 27 deliberately indifferent to pretrial detainee’s medical needs because they knew “that
 28 medical staff should be at the Jail seven days a week, twenty-four hours a day,” and yet

1 authorized and implemented a policy whereby Jail medical staff were available only from
2 4:00 a.m. to midnight); *see also* Grunfeld Decl. ¶¶ 18, 25 & Exs. I & L (notifying
3 Defendants of dangers of understaffing at Yuba County Jail, particularly in light of *Prasad*
4 lawsuit).

5 **E. Defendants Have Failed to Comply With the Consent Decree’s**
6 **Requirement of Providing Inpatient Mental Health Care and Are**
7 **Deliberately Indifferent to Plaintiffs With Serious Mental Illnesses Who**
8 **Require Psychiatric Hospitalization**

8 Defendants are constitutionally required to provide “a system of ready access to
9 *adequate* [mental health] care,” which includes inpatient care. *Coleman*, 938 F. Supp. 2d
10 at 981; *see also Hoptowit*, 682 F.2d at 1253 (a “prison must provide an adequate system
11 for responding to emergencies. If outside facilities are too remote or too inaccessible to
12 handle emergencies promptly and adequately, then the prison must provide adequate
13 facilities and staff to handle emergencies within the prison. These requirements apply to
14 physical, dental and mental health.”).

15 The Consent Decree also specifically requires that the Jail provide inpatient mental
16 health care as needed. *See* Grunfeld Decl. ¶ 4 & Ex. C, § V.A.3. (“The Sutter County
17 Crisis Clinic and the Bi-County Mental Health Department will provide inpatient ...
18 mental health care as needed.”), emphasis added; *id.* § V.A.4. (“The [mental health]
19 counselor must be able to ... provide inpatient ... treatment as indicated ...). As the
20 Consent Decree specifically states, “[n]o inmate shall be denied or unreasonably delayed
21 emergency hospitalization which is medically indicated for security reasons.” *See id.*,
22 § V.P.

23 Defendants fail to provide prisoners in acute psychiatric distress with timely and
24 appropriate access to inpatient psychiatric care or emergency psychiatric hospitalization.
25 *See* Stewart Decl. ¶ 250. Defendants are well aware of the fact that the Jail fails to provide
26 any inpatient care. As the Sheriff’s Department wrote in its recent BSCC grant
27 application, “[c]urrently, no dedicated mental health treatment space exists in the jail” and
28 “[t]he facility ... has no designated mental health beds.” Grunfeld Decl. ¶ 82 & Ex. KKK

1 at § 5.1 (“Mental Health Treatment Needs” and “Medical and Mental Health Treatment
2 Beds”). The Jail also lacks mental health and medical care twenty-four hours a day, seven
3 days a week, as is required for psychiatric inpatient hospital services. Stewart Decl. ¶ 250.

4 Defendants also fail to provide ready access to emergency psychiatric
5 hospitalization when class members’ needs extend beyond the care that Defendants are
6 able to provide at the Jail. Stewart Decl. ¶¶ 251-263. While numerous policies in the
7 Yuba County Jail Manual specifically allow prisoners to be brought to SYBH—the mental
8 health provider for Yuba and Sutter Counties—for evaluation or inpatient treatment, *see*,
9 *e.g.*, Grunfeld Decl. ¶¶ 68, 69 & Exs. WW (YCJ order No. D-401, § II.E) & F (rev’d
10 June 1, 2015) & XX (YCJ Order No. C-154) (§ III, the Jail refuses to transfer prisoners to
11 SYBH for inpatient care once they are admitted into the Jail, regardless of whether class
12 members are in acute psychiatric distress). Stewart Decl. ¶¶ 256, 257.

13 The Jail Manual also has policies that permit transporting prisoners in need of acute
14 psychiatric care to Rideout Memorial Hospital. *See, e.g.*, Grunfeld Decl. ¶¶ 73, 87 &
15 Exs. BBB (YCJ Order No. D-204 § I.A), PPP (Health & Human Services Policy No.
16 CMS-001-027). In addition, the Consent Decree requires that, “[i]n an emergency
17 situation or at the request of health care personnel, an inmate must be hospitalized for
18 physical **or mental** reasons.” *Id.* ¶ 4 & Ex. C (C.D. § V.P.) (emphasis added). While
19 individuals are brought to Rideout for physical emergencies on a routine basis, *see* Stewart
20 Decl. ¶ 259, individuals from the Jail are not regularly admitted to Rideout for psychiatric
21 emergencies, *id.*, ¶ 260. Rather, it appears that the only instances in which the Jail will
22 even consider transporting a prisoner in acute psychological distress to Rideout is if that
23 prisoner commits an act of self-harm that requires emergency medical care. *Id.* Even
24 when transported to Rideout, however, prisoners generally only receive treatment for their
25 **physical** wounds not their **psychological** wounds. *Id.*; *see also* Stark Decl. ¶ 12 & Ex. J.

26 The only inpatient care Defendants appear to consider as even a viable option is
27 placement in a state hospital pursuant to a court order finding a prisoner incompetent to
28 stand trial or a regional center. However, “even when a court has ordered a prisoner to be

1 transferred to a state hospital, such as Napa State Hospital, it can take 90 days or longer for
2 a prisoner to be accepted into the state facility and transferred.” Stewart Decl. ¶ 251;
3 Stanley Decl. ¶ 44 (noting delay in transfer). Moreover, regional centers only provide
4 services and support for individuals with mental disabilities. *See* Cal. Dep’t of Dev’t
5 Services, Information About Regional Centers, *available at* <http://www.dds.ca.gov/rc/>.

6 Defendants are fully aware of the dangers created by failing to transfer Plaintiffs in
7 need of acute stabilization and longer-term inpatient care to facilities that can provide such
8 treatment. As Defendants’ counsel has stated: “I could not agree more with your concerns
9 about housing persons in jail cells who are in need of psychiatric hospitalization, and I
10 know that the Sheriff’s staff shares those concerns.” Grunfeld Decl. ¶ 20 & Ex. J at 2.
11 Rather than taking responsibility for finding ways to move prisoners to inpatient hospital
12 settings, however, the Jail’s response is simply to blame its problems on other factors, such
13 as backlogs from Napa State Hospital, and state that, “it is of little value to point out the
14 obvious; that there is the potential for bad things to happen if some of these inmates are
15 left in a jail setting.” *Id.* None of these factors excuse Defendants’ failure to respond to
16 and prevent the dangers that they concede are “obvious” when plaintiffs in need of
17 emergency psychiatric hospitalization “are left in a jail setting.” *Id.*

18 As a result of the Jail’s failure to provide inpatient care at the Jail and failure to
19 arrange for any timely inpatient care outside of the facility, individuals in acute psychiatric
20 distress are frequently isolated in “safety cells,” medical isolation cells, or holding cells
21 without adequate mental health treatment to help alleviate their symptoms. Such isolation
22 can occur even when a court has found a prisoner incompetent to stand trial and ordered
23 that he or she be transferred to a state hospital. Stewart Decl. ¶ 264.

24 Aside from the problems with actually transferring prisoners to state hospitals, the
25 Jail also fails to provide prisoners with adequate care when they are awaiting transfer to
26 and have returned from such facilities. The Jail does not maintain lists of those who have
27 been found incompetent to stand trial. Grunfeld Decl. ¶ 89; Stewart Decl. ¶ 271. Without
28 any system of tracking individuals who have been found incompetent to stand trial, it is

1 nearly impossible for the Jail to specifically attend to these prisoners’ needs. *Id.*

2 Further, due to the Jail’s inability to provide adequate mental health care, Plaintiffs
3 who have been found incompetent to stand trial are frequently placed in segregation, do
4 not receive adequate psychosocial treatment, and may be denied access to psychiatric
5 medication. *Id.* For example, the Jail held a Plaintiff who the County Counsel described
6 as a “floridly mentally ill inmate,” *see* Grunfeld Decl. ¶ 22 & Ex. J at 3, in a medical
7 isolation cell for several months prior to and after being sent to Napa State Hospital.
8 Dr. Stewart observed this prisoner quickly and repeatedly pacing back and forth in his
9 medical isolation cell while appearing actively psychotic and agitated. Stewart Decl.
10 ¶ 273. According to Dr. Stewart, a prisoner such as this “requires inpatient hospitalization,
11 not prolonged isolation.” Stewart Decl. ¶ 265. Even Defendants have conceded this
12 prisoner “is indeed an example of an inmate with mental health issues who presents a
13 serious problem for the Jail.” Grunfeld Decl. ¶ 20, Ex. J at 3. The lack of continuity of
14 medications and psychosocial therapy jeopardizes the progress that prisoners have made at
15 inpatient facilities, risks deterioration in their mental health, and, for prisoners returned
16 from the state hospital, increases the likelihood that they will be found incompetent a
17 second time before it is possible to conclude their criminal proceedings. *See* Stewart Decl.
18 ¶¶ 248-275. As reflected in *Bock v. County of Sutter*, Case No. 2:11-cv-00536-MCE-KJN
19 (E.D. Cal. Feb. 25, 2011)—a lawsuit involving Yuba County’s sister jail, Sutter County, in
20 which a prisoner committed suicide while awaiting transfer to a state psychiatric
21 hospital—failure to timely transfer individuals to inpatient hospitals and to afford them
22 proper care in the interim can have life-threatening results. Defendants were specifically
23 put on notice about the *Bock* lawsuit in written correspondence from Plaintiffs on April 9,
24 2015. *See* Grunfeld Decl. ¶ H. Yet Defendants have failed to reform their system,
25 showing their deliberate indifference to Plaintiffs with serious mental illnesses who require
26 psychiatric hospitalization.

27
28

1 **III. DEFENDANTS ARE DELIBERATELY INDIFFERENT TO PLAINTIFFS’**
2 **NEED FOR ADEQUATE OPPORTUNITIES FOR OUTDOOR EXERCISE**
3 **AT YUBA COUNTY JAIL**

4 “Exercise has been determined to be one of the basic human necessities protected
5 by the Eighth Amendment.” *LeMaire v. Maass*, 12 F.3d 1444, 1457 (9th Cir. 1993); *see*
6 *also Lopez v. Smith*, 203 F.3d 1122, 1132-33 (9th Cir. 2000) (en banc) (complete
7 deprivation of outdoor exercise for six weeks constituted cruel and unusual punishment);
8 *Allen v. Sakai*, 48 F.3d 1082, 1087-1088 (9th Cir. 1995) (45 minutes of outdoor exercise
9 per week for six weeks constituted cruel and unusual punishment). “[S]ome form of
10 regular outdoor exercise is extremely important to the psychological and physical well-
11 being” of prisoners. *Spain v. Procunier*, 600 F.2d 189, 199 (9th Cir. 1979).

12 On November 13, 1976, the Court found that “[t]he conditions of confinement
13 within the Yuba County Jail as they relate to inmate opportunities for exercise and
14 recreation constitute cruel and unusual punishment in violation of the Eighth Amendment
15 to the Constitution of the United States and, as to pretrial detainees, summary punishment
16 without due process of law in violation of the Fifth Amendment to the Constitution of the
17 United States.” Grunfeld Decl. ¶ 91 & Ex. TTT. To remedy this constitutional violation,
18 the Consent Decree requires the Jail Supervisor to “establish a program that provides
19 regularly scheduled periods of inmate exercise and recreations.” *Id.*, Ex. C, § III at 5.
20 Unfortunately for the prisoners at the Jail, all these years later, access to exercise and
21 recreation is virtually nearly non-existent.

22 **A. The Jail Violates the Eighth Amendment Through its Wholly Illusory**
23 **Offer of Exercise**

24 “Exercise is critical to the health and safety of the incarcerated and to the safe
25 operation of a correctional institution.” Stanley Decl. ¶ 39. Yet, “prisoners housed at Yuba
26 County Jail rarely receive outdoor exercise and recreation.” *Id.* ¶ 17.

27 The Jail currently has only one small exercise area—known as the “yard” or the
28 “roof.” This small space (approximately 15 feet by 20 feet) is surrounded by four tall
walls with an open chain-link ceiling, and can only accommodate, at most, approximately

1 22 Plaintiffs at any point in time. *Id.* ¶ 30. It is only accessible via stairs or an elevator;
2 the elevator breaks from time to time. *Id.* ¶ 37. This space fails to afford Plaintiffs
3 adequate fresh air or sunshine; when exercising in this area, Plaintiffs cannot feel the
4 breeze, nor view the horizon. The Jail’s larger recreation area is currently too decrepit for
5 regular use. *Id.* ¶ 32. It also requires a custody officer to stand watch over Plaintiffs,
6 which the Jail maintains that it lacks sufficient staffing to cover. *Id.* ¶¶ 34-36; Grunfeld
7 Decl., Ex. BB.

8 Due to the Jail’s lack of usable exercise space and recreation staffing, the Jail
9 cannot make adequate offers of outdoor exercise time to every Plaintiff. Stanley Decl.
10 ¶¶ 20, 30-31. As a result, Defendants are utilizing an exercise scheme designed to make
11 exercise as unattractive as possible, to elicit prisoner refusal of exercise, and ultimately to
12 minimize time, effort, and resources spent on prisoner exercise.

13 Defendants deprive prisoners of outdoor exercise by intentionally making offers of
14 exercise at inconvenient, unappealing, inclement, or otherwise inaccessible times. *Id.*
15 ¶¶ 21-23, 25-26. Defendants regularly offer exercise to prisoners in the early morning—at
16 either 5:00 a.m. or 6:00 a.m., though at times as early as 4:55 a.m.—when prisoners are
17 sleeping. *Id.* ¶¶ 22, 38. While prisoners should not be forced to choose between sleep and
18 exercise, these early morning offers are further flawed because they are made before
19 sunrise such that prisoners must venture out into the cold and darkness to participate. *Id.*
20 ¶ 22. Many prisoners opt not to participate rather than venturing out into such inclement
21 and uncomfortable conditions, and Defendants do not provide prisoners with appropriate
22 clothing for braving this elemental cold. *Id.* ¶ 21; Grunfeld Decl., Exs. HH, JJ. At times,
23 custody staff make the “offer” so quietly that prisoners are not even conscious to hear it.
24 Stanley Decl. ¶ 21; Grunfeld Decl., Exs. V, VVV. Defendants also allow a single prisoner
25 to decline an offer of exercise time on behalf of an entire cellblock. Stanley Decl. ¶ 23;
26 Grunfeld Decl., Ex. VVV. Therefore, even if a prisoner is willing and able to forego rest
27 and brave the pre-dawn cold and darkness, he or she may be unable due to the whim of a
28 fellow prisoner or the quietness of a guard. Moreover, Defendants frequently renege on

1 exercise offers to prisoners because the Jail's one functional exercise area is already in use
 2 and cannot safely accommodate more prisoners. Stanley Decl. ¶ 26; Grunfeld Decl.,
 3 Ex. V; Stark Decl., Ex. SS.

4 Defendants are well aware that their policy and practice of regularly offering
 5 exercise and recreation to prisoners in the early hours of the morning results in the vast
 6 majority of prisoners receiving little to no outdoor exercise and recreation. Grunfeld Decl.
 7 ¶¶ 15-16 & Exs. F, G.

8 Defendants maintain a "Yuba County Jail Exercise Yard Log" that purports to show
 9 offers of exercise to different areas of the Jail, but does not show if and/or when
 10 individuals within those areas are offered or receive yard. Grunfeld Decl. ¶ 92 &
 11 Ex. UUU; Stanley Decl. ¶ 27. For the most recent six months available, these logs show
 12 multiple "refusals" of these areas to go to go to yard. *Id.* As Mr. Stanley explains, the
 13 amount of exercise provided is wholly inadequate:

14 The most recent exercise logs provided by the Jail [demonstrate that] ...
 15 **most prisoners in the A, S, and M cellblocks received between zero and**
 16 **three hours of yard time a week.** During this four-week sample, 63% of
 17 prisoners housed in A-Pod received zero hours of yard time, 23% received 1-
 18 2 hours, and 14% received more than two hours, with no prisoner receiving
 19 more than 6 hours. Of prisoners housed in the M-cells, **79% received zero**
 20 **hours of yard time**, 17% received up to 2 hours, and 4% received more than
 21 2 hours, with no prisoner receiving more than 3 hours, during this four-week
 22 sample. In the S-cells, **95% of prisoners received zero yard time**, and 5%
 23 received up to one hour, during this four week sample.

24 Stanley Decl. ¶ 38 (emphasis added). Despite knowing this and despite simple program
 25 changes that could easily improve the situation, Defendants have done nothing. *Id.* ¶ 28.

26 Defendants also deprive prisoners of outdoor exercise by declining to hire
 27 recreation staff, as expressly required by the Consent Decree, or to repair and renovate the
 28 dilapidated second, much larger recreation area, which would increase Plaintiffs' access to
 exercise opportunities. Grunfeld Decl. ¶¶ 26, 28 & Ex. C, § IV; Stanley Decl. ¶¶ 20, 28,
 32. Further, Defendants deprive prisoners of adequate exercise due to the lack of exercise
 equipment. *Id.* ¶ 24. Section III of the Consent Decree expressly requires multiple pieces
 of mandatory equipment for the Jail, but the Jail has failed to maintain equipment even

1 approximating these requirements. *Id.*; Grunfeld Decl., Ex. C, § III. Consequently, on
2 those rare occasions when a prisoner is given an opportunity to exercise at a reasonable
3 time, the prisoner still cannot make that time fully meaningful. Stanley Decl. ¶ 24.
4 Although Defendants are fully aware of the exercise equipment provision in the Consent
5 Decree, custody staff have taken the express position that exercise equipment is simply
6 unnecessary. *Id.*, Grunfeld Decl., Exs. HH, VVV.

7 By failing to provide Plaintiffs with adequate opportunities for regular outdoor
8 exercise and recreation, Defendants are deliberately indifferent to Plaintiffs' basic human
9 needs. *See Lopez*, 203 F.3d at 1132-33. Plaintiffs frequently go weeks without accessing
10 outdoor recreation. Stanley Decl. ¶ 19; Grunfeld Decl., Ex. JJ; Stark Decl., Ex. SS. The
11 average prisoner stay at the Jail is about a month, and this is too long to spend without
12 regular exercise. Stanley Decl. ¶ 17. The many ICE detainees incarcerated at the Jail have
13 the much longer average stay of 105 days. *Id.* Under AB 109 Realignment, many
14 prisoners are now serving lengthy sentences within the Jail. The outdoor exercise needs of
15 these prisoners are even more pronounced than the needs of those with shorter stays. *Id.*

16 Defendants' failure to provide adequate opportunities for outdoor exercise and
17 recreation creates an excessive risk of harm, both from the immediate physical and
18 psychological harms caused by such deprivation, and from the further harms that flow
19 from the psychological distress of prisoners who are deprived of this essential physical
20 outlet. Many prisoners look to exercise as a way to deal with stress and depression, and
21 the deprivation of exercise therefore increases the risk that they will be unable safely to
22 cope. *Id.* ¶ 41; Stark Decl., Exs. B, VV. For instance, Mr. Gerardo Arroyo-Flores
23 described worsening depression as a result of the lack of genuine exercise opportunities.
24 Stanley Decl. ¶ 39; Grunfeld Decl., Ex. P. Unfortunately, Defendants often deprive
25 prisoners of access to exercise despite exercise being a commonly prescribed medical
26 treatment at the Jail. Stanley Decl. ¶ 41; Stark Decl., Exs. D, N. QQ, RR, TT. Mr. Shelton
27 Claborne became distraught after learning first of the death of his mother and then about
28 the incarceration of his brother at the Jail. Stanley Decl. ¶ 40; Grunfeld Decl., Ex. VVV.

1 Mr. Claborne requested to use an exercise yard, but custody staff said the yard was
2 occupied. *Id.* Mr. Claborne then began setting fire to rolls of toilet paper and throwing the
3 flaming rolls from his cell into the Jail. *Id.* These harms illustrate the substantial risk of
4 serious harm to the health and safety of Plaintiffs created by Defendants' illusory exercise
5 regime. The amount of exercise time received by prisoners falls short of the minimum
6 recommended by Section III of the Consent Decree, the existence of which undoubtedly
7 places Defendants on notice as to the unacceptable risk of great harm caused by the
8 deprivation of Plaintiffs' access to exercise. Defendants also fail to meet the minimum
9 standard set by the American Correctional Association ("ACA"). *See* ACA Core Jail
10 Standards, 1st ed., 1-CORE-5C-01 (prisoners are to have at least one hour daily of outdoor
11 exercise and recreation). "[K]nown noncompliance with generally accepted guidelines for
12 inmate health strongly indicates deliberate indifference to a substantial risk of serious
13 harm." *Hernandez*, 110 F. Supp. 3d at 943.

14 **B. The Jail Violates the Eighth Amendment Through Its Segregation**
15 **Policies**

16 Defendants are deliberately indifferent to the substantial risk of serious harm caused
17 by their failure to provide adequate out-of-cell time for segregated prisoners. "[F]ailure to
18 provide each inmate one hour per day of exercise outside the cells is a constitutionally
19 intolerable condition." *Pierce v. Cty. of Orange*, 526 F.3d 1190, 1212 (9th Cir. 2008)
20 (*quoting Hutchings v. Corum*, 501 F. Supp. 1276, 1294 (D. Neb. 1980)). "[D]etainees who
21 are held for more than a short time and spend the bulk of their time inside their cells are
22 ordinarily entitled to daily exercise, or five to seven hours of exercise per week, outside
23 their cells." *Id.* At the Jail, segregated prisoners are not given even seven hours of time
24 out of their cell per week, let alone seven hours to spend focused on exercise. Stanley
25 Decl. ¶ 42. Yet the population of segregated prisoners has no less need for outdoor
26 exercise than the general population, and the same risks of harm caused by the failure to
27 provide exercise opportunities apply to these prisoners with at least equal force.
28 Defendants are well aware of their duties to provide outdoor exercise to all prisoners.

1 Grunfeld Decl. ¶¶ 15-26 & Exs. F, I, L.

2 As discussed in Section II, B at 2, *supra*, Defendants routinely place prisoners with
3 mental illness and disabilities in segregation. Prisoners are allowed only a half hour out of
4 their cells per day. Stanley Decl. ¶ 42. Prisoners have only these precious few minutes to
5 engage in any number of out-of-cell activities such as showering, making phone calls, or
6 engaging in indoor exercise. *Id.* Such limited out-of-cell time is irrational, unduly
7 punitive, and creates a substantial risk of grave psychological harm, especially for those
8 many prisoners with mental illness. *Id.* Further contributing to this harm is the fact that
9 prisoners are let out of their cells one by one, preventing any socialization with other
10 prisoners. *Id.* The risk of harm generated by such harsh practices redounds against all
11 prisoners, as the dangerous acts of a decompensated mentally ill prisoner may easily harm
12 other prisoners. Out-of-cell time cannot constitutionally be so limited and the amount of
13 out-of-cell time afforded to an individual prisoner must take into account the specific
14 physical and mental health needs of that prisoner. *Id.*

15 Defendants have long known about these risks, yet they have failed to remedy them.
16 Their failure to act constitutes deliberate indifference. Further, “conditions of extreme
17 social isolation and reduced environmental stimulation” can constitute unconstitutional
18 conditions. *Madrid*, 889 F. Supp. at 1261-67; *see also Johnson v. Wetzel*, No. 16-00863,
19 2016 WL 5118149, at *7 (M.D. Pa. Sept. 20, 2016) (recognizing social interaction and
20 environmental stimulation as basic human needs); *Wilkerson v. Stalder*, 639 F. Supp. 2d
21 654, 678 (M.D. La. 2007) (same).

22 **IV. DEFENDANTS’ TREATMENT OF ITS ICE AND PRE-TRIAL DETAINEES**
23 **VIOLATES THEIR FOURTEENTH AND FIFTH AMENDMENT RIGHTS**

24 As demonstrated above, Plaintiffs have met the subjective prong of the *Farmer* test
25 by showing Defendants’ deliberate indifference to the substantial risk of serious harm
26 caused by the Jail’s inadequate medical and mental health care and lack of access to
27 exercise and recreation. *See supra* at Sections II & III. Yet, should there be any doubt that
28 Defendants are deliberately indifferent, the Court should also consider the greater

1 constitutional rights afforded to pretrial and ICE detainees at the Jail, who make up the
 2 overwhelming majority of the Jail’s population, pursuant to the Fifth and Fourteenth
 3 Amendments. *Stone v. City of San Francisco*, 968 F.2d 850, 857 n.10 (9th Cir. 1992)
 4 (“[P]retrial detainees ... possess greater constitutional rights than [convicted] prisoners.”)
 5 *Zadvydas*, 533 U.S. at 690 (holding that ICE detainees are entitled to at least this same
 6 level of protection); *Bell v. Wolfish*, 441 U.S. at 535. With respect to these detainees,
 7 Plaintiffs need only show that Defendants are recklessly indifferent to these same risks.
 8 *Castro v. County of Los Angeles*, 2016 WL 4268955, at *7.

9 In *Castro*, a case that also involved the dangers posed by unsupervised sobering
 10 cells, albeit in a different context, an en banc court overruled the Ninth Circuit’s previous
 11 Fourteenth Amendment standard as articulated in *Clouthier v. County of Contra Costa*,
 12 591 F.3d 1232 (9th Cir 2010). 2016 WL 4268955, at *7. The Ninth Circuit read the
 13 Supreme Court’s decision in *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015), as casting
 14 doubt on the subjective standard of *Clouthier*, concluding that a pretrial detainee need not
 15 prove “an individual defendant’s subjective intent to punish in the context of a ... failure to
 16 protect claim.” 2016 WL 4268955, at *7.

17 Instead, pretrial detainees need only prove that a defendant acted recklessly by
 18 failing to realize a great risk which a reasonable person in his or her place would have
 19 appreciated. *Id.* (citing Restatement (Second) of Torts § 500 cmt. a (Am. Law Inst. 2016)).
 20 Under this standard, even if Defendants do not fully appreciate the substantial risk of harm
 21 created by their acts and omissions, if, as here, the risk is plain, Defendants have violated
 22 the constitutional rights of all ICE and pretrial detainees by failing to correct that risk.⁷

24 ⁷ While *Castro* involved a failure-to-protect claim, the *Castro* court framed the “broader
 25 question” it was answering as “whether the objective standard applies to all § 1983 claims
 26 brought under the Fourteenth Amendment against individual defendants” and went on to
 27 answer that question in the affirmative. *Castro*, 2016 WL 4268955, at *6. Courts in this
 28 district are applying *Castro* to claims similar to those raised here on behalf of pretrial and
 ICE detainees. See *Kinder v. Merced Cty.*, No. 16-01311, 2016 WL 5341254, at *3 (E.D.
 (footnote continued)

1 While the evidence in this Motion demonstrates that Defendants were deliberately
 2 indifferent to the great risks of harm present at the Jail, even if Defendants claim that they
 3 somehow did not have actual knowledge of these risks, they had clear reason to know of
 4 facts that would lead reasonable persons to realize that their conduct creates an
 5 unreasonable risk of harm to Plaintiffs. *See, e.g.*, Consent Decree, Grunfeld Decl., Ex. C,
 6 well-established correctional standards, Stanley Decl. ¶¶ 31, 38, 42, 59; Yuba Grand Jury
 7 Reports about the Jail, Grunfeld Decl. ¶ 83 & Ex. LLL, the numerous prisoner incidents
 8 and grievances, Stark Decl. ¶ 29 & Exs. B, F, J, L, AA, communications from Plaintiffs’
 9 counsel, Grunfeld Decl., Exs. F, H, I, K, L. Under *Castro*, regardless of Defendants’
 10 subjective intent, the circumstances illustrate that Defendants acted in reckless disregard of
 11 the due process rights of pre-trial and ICE detainees.

12 Further, with regard to ICE detainees, Defendants’ contract with ICE additionally
 13 places Defendants on notice by setting and incorporating certain minimum standards for
 14 immigration detention. *See* Grunfeld Decl. ¶ 7 & Ex. D at Art. III (requiring “compliance
 15 with all applicable laws, regulations, fire and safety codes, policies and procedures”),
 16 Art. V (requiring housing of detainees accord with ICE National Detention Standards), and
 17 Art. VII (requiring, *inter alia*, adequate intake screening and 24 hour emergency medical
 18 care); *see also* Part II.A., *supra* at 12 (discussing of findings of Special Monitor regarding
 19 inadequacy of Jail intake for ICE detainees).⁸ From these multiple violations of the

20 _____
 21 Cal. Sept. 22, 2016) (applying the *Castro* standard to claim of inadequate medical care);
 22 *Morehouse v. Kern Cty. Sheriff’s Office*, No. 16-00986, 2016 WL 5341256, at *3 (E.D.
 23 Cal. Sept. 22, 2016) (“The Court sees no reason why the [*Castro*] rationale should not
 24 apply to other Fourteenth Amendment conditions of confinement claims.”); *Smith v. Ahlin*,
 25 No. 16-00138, 2016 WL 5943920, at *5 (E.D. Cal. Oct. 12, 2016) (applying *Castro*
 26 standard to civil detainees).

25 ⁸ ICE’s current Performance-Based National Detention Standards, made applicable to the
 26 Jail by Art. V of the contract, further describe these minimum standards, and thereby place
 27 Defendants on notice of their failure to provide conditions in satisfaction thereof. *See* ICE
 28 Performance-Based National Detention Standards 2011, as modified by February 2013
 Errata, *available at* <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011.pdf>.
 (footnote continued)

1 standards required by the Jail’s ICE contract, Defendants’ conduct is objectively reckless
2 under *Castro* and places all ICE detainees at plain risk of grave harm.

3 **V. DEFENDANTS MUST BEGIN SERIOUS AND PROMPT REMEDIAL**
4 **EFFORTS TO ADDRESS THE CONSTITUTIONAL VIOLATIONS**
5 **OUTLINED HERE**

6 “Once a constitutional violation has been found, a district court has broad powers to
7 fashion a remedy. A court may order relief that the Constitution would not of its own
8 force initially require if such relief is necessary to remedy a constitutional violation.”
9 *Sharp v. Weston*, 233 F.3d 1166, 1173 (9th Cir. 2000) (internal citations omitted); *see also*
10 *Graves v. Arpaio*, 623 F.3d 1043, 1050 (9th Cir. 2010) (PLRA authorizes prospective
11 relief that does not “exactly map” onto constitutional requirements). After all,
12 “constitutional violations in conditions of confinement are rarely susceptible of simple or
13 straightforward solutions.” *Plata*, 563 U.S. at 525.

14 Further, a “defendant’s history of noncompliance with prior court orders is a
15 relevant factor in determining the necessary scope of an effective remedy.” *Toussaint v.*
16 *McCarthy*, 801 F.2d 1080, 1087 (9th Cir. 1986) *abrogated in part on other grounds in*
17 *Sandin v. Connor*, 515 U.S. 471 (1995); *see also Hutto v. Finney*, 437 U.S. 678, 690
18 (1979) (“[F]ederal courts are not reduced to issuing injunctions against state officers and
19 hoping for compliance. Once issued, an injunction may be enforced.”). Specific and
20 targeted remedial orders are appropriate when supported by the record because
21 “[p]rospective relief for institutions as complex as prisons is a necessarily aggregate
22 endeavor, composed of multiple elements that work together to redress violations of the

23 _____
24 Defendants fail to meet these standards by, for example, failing to provide sufficient
25 appropriately trained staff to satisfy the medical and mental health needs of detainees and
26 failing to protect detainees’ privacy during the provision of medical and mental health
27 services, *id.* at 279, by failing to minimize the time suicidal detainees spend in segregation,
28 *id.* at 318, and by failing to provide ICE detainees with access to outdoor exercise
opportunities with equipment for at least one hour daily “at a reasonable time of day,” *id.*
at 342.

1 law.” *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1070 (9th Cir. 2010).

2 Defendants’ failure to comply with key provisions of the Consent Decree and the
3 Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution—as well as the risks of
4 serious harm that flow from Defendants’ denials of adequate access to medical and mental
5 health care and opportunities for outdoor exercise—more than warrant additional orders in
6 this case. *See id.* (Defendants’ “record of abject failure” informs the appropriateness of
7 court-ordered relief where, as here, Defendants have been unable to “cure the
8 constitutional infirmities ...” plaguing their system).

9 Plaintiffs ask the Court to enter additional specific relief which, at a minimum,
10 should include the six plans outlined in their Proposed Order: an Intake Screening Plan, a
11 Health Care Implementation Plan, a Suicide Prevention Plan, a Staffing Plan, an Inpatient
12 Care Plan, and an Exercise and Recreation Plan.

13 Each of the proposed Plans targets the most serious constitutional violations and
14 provides discrete steps Defendants must take to remedy those violations. Proposed Order,
15 ¶¶ 1-33, at 5-12. In addition, the Proposed Order requires that the Plans include funding,
16 staffing, training, resources, and an implementation schedule. *Id.* at 5. The Plans should
17 be developed after consultation with Plaintiffs’ counsel, who will have an opportunity to
18 object if necessary, and must be filed with the Court no later than 60 days from the date of
19 the Order. *Id.* Given that there has already been substantial delay in remedying these
20 violations, Defendants’ Plans must provide for rapid implementation and funding. The
21 Proposed Order requires Defendants to fund the Plans as soon as possible with
22 implementation no later than six months from the entry of the Order. *Id.*

23 Allowing Defendants to develop the Plans in the first instance is consistent with the
24 Prison Litigation Reform Act’s requirement that relief ordered by the Court be narrowly
25 drawn, extend no further than necessary to remedy the current and ongoing violations of
26 prisoners’ federal rights due to the acts and omissions of Defendants, and be the least
27 intrusive means necessary to correct the violations. *See* 18 U.S.C. § 3626(a)(1); *see also*
28 *Armstrong*, 622 F.3d at 1071 (“Allowing defendants to develop policies and procedures ...

1 is precisely the type of process that the Supreme Court has indicated is appropriate for
2 devising a suitable remedial plan in a prison litigation case.”).

3 **CONCLUSION**

4 In the process of monitoring the Consent Decree, Plaintiffs uncovered substantial,
5 troubling evidence that prisoners in the Jail are regularly exposed to substantial risk of
6 serious harm, especially with regard to adequate access to medical and mental health care
7 as well as outdoor exercise and recreation. To remedy these ongoing constitutional
8 violations, Plaintiffs respectfully request that the Court issue Plaintiffs’ Proposed Order
9 Granting Motion to Enforce and For Further Remedial Orders, filed herewith.

10
11 DATED: October 24, 2016

Respectfully submitted,

12 ROSEN BIEN GALVAN & GRUNFELD LLP

13 By: /s/ Gay Crosthwait Grunfeld
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