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in his official capacity as Sheriff of the Alameda
12 County Sheriff s Office; KARYN TRIBBLE in her
official capacity as Director of the Alameda County
13 Behavioral Health Care Services Agency;

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA/SAN JOSE DIVISION

16
17 ASHOK BABU, ROBERT BELL,
IBRAHIM KEEGAN-HORNSBY,
18 DEMAREA JOHNSON, BRANDON
JONES, STEPHANIE NAVARRO,
19 ROBERTO SERRANO, and ALEXANDER
WASHINGTON on behalf of themselves
20 and all others similarly situated,

21 Plaintiffs,

22 v.

23 COUNTY OF ALAMEDA; GREGORY J.
AHERN in his official capacity as Sheriff of
the Alameda County Sheriff s Office;
24 KARYN TRIBBLE in her official capacity
as Interim Director of the Alameda County
25 Behavioral Health Care Services Agency;
and DOES 1 to 20, inclusive,
26

27 Defendants.
28

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Case No. 5:18-cv-07677 NC

**JOINT RESPONSE TO SUMMARY
ORDER FOLLOWING APRIL 17 STATUS
HEARING RE: SANTA RITA JAIL
COVID-19 RESPONSE**

1 Plaintiffs Ashok Babu, Robert Bell, Ibrahim Keegan-Hornesby, Demarea Johnson,
2 Brandon Jones, Stephanie Navarro, Roberto Serrano, and Alexander Washington (“Plaintiffs”)
3 and Defendants County of Alameda, Gregory J. Ahern, and Karyn Tribble (“Defendants”)
4 (collectively, the “Parties”) submit the following joint response to the Court’s summary order
5 following the April 17 status hearing regarding Santa Rita Jail’s COVID-19 response.

6 **DEFENDANTS’ RESPONSE**

7 Defendants continue to work around the clock to address the COVID-19 pandemic.
8 Defendants provide the following updates and responses to the Court’s “Summary Order
9 Following April 17 Status Hearing Re: Santa Rita Jail COVID-19 Response.” (“Order”) (ECF
10 105.)

11 In response to the final paragraph of the Order, the following information is provided with
12 respect to Alameda County Public Health Department’s (“ACPHD”) role regarding Santa Rita
13 Jail’s COVID-19 response:

14 1. Alameda County Public Health Department

15 Alameda County Public Health Department (“ACPHD”) inspects Santa Rita Jail annually
16 to audit its policies, procedures, and practices as provided under Title 15 of the California Code
17 of Regulations. ACPHD does not provide day-to-day health services at the jail; non-party
18 Wellpath does.

19 The COVID-19 pandemic is far broader than the confines of Santa Rita Jail, and ACPHD
20 has public health responsibilities countywide (excluding Berkeley), including nursing homes and
21 other institutions. While Wellpath, not ACPHD, is providing the medical care in response to
22 COVID-19 at Santa Rita Jail, ACPHD remains very actively involved in reviewing, evaluating
23 and recommending policies, procedures and appropriate responses to the pandemic in Santa Rita
24 Jail’s correctional environment.

25 ACPHD has closely reviewed and continuously provides input into Wellpath’s COVID-19
26 Outbreak Control Plan. Indeed, ACPHD and Wellpath participate in a standing call, every other
27 day, to ensure open and regular communication regarding this constantly-evolving pandemic and
28 cases in the jail. In addition, there are ad-hoc meetings to discuss any public health issues.

1 Further, ACPHD receives a daily list from Wellpath identifying inmates who are COVID-19
2 positive, have a COVID-19 test that is pending, or who have symptoms concerning for COVID-
3 19. ACPHD reviews the list and will make specific recommendations, as needed or appropriate,
4 based on public health investigation and up to date guidance, on which inmates should be tested
5 based on epidemiologic evidence. Thus, there is a comprehensive system in place for overseeing
6 and evaluating Wellpath's medical response to the COVID-19 pandemic at Santa Rita Jail.

7 2. Testing Criteria and Availability

8 Wellpath follows CDC guidelines for COVID-19 testing in institutional settings with
9 oversight by ACPHD. Per CDC, "guidance will not necessarily address every possible custodial
10 setting and may not use legal terminology specific to individual agencies' authorities or
11 processes. **The guidance may need to be adapted based on individual facilities' physical**
12 **space, staffing, population, operations, and other resources and conditions."** A situation
13 could arise in which ACPHD would make recommendations based on local epidemiology or
14 outbreak specific information that may be a modification from CDC guidelines with local health
15 department recommendations, though no such situation has arisen to date. For example, if there
16 is evidence indicating that a significant number of people within the same housing unit tested
17 positive, ACPHD could recommend testing that varies from CDC guidelines despite the fact that
18 Wellpath has implemented patient monitoring measures in quarantined housing units. ACPHD
19 has not indicated that any such variation is appropriate at this time.

20 ACPHD continually reviews patient data and discusses the significance of the data with
21 Wellpath and any necessary steps that should be taken in response, if appropriate. When a
22 housing unit is under quarantine, there is minimal risk of further spread to the rest of the jail
23 population from any of these individuals. This 14-day quarantine starts from date of onset of
24 symptoms for the index patient and is a public health measure to protect the rest of the jail
25 population. If additional cases are detected in a housing unit, then the quarantine period is
26 extended to 14 days from the last date of exposure of the housing unit to the last detected case
27 during the inmate's infectious period. Wellpath also performs daily medical monitoring in
28

1 quarantined units for positive symptoms that would warrant testing. ACPHD is also involved in
2 the decision to lift the quarantine on any quarantined unit.

3 Plaintiffs' suggestion or request to expand testing within Santa Rita Jail to every inmate or
4 every inmate within specific housing units or pods would deviate from CDC Guidelines and will
5 not provide substantial additional information to assist public health guide appropriate
6 interventions. This is because from a medical perspective, it is presently unknown when is the
7 optimal time to test asymptomatic patients after a potential exposure. At present, the best data,
8 suggests testing patients 3-7 days after exposure may result in detection of COVID-19 among
9 asymptomatic individuals. From a public health perspective, there is no need to test
10 asymptomatic patients who reside in a quarantined housing unit because they are already
11 quarantined (a public health intervention) and are not mixing with non-quarantined inmates.
12 Further, testing asymptomatic patients too early could lead to the need for further testing if or
13 when a patient becomes symptomatic, and/or a false sense of security that a particular patient is
14 not infected, all of which can lead to overutilization of testing assets and unreliable clinical and
15 public health data. At present Wellpath has not reported any problems or concerns about access
16 to tests or turnaround times with LabCorp, which provides testing services to Wellpath.

17 3. ACPHD has reviewed and Approved Wellpath and Custody COVID-19 Policies

18 Next, ACPHD wants to assure the Court and the public that ACPHD has reviewed and
19 approved all applicable COVID-19-related policies and procedures in place at Santa Rita Jail.
20 Further, it must be emphasized that Wellpath and custody staff proactively implemented
21 numerous COVID-19 measures, policies and procedures to protect both inmates and staff in late
22 March before Santa Rita Jail had its first positive case. These policies include Wellpath's
23 COVID-19 Outbreak control plan and screening measures, as well as custody policies and
24 procedures with respect to screening every person entering the jail and use of personal protective
25 equipment, among others.

26 Finally, to respond to the Court's inquiry with regard to whether there is a specific point-
27 of-contact at ACPHD with regard to Santa Rita Jail, Dr. Amit Chitnis with ACPHD has been
28 most involved in assessing and advising Santa Rita Jail and Wellpath in regards to their response

1 to the pandemic. Dr. Chitnis has reviewed and approved of the content in this filing, however,
 2 due to the pandemic and responsibilities including (1) COVID-19 response at Santa Rita Jail, (2)
 3 assistance with clinical consultation or guidance for COVID-19, (3) oversight of tuberculosis
 4 (“TB”) control in Alameda County, and (4) clinical management of TB patients at Highland
 5 Hospital,¹ however, Dr. Chitnis must respectfully decline the Court’s invitation to collaborate in
 6 future proceedings.

7 4. Concern about Inmate Movement to Court

8 ACPHD is aware of the concern raised at the April 17 hearing in this case with respect to
 9 the movement of inmates to court who later tested positive for COVID-19. The two instances
 10 occurred at the East County Hall of Justice in two different departments on April 3 and then on
 11 April 8. In the first instance, an inmate who attended court tested positive for COVID-19 eleven
 12 days later; in the second instance, the inmate tested positive four days later. As part of its routine
 13 process once an inmate tests positive for COVID-19, ACPHD requested and received the
 14 movement history from the Sheriff’s Office for each inmate and confirmed that the inmates were
 15 not in court during their infectious period (note: the infectious period starts two days prior to
 16 symptom onset.) ACPHD notified Public Defender Brendan Woods of this on April 16, before
 17 the April 17 court hearing in this matter. ACPHD also notified the public defender that, to date,
 18 ACPHD has not identified an exposure that has occurred at the Court among confirmed COVID-
 19 19-positive inmates.

20 5. Plaintiffs’ ongoing California Gov. Code § 8658 and Population Reduction
 21 Requests

22 The Sheriff’s Office will continue to cooperate with state and federal justice stakeholders
 23 and will release inmates as ordered. As detailed in our filings in this court, Santa Rita Jail is at
 24 the forefront of correctional institutions nationwide with regard to actions taken to address the
 25 COVID-19 pandemic. While the Sheriff’s Office will continue to work with justice stakeholders
 26

27 ¹ Dr. Chitnis sees TB patients at Highland Hospital. As a result of shelter-in-place orders, Dr.
 28 Chitnis has implemented remote visits and remote monitoring of patients.

1 to safely reduce the jail's population as to those inmates who are not in custody for serious and
2 violent felonies, out of concern for public safety, the Sheriff declines to invoke California
3 Government Code Section 8658.

4 Indeed, the need to balance public safety is significant, as evidenced by a recent news
5 report² of an inmate who was arrested, released on April 20 pursuant to zero-dollar bail under
6 Emergency Rule 4, and allegedly committed a carjacking 37 minutes after his release. The
7 inmate then attempted a second carjacking before fleeing and kicking a police K-9 in pursuit.

8 6. Answers to Questions from Plaintiffs' Counsel

9 **(1) Staffing**

10 Are you satisfied with the level of staffing and the care being provided by Wellpath during the
11 Pandemic? If you have any concerns, we would appreciate at least a high level briefing on the
12 nature of your concerns.

13
14 **ACPHD has no concerns related to the level of staffing and care being provided by**
15 **Wellpath during the pandemic.**

16
17 **(2) Oversight**

18 What if any steps are you taking proactively to monitor the conditions at Santa Rita? Is this a
19 regular part of the oversight you usually provide or specific to the pandemic? Have you made
20 suggestions that were implemented?

21
22 **We have worked with both Wellpath and the Sheriff's Department staff to review a COVID**
23 **prevention and outbreak plan prior to the first case of COVID 19. Since the first cases were**
24 **reported in Alameda County, we continue to work with Wellpath to prevent secondary**
25 **cases and manage COVID cases at SRJ. We have been given the opportunity to provide**

26
27 ² [https://sanfrancisco.cbslocal.com/2020/04/20/stolen-car-suspect-carjacks-victim-37-minutes-](https://sanfrancisco.cbslocal.com/2020/04/20/stolen-car-suspect-carjacks-victim-37-minutes-after-release-santa-rita-jail/)
28 [after-release-santa-rita-jail/](https://sanfrancisco.cbslocal.com/2020/04/20/stolen-car-suspect-carjacks-victim-37-minutes-after-release-santa-rita-jail/)

1 **input on measures implemented. All COVID cases are reportable to Public Health by law –**
2 **(Title 17, Section 2500 H&S Code) – similar notifications for other reportable**
3 **communicable diseases are required at all times, unrelated to the pandemic. We routinely**
4 **work with staff at SRJ on other communicable disease issues.**

5
6 **(3) Hospitalization**

7 Are you satisfied that the people in the jail will have access to hospitals timely if there is a need
8 for anyone with Covid symptoms who needs hospitalization?

9
10 **Yes. At the present time, the number and frequency of COVID-19 hospitalizations have not**
11 **placed undue strain on hospital resources and availability.**

12
13 Have you reviewed and approved any specific contingency plans for this occurrence?

14
15 **Public Health has reviewed and approved Wellpath’s Santa Rita Jail COVID-19 Outbreak**
16 **Plan, as well as the Sheriff’s and Wellpath’s release and discharge plans.**

17
18 **(4) Testing**

19 Are you satisfied with the quality and number of tests being administered to people who are
20 incarcerated or working at Santa Rita?

21
22 **At this time, Public Health has no information to suggest a specific problem with testing at**
23 **SRJ. Testing availability is limited in other settings due to supply issues.**

24
25 **(5) Other Recommendations**

26 Have you made other recommendations for treatment during this pandemic that you would like to
27 be followed by the jail that have so far not been implemented?

1 **Though Wellpath is the medical provider responsible for the medical care and treatment of**
2 **the inmates, ACPHD has and continues to communicate with Wellpath on a regular**
3 **schedule and on an ad hoc basis with regard to public health issues.**

4
5 **(6.) Public Health Response re Applicability of New Cal. Department of Public Health**
6 **Guidelines**

7 ACPHD thanks Judge Cousins for asking us to comment on the California Department of
8 Public Health (CDPH) Guidelines for expanding COVID-19 testing.

9 At present, guidance regarding COVID-19 testing is rapidly evolving and as noted in the
10 CDPH guidance document expansion of testing hinges on testing capacity and public health
11 priorities (i.e., discretion of the public health officer). During the COVID-19 response at Santa
12 Rita jail, ACPHDs priority has been to control the spread of ongoing transmission in the jail,
13 which would correspond to priority 1 in the CDPH guidance document. The rationale for this
14 approach was largely based on the following data obtained during this investigation and the
15 public health measures implemented to date: 1) Nearly all inmates have been in jail for 14 or
16 more days prior their illness onset; 2) No inmates have been detected as COVID-19 positive on
17 intake; and 3) Wellpath and Sheriff staff have implemented a screening procedure such that all
18 inmates are placed in a quarantined unit for the first 5 days after intake and are symptomatically
19 monitored, which corresponds to the median incubation period for COVID-19. All these factors
20 suggest that the primary public health problem is controlling transmission in existing housing
21 units where a COVID-19 positive inmate has been detected rather than screening inmates on
22 entry.

23 ACPHD agrees with the updated CDPH testing priority noting that screening
24 asymptomatic residents in congregate living facilities prior to admission or readmission may be
25 useful in this setting to ensure appropriate isolation and placement of new inmates. Given that
26 there may be public health benefit in the long-term to identify individuals on entry to Santa Rita
27 Jail who may be COVID-19 positive, ACPHD is adopting this new testing policy. Moving
28 forward ACPHD recommends that all new inmates be screened for COVID-19; however,

1 ACPHD recommends that if testing is to be conducted on intake then the following public health
 2 principles also be adopted: 1) The COVID-19 results should be used immediately to guide
 3 decisions on isolation and quarantine of inmates; 2) Additional COVID-19 tests will not be
 4 conducted unless indicated for clinical or public health purposes; and 3) In the rare event that
 5 there is limited COVID-19 testing or supplies in the future and there is evidence of ongoing
 6 COVID-19 transmission within the jail, then public health can review the clinical data gathered
 7 on screening on intake and potentially stop or limit the numbers of tests conducted at intake to
 8 prioritize testing of other inmates that would guide inmate isolation, quarantine, or other
 9 movement or movement restriction from or within the facility.

10 **PLAINTIFFS' RESPONSE**

11 The Court is correct to focus on the level of testing at the Jail and the role of the
 12 Department of Public Health. Plaintiffs' responses on those issues are note below. Defendants'
 13 carjacking anecdote is not well taken. If Defendants care about this question, they should invest
 14 in a statistically sound study of recidivism under their pre-COVID-19 release policies and under
 15 their current policies. One crime taken out of context is just rhetorical grandstanding. There is an
 16 unprecedented public health emergency and public safety and public health are best protected by
 17 taking all possible steps to limit the spread of COVID-19.

18 **Need to Increase Testing of Asymptomatic Individuals.** Governor Newsom has stated
 19 that testing goals need to triple in order for the state to reopen.³ Unless we test, the disease will
 20 continue to progress. Increased testing in the Jail would better protect vulnerable individuals and
 21 better Defendants' understanding of the spread of COVID-19 in Santa Rita Jail. It is not true that
 22 there is no value in testing when a unit has already been quarantined, one key value added by
 23 testing is the ability to do contact tracing on the other individuals who may turn out to be positive
 24 to isolate their prior contacts. For example, the Jail recently reported its first case of COVID-19
 25 in Housing Unit 6, a maximum security housing unit that had not previously had any cases.

26 _____
 27 ³ Catherine Ho, "Testing Goals Must Triple for State to Reopen," San Francisco Chronicle (Apr.
 28 23, 2020), <https://www.pressreader.com/usa/san-francisco-chronicle/20200423/282325387117067>.

1 Defendants have not been able to explain to Plaintiffs how COVID-19 got into that unit. Testing
 2 the other asymptomatic people on the unit would allow Defendants to identify whether it was
 3 introduced by an asymptomatic inmate and then to trace that person's movements to determine
 4 the source of the spread.

5 As noted by the Court, this past Sunday, April 19, 2020, the California Department of
 6 Public Health announced increased testing of asymptomatic people, prioritizing those living and
 7 working in places like correctional facilities.⁴ All persons booked into the jail should be tested, as
 8 should all "red" patients at the termination of their quarantine to confirm they no longer carry the
 9 virus before they are reintroduced to non-quarantined units. It is not clear from Defendants'
 10 response whether the new screening process for all new bookings will automatically include a test
 11 or if Defendants intend to continue with current screening practices. In response to the Court's
 12 Order (Docket 109), Plaintiffs have requested that Alameda County's Public Health Department
 13 and Santa Rita jail implement greater testing as soon as possible and contacted Defendants'
 14 counsel about scheduling a meet and confer about this new development.

15 **Quarantine of Newly Booked Individuals.** Plaintiffs' request that Defendants identify
 16 research explaining why individuals newly booked into the jail are quarantined for only five days
 17 before they are introduced to the general population. CDC guidelines advise individuals who feel
 18 healthy, but have been exposed to COVID-19 isolate for 14 days. "Social Distancing,
 19 Quarantine, and Isolation," Centers for Disease Control, [https://www.cdc.gov/coronavirus/2019-
 20 ncov/prevent-getting-sick/social-distancing.html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html). Plaintiffs' counsel has not found support for a
 21 shorter, five-day isolation period. While this may be the "median incubation period for COVID-
 22 19," setting the isolation point at the median ignores the fact that half of the cases will take longer
 23 to incubate. This is why the CDC recommends isolating for 14 days. Defendants themselves
 24

25 ⁴ See Sonia Y. Angell, MD, MPH, State Public Health Officer & Director,
 26 Expanding Access to Testing: Updated Interim Guidance on Prioritization for COVID-19
 27 Laboratory Testing, CALIFORNIA DEPARTMENT OF PUBLIC HEALTH (available at
 28 <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Expanding-Access-to-Testing-Updated-Guidance-on-Prioritization-for-COVID-19-Testing.aspx>) (last accessed Apr. 23, 2020 at 8:43 a.m.).

1 appear to recognize this because where COVID-19 cases are confirmed within the Jail, the units
2 or pods on which they occur are quarantined for 14 days. Treating new bookings differently
3 opens the door to increased COVID-19 spread within the Jail.

4 **Concern about Inmate Movement to Court.** Plaintiffs have requested the source or
5 authority behind Defendants' statement that COVID-19 is only infectious "two days prior to
6 symptom onset" but have not been provided with any authority for that statement. The statement
7 also runs contrary to CDC guidelines which provide:

8 *The onset and duration of viral shedding and the period of infectiousness for*
9 *COVID-19 are not yet known. It is possible that SARS-CoV-2 RNA may be*
10 *detectable in the upper or lower respiratory tract for weeks after illness onset,*
11 *similar to infections with MERS-CoV and SARS-CoV. However, detection of*
12 *viral RNA does not necessarily mean that infectious virus is present. There are*
13 *reports of asymptomatic infections (detection of virus with no development of*
14 *symptoms) and pre-symptomatic infections (detection of virus prior to*
15 *development of symptoms) with SARS-CoV-2, but their role in transmission is not*
16 *yet known. Based on existing literature, the incubation period (the time from*
17 *exposure to development of symptoms) of SARS-CoV-2 and other coronaviruses*
18 *(e.g. MERS-CoV, SARS-CoV) ranges from 2–14 days.⁵*

15 Based on the above guidance the individuals brought to Court could have been contagious for as
16 many as 14 days before they tested positive, including on the dates they were brought to Court.
17 This is yet another reason why Defendants need to expand testing to include asymptomatic people
18 and conduct proper contact tracing to identify all locations that individual had been to in the prior
19 14 days.

20 **Role of Alameda County Public Health Department.** The Alameda County Public
21 Health Department is responsible for public health in the Santa Rita Jail, just as in the rest of the
22 County. Defendants' response outlines how the Department has delegated to Wellpath health
23 care in the Jail; however, it cannot delegate its oversight responsibility. While the Department
24 has reviewed Wellpath's Master Outbreak Plan and policies, County health personnel cannot
25 ensure those plans, policies, and procedures are followed if they do not make regular in-person
26 visits to the Jail to observe those practices. For this reason, Plaintiffs request that Alameda

27 ⁵ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/faq.html#Transmission> (emphasis added).
28

1 County Public Health Department officials conduct random, unannounced rounds at the facility to
2 properly monitor Wellpath's care, as well as social distancing, cleaning, testing, use of masks,
3 etc. in the Jail.

4 Defendants informed Plaintiffs that Dr. Chitnis will make himself available to conduct a
5 thirty minute teleconference with the parties and their attorneys at a mutually agreeable time.
6 Plaintiffs were also informed that the Department is willing to further discuss Plaintiffs' request
7 for an additional inspection of the Jail during that meeting and are willing to continue meeting
8 and conferring regarding these issues.

9 **Population Reduction.** Reducing population remains the best way to prevent a COVID-
10 19 hotspot from developing at the Jail. Failure to reduce jail populations across the country could
11 cause 100,000 more deaths than currently estimated, according to a new study by analysts and
12 researchers at the American Civil Liberties Union, Washington State University, University of
13 Pennsylvania, and University of Tennessee.⁶ Defendants in Alameda can save lives by releasing
14 those who are medically vulnerable and those who pose no risk of imminent serious physical
15 harm to others.⁷ Defendant Sheriff Ahern can also avoid increasing the jail population by citing
16 and releasing those who are charged with crimes for which bail would be set at \$0 per Emergency
17 Rule of Court 4, rather than booking these individuals and waiting until arraignment to release
18 them on bail, if this is not already the practice. Defendants should cite and release these
19 individuals outside of the Jail to prevent these individuals from bringing the virus into the Jail or
20 taking the virus out in the community after exposure in the Jail.

21 Plaintiffs encourage Defendants to initiate talks with federal authorities to encourage more
22 releases; this is particularly important given the lack of systemic action to limit the population of
23 federal detainees at the Jail. Plaintiffs' also ask the Court to request an update from the District
24 Attorney of Alameda County regarding releases and to encourage weekly meetings with pretrial
25

26 ⁶ "COVID-19 Model Finds Nearly 100,000 More Deaths Than Current Estimates, Due to Failures
27 to Reduce Jails," American Civil Liberties Union, <https://www.aclu.org/report/flattening-curve-why-reducing-jail-populations-key-beating-covid-19?redirect=covidinjails>.

28 ⁷ *See id.* at 4.

1 to release more people if possible.

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Dated: April 23, 2020

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