

1 GAY CROSTHWAIT GRUNFELD – 121944  
 VAN SWEARINGEN – 259809  
 2 PRIYAH KAUL – 307956  
 ERIC MONEK ANDERSON – 320934  
 3 HANNAH M. CHARTOFF – 324529  
 ROSEN BIEN GALVAN & GRUNFELD LLP  
 4 101 Mission Street, Sixth Floor  
 San Francisco, California 94105-1738  
 5 Telephone: (415) 433-6830  
 Facsimile: (415) 433-7104  
 6 Email: ggrunfeld@rbgg.com  
 vswearingen@rbgg.com  
 7 pkaul@rbgg.com  
 eanderson@rbgg.com  
 8 hchartoff@rbgg.com

9 AARON J. FISCHER – 247391  
 LAW OFFICE OF  
 10 AARON J. FISCHER  
 2001 Addison Street, Suite 300  
 11 Berkeley, California 94704-1165  
 Telephone: (510) 806-7366  
 12 Facsimile: (510) 694-6314  
 Email: ajf@aaronfischerlaw.com

13 *(additional counsel on following page)*

14 Attorneys for Plaintiffs

16 UNITED STATES DISTRICT COURT  
 17 SOUTHERN DISTRICT OF CALIFORNIA

18 DARRYL DUNSMORE, ERNEST  
 ARCHULETA, ANTHONY EDWARDS,  
 19 REANNA LEVY, JOSUE LOPEZ,  
 CHRISTOPHER NELSON,  
 20 CHRISTOPHER NORWOOD, and  
 LAURA ZOERNER, on behalf of  
 21 themselves and all others similarly situated,

22 Plaintiffs,

23 v.

24 SAN DIEGO COUNTY SHERIFF'S  
 DEPARTMENT, COUNTY OF SAN  
 DIEGO, CORRECTIONAL  
 25 HEALTHCARE PARTNERS, INC.,  
 LIBERTY HEALTHCARE, INC., MID-  
 26 AMERICA HEALTH, INC., LOGAN  
 HAAK, M.D., INC., SAN DIEGO  
 27 COUNTY PROBATION DEPARTMENT,  
 and DOES 1 to 20, inclusive,

28 Defendants.

Case No. 3:20-cv-00406-AJB-WVG

**REQUEST FOR JUDICIAL  
 NOTICE IN SUPPORT OF  
 PLAINTIFFS' MOTIONS FOR  
 PRELIMINARY INJUNCTION  
 AND PROVISIONAL CLASS  
 CERTIFICATION**

Judge: Hon. Anthony J. Battaglia

Trial Date: None Set

1 *(counsel continued from preceding page)*

2 CHRISTOPHER M. YOUNG – 163319  
3 ISABELLA NEAL – 328323  
4 OLIVER KIEFER – 332830  
5 DLA PIPER LLP (US)  
6 401 B Street, Suite 1700  
7 San Diego, California 92101-4297  
8 Telephone: (619) 699-2700  
9 Facsimile: (619) 699-2701  
10 Email: christopher.young@dlapiper.com  
11 isabella.neal@dlapiper.com  
12 oliver.kiefer@dlapiper.com

13 BARDIS VAKILI – 247783  
14 JONATHAN MARKOVITZ – 301767  
15 ACLU FOUNDATION OF SAN DIEGO &  
16 IMPERIAL COUNTIES  
17 2760 Fifth Avenue, Suite 300  
18 San Diego, California 92103-6330  
19 Telephone: (619) 232-2121  
20 Email: bvakili@aclusandiego.org  
21 jmarkovitz@aclusandiego.org

22 Attorneys for Plaintiffs  
23  
24  
25  
26  
27  
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1 Pursuant to Federal Rule of Evidence 201, Plaintiffs Darryl Dunsmore, Ernest  
2 Archuleta, Anthony Edwards, Reanna Levy, Josue Lopez, Christopher Nelson,  
3 Christopher Norwood and Laura Zoerner (“Plaintiffs”) hereby request that the Court  
4 take judicial notice of the following documents in support of Plaintiffs’ Motions for  
5 Preliminary Injunction and Provisional Class Certification (“Plaintiffs’ Motions”):

6 **DOCUMENT LIST**

7 1. The California State Auditor’s February 3, 2022 report No. 2021-109,  
8 titled “San Diego County Sheriff’s Department: It Has Failed to Adequately Prevent  
9 and Respond to the Deaths of Individuals in Its Custody” (“State Audit Report”). A  
10 true and correct copy of the State Audit Report is attached as **Exhibit B** to the  
11 Declaration of Van Swearingen in Support of Plaintiffs’ Motions for Preliminary  
12 Injunction and Provisional Class Certification (“Swearingen Declaration”).

13 2. Findings of the San Diego County Citizens’ Law Enforcement Review  
14 Board (“CLERB”), true and correct copies of which are attached as **Exhibits M-X**  
15 to the Swearingen Declaration.

16 3. The San Diego Association of Government’s August 2021 report  
17 titled, “2020 Adult Arrestee Drug Use in the San Diego Region” (“SANDAG  
18 Report”), a true and correct copy of which is attached as **Exhibit EE** to the  
19 Swearingen Declaration.

20 4. The Death in Custody Reporting Forms (BCIA 713) submitted by the  
21 Sheriff’s Department to the California Department of Justice in 2019-2021, true and  
22 correct copies of which are attached as **Exhibit Z** to the Swearingen Declaration.

23 5. San Diego County Sheriff’s Department (“Sheriff’s Department”)  
24 Detention Services Bureau policies and procedures G.3, I.2, I.57, I.64, J.3, M.6,  
25 M.9, M.39, and Q.55, true and correct copies of which are attached as **Exhibits SS-**  
26 **TT and YY-EEE** to the Swearingen Declaration.

27 6. Sheriff’s Department Medical Services Division Department  
28 Operations Manual policies MSD.A.2, MSD.D.4, MSD.G.2.1, and MSD.P.7, true

1 and correct copies of which are attached as **Exhibits VV-XX and FFF** to the  
2 Swearingen Declaration.

3 7. Sheriff’s Department Medical Services Division Standard Nursing  
4 Procedure H.4, a true and correct copy of which is attached as **Exhibit UU** to the  
5 Swearingen Declaration.

6 8. Sheriff’s Department Detention Services Bureau reports on “Suspected  
7 Overdose Incidents with Naloxone Deployment,” dated December 30, 2021 and  
8 April 29, 2022, true and correct copies of which are attached as **Exhibits CC-DD** to  
9 the Swearingen Declaration.

10 9. The Sheriff’s Department Detention Services Bureau’s Jail Population  
11 Statistics from February 2022, a true and correct copy of which is attached as  
12 **Exhibit FF** to the Swearingen Declaration.

13 10. The April 2022 report titled “San Diego County In-Custody Death  
14 Study,” prepared for CLERB by Analytica Consulting (“Analytica Consulting  
15 Report”), a true and correct copy of which is attached as **Exhibit C** to the  
16 Swearingen Declaration.

17 11. The April 2018 Disability Rights California report titled “Suicides in  
18 San Diego County Jail: A System Failing People with Mental Illness” (“DRC  
19 Report”), a true and correct copy of which is attached as **Exhibit F** to the  
20 Swearingen Declaration.

21 12. The June 22, 2018 report by Lindsay Hayes titled “Report on Suicide  
22 Prevention Practices Within the San Diego County Jail System,” and the Sheriff’s  
23 Department’s response (“Hayes Report”), a true and correct copy of which is  
24 attached as **Exhibit G** to the Swearingen Declaration.

25 13. The 2017 report from the National Commission on Correctional  
26 Healthcare titled “Technical Assistance Report: San Diego County Sheriff’s  
27 Department (“NCCHC Report”), a true and correct copy of which is attached as  
28 **Exhibit H** to the Swearingen Declaration.

1 14. The May 30, 2020 report from Community Oriented Correctional  
2 Health Services to the Sheriff’s Department (“COCHS Report”), a true and correct  
3 copy of which is attached as **Exhibit I** to the Swearingen Declaration.

4 15. The San Diego County Grand Jury reports titled “San Diego County  
5 Detention Facilities Condition and Management” (dated May 19, 2014), “San Diego  
6 County Adult Detention Facilities” (dated June 1, 2017), and “San Diego County  
7 Detention Facilities Inspection Report and Inmate Mental Health” (dated May 28,  
8 2019). True and correct copies of these documents are attached as **Exhibits J-L** to  
9 the Swearingen Declaration.

10 **BASIS FOR JUDICIAL NOTICE**

11 The Court may take judicial notice of facts that are “capable of accurate and  
12 ready determination by resort to sources whose accuracy cannot be reasonably  
13 questioned.” Fed. R. Evid. 201(b)(2). The Court must take judicial notice of a  
14 judicially noticeable fact “if requested by a party and supplied with the necessary  
15 information.” Fed. R. Evid. 201(d).

16 **I. THE COURT MAY TAKE JUDICIAL NOTICE OF OFFICIAL**  
17 **REPORTS PREPARED BY STATE AND LOCAL AGENCIES**

18 Plaintiffs seek judicial notice of several documents created by state and local  
19 government agencies. Specifically, Plaintiffs seek judicial notice of the State Audit  
20 Report (**Exhibit B** to the Swearingen Declaration), an official report of the  
21 California State Auditor, as well as the Sheriff’s Department’s response to that  
22 report; several findings by CLERB (**Exhibits M-X** to the Swearingen Declaration),  
23 a San Diego County government agency responsible for investigating deaths that  
24 occur at the San Diego County Jail (the “Jail”); and the San Diego Association of  
25 Governments (“SANDAG”) Report (**Exhibit EE** to the Swearingen Declaration),  
26 which was prepared by a San Diego region agency.

27 All of these documents are posted on the agencies’ public websites, are  
28 reliable, and are subject to judicial notice as matters of public record and official

1 agency publications. Courts regularly take judicial notice of official governmental  
2 publications. *See Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375  
3 F.3d 861, 866 (9th Cir. 2004) (taking judicial notice of “records of state agencies  
4 and other undisputed matters of public record”); *Zakinov v. Blue Buffalo Pet Prods.,*  
5 *Inc.*, 2018 WL 1426932, at \*3 (S.D. Cal. Mar. 22, 2018) (taking judicial notice of  
6 government documents posted on public websites); *see also United States ex rel.*  
7 *Dingle v. BioPort Corp.*, 270 F. Supp. 2d 968, 972 (W.D. Mich. 2003) (“Public  
8 records and government documents are generally considered not to be subject to  
9 reasonable dispute.”) (internal quotation marks omitted), *aff’d sub nom. Dingle v.*  
10 *Bioport Corp.*, 388 F.3d 209 (6th Cir. 2004); *Hernandez v. Cty. of Monterey*, 305  
11 F.R.D. 132, 139 n.2 (N.D. Cal. 2015) (taking judicial notice of official government  
12 report by United States Census Bureau, in connection with motion to certify class of  
13 incarcerated plaintiffs).

14       These government agency reports and CLERB findings are also relevant to  
15 Plaintiffs’ Motions. The State Audit Report documents the California State  
16 Auditor’s investigation into the 185 deaths at the Jail from 2006 to 2020. The State  
17 Audit Report addresses several claims at issue in Plaintiffs’ Motions, including  
18 overdose deaths and suicides at the Jail, inadequate safety checks and safety check  
19 audits, safety checks in segregation units that are too infrequent, and inadequate  
20 surveillance systems at the Jail. The State Audit Report includes the Sheriff’s  
21 Department’s own response to the report (beginning at page 83), which is relevant to  
22 the Sheriff’s Department’s deliberate indifference to conditions at the Jail, and  
23 whether and when it intends to implement any of the recommendations in the State  
24 Audit Report to prevent deaths in the Jail.

25       The SANDAG Report is relevant to Plaintiffs’ Motions because it documents  
26 the prevalence of substance use among individuals arrested and booked into the Jail,  
27 which underscores the need for the Sheriff’s Department to act to prevent, detect,  
28 and treat illicit substance overdoses in the Jail. Finally, the CLERB findings are

1 relevant to Plaintiffs’ Motions because CLERB is the County agency responsible for  
2 investigating all deaths in custody—and addressing preventable deaths is the central  
3 thrust of Plaintiffs’ Motions. The CLERB findings document the causes of deaths at  
4 the Jail, deficiencies in Sheriff’s Department’s policies and practices contributing to  
5 or relating to those deaths, and misconduct by Sheriff’s Department custody staff.  
6 The Sheriff’s Department is informed of CLERB’s findings and recommendations  
7 to reform Jail policies and procedures. Accordingly, these findings, like the other  
8 government reports, are relevant to the Sheriff’s Department’s deliberate  
9 indifference to the constitutional and ADA violations contributing to death and  
10 serious harm at the Jail. It is appropriate to take judicial notice of the undisputed  
11 facts within the documents and the undisputed fact that these reports have put  
12 Defendants on notice of the dangerous conditions addressed in Plaintiffs’ Motions.

13 **II. THE COURT MAY TAKE JUDICIAL NOTICE OF THE SHERIFF’S**  
14 **DEPARTMENT’S OWN POPULATION, OVERDOSE, AND DEATH**  
15 **REPORTS**

16 Plaintiffs seek judicial notice of publicly available data about the incarcerated  
17 population in San Diego County, posted on the Sheriff’s Department’s website.  
18 Specifically, Plaintiffs seek judicial notice of a Sheriff’s Department report on the  
19 average daily population in the Jail (**Exhibit FF** to the Swearingen Declaration),  
20 Sheriff’s Department reports on the weekly and annual number of suspected opioid  
21 overdoses in the Jail (**Exhibits CC-DD** to the Swearingen Declaration), and  
22 Sheriff’s Department death in custody forms provided to the California Department  
23 of Justice (**Exhibit Z** to the Swearingen Declaration). Jail population data and the  
24 suspected opioid overdose reports are posted regularly on the Sheriff’s Department’s  
25 public website.<sup>1</sup> The death in custody forms are official State of California forms

26 \_\_\_\_\_  
27 <sup>1</sup> These reports are available at: [https://www.sdsheriff.gov/resources/jail-population-](https://www.sdsheriff.gov/resources/jail-population-data)  
28 [data](https://www.sdsheriff.gov/resources/jail-population-data) (overdoses and historical population data), and  
<https://apps.sdsheriff.net/inmatepopulation/displaypop.aspx> (up-to-date population  
data).

1 that the Sheriff's Department completes to report each death occurring in the Jail to  
2 the California Department of Justice.

3 Because these facts are self-reported by the Sheriff's Department, and the  
4 accuracy of these facts is verifiable and certain, the Court should take notice of these  
5 population and overdose counts. *MacGregor v. Mallinckrodt, Inc.*, 373 F.3d 923,  
6 933-34 (8th Cir. 2004) (affirming district court's decision to take judicial notice of  
7 the number of company employees because "the size is readily obtainable from  
8 company or tax records" and because the fact that "the number of employees is not  
9 common knowledge does not prevent the fact from being widely available"); *see*  
10 *also Hernandez*, 305 F.R.D. at 139 n.2 (taking judicial notice of the County's own  
11 counts of people incarcerated in County's jail). The average daily population in the  
12 Jail is relevant to Plaintiffs' motion for provisional class certification and  
13 demonstrates that the putative class is sufficiently numerous. The Sheriff's  
14 Department's overdose reports are relevant to Plaintiffs' claims that the Sheriff's  
15 Department is not adequately preventing overdoses in the Jail. The death in custody  
16 forms are relevant because they are the Sheriff's Department's self-reported  
17 documentation of deaths in the Jail from 2019-2021, and show the high number of  
18 deaths continuing to occur in the Jail.

19 **III. THE COURT MAY TAKE JUDICIAL NOTICE OF THE SHERIFF'S**  
20 **DEPARTMENT'S POLICIES AND PROCEDURES**

21 Plaintiffs request that the Court take judicial notice of certain sections of the  
22 Sheriff's Department's policies and procedures. Specifically, Plaintiffs seek judicial  
23 notice of several Detention Services Bureau policies and procedures (**Exhibits SS-**  
24 **TT and YY-EEE** to the Swearingen Declaration), Medical Services Division  
25 Department Operation Manual policies (**Exhibits VV-XX and FFF** to the  
26 Swearingen Declaration), and a Medical Services Division Standard Nursing  
27 Procedure (**Exhibit UU** to the Swearingen Declaration). The Detention Services  
28 Bureau policies govern the operations of the Jail. The Medical Services Division

1 policies and procedures govern the Sheriff’s Department’s medical operations. All  
2 of these policies are publicly posted on the Sheriff’s Department website.<sup>2</sup>

3 The Court may take judicial notice of agency records that are not subject to a  
4 reasonable dispute, including agency manuals, rules and policies. *See, e.g., Brown*  
5 *v. Valoff*, 422 F.3d 926, 931 & n.7, 933 n.9 (9th Cir. 2005) (taking judicial notice of  
6 the California Department of Corrections Operations Manual and Departmental  
7 procedures); *Hernandez*, 305 F.R.D. at 139 n.2 (taking judicial notice of Monterey  
8 County Jail policies and procedures). These policies are all relevant to Plaintiffs’  
9 Motions, which concern deficiencies in the Sheriff’s Department’s policies and  
10 practices related to the safety and security of people incarcerated at the Jail, and the  
11 provision of medical and mental health care at the Jail.

12 **IV. THE COURT MAY TAKE JUDICIAL NOTICE OF OFFICIAL**  
13 **REPORTS ABOUT THE JAIL**

14 Plaintiffs ask the Court to take judicial notice of several official reports about  
15 deaths in the Jail issued to the Sheriff’s Department or the County. These reports  
16 are the DRC Report (**Exhibit F** to the Swearingen Declaration), the Hayes Report  
17 (**Exhibit G** to the Swearingen Declaration), the NCCHC Report (**Exhibit H** to the  
18 Swearingen Declaration), , the Analytica Consulting Report (**Exhibit C** to the  
19 Swearingen Declaration), and the COCHS Report (**Exhibit I** to the Swearingen  
20 Declaration). These reports are each the result of extensive investigation and  
21 analysis of deaths at the Jail, including preventable deaths.

22 The Court may take judicial notice of these documents because they are  
23 posted or referenced on government websites, including the Sheriff’s Department’s  
24 own website. The Sheriff’s Department and/or the County of San Diego  
25 commissioned the NCCHC, Hayes, and COCHS Reports. The Sheriff’s Department  
26

27 \_\_\_\_\_  
28 <sup>2</sup> The policies and procedures, as redacted for public view, are available at  
<https://apps.sdsheriff.net/PublicDocs/SB978/Detention%20Services%20Bureau/>.

1 and/or CLERB have responded to or acknowledged all of these reports. The reports  
2 are all matters of public record, their authenticity is not in dispute, and they concern  
3 Defendants’ failure to prevent deaths in the Jail—the thrust of Plaintiffs’ Motions.  
4 *See Greenfield MHP Assocs., L.P. v. Ametek, Inc.*, 145 F. Supp. 3d 1000, 1007 (S.D.  
5 Cal. 2015) (judicial notice is appropriate where documents are “matters of public  
6 record, the parties do not dispute their authenticity, and they are central to Plaintiff’s  
7 claims”); *see also Murphy v. Bronson, Cawley, & Bergmann, LLP*, 2011 WL  
8 2413447, at n.1 (taking judicial notice of information found on government  
9 website).

10 The DRC Report is an extensive study of suicide deaths and policies in the  
11 Jail that is publicly available on DRC’s website, and the Sheriff’s Department has  
12 published a response to the DRC Report on the Sheriff’s Department’s own  
13 website.<sup>3</sup> Although the Sheriff’s Department disputes aspects of the DRC Report,  
14 the fact of the DRC Report’s publication and that it advised the Sheriff’s  
15 Department of problems with the mental health system at the Jail in 2018 cannot be  
16 reasonably disputed.

17 The County of San Diego commissioned the Hayes Report. *See Hayes Report*  
18 at 1. The Hayes Report analyzes suicide deaths and Jail policies, and a copy of the  
19 Hayes Report is published on the Sheriff’s Department’s website with a response  
20 from the Sheriff’s Department.<sup>4</sup> The fact of the Hayes Report’s publication, its  
21 content, and the Sheriff’s Department response cannot be reasonably disputed. The  
22 NCCHC Report is an analysis by the National Commission on Correctional  
23

24 \_\_\_\_\_  
25 <sup>3</sup> The report is available at: [https://www.disabilityrightsca.org/public-reports/san-](https://www.disabilityrightsca.org/public-reports/san-diego-jail-suicides-report)  
26 [diego-jail-suicides-report](https://www.sdsheriff.gov/bureaus/detention-services-bureau/preventing-jail-suicides). The response is available at:  
[https://www.sdsheriff.gov/bureaus/detention-services-bureau/preventing-jail-](https://www.sdsheriff.gov/bureaus/detention-services-bureau/preventing-jail-suicides)  
[suicides](https://www.sdsheriff.gov/bureaus/detention-services-bureau/preventing-jail-suicides).

27 <sup>4</sup> The report and response are available at:  
28 [https://www.sdsheriff.gov/bureaus/detention-services-bureau/preventing-jail-](https://www.sdsheriff.gov/bureaus/detention-services-bureau/preventing-jail-suicides)  
[suicides](https://www.sdsheriff.gov/bureaus/detention-services-bureau/preventing-jail-suicides).

1 Healthcare of the Jail medical and mental health care system. The Sheriff's  
2 Department commissioned the NCCHC Report, and a copy of the report is  
3 published on the Sheriff's Department's website.<sup>5</sup> The Sheriff's Department itself  
4 has lauded the expertise of Hayes and NCCHC, and shown that it is aware of those  
5 reports. In the Sheriff's Department's response to the State Audit Report, at pages  
6 11-12, the Sheriff's Department referred to Hayes and NCCHC as "subject matter  
7 experts who possessed the requisite knowledge, skills, and abilities necessary for the  
8 scope of their engagement." The County also commissioned the COCHS Report,  
9 which was issued in 2020 to inform the Sheriff's Department and County about best  
10 practices in correctional healthcare. The Sheriff's Department and County cannot  
11 reasonably dispute that the COCHS Report was published, and is therefore relevant  
12 to Plaintiffs' claims of deliberate indifference.

13 The Analytica Consulting Report is an independent analysis of deaths in the  
14 Jail over the last ten years prepared for CLERB, a public agency, posted on  
15 CLERB's website,<sup>6</sup> and addressed at an April 26, 2022 special meeting of CLERB.<sup>7</sup>  
16 The Analytica Consulting Report found that the Jail has the highest number of  
17 excess deaths among other large California jail systems, including an extraordinarily  
18 high number of excess overdose deaths. The report is relevant to Plaintiffs' claims  
19 that the deaths at the Jail constitute a crisis warranting the Court's intervention. The  
20 report was also provided to CLERB, a county agency, which is relevant to  
21 Plaintiffs' claims of deliberate indifference. Judicial notice of the foregoing reports  
22

23 <sup>5</sup> The report is available at: <https://www.sdsheriff.gov/bureaus/detention-services-bureau/preventing-jail-suicides>.

24 <sup>6</sup> The report is available at:  
25 <https://www.sandiegocounty.gov/content/dam/sdc/clerb/docs/in-custody-death-study/Att.G-CLERB%20In-Custody%20Death%20Study.pdf>.

26 <sup>7</sup> See Citizens' Law Enforcement Review Board, April 26, 2022 Special Meeting  
27 Agenda,  
28 <https://www.sandiegocounty.gov/content/dam/sdc/clerb/docs/agendas/2022/042622%20Special%20Agenda%20-%20Town%20Hall.pdf>.

1 is therefore appropriate.

2 **V. THE COURT MAY TAKE JUDICIAL NOTICE OF CIVIL GRAND**  
3 **JURY REPORTS ABOUT THE JAIL**

4 Plaintiffs also seek judicial notice of San Diego County Grand Jury reports  
5 about the Jail from 2014, 2017, and 2019 (attached as **Exhibits J-L** to the  
6 Swearingen Declaration). Courts regularly take notice of county grand jury reports.  
7 *See, e.g., Sommers v. City of Santa Clara*, 516 F. Supp. 3d 967, 980 (N.D. Cal.  
8 2021); *M.S. v. Cty. of Ventura*, 2016 WL 11506613, at \*6 (C.D. Cal. Oct. 24, 2016).  
9 These grand jury reports are relevant to Plaintiffs’ Motions because they contain  
10 recommendations from several years ago to the Sheriff’s Department and County to  
11 address issues raised in Plaintiffs’ motions, such as outdated surveillance systems  
12 and problems with the body scanners at the Jail.

13 **CONCLUSION**

14 For the reasons stated above, Plaintiffs respectfully request that the Court take  
15 judicial notice of the facts about the Jail in these exhibits, and consider them as true  
16 when ruling on Plaintiffs’ Motions.

17  
18 DATED: May 2, 2022

Respectfully submitted,

19 ROSEN BIEN GALVAN & GRUNFELD LLP

20  
21 By: */s/ Van Swearingen*

22 Van Swearingen

23 Attorneys for Plaintiffs  
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