Monitoring Tour Report – Yuba County Jail
April 2020 to August 2020
***Hedrick v. Grant*, E. D. Cal. No. 2:76-cv-00162-EFB**
October 9, 2020

I. EXECUTIVE SUMMARY

On January 30, 2019, United States Magistrate Judge Edmund F. Brennan granted final approval to an Amended Consent Decree ("ACD") designed to remedy ongoing constitutional and statutory violations in the Yuba County Jail (the "Jail"). Pursuant to the ACD, which is attached to this Report as **Exhibit 1,** Plaintiffs' counsel are the court-appointed monitor of Defendants' compliance with the ACD. The ACD required that Defendants complete implementation of the majority of its terms within nine months of the Court's final approval—that is, by October 30, 2019.

This Report on Defendants' compliance with the ACD is based on documents covering the first and second quarters of 2020; a monitoring tour of the Jail on July 10, 2020; and telephonic interviews with class members conducted between April 2020 and August 2020.

Plaintiffs' counsel identified several areas of non-compliance. Plaintiffs' counsel are particularly concerned about (1) persistent delays in providing medical and mental health care; (2) Defendants' practice of housing class members in administrative segregation solely due to mental illness; (3) Defendants' psychiatry understaffing; and (4) Defendants' failures to provide any information about the treatment received by class members referred for inpatient mental health care. Failure to remedy these problems before the next monitoring report may necessitate an enforcement motion. Additional areas of non-compliance include: (5) inadequate tracking and self-reviews of the sick call process; (6) inadequate medical and mental health staffing generally; (7) failures to comply with the grievance procedure established by the ACD; (8) inadequate tracking of class members with disabilities and inadequate interactive process related to disability accommodations; (9) inadequate evaluations of class members in safety cells; and (10) insufficient testing of class members for COVID-19.

For many other areas of the ACD, Plaintiffs' counsel have not been provided sufficient information to determine if compliance exists or not. Plaintiffs' counsel will continue to pursue the necessary information in the months ahead. Throughout the report, Plaintiffs have made requests for information, documents, or action by Defendants. These requests are in bold.

II. HEALTH CARE RESPONSIBILITIES

A. Sick Call

1. *Relevant Provisions of Amended Consent Decree and Sick Call Process at Jail*

Prompt access to medical care has never been more important, given the global Pandemic. Section V.B.9 of the Amended Consent Decree requires "daily sick call" for "all inmates requesting medical attention." Pursuant to this section, a Physician's Assistant (PA), Nurse Practitioner (NP), or Registered Nurse (RN) must triage all sick call requests within 24 hours of submission and determine the urgency of each request. Those requests raising "emergent" issues must be completed "immediately"; those raising "urgent" issues must be completed "within 24 hours"; and those raising "routine" issues must be completed "within 72 hours, unless in the opinion of the PA, NP, or RN that is not medically necessary." Where the PA, NP, or RN concludes that it is not medically necessary for a sick call request to be completed within 72 hours, he or she must note the basis for that conclusion.

Section V.B.9 further provides that Defendants must "develop and implement a process to track and assess the timeliness of providing sick call services," "review and assess that information on a quarterly basis, at minimum," and "produce the results of the review and assessment of the sick call process."

Defendants' current process for class members to request medical care involves the use of sick call slips. Sick call slips are available upon request from medical staff, who, according to Defendants, are present in each housing unit at least four times per day in order to distribute medication. Class members submit completed sick call slips by giving them to medical staff when medical staff enter the housing units. Sick call slips are required to be triaged by nursing staff within 24 hours, *see* ACD § V.B.9. During Plaintiffs' January 27, 2020 tour of the Jail, Defendants' contracted medical provider Wellpath stated to Plaintiffs' counsel that sick call slips typically are triaged by no later than the end of the 12-hour nursing shift during which the sick call slip is submitted.

2. *Defendants' System for Tracking and Assessing Their Own Compliance With Sick Call Timelines Remains Deficient*

To assess Defendants' compliance with the requirements of the ACD, Plaintiffs' counsel reviewed Defendants' Sick Call Logs for the first and second quarters of 2020.[1]

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[1] In their comments on Plaintiffs' draft report for the period ending in March 2020, Defendants stated that the Jail also uses a "CorEMR" system for tracking the sick-call process. *See* **Exhibit 2**, Michael J. Ciccozzi, Comments on 1st Monitoring Report, May 22, 2020, at 2. Defendants have not provided Plaintiffs' counsel with access to the

For Q1, Plaintiffs' counsel identified and analyzed 242 entries in which staff labeled the entry as being related to a sick call request by including the abbreviations "SC" and/or "S/C" in the Task Description column of the Sick Call Logs.[2] For Q2, Plaintiffs' counsel identified 137 such entries in the sick call logs.[3]

Unfortunately, the Logs have several deficiencies that make it difficult or impossible to determine whether Defendants are complying with the Amended Consent Decree:

- Defendants' Logs sometimes do not indicate the date and time when Defendants receive a sick call slip. This omitted information makes it difficult to determine whether the request was triaged within 24 hours. In the future, Defendants should incorporate the additional information about submission date and time into the Logs provided to Plaintiffs' counsel, or else provide Plaintiffs' counsel with scans of each sick call slip from each review period to permit Plaintiffs' counsel to monitor the triage process. **Please describe what steps, if any, Defendants intend to take to facilitate monitoring of triage timelines.**

- Defendants have yet to fully implement an effective system for classifying sick call requests as emergent, urgent, or routine. For the second quarter of 2020, Defendants changed their previous Priority-level numbering system to a two-tier system designating sick calls as either "urgent" or "routine." While this system more closely resembles the priority scheme envisioned by the ACD, 29% of total sick call entries for the second quarter of 2020 did not specify the priority level of the sick call. Sick call entries that did not specify a classification were usually related to mental health, and in most cases the class member requesting mental health treatment was not seen until long after the 72-hour compliance window for "routine" requests had lapsed. **Please provide appropriate training to triage staff to ensure that all requests for medical and mental health care are appropriately classified.**

CorEMR system and do not explain why the Logs provided to Plaintiffs' counsel do not include the additional information supposedly tracked in this system.

[2] It is Plaintiffs' counsel's understanding that the Sick Call Log or list is used to manage all types of care at the Jail, including follow up care and other types of care that is not initiated in response to a sick call slip. Plaintiffs' counsel limited its review to entries in which staff noted "SC" or "S/C" to focus only on care provided in response to class member requests.

[3] Plaintiffs' counsel assumes that the lower number of sick call requests during Q2 is a product of the reductions in the jail population during the COVID-19 pandemic.

- Defendants have not provided Plaintiffs with adequate self-reviews and assessments of the sick call process, as required by ACD § V.B.9. For Q1, Defendants provided Plaintiffs' counsel with one document titled "Minutes Quality Assurance/Peer-Review-Committee Meeting," and another document titled "CQI Screen: Scheduled and Unscheduled Care." Neither document purports to track or analyze the timeliness of Defendants' responses to class member requests for medical or mental health treatment. For Q2, Defendants again provided Plaintiffs' counsel with the minutes of a "Quality Assurance/Peer-Review-Committee" meeting, held on May 27, 2020. This document also does not purport to track the timeliness of Defendants' responses to class member requests for medical or mental health care. Another document provided to Plaintiffs' counsel consists of a single paragraph of text that reads, in full: "No non-confidential Quarterly Assurance or Quality Improvement Documentation this quarter 04-2020 to 06-2020- This year there were confidential information that included Juvenile content. Wellpath currently services both adult and juvenile facility and information is discussed at the Quarterly Meetings. Quality Improvement was pushed back due to the COVID19 Pandemic and shall resume July 2020."

  Defendants' self-reviews are not compliant with Section V.B.9 of the ACD, as they do not "track and assess the timeliness of providing sick call services"—or, for Q2, any other aspect of Defendants' system for providing medical care. **Please describe what, if any, steps Defendants intend to take to create a quarterly sick call review process that complies with the Amended Consent Decree.**

3. *Defendants are Exceeding Sick Call Timelines on a Regular Basis*

Although the problems described above continue to make it difficult for Plaintiffs' counsel to determine whether Defendants are complying with the timelines established by the ACD, the limited information available suggests that they are not.

For Q1, the logs produced to Plaintiffs' counsel included 242 sick call entries.[4] None of these entries identifies a basis for applying an exception to the timelines in the ACD.[5] Nevertheless, in 84 of the 242 sick call entries—approximately 35%—Defendants did not conduct any evaluation or provide any treatment within 72 hours.

[4] Pursuant to ACD Exhibit G, Plaintiffs' counsel receive only a limited production of Sick Call Logs, from the 2nd, 5th, 13th, 14th, 18th, 24th, 26th, and 30th of each month.

[5] In their response to the May 28, 2020 Monitoring Tour Report, Defendants contended that they are not obligated to record whether a determination of medical necessity was made at all, let alone record their rationale for concluding that a response within 72 hours was not medically necessary. Defendants' interpretation of the ACD is absurd, as it

For Q2, the logs produced to Plaintiffs' counsel included 137 sick calls requests from class members. None of these entries identifies a basis for applying an exception to the timelines in the ACD. Nevertheless, in 29 of the 137 sick call entries—approximately 21%—Defendants did not conduct any evaluation or provide any treatment within 72 hours.

In response to a draft of Plaintiffs' May 28 tour report, Defendants stated that they had "received approval for a sick call nurse position, which should improve the overall rate of responsiveness." *See* **Exhibit 2** at 3. When Plaintiffs' counsel asked about the status of this additional "sick call nurse" position during the July 10 tour, however, Defendants stated that no one had been interviewed for this new position and that the earliest possible date when the additional RN would start work would be in September 2020. **What is the status of this new "sick call nurse" position?**

Please explain what steps Defendants intend to take to ensure that they respond to class members' requests for medical and mental health care within the timelines required by the Amended Consent Decree. Failure to do so may necessitate an enforcement motion.

B. Medical And Mental Health Staffing

Section IV.A of the Amended Consent Decree requires that Defendants maintain, "at all times," the healthcare staffing levels contained in Exhibit C to the Amended Consent Decree. The staffing table in Exhibit C is reprinted below:

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would provide them with unlimited discretion to exceed the sick call timelines established by the ACD, with no mechanism for reviewing their exercise of that discretion. If Defendants intend to rely on the "not medically necessary" exception to the 72-hour requirement in the future, they must indicate each case in which they are doing so and provide a written explanation of their rationale.

Minimum Staffing Pattern

Yuba County, CA Adult Staffing Plan - ADP 385										
Position	Scheduled Hours							Total Hours	FTEs	Facility
	SUN	MON	TUE	WED	THU	FRI	SAT			
Day Shift										
HSA/RN		8.0	8.0	8.0	8.0	8.0		40.0	1.00	Adult
Weekend RN sick call	8.0						8.0	16.0	0.40	Adult
RN		8.0		8.0		8.0		24.0	0.60	Adult
LVN	8.0	8.0	8.0	8.0	8.0	8.0	8.0	56.0	1.40	Adult
Clerk	8.0	8.0	8.0	8.0	8.0	8.0	8.0	56.0	1.40	Adult
Evening/Night Shift										
RN	8.0	8.0	8.0	8.0	8.0	8.0	8.0	56.0	1.40	Adult
LVN	8.0	8.0	8.0	8.0	8.0	8.0	8.0	56.0	1.40	Adult
Night Shift										
RN	8.0	8.0	8.0	8.0	8.0	8.0	8.0	56.0	1.40	Adult
LVN	8.0	8.0	8.0	8.0	8.0	8.0	8.0	56.0	1.40	Adult
Medical and Mental Health Providers										
Medical Director		3.0		3.0		3.0		9.0	0.23	Adult
PA/FNP		8.0	8.0	8.0	8.0	8.0		40.0	1.00	Adult
On-site Psychiatrist		8.0						8.0	0.20	Adult
Telepsych			8.0	8.0				16.0	0.40	Adult
MFT/LCSW		8.0	8.0	8.0	8.0	8.0		40.0	1.00	Adult
MFT/LCSW	8.0			8.0	8.0	8.0	8.0	40.0	1.00	Adult
Totals								569.0	14.23	

To verify compliance with this staffing plan, Plaintiffs' counsel reviewed all staffing reports included in Defendants' first and second quarterly productions for 2020. These productions included staffing reports for January through June 2020. Using the data in these monthly reports, Plaintiffs' counsel compiled tables of the daily hours worked for each employee during a randomly chosen week from each month. These tables are attached to this report as **Exhibit 3**.[6] We then compared the information in these tables to the requirements in Exhibit C to the ACD. Squares highlighted in yellow indicate that Defendants' employees worked fewer hours on that day than Exhibit C requires for the position at issue.

For example, the ACD requires that an MFT/LCSW work at the Jail for at least 8 hours per day on Sundays, Mondays, Tuesdays, and Saturdays, and that two MFT/LCSWs work a combined total of 16 hours at the Jail each Wednesday, Thursday and Friday. *See* Exhibit C *supra*. During the week of February 23-29, 2020, however,

[6] The data provided to Plaintiffs' counsel lists the number of hours each employee worked on a given day but does not indicate the time of day the employee was on-site at the Jail. As a result, Plaintiffs' counsel were able to determine whether the total number of required hours for each position was satisfied on a given day, but not whether, for example, the 24 LVN hours worked on that day were appropriately spread between first, second, and third shifts so that an LVN was on site 24 hours per day.

Defendants' two MFT/LCSWs worked a total of only 4.25 hours on Sunday, 12.03 and 11 hours on Wednesday and Friday, respectively, and *zero* hours on Thursday and Saturday. Defendants' understaffing of MFT/LCSWs was even worse during the week of March 1-7, 2020, when Defendants' MFT/LCSWs worked fewer hours than Exhibit C requires *every single day*. On Sunday, Monday, Tuesday, and Saturday of that week, Defendants had an MFT/LCSWs working at the Jail for no more than 2.75 hours per day, rather than the 8 hours per day required by Exhibit C to the ACD. Although Defendants' MFT/LCSW staffing improved slightly during the second quarter of 2020, **Defendants still did not meet their MFT/LSCSW staffing obligations during any of the weeks Plaintiffs' counsel reviewed.**

Defendants had a similar understaffing problem for Registered Nurses (RNs). Exhibit C to the ACD requires that Defendants have at least one RN on site at the Jail 24 hours per day—not including the HSA/RN who must be onsite each weekday for at least 8 hours—except for Tuesdays and Thursdays, when there must be at least one RN on site (again, not including the HSA/RN) for at least 16 hours per day. During the week of February 23-29, however, an RN was only on site at the Jail for 18 hours per day on Friday and Saturday, rather than the 24 hours required by Exhibit C. During the week of April 5-11, an RN was on site at the Jail only 12 hours per day on Thursday and Friday, and only 7.75 hours on Saturday. Although Defendants' staffing of RNs improved slightly during the weeks of May 24-30 and June 14-20, an RN was on site at the Jail for only 10.5 hours on Thursday, May 28, and for only 18 hours on Wednesday, June 17.

Defendants' psychiatry staffing appears highly inconsistent. The ACD requires Defendants to have a psychiatrist working on-site at the Jail for only 8 hours per week, and to have a telepsychiatrist available for an additional 16 hours per week. Data for the week of April 5-11 indicates that Defendants' psychiatrist did not work any hours on-site at the Jail. This is a clear violation of the ACD. The data for the other weeks Plaintiffs' counsel reviewed, however, suggests that Defendants' psychiatrist was working on-site at the Jail for *far* more than the required 8 hours per week. Data for the weeks of January 19-25 and June 14-20, for example, indicate that a psychiatrist was on-site at the Jail for 45 and 46 hours, respectively. Plaintiffs are concerned that these figures may include hours that Defendants' psychiatrist worked at other facilities rather than showing only the time he worked at Yuba County Jail. **Please confirm whether Defendants' psychiatry staffing data includes hours worked at other facilities. If it does, please identify when Defendants' psychiatrist was on-site at the Jail. For any weeks when a psychiatrist was not working on-site at the Jail for at least 8 hours per day three days per week, please explain whether Defendants provided telepsychiatry services as an alternative.**

III. JOINT HEALTH CARE AND CUSTODY RESPONSIBILITIES

A. Inpatient Mental Health Care

Plaintiffs' counsel reviewed the inpatient mental health referral records produced by Defendants for the second quarter of 2020. Defendants made two referrals during this time period. There is no documentation of whether or when these class members were actually transferred to inpatient care, or what care they received at the Jail while they were awaiting transfer. Nor have Defendants provided any information about what care the patients actually received once they arrived at the hospital. **Please provide us with information about the care these individuals received at the Jail while awaiting transfer, as well and the inpatient medical records for patients K.M. and A.V.L. so that Plaintiffs can assess whether class members are receiving the care to which they are entitled under the Amended Consent Decree.**

B. Grievances

Section X.B of the Amended Consent Decree states that "[a]ny inmate may file a grievance" by submitting a form "provided for that purpose." Upon submission of a grievance form, a Jail Supervisor must investigate and attempt to resolve the grievance within 48 hours. If the grievant signs a form indicating that he or she is satisfied with the proposed resolution, "the grievance shall proceed no further." If the grievant does not sign this form and/or otherwise indicates that he or she is not satisfied with the proposed resolution, the Jail Commander must conduct a grievance hearing "within seventy-two (72) hours of receipt of the grievance." The Commander must then provide the grievant with "a written disposition … within seventy-two (72) hours of the completion of the hearing." The grievant may appeal the Jail Commander's disposition so long as he files the appropriate paperwork within seven days of receiving that disposition, ACD § X.C. "If a grievance concerns an allegation of a violation of a Sheriff's Department policy or state or federal law by an employee of the Jail," the grievance must be referred to the Professional Standards Unit of the Sheriff's Department for investigation by Internal Affairs. *Id.* § X.A.2.

1. *Inadequate or Improper Responses to Grievances*

We reviewed all grievance forms and associated incident reports provided for the first and second quarters of 2020 and identified several significant problems with Defendants' responses to class members' grievances.

- Defendants often do not provide the required hearings to class members who are not satisfied with Defendants' initial attempts to resolve their grievances. As noted above, class members are entitled to a hearing on their grievances with the Jail Commander if they are not satisfied with the Jail Supervisor's proposed resolution and/or do not sign the grievance indicating their satisfaction with this

proposed resolution. Several of the grievances we reviewed appear to have been closed or otherwise dismissed even though the grievant neither signed off on the grievance nor received a hearing. *See, e.g.*, Grievance 76598 (Feb. 16, 2020); Grievance 77276 (April 9, 2020); Grievance 77318 (April 11, 2020); Grievance 77465 (April 26, 2020); Grievance 77585 (May 10, 2020); Grievance 77750 (May 21, 2020). **This problem appears to have been particularly common with grievances relating to medical or mental health care.** *See, e.g.*, Grievance 76476 (Jan. 3, 2020); Grievance 76488 (Jan. 14, 2020); Grievance 76493 (Jan. 13, 2020); Grievance 76524 (Jan. 17, 2020); Grievance 76526 (Jan. 18, 2020); Grievance 76527 (Jan. 26, 2020); Grievance 76944 (Feb. 10, 2020); Grievance 77193 (Feb. 12, 2020); Grievance 77206 (Feb. 14, 2020); Grievance 77208 (Feb. 19, 2020); Grievance 77216 (March 4, 2020); Grievance 7727 (March 10, 2020); Grievance 77221 (March 19, 2020); Grievance 77227 (March 30, 2020); Grievance 77296 (April 4, 2020); Grievance 77469 (April 24, 2020); Grievance 77601 (May 11, 2020). On at least two occasions, a grievance complaining about the inadequacy of the care Defendants were providing for an ongoing medical problem was summarily dismissed on the grounds that it was a "duplicate" of the grievant's original request to be treated for the condition at issue. *See* Grievances 77599 and 77916 (May 11 and June 11, 2020); Grievances 77601 and 77915 (May 11 and June 5, 2020). **Please train staff on their obligation to comply with the ACD's requirements relating to grievance hearings.**[7]

- Certain responses to grievances relating to medical care are incomplete because they do not address one or more substantive complaints raised in the grievance. *See, e.g.*, Grievance 76598 (Feb. 19, 2020) (failing to respond to the grievant's complaint that he had not yet received a prescription refill from more than a week earlier); Grievance 77296 (April 4, 2020) (failing to respond to the grievant's complaint that he had not yet received medication prescribed to him at an

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[7] In their comments on a draft of Plaintiffs' May 28, 2020 tour report, Defendants argued that the ACD does not require that they provide a grievant with a hearing if Defendants do not obtain the grievant's signature indicating his or her satisfaction with the proposed resolution of the grievance. *See* **Exhibit 2** at 7-8. Defendants then explained that they would modify their grievance form so that grievants may check a box to indicate that he or she "is not satisfied with the resolution and would like a hearing with the division commander." *Id.* at 8. Defendants misinterpret Section X.B, which requires a grievance procedure in which class members may affirmatively opt *out* of their right to a hearing, not a procedure in which they must affirmatively opt *in* to that right. The change to Defendants' grievance forms therefore does not absolve Defendants of their obligation to provide a grievance hearing to grievants who do not affirmatively express their satisfaction with Defendants' proposed resolution of the grievance.

outpatient visit the previous month). **Please train staff on their obligation to investigate and attempt to resolve all complaints in each grievance.**

- In at least one case, it appears that Defendants may not have followed the required procedure for investigating a grievance that alleged a violation of County policy or state or Federal law. *See* Incident Report Nos. 77269, 77270, 77287 (relating to a physical altercation between Jail staff and one or more detainees in E-pod on April 8, 2020). Incident Narrative 77287 states that one of the detainees involved in this altercation handed a written grievance form to Officer Kandola at approximately 2218 hours on April 9, 2020. According to this Incident Narrative, the grievance—which appears to be missing from Defendants' Q2 document production—alleged that Jail staff used excessive force during the April 8 altercation in E-pod. Because the alleged excessive force would represent a violation of both state and Federal law, Defendants were obligated to refer the matter to the Sheriff's Professional Standards Unit for further investigation by Internal Affairs. *See* ACD § X.A.2. It is not clear whether such a referral occurred in this instance. Incident Narrative No. 77287 states that the incident "will be reviewed by the Use of Force Panel," but Plaintiffs have not been provided with any documentation of the required Internal Affairs investigation. **Please identify the individuals who serve on this "Use of Force Panel" and confirm whether this incident was, in fact, reviewed by that Panel. Please also confirm whether this incident was referred to the Professional Standards Unit and to Internal Affairs, as required by the ACD. If such a referral did occur, please provide Plaintiffs' counsel with a copy of the decision that resulted from the Internal Affairs investigation. If the referral did not occur, please explain why not. Finally, please provide Plaintiffs' counsel with a copy of the written grievance referenced in Incident Narrative 77827, any other documentation associated with the underlying altercation in E-pod on April 8, 2020, and copies of all video footage referenced in Incident Narrative 77827 and Hearing Narrative 77827.**

- In the same case arising from allegations of excessive force in E-pod, Captain Garza's written disposition following a hearing on the (missing) grievance informed the grievant that if he wished to appeal the disposition, "[i]t is your responsibility to file a written request for an appeal within 24 hours of receiving this decision." *See* Hearing Narrative, Incident No. 77287 (April 16, 2020). This 24-hour deadline represents a clear violation of ACD Section X.C, which unambiguously states that "appeals must be presented . . . *within seven (7) days of receiving the written disposition* from the Jail Commander." (emphasis added). **Please explain why the Jail imposed a 24-hour deadline for an appeal in this instance rather than the 7 days provided for in the ACD. If this is standard practice at the Jail, please cease this practice immediately. Finally, in light of Defendants' multiple deviations from required procedures in responding to**

the incident described in Incident Report Nos. 77269, 77270, and 77287, please provide Plaintiffs' counsel with copies of all video evidence referenced in Incident Narrative and Hearing Narrative documents, as well as any other materials related to this incident that are in Defendants' possession.

C. ADA Compliance

Section V.D of the Amended Consent Decree requires that the Jail adhere to the Americans with Disabilities Act (ADA) and all other applicable federal and state laws, regulations, and guidelines.

1. *Defendants' Flawed Grievance System Impedes Their Ability to Provide Reasonable Accommodations*

Section V.D.3 of the ACD requires Defendants to "offer reasonable accommodations to inmates with disabilities necessary to provide access to all programs, services and activities offered to other inmates[.]" Furthermore, "[i]f there is a question regarding the ability of the Jail to provide an accommodation, Defendants shall conduct an interactive process to determine whether a reasonable accommodation can afford an inmate with a disability the ability to participate in a program, service, or activity." To assess Defendants' compliance with these requirements, Plaintiffs' counsel reviewed all grievances and incident reports filed during the first two quarters of 2020. This review revealed at least two instances in which Defendants denied a class member's request for a specific accommodation and then closed his or her grievance without adhering to the grievance procedures established by the ACD. These failures to comply with the Jail's own grievance procedures resulted in these class members being denied the "interactive process" required by the ACD and by Title II of the ADA. *See, e.g.*, *Vinson v. Thomas*, 288 F.3d 1145, 1154 (9th Cir. 2002); *See* also 28 C.F.R. § 35.107(b).

In Grievance 77909, dated June 14, 2020, a class member who had been approved for medical shoes filed a grievance requesting a different pair of medical shoes. The shoes the Jail had provided were too large, the grievant explained, and had caused him to slip. Defendants denied the request and closed the grievance without obtaining the grievant's signature or providing him with a hearing—apparently because the grievant refused an alternative pair of shoes that staff offered him on June 16. While we appreciate Defendants' attempt to obtain appropriate shoes for the grievant, the ADA and ACD required them to engage in a good faith discussion of class member's needs. By failing to provide the class member with a hearing to consider his request, in accordance with the Jail's own grievance procedures, Defendants did not engage in the required good-faith interactive process.

Similarly, in Grievance 77538, dated May 1, 2020, a class member requested pain medication and an extra mattress due to his chronic back and neck pain. Defendants denied the request for an extra mattress and then closed the grievance without obtaining

the grievant's signature or providing him with a hearing. Defendants' failure to provide the grievant with such a hearing resulted in him being denied the interactive process to which he was entitled. **Please train staff on their obligation to engage in a "timely, good faith, interactive process"[8] to resolve disability-related grievances—including by providing grievants with a hearing with the Jail's ADA Coordinator where appropriate.**

2. *Defendants' System for Tracking Inmates with Disabilities May be Underinclusive*

Section V.B.2 of the ACD requires that the Jail "have a system for identifying and tracking all inmates who have a disability and the accommodations they require for those disabilities." This section further requires that Defendants' tracking system "be readily accessible to all staff (including staff for the third-party provider of health care services)," and be "updated at least twice per week." During the July 10 tour, Plaintiffs' counsel were pleased to hear that control room staff are provided with updated lists of inmates with disability accommodations in each housing unit on a daily basis. In reviewing the grievances and incident reports for the first two quarters of 2020, however, Plaintiffs identified at least two individuals who had been approved for disability accommodations by medical staff but whose names did not appear in any of the monthly "disability snapshots" provided with Defendants' quarterly document productions. *Compare* Grievances 77210 (Feb. 21, 2020) *and* 77909 (June 14, 2020), *with* Defendants' monthly disability snapshots for February, March, April, May, and June, 2020. **Is the information in these disability snapshots the same as what Defendants provide to Jail staff? Please explain why the grievants identified above were not included in the monthly disability snapshots.**

3. *Plaintiffs' ADA Expert Requires Additional Photographs and Information to Complete His Assessment of the Jail's Architectural Modifications.*

Section V.D. requires that Defendants complete all physical alterations to the Jail identified in the Blackseth Report of February 20, 2017, and that they do so do so by the dates specified in Exhibit E to the Amended Consent Decree. Section V.D. further states that Defendants "shall provide Plaintiffs with updates on a quarterly basis regarding the status of the changes." Defendants' comments on the May 28, 2020 tour report stated that that "[a]ll ADA projects in Phase 3 of Exhibit E have been completed."

During the July 10, 2020 monitoring tour, Defendants provided Plaintiffs' counsel with photographs of most physical conditions identified in Exhibit E, for the purpose of having Plaintiffs' architectural expert, Paul Bishop, assess Defendants' progress in

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[8] https://www.dfeh.ca.gov/accommodation/.

completing the modifications identified in the Blackseth Report and Exhibit E. Mr. Bishop's draft assessment is attached to this Monitoring Report as **Exhibit 4. Please provide, at your earliest convenience, the additional photographs and information requested in the draft assessment so that Mr. Bishop can complete his assessment of the Jail's progress in this area.**

D. Inadequate Monitoring and Overuse of Safety Cells

1. *Initial Mental Health Evaluations*

Section VI.C of the Amended Consent Decree requires that two types of mental health evaluations be performed within four hours of a class member being placed in a safety cell: a suicide risk assessment (SRA) and a broader mental health evaluation. The SRA may be conducted by a qualified mental health professional or by a physician, PA, NP, or RN. The broader evaluation must be performed by a qualified mental health professional.

Plaintiffs' counsel reviewed the safety-cell check sheets produced by Defendants for the first and second quarters of 2020 to assess whether Defendants are complying with these requirements. There is no documentation of either of these evaluations on the check sheets for 50 percent of safety-cell placements during quarter one, and 42 percent of safety-cell placements during quarter two. **To facilitate future monitoring of this issue, please ensure that staff record the required evaluations on the safety-cell check sheet.**

2. *Least Restrictive Housing Reviews*

Section VI.C further states that "[e]very twelve (12) hours, custody, medical, and mental health care staff must review whether it is appropriate to retain an inmate in a safety cell or whether the inmate can be transferred to a less restrictive housing placement."

Although Defendants appear to have complied with this requirement during the second quarter of 2020, the records reviewed by Plaintiffs' counsel showed significant lapses during the first quarter of 2020. During that quarter, there were eleven recorded cases in which a class member was held in a safety cell for longer than twelve hours. Staff documented the mandatory least-restrictive-housing review in only 1 of these cases. Plaintiffs' counsel will continue to monitor this issue.

3. *12-hour Cleanings*

Section VI.C requires that Defendants "clean safety cells at least every twelve (12) hours when occupied, unless it is not possible to do so because of safety concerns, and

when an inmate is released from a safety cell. Defendants shall indicate on the safety cell log when an occupied safety cell is cleaned."

During the first quarter of 2020, there were eleven instances in which class members were held in safety cells for longer than 12 hours. Defendants' records indicate that the safety cell was cleaned in only six of these eight instances. During the second quarter of 2020, there were eight instances in which class members were held in safety cells for longer than 12 hours. Defendants' records indicate that the safety cell was cleaned in only four of these eight instances. This is unacceptable and must be improved.

IV. CUSTODY RESPONSIBILITIES

A. Segregation

Section IX of the ACD states that "[e]very assignment of a person to Administrative Segregation shall be based on a written report providing an explanation of the facts and circumstances requiring the segregation." Section IX further states that "[a]ssignment to Administrative Segregation shall not involve a deprivation of privileges other than those necessary to protect the welfare of inmates and staff," and that "[i]nmates shall not be housed in Administrative Segregation solely because they have a mental illness."

Defendants' system for documenting assignments to Administrative Segregation involves written "incident reports." To assess whether Defendants are complying with Section IX of the ACD, Plaintiffs' counsel reviewed all incident reports provided in the first and second quarterly productions for 2020. Based on this review, Plaintiffs' counsel identified the following areas of noncompliance with Section IX.

1. *Inappropriate Placement in Administrative Segregation Based on Mental Illness*

As noted above, Section IX of the ACD states that "[i]nmates shall not be housed in Administrative Segregation solely because they have a mental illness." Despite this clear and unambiguous prohibition, **it appears that Defendants frequently house class members in administrative segregation for no reason other than their mental illness.** *See, e.g.*, Incident Report No. 75898 (Jan. 2, 2020); Incident Report No. 75934 (Jan. 6, 2020); Incident Report No. 76104 (Jan. 17, 2020); Incident Report No. 76215 (Jan. 27, 2020); Incident Report No. 76237 (Jan. 29, 2020); Incident Report No. 76300 (Feb. 3, 2020); Incident Report No. 76426 (Feb. 11, 2020); Incident Report No. 76559 (Feb. 16, 2020); Incident No. 76777 (Feb. 27, 2020); Incident Report No. 77018 (March 15, 2020). Defendants did not document a "current threat to Jail security, inmate safety, or officer safety" in any of these reports. **Please train custody staff on their obligation to house inmates suffering from mental illness in the least restrictive environment consistent**

with Jail security, inmate safety, and officer safety. Failure to do so by the next tour may result in an enforcement motion.

2. *Inappropriate Placement in Administrative Segregation Based on Withdrawal from Controlled Substances*

Defendants appear to have housed class members in administrative segregation for no reason other than a belief that the class member was "coming down" from drugs such as heroin or methamphetamine. *See, e.g.*, Incident Report No. 76441 (Feb. 12, 2020); Incident Report No. 76777 (Feb. 27, 2020); Incident Report No. 77001 (March 14, 2020); Incident Report No. 77037 (March 17, 2020). Section V.B.5 of the ACD states that "[i]f there is reasonable cause to believe that a person is addicted to a controlled substance or alcohol or is potentially undergoing withdrawal, the inmate must either be timely assessed and treated by a Qualified Medical Professional at the Jail or transported immediately to an appropriate hospital facility, such as Rideout Memorial Hospital." These reports, however, do not indicate that the class members placed in administrative segregation due to their withdrawal symptoms received appropriate—or in some cases, any—medical care. **Please explain what care these class members received for their withdrawal symptoms. And please explain why these class members were classified to administrative segregation rather than a medical cell or to inpatient care.**

3. *Inappropriate Placement in Administrative Segregation Based on Transgender Status*

On at least two occasions, custody staff appear to have housed classified class members in administrative segregation for no reason other than the class member's self-identification as transgender. *See* Incident Report No. 76050 (Jan. 15, 2020); Incident Report No. 76403 (Feb. 9, 2020). Incident No. 76050 is particularly troubling. In that case, a class member filed a grievance about being classified to administrative segregation and being required to program alone for no reason other than her identity as transgender. In his written response to the grievance, Sgt. Little states that he told the grievant that she could program with others in the pod *if all other inmates in the pod signed inmate request forms stating that they wanted to program with the grievant*. Sgt. Little identified no safety or security rationale to support his decision to condition the grievant's ability to program on the approval of others in the pod. **Please train staff on their obligation to offer programming to class members on a non-discriminatory basis.**

B. Education and Vocational Training

Section XIII of the ACD requires Defendants to develop detailed plans for an education and vocational training program that includes, at minimum, "high school courses leading to a high school degree or its equivalent"; "life skills and/or drug/alcohol recovery; vocational training"; and "utilization of outside instructors and county

personnel as instructors, where feasible and appropriate." Section XIII further requires that Defendants make "a good faith effort" to incorporate in their education and vocational training program any available resources and suggestions from the Yuba Community College District, the Marysville Joint Unified School District, Gateways Projects, Inc., and the Board of State and Community Corrections.

In their May 28, 2020 monitoring report, Plaintiffs' counsel noted that Defendants had not made the requisite good-faith effort to incorporate resources and suggestions from these entities from these entities into Defendants' educational and vocational training programs. **Please describe what, if any, additional steps Defendants have taken in this area since the May 28 monitoring report.**

During the July 10, 2020 monitoring tour, Defendants represented that all educational and vocational training programs had been suspended due to COVID-19-related limitations on entry of non-custodial and medical staff into the Jail. Defendants also stated that tablets would be made available to class members later in the year, and that unspecified educational materials would be available to class members on these tablets. **Please provide an update on the status of Defendants' educational and vocational training programs. Have in-person classes and programs resumed? If not, when do Defendants anticipate resuming such programming? What is the status of the tablets Defendants mentioned during the July 10 tour, and what specific programming will be available to class members on these tablets?**

C. COVID-19 Preparedness

1. *Quarantine*

Plaintiffs' counsel were pleased to hear during the July 10 tour that Defendants have maintained a strict quarantine system for all new intakes, which includes a 14-day quarantine period during which intakes are housed alone in individual cells. **Is this system still in place? Are individuals who leave the Jail to attend court proceedings required to complete the 14-day quarantine period again when they return to the Jail? What kind of facility does the Jail use to house people who are out to court? Are such individuals placed in group holding cells when out to court? Plaintiffs' counsel requested information about this topic in an email dated August 27, 2020,** ***see*** Exhibit 5**, but have not yet received a response.**

2. *Identification and protection of high-risk class members*

Since the pandemic began in March, Plaintiffs' counsel have repeatedly expressed our concern that the Jail does not have an adequate system for identifying and protecting class members whose age or underlying health conditions place them at high risk of serious illness or death from COVID-19. *See* **Exhibit 6.** Plaintiffs' concerns about Defendants' inadequate system for identifying and protecting vulnerable class members

clearly have merit. In the ongoing class action *Zepeda-Rivas v. Jennings*, No. 20-cv-02731 (N.D. Cal., filed April 20, 2020), Judge Vince Chhabria has ordered dozens of ICE detainees released on bail because their underlying health conditions place them at an elevated risk of severe illness from COVID-19, but few if any of these individuals were included on the lists of medically vulnerable class members Defendants provided to Plaintiffs' counsel. **Have Defendants made any efforts to improve their system for identifying and protecting such high-risk class members in response to our inquiries?**

3. *Inadequate Testing*

Plaintiffs' counsel remain concerned that the lack of COVID-19 testing at Jail places both inmates and staff at an substantial risk of serious harm. During the July 10 monitoring tour, Defendants stated that the Jail tests persons who exhibit symptoms of COVID-19, but does not provide testing for asymptomatic individuals. Nor does the Jail provide or require testing for Jail staff. Indeed, Defendants represented during the tour a only two inmates in total have been tested for COVID-19 since the pandemic began in March. If this extraordinarily low number is accurate, it suggests that Defendants are not even testing people exhibiting symptoms of the disease, as a brief review of the Defendants' Q2 sick call logs shows that at least four people requested medical attention for coughing and breathing problems between April and June. **Were any of the individuals listed in** Exhibit 7 **tested for COVID-19 at the Jail? If not, why not? Where were these individuals housed during their incarceration at the Jail?**

4. *Overall Jail Population*

It is Plaintiffs' counsel's understanding that the total inmate population at the Jail fell from approximately 400 at the outset of the pandemic to fewer than 200 at one point in the late spring. Although the Jail population appears to have increased slightly from its low point—the Jail's inmate locator shows a total population of approximately 235 people as of the date of this Monitoring Report—Defendants continue to incarcerate far fewer inmates in the Jail than in the months leading up to the pandemic. We commend Defendants for their efforts to reduce the Jail population during the pandemic, and we hope that Defendants will continue to take affirmative steps to limit the Jail population in the months and years ahead. **Please provide an update on what steps Defendants intend to take to limit crowding within the Jail in the months and years ahead.**