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16 UNITED STATES DISTRICT COURT
17 SOUTHERN DISTRICT OF CALIFORNIA

18 DARRYL DUNSMORE, ANDREE
ANDRADE, ERNEST ARCHULETA,
19 JAMES CLARK, ANTHONY EDWARDS,
LISA LANDERS, REANNA LEVY,
20 JOSUE LOPEZ, CHRISTOPHER
NELSON, CHRISTOPHER NORWOOD,
21 JESSE OLIVARES, GUSTAVO
SEPULVEDA, MICHAEL TAYLOR, and
22 LAURA ZOERNER, on behalf of
themselves and all others similarly situated,
23 Plaintiffs,

24 v.
25 SAN DIEGO COUNTY SHERIFF'S
DEPARTMENT, COUNTY OF SAN
DIEGO, SAN DIEGO COUNTY
26 PROBATION DEPARTMENT, and DOES
1 to 20, inclusive,
27 Defendants.

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

**REBUTTAL EXPERT REPORT
OF KAREN L. SNELL**

Judge: Hon. Anthony J. Battaglia
Magistrate: Hon. David D. Leshner

Trial Date: None Set

1 I, Karen L. Snell, declare:

2 1. I have been asked by Plaintiffs' Counsel to prepare this Rebuttal
3 Expert Report. Specifically, I was asked to review and analyze the opinions and
4 conclusions expressed in Opinion 12 of the August 21, 2024 Expert Report of
5 Lenard Vare (hereinafter, "Vare Report") to decide if that opinion caused a change
6 in my opinions and conclusions and to provide a response to that opinion. A list of
7 all documents that I reviewed and relied on to draft this Rebuttal Expert Report
8 and that are not listed in my initial report is attached hereto as **Exhibit A**.

9 2. I have reviewed and analyzed the opinion in Mr. Vare's report, and it
10 does not change any of the opinions that I expressed in my initial report dated
11 August 7, 2024 (hereinafter, "Snell Report").

12 3. The opinions expressed in this report are based on information that
13 has been made available to me. Should new information become available to me
14 in the future, I reserve the right to analyze that information and revise my opinions
15 and/or conclusions.

16 **A. There Is Ample Evidence That the Sheriff's Department**
17 **Unreasonably and Unjustifiably Denies Incarcerated People Access**
18 **To Confidential Communications With Their Attorneys**

19 4. Mr. Vare's Opinion 12, subpart a), states: "There is no evidence that
20 the Sheriff's Office unreasonably and unjustifiably denied incarcerated people
21 access to confidential communications with their attorneys." Vare Report, p. 114.
22 Mr. Vare discusses only attorney-client telephone communications in this section
23 of his Report, but elsewhere he addresses in person attorney-client
24 communications, so I will respond to both. It remains my opinion, as set forth in
25 the Snell Report, that people incarcerated in the San Diego County Jail ("Jail") are
26 denied confidential in person, telephone, and mail communications with their
27 attorneys.

28 5. **Telephone Communications.** Mr. Vare admits that "there are no
separate phones for attorney calls. The same phones are used for both regular and

1 attorney calls.” Vare Report, p. 115. The photographs included in the Snell
2 Report show these telephones and confirm that incarcerated people must call their
3 attorneys from day rooms where other incarcerated people and guards are present
4 and can overhear their conversations. Snell Report, ¶¶ 192-201. Incarcerated
5 people are allowed to make these calls during the limited time their housing unit
6 has access to the day room. Other incarcerated people are competing for the
7 telephones and are often, according to the incarcerated people I interviewed, lined
8 up close by. There are tables and chairs occupied by other incarcerated people, as
9 well as vending machines, within a few feet of the phones. Telephone
10 conversations are limited to 15 minutes.

11 6. Based on my review of the evidence, but for the rare exception, the
12 San Diego Sheriff’s Department (“Sheriff’s Department”), also known as the “San
13 Diego Sheriff’s Office,”¹ provides no telephones where clients can call their
14 attorneys and have a confidential conversation.

15 7. Mr. Vare cites a regulation from the San Diego County Sheriff’s
16 Department Policy & Procedures Manual , SD_175612, et seq., in support of his
17 opinion that it is Department policy not to eavesdrop on attorney-client
18 conversations. Vare Report, p. 115. This citation is unpersuasive for two reasons.

19 8. First, Mr. Vare cites an outdated version of this document; the current
20 version of the manual (dated June 4, 2024 and available online²) omits the
21 language that Mr. Vare relies on. According to the Vare Report, section 6.105 of
22

23 _____
24 ¹ According to the San Diego Union-Tribune, this Defendant has not made any
25 public announcement regarding a change in its name, but “quietly begun referring to
26 itself as the San Diego County Sheriff’s Office” as of July 2024. Jeff McDonald,
27 “San Diego County’s Largest Law Enforcement Agency Takes a New Name,” San
28 Diego Union-Tribune, August 30, 2024, *available at*
<https://www.sandiegouniontribune.com/2024/08/30/san-diego-countys-largest-law-enforcement-agency-takes-a-new-name/>.

² Available at: <https://www.sdsheriff.gov/home/showpublisheddocument/8298/638554489635070000>

1 this “Policy & Procedures Manual” reads, in part:

2 “Department employees shall not eavesdrop on or record any
3 confidential communications between a person in custody, and his/her
4 attorney, doctor, or clergy.”

4 Vare Report, p. 115. Although the document Mr. Vare relies on is not dated, it
5 appears to be from 2022 at the latest. The third page of the document includes an
6 “Executive Order” signed by “William D. Gore, Sheriff.” SD_175611. Mr. Gore
7 resigned as Sheriff in 2022.

8 9. In contrast, in the June 4, 2024 version of this document, section 6.105
9 reads, in its entirety:

10 With the advances in technology, Department employees have greater
11 access to audio/video equipment. The Department supports the use of
12 such equipment however the equipment must be used in an ethical and
13 responsible manner.

14 All personnel using any audio/video equipment, (e.g. Apple iOS
15 devices, all cellular phones, Smartphones, and other wireless electronic
16 devices, pen camera, digital record, video recorder) to record
17 conversations or contacts with the public shall adhere to all applicable
18 privacy statutes, case law, legal updates, Department training and
19 procedures. (04-21-15)

16 10. Therefore, even it were true that this provision once prohibited deputies
17 from listening to conversations between incarcerated people and their attorneys, the
18 current version of the document does not include that express language.

19 11. Second, even if it were operative, the document Mr. Vare cites
20 appears to relate more generally to investigations conducted by the law
21 enforcement and investigations bureaus of the Sheriff’s Department—not the
22 Detentions Services Bureau, which operates the Jail and has a separate policy and
23 procedure manual. In fact, the Detention Services Bureau’s own policies and
24 practices appear to conflict with the instructions cited by Mr. Vare.

25 12. While the line Mr. Vare quotes from the earlier version of the
26 regulation appears applicable to all Department employees, the remainder of that
27 regulation makes clear that 6.105 is directed at the Investigations and Patrol
28 divisions and not the Detentions division of the Department. SD_175964-175965.

1 For example, it states, “Department employees should activate the recorder as soon
2 as possible, consistent with officer/personal safety and prudent field tactics. Once
3 activated, the recorder shall remain on for the duration of the contact. NOTE: If
4 the contact is interrupted, i.e., deputy returns to the car to run a warrant check,
5 write a citation, etc. and there will be no contact with the person for several
6 minutes, the recorder may be turned off” SD_175965.

7 13. More broadly, the manual cited by Mr. Vare is listed separately on the
8 Sheriff’s Department’s website from the “Detention Policies and Procedures.” The
9 Snell Report cites to the latter policy and procedure manual, given that that is the
10 manual specific to running the Jail. The section in the non-detention-specific
11 manual that is cited by Mr. Vare, Section 6.105, Audio/Video Use Requirements,
12 is in the Operations section of the document, sandwiched between “Controlled Tire
13 Deflation Device Deployment” (6.104), and “Release of Narcotics from Sheriff’s
14 Evidence for Training” (6.106). It is **not** included in the non-detention-specific
15 manual’s “Critical Policies and Procedures” that “[a]ll members of this
16 Department will read, will adhere to and will be held accountable for”
17 SD_175619. It is also **not** listed in the Index under “Attorney,” “Lawyer,”
18 “Confidential,” “Privacy,” or “Recording.” SD_175619, 175621. It can only be
19 found if one looks up “Tape Recording.” SD_175622. There is no evidence
20 Detention deputies are specifically trained on this section.

21 14. If they were, they would immediately see a contradiction between this
22 regulation and the Jail’s practices. The part of regulation 6.105 Mr. Vare relies on
23 reads:

24 “Department employees shall not eavesdrop on or record *any*
25 confidential communications between a person in custody, and his/her
attorney, doctor, or clergy.”

26 Vare Report, p. 115 (emphasis added). But, as Mr. Vare admits, calls between
27 incarcerated people and their attorneys are “monitored” unless the number has been
28 “submitted to the detention investigations unit to be entered into a system that

1 ensures these communications remain private.” Vare Report, pp. 115-116. And as I
2 described in the Snell Report, this process is plagued with months-long delays.
3 Snell Report, ¶¶ 205-208. Thus, while it sounds good, the regulation is regularly
4 violated by the Department.

5 15. **In Person.** Mr. Vare appears to agree that attorney-client visits must
6 be private. He writes approvingly,

7 Commander Ralph was asked if the spaces provided for attorneys to
8 meet with their clients were private if the visits were held in an area
9 that had an incomplete wall between two visiting rooms. She
responded that it would depend on whether any other people were
present in the area.

10 Vare Report, p. 119. Presumably, Mr. Vare would agree that if there are “any other
11 people present in the area,” the visit is not private.

12 16. Mr. Vare asserts that the important point is that the meeting is private,
13 not that it is held in a visiting room of specific dimensions. I would agree. But in
14 the San Diego County Jail, attorney client meetings are held in rooms that are not
15 private rooms where other incarcerated people and even other law enforcement
16 personnel can overhear the conversations between incarcerated people and their
17 lawyers. Mr. Vare does not even attempt to justify this, nor does he provide any
18 explanation of how the specific attorney visiting areas at this Jail, including the
19 Central Jail facility, are conducive to holding a confidential meeting.

20 17. Mr. Vare acknowledges that “the Sheriff’s Office does not keep
21 reports on ... the wait times for attorneys after checking in to see their clients.”
22 Vare Report, p. 116. His argument that wait times are not a problem is based
23 instead on the fact that he has “not seen evidence in this case from a group of
24 attorneys not connected with this case who have made any complaints regarding
25 this issue.” *Id.*, p. 117.

26 18. The fact that Mr. Vare has not seen the evidence does not mean it does
27 not exist. I was provided with complaints from attorneys not connected with this
28 case about wait times and other problems related to in person visiting in the Jail.

1 See Snell Report, ¶¶ 123-124.

2 19. One email produced by Defendants refers to an attorney who waited
3 several hours before leaving Central Jail in frustration and then formally
4 complained to the Captain of the Jail. The Captain “believed staffing and poor
5 communication played a role.” Email to S. Manning from K. Bibel, October 26,
6 2023, SD_659605. Another email concerns an attorney complaint about the wait
7 at South Bay Detention Center. Email to E. Frierson from M. Carter, January 7,
8 2022, SD_661329. The attorney wanted to advise her client of what was going to
9 happen in court the next day. When she arrived at the jail, only one of the four
10 professional visiting rooms was in use, but she was required to wait for two hours
11 before she was allowed to see her client. *Id.* at SD_661330.

12 20. A third email, from Lieutenant Kelly Buchanan, describes an attorney
13 being stuck in a visiting room for over an hour because the jail’s intercom system
14 was broken and she could not alert the guards that she wanted to leave:

15 Our intercoms are not consistently working and none of our
16 professional visit room ones are working at all. This is a huge liability.
17 Yesterday we had an IP defecate in a pro-visit room because the call
18 box did not work for him to notify anyone that he needed out. This is
19 unacceptable. Additionally, two weeks ago, an attorney was stuck in
the room with an IP for almost an hour because she had no way to
communicate the visit was over. ... [I]t was known these intercoms
have been down for almost a month.

20 Email from K. Buchanan to Staff, July 21, 2022, SD_704056-704057; Snell Report,
21 ¶ 161.

22 21. In addition, I was provided with the deposition of the Sheriff’s
23 Department’s person most knowledgeable about attorney visiting, Captain Johns,
24 who testified that the Department is aware of long wait times for attorneys to visit
25 with their clients. Johns Depo. at 18:20-24. Captain Johns testified that the
26 Department is aware of attorneys waiting several hours to see a client, then leaving
27 the jail in frustration. *Id.* at 19:8- 21. He testified that the Department is aware
28 that attorneys and other professionals can overhear the conversations of other

1 professionals in the professional visiting area at Central Jail. *Id.* at 75:21-76:23.

2 22. Finally, I was provided with publicly available evidence that in 2013,
3 an attorney sued the County of San Diego after he was locked in a Central Jail
4 visiting room for hours and that the County settled the claim by paying him
5 \$4,000. Snell Report, ¶ 137.

6 23. Clearly, the Department is aware of the problems attorneys face when
7 attempting to visit their clients. It simply gives them such low priority that they
8 have not been systemically addressed.

9 **B. There Is Ample Evidence That The Sheriff's Department**
10 **Frequently Fails To Notify Incarcerated People About Professional**
11 **Callback Requests From Their Attorneys**

12 24. Mr. Vare's Opinion 12, subpart b), states: "Plaintiffs' allegation that
13 the Sheriff's Office staff frequently fails to notify incarcerated people about
14 professional call requests from their attorneys is not supported by evidence." Vare
15 Report, p. 116.

16 25. Mr. Vare acknowledges that the San Diego Sheriff's Department does
17 not log the callback requests that come in, Vare Report, p. 116, and thus lacks any
18 evidence to refute Plaintiffs' claim that a substantial number of the callback
19 requests attorneys make are not delivered to their clients.

20 26. The sworn testimony of two named plaintiffs, Anthony Edwards and
21 Jesse Olivares, Complaint, pp. 193-194; Anthony Edwards Depo. at 164:11-13;
22 Jesse Olivares Depo. at 151:5-14, provides solid evidence to support Plaintiffs'
23 claim. The evidence I collected in the course of my investigation further supports
24 this claim. *See* Snell Report, ¶¶ 172-183; Declaration of Hannah Chartoff (Ex. C
25 to Snell Report). In addition, I understand from counsel for Plaintiffs in this case
26 that these problems continue, as named plaintiff James Clark has reported not
27 receiving multiple callback requests placed by his attorneys in this case.

28 27. In the absence of Department records of the number of attorney
callback requests that come in, Mr. Vare bases his opinion that it would be "an

1 unnecessary burden to have to write down each of the phone calls” on the number
2 *he calculates* come in per day, taking into account the Jail’s annual booking rates
3 and assuming that each person booked receives just one callback request from an
4 attorney. Vare Report, pp. 116-117. According to Mr. Vare, the Department
5 likely receives 132 attorney requests for a callback per day. There are seven jails.
6 This works out to less than 20 callback requests per jail per day. This is not an
7 onerous number.

8 28. It is interesting to compare Mr. Vare’s calculation of the total number
9 of attorney callback requests the Department receives to the number of callback
10 requests delivered by a deputy to an incarcerated person, as reflected on
11 Defendant’s log, SD_727548. As I explained in the Snell Report, according to
12 Defendant’s 2023 Callback Log, all of the jails combined logged fewer than 40
13 callback requests delivered to incarcerated people per week day. *See* Snell Report,
14 ¶ 178. That is substantially fewer than the 132 callback requests that Mr. Vare
15 estimates the Jail could, at minimum, expect on a daily basis.

16 29. Mr. Vare also asserts that, “It would be unreasonable to require that
17 the Sheriff’s Office staff log each of [the 20 attorney] phone calls [received]
18 without even knowing that the call originated from an attorney’s office.” Vare
19 Report, p. 116. But he forgets that in order to have an unmonitored telephone call
20 with an incarcerated person, the attorney’s number must be pre- “designated as
21 private” or “privileged” by the Sheriff’s Office. *Id.*, p. 117. The Sheriff’s staff
22 can simply consult this list and log those calls. It chooses not to, presumably
23 because the results would not be favorable to the Department.

24 **C. Mr. Vare Admits Access to Law Library Services “Could Be**
25 **Improved”**

26 30. Mr. Vare’s Opinion 12, subpart c), states: “I find that access to law
27 library services could be improved and the current process of using the services of
28 Legal Research Associates (LRA) should be enhanced to provide additional

1 access; however, they meet constitutional and title 15 standards.” Vare Report,
2 p. 119.

3 31. Mr. Vare notes that the Department has “logs that track access to the
4 law library by incarcerated individuals.” Vare Report, p. 116. Having reviewed
5 this evidence, he agrees with me that additional access should be provided. Vare
6 Report, p. 120. He states that he has “been informed that the county is open to
7 considering changes to this process to allow greater access to LRA requests.” *Id.*,
8 p. 120. He does not set forth what changes he thinks should be made.

9 32. Mr. Vare does not provide the reasoning for his (probably
10 inadmissible) conclusion that, despite its shortcomings, the access the Department
11 provides meets “constitutional and title 15 standards.” Vare Report, p. 120. In
12 contrast, I can attest, as a criminal defense attorney who has prepared for many
13 hearings and trials, and a civil rights attorney who has drafted many complaints,
14 that it is not possible to prepare a case or a defense within the statutory and court
15 imposed deadlines limited to two written legal research requests per month, with
16 results limited to 50 printed pages per request.

17 33. Mr. Vare explains the security concerns that have led many jails to
18 use offsite law library services rather than allowing incarcerated people to visit the
19 jails’ law libraries in recent years. Vare Report, p. 119-120. While safety and
20 security are important, they cannot override constitutional rights. Neither the
21 Department nor Mr. Vare appear to have given much thought to how to ensure that
22 incarcerated people continue to have access to law books. Sometimes it takes
23 some digging to figure out the question you want to ask. With only two requests
24 per month allowed, it would take months to access the information necessary to
25 mount a defense or draft a complaint. Current access is clearly insufficient.

26 34. Both Mr. Vare’s concerns and mine would be alleviated if
27 incarcerated people were given sufficient timely access to computer tablets
28 programmed to allow them to conduct legal research. This functionality is

1 available in the tablets provided by a number of correctional communication
2 companies, including (according to their websites) Smart Communications,³ GTL,⁴
3 Securus,⁵ and Pay Tel.⁶ Incarcerated people should also have access to technology
4 that allows them to save the results of their research, draft pleadings, and print
5 sufficient copies to comply with the rules of the court.

6 35. The information and opinions contained in this report are based on
7 evidence, documentation, and/or observations available to me. I reserve the right
8 to modify or expand these opinions should additional information become
9 available to me. The information contained in this report and the accompanying
10 exhibits are a fair and accurate representation of the subject of my anticipated
11 testimony in this case.

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13
14 Dated: October 1, 2024



15 Karen L. Snell

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24 _____
25 ³ Available at: <https://www.smartcommunications.us/kiosks-and-tablets.cfm>.

26 ⁴ Available at: <https://www.gtl.net/gtl-tablet-solutions/>.

27 ⁵ Available at: <https://www.securustablet.com/>.

28 ⁶ Available at: <https://www.paytel.com/interested-facilities/products-and-services/inmate-tablets/>.