CARTER C. WHITE – 164149
KING HALL CIVIL RIGHTS CLINIC
U.C. Davis School of Law
One Shields Avenue, Bldg. TB-30
Davis, California 95616-8821
Telephone: (530) 752-5440
Facsimile: (530) 752-5788
Email: ccwhite@ucdavis.edu

MICHAEL W. BIEN – 096891
GAY CROSTHWAIT GRUNFELD – 121944
JENNIFER L. STARK – 267062
BENJAMIN BIEN-KAHN – 267933
PABLO A. LASTRA – 287718
ANDREW G. SPORE – 308756
ROSEN BIEN GALVAN & GRUNFELD LLP
50 Fremont Street, 19th Floor
San Francisco, California 94105-2235
Telephone: (415) 433-6830
Facsimile: (415) 433-7104
Email: mbien@rbgg.com
ggrunfeld@rbgg.com
jstark@rbgg.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

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

Plaintiffs,

v.

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

Defendants.

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

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

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

Trial Date: None Set

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NOTICE OF MOTION

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

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

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

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

DATED: October 24, 2016

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: */s/ Gay Crosthwait Grunfeld*
Gay Crosthwait Grunfeld

Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ex. NNN at 42-45.

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

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

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

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

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

ARGUMENT

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

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

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

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

II. DEFENDANTS ARE DELIBERATELY INDIFFERENT TO PLAINTIFFS' MEDICAL AND MENTAL HEALTH NEEDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Defendants Are Deliberately Indifferent to Plaintiffs' Need for Adequate Outpatient Medical and Mental Health Care

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

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

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

1. Defendants' Medication Practices Place Plaintiffs At Risk of Serious Harm

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Grunfeld Decl. ¶ 81 & Ex. JJJ.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. DEFENDANTS ARE DELIBERATELY INDIFFERENT TO PLAINTIFFS' NEED FOR ADEQUATE OPPORTUNITIES FOR OUTDOOR EXERCISE AT YUBA COUNTY JAIL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. DEFENDANTS' TREATMENT OF ITS ICE AND PRE-TRIAL DETAINEES VIOLATES THEIR FOURTEENTH AND FIFTH AMENDMENT RIGHTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

DATED: October 24, 2016

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: */s/ Gay Crosthwait Grunfeld*
Gay Crosthwait Grunfeld

Attorneys for the Plaintiff Class