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' REPLY IN SUPPORT OF MOTION TO ENFORCE CONSENT DECREE AND FOR FURTHER REMEDIAL ORDERS

Judge: Hon. Edmund F. Brennan
Date: February 23, 2017
Time: 10:00 a.m.
Crtrm.: 8

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After years of empty promises of reform, Plaintiffs had no choice but to file this Motion asking the Court to oversee a remedial process at the Yuba County Jail (the "Jail"). In direct response to Plaintiffs' Motion, Defendants finally began making some minor improvements at the Jail. These improvements do not negate the need for this Motion, which aims to correct serious deficiencies in the Jail's provision of out-of-cell time and medical and mental health care. If anything, Defendants' changes are an admission of the Jail's violations of the Consent Decree and Constitution, bolstering the need for this Court's oversight of a durable remedy.

Defendants' half-hearted efforts came too late for Bertram Hiscock. On January 29, 2017, this 34-year-old graduate of the University of California at Berkeley, who suffered from mental illness and was found incompetent to stand trial, tragically died after being held in a "safety" cell at Yuba County Jail. Without the entry of Plaintiffs' [Proposed] Amended Order Granting Motion to Enforce Consent Decree and for Further Remedial Orders ("Proposed Order"), Dkt. No. 168-1, other pre-trial detainees, immigration detainees, and Jail prisoners will continue to face a substantial risk of serious harm, and possibly meet the same fate as Mr. Hiscock.

I. THE COURT HAS THE AUTHORITY AND DUTY TO GRANT PLAINTIFFS' MOTION TO PREVENT ONGOING VIOLATIONS OF THE CONSENT DECREE AND CONSTITUTION THAT ARE PLACING PLAINTIFFS AT SUBSTANTIAL RISK OF SIGNIFICANT HARM

Defendants argue that Plaintiffs' Motion to Enforce the Consent Decree and for Further Remedial Orders ("Plaintiffs' Motion" or "Motion") should be denied because Plaintiffs "fail to identify how any specific provision [of the Consent Decree] is violated." Defs.' Opp'n to Pls.' Mot. to Enforce ("Opp'n") at 1. Defendants' argument is belied by Plaintiffs' Motion, which states specifically that Defendants' current policies and practices are "in direct violation of key provisions of Sections III, IV, V, and XIV of the Consent Decree," Mot. at 7, and then repeatedly discusses the precise manner in which these provisions are implicated. *See also* Appendix A (attached hereto) (identifying the provisions of the Consent Decree that Defendants are violating as discussed in Plaintiffs'

Motion).

Defendants also balk at the scope of this Motion. However, Plaintiffs have not moved to enforce every provision of the Consent Decree. Plaintiffs have limited this Motion to the most serious violations that currently pose the greatest risk of harm to Plaintiffs. Unfortunately, there are many.

There is no doubt that the Consent Decree is valid and that this Court possesses the authority to enforce it. *Hedrick v. Grant*, 648 F. App'x 715, 716-17 (9th Cir. 2016) (upholding this Court's findings that, "as a matter of law, the Decree is necessary and narrowly tailored" and holding that the Consent Decree incorporates findings of constitutional violations). Insofar as Plaintiffs' Motion seeks relief beyond that expressly provided by the Consent Decree, Plaintiffs' requested relief is fairly within the spirit of the Consent Decree and necessary to protect Plaintiffs' constitutional rights. *See Clark v. California*, 739 F. Supp. 2d 1168, 1233 (N.D. Cal. 2010) (ordering enforcement of consent decree as well as further remedial orders "to ensure defendants' full compliance" with Federal law).

Defendants assert that they have been "denied due process" because "[t]here is no lawsuit which raises these issues." Opp'n at 1. However, all of the constitutional issues raised by Plaintiffs' Motion are well within the scope of the underlying complaint**,** as set forth in Appendix B. *See* Appendix B (attached hereto); *see also* Decl. Gay Crosthwait Grunfeld Supp. Pls.' Mot. to Enforce Consent Decree & For Further Remedial Orders ("Grunfeld Decl."), Dkt. No. 163-1, Ex. A (Pls.' Compl. ¶¶ 1, 22, 28, 31, 33, 34, 35, 39, & Prayer for Relief ¶ 4(a), (b), (c), (e), (g), (h), (j), (k), (l), (n), (o), (p), (q), (r), (ac)). Defendants fail to explain how the issues raised by Plaintiffs' Motion are not encompassed by the Complaint. Because Defendants have failed to develop this argument, or even to read the complaint, the Court should find the argument waived.

II. DEFENDANTS' PROCEDURAL ARGUMENTS POSE NO OBSTACLES TO PLAINTIFFS' REQUESTED RELIEF

A. Plaintiffs Do Not Need to Exhaust Their Administrative Remedies Because this Lawsuit Was Commenced Prior to the PLRA

Defendants argue that Plaintiffs have failed to comply with the exhaustion requirement of the Prison Litigation Reform Act ("PLRA"). *See* Opp'n at 2 n.2, 3 n.3, 5, 8-9, 30, 39-40, 43, 64. This contention has no merit. Plaintiffs' Motion is not an attempt to file several complaints on behalf of individual Plaintiffs. Plaintiffs' Motion seeks to alert the Court to multiple violations of the Constitution and to enforce the written terms of the Consent Decree, which was entered before the enactment of the PLRA. *See* Grunfeld Decl., Ex. C.

The PLRA states that "[n]o action shall be **brought** with respect to prison conditions … until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a) (emphasis added). This language unambiguously applies only to the initial **bringing** of an action. As such, courts have consistently held that PLRA's exhaustion requirement does not apply to actions commenced before the PLRA became effective. *Bishop v. Lewis*, 155 F.3d 1094, 1096 (9th Cir. 1998) ("[W]e hold that § 1997e(a), as amended by the PLRA, does not apply to actions filed prior to its enactment."); *see also Clark*, 739 F. Supp. 2d at 1232 (plaintiffs' motion for enforcement of consent decree and for further remedial orders did not trigger the exhaustion requirement where original complaint was filed before the PLRA's enactment).

No case cited by Defendants supports the proposition that exhaustion under the PLRA applies to an action that predates the PLRA's passage. *See* Opp'n at 8-9. Instead, Defendants cite multiple inapposite cases where courts have dismissed complaints for failure to exhaust in suits brought well after the enactment of the PLRA. Even if exhaustion were somehow required, Defendants have produced no evidence of Plaintiffs' alleged failure to exhaust, as they are required to do. *Albino v. Baca*, 747 F.3d 1162, 1172 (9th Cir. 2014) (en banc) ("[T]he defendant's burden is to prove that there was an available administrative remedy, and that the prisoner did not exhaust that available remedy.")

Whether because Defendants have produced no evidence of non-exhaustion or because Plaintiffs brought this action before the PLRA was enacted, the PLRA's exhaustion requirement does not bar the Court's authority to grant Plaintiffs' Motion.

B. Plaintiffs' Request for Further Remedial Orders Meets PLRA Standards

Defendants argue that, pursuant to Ninth Circuit precedent, "the PLRA restricts the power of the court to grant prospective relief regarding any civil action respecting prison conditions." Opp'n at 7 (citing *Oluwa v. Gomez*, 133 F.3d 1237, 1239 (9th Cir. 1998); *Gilmore v. California*, 220 F.3d 987, 999 n.15 (9th Cir. 2000)).

Plaintiffs agree that any prospective relief ordered by the Court must comply with the terms of the PLRA. *See* 18 U.S.C. § 3626(a)(1)(A). Such relief must "[be] narrowly drawn, extend[] no further than necessary to correct the violation of the Federal right, and [be] the least intrusive means" to correct the constitutional violation. *Id.*

Plaintiffs' Motion meets the requirements of the PLRA. In their Proposed Order, Plaintiffs ask the Court to order Defendants to create implementation plans to address Defendants' ongoing constitutional violations in six specific areas: Intake Screening, Health Care, Suicide Prevention, Staffing, Inpatient Care, and Exercise and Recreation. *See* Proposed Order at 5-12. By allowing Defendants to participate in the development of their own remedial plans, the Proposed Order ensures that the requested relief meets the need-narrowness requirement of the PLRA. The Proposed Order also spells out the elements of each remedial plan that are narrowly tailored to meet each specific Constitutional violation as the PLRA requires. *See Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1070 (9th Cir. 2010) ("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.").

Defendants cite *Turner v. Safley*, 482 U.S. 78 (1987), but provide no analysis as to why the Jail's violations of Plaintiffs' constitutional rights are justified by any legitimate penological interest. *See* Opp'n at 6. While Defendants claim they are limited by

budgetary constraints, inadequate funding is not a valid defense. *Peralta v. Dillard*, 744 F.3d 1076, 1083 (9th Cir. 2014) (en banc). Tellingly, Defendants cite no case where a court has applied *Turner* to a plaintiff's deliberate indifference claim. This is because the rights asserted by Plaintiffs, *i.e*. access to appropriate medical and mental health care and exercise, do not conflict with the legitimate goals of incarceration. *Johnson v. California*, 543 U.S. 499, 510-11 (2005) ("[W]e have not used *Turner* to evaluate Eighth Amendment claims of cruel and unusual punishment in prison. We judge violations of that Amendment under the 'deliberate indifference' standard, rather than *Turner's* 'reasonably related' standard. This is because the integrity of the criminal justice system depends on full compliance with the Eighth Amendment." (internal citations omitted)). Insofar as Defendants are deserving of any deference in addressing the many constitutional violations outlined by Plaintiffs' Motion, the Proposed Order allows Defendants to propose implementation plans sufficient to address these ongoing violations.

Plaintiffs have shown ongoing violations of their constitutional rights and have requested relief from the Court that meets the standard set forth by the PLRA. *See* Mot. at 52-54; 18 U.S.C. § 3626. The Court should not hesitate to remedy these many serious violations, consistent with this standard.

C. Defendants' Municipal Liability Argument Has No Applicability Here

Defendants argue that Plaintiffs must meet a higher standard to make out a constitutional claim against the County. *See* Opp'n at 11-12 (citing *Monell v. Dep't. of Soc. Servs.*, 436 U.S. 658, 659 (1978)). But *Monell* is irrelevant because Yuba County is not a party to this action. Instead, all Defendants are individuals and, under Rule 25(d) of the Federal Rules of Civil Procedure, all successors to the offices of the original individual Defendants have been automatically substituted as Defendants in this case.

No case cited by Defendants applies the *Monell* standard to a claim brought against an individual official. *See* Opp'n at 11-12. *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996) is inapposite; it uses distinct standards to analyze claims against a city as opposed to its councilmembers. Regardless, even if *Monell* somehow applied to Plaintiffs' claims

against individual officials, Defendants do not explain how Plaintiffs fail to meet the *Monell* standard. Plaintiffs have shown "persistent and widespread" customs in violation of the Constitution. *Monell*, 436 U.S. at 691 (citation omitted). Further, *Monell* liability is appropriate where those responsible for constitutional violations possess final decision-making authority from the municipality, just as Defendants do here. *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 485 (1986). In short, *Monell* has no application, but even if it did, Yuba County is legally responsible for the actions of Defendants as alleged by Plaintiffs.

D. Third Party Inspection Reports and Compliance with California Regulatory Guidance are Not Sufficient

Defendants persistently argue that their inspection reports and substantial compliance with California's Title 15 standards are sufficient to demonstrate compliance with the Consent Decree and the Constitution. Opp'n at 2, 12, 15-27.

First, not all of these inspection reports are as glowing as Defendants suggest. *See* Mot. at 5-6. Second, the Jail's lack of accreditation by the Institute for Medical Quality ("IMQ") and others casts doubt on their claim that they are actually complying with these regulations and standards. *See* Reply Decl. Gay Crosthwait Grunfeld Supp. Pls.' Mot. to Enforce Consent Decree & For Further Remedial Orders ("Grunfeld Reply Decl."), filed herewith, ¶ 12 & Ex. K (IMQ's response to subpoena for documents indicate no attempt to accredit the Jail has even been made); *see also* Defs.' App. of Exs. ("Defs' App."), Dkt. No. 181, Ex. J-7 (2015 ICE Inspection Report shows that YCJ is not accredited by American Correctional Association, National Commission on Correctional Health Care, The Joint Commission, or Prison Rape Elimination Act and found the Jail had 23 deficiencies in 16 standards). The inconsistencies between Defendants' practices and prevailing medical and correctional standards pointed out by Plaintiffs' experts cast doubt on this claim as well. *See, e.g.*, Decl. Phil Stanley Supp. Pls' Mot. to Enforce Consent Decree & For Further Remedial Orders ("Stanley Decl."), Dkt. No. 163-4, ¶¶ 31, 38, 42, 58-60; Reply Decl. of Phil Stanley Supp. Pls.' Mot. to Enforce Consent Decree & For

Further Remedial Orders ("Stanley Reply Decl."), filed herewith, ¶¶ 19, 27, 38, 58; Decl. Pablo Stewart, M.D., Supp. Pls' Mot. to Enforce Consent Decree & For Further Remedial Orders ("Stewart Decl."), filed under seal, ¶ 142, 229, 248, 250-52; Reply Decl. Pablo Stewart, M.D., Supp. Pls' Mot. to Enforce Consent Decree & For Further Remedial Orders ("Stewart Reply Decl."), filed herewith, ¶¶ 38, 46, 48, 86-87, 89, 110-12; *see also* Mot. at 10, 29, 48.

As a matter of law, Defendants' supposed compliance with state regulatory guidance and correctional standards does not show that Defendants' practices are constitutional. *See Hernandez v. Cty. of Monterey*, 110 F. Supp. 3d 929, 945-46 (N.D. Cal. 2015). The *Hernandez* court rejected a virtually identical argument, holding that compliance with California's Title 15 regulations did not alleviate defendants from their federal constitutional obligations. *Id.*; *see also Grenning v. Miller-Stout*, 739 F.3d 1235, 1241 (9th Cir. 2014) (denying summary judgment to defendant prison officials who argued that they were not deliberately indifferent because, *inter alia*, they complied with American Correctional Association accreditation standards). The same is true here.

There is no reason why Defendants cannot develop and implement policies that comply with both the Constitution and California administrative guidance. Even if a conflict did exist, the Constitution is supreme to state statutes, regulations, and accreditation standards. *See Spain v. Mountanos*, 690 F.2d 742, 746 (9th Cir. 1982) ("Under the Supremacy Clause of the United States Constitution, a court, in enforcing federal law, may order state officials to take actions despite contravening state laws."). The relevant inquiry is whether Defendants "acted or failed to act despite [their] knowledge of a substantial risk of serious harm." *Farmer v. Brennan*, 511 U.S. 825, 842 (1994); *see infra* Part III. Plaintiffs have presented abundant evidence in their Motion of deliberate indifference to Plaintiffs' rights. That evidence cannot be rebutted by citing to a feckless administrative standard.

E. Defendants' Half-Hearted Remedial Measures Do Not Moot Plaintiffs' Motion; Instead They Are an Admission of Constitutional Violations

In response to Plaintiffs' Motion, Defendants have produced some evidence of very recent changes to some policies and practices. *See, e.g.*, Opp'n at 33, 39, 62. However, Defendants have not produced any evidence that these litigation-driven changes have remedied the substantial risks of serious harm shown by Plaintiffs; that these changes will be supported by appropriate funding; that staff have been trained on the changes; that Defendants are monitoring staff's compliance with the changes; or even that the changes are permanent. In the absence of any evidence of implementation, training, and sustainability, this Court should not credit Defendants' representations that their meager and belated policy changes have cured the problems harming Plaintiffs on a daily basis.

Even if Defendants' changes were wholly effective, Defendants' voluntary cessation of unconstitutional practices cannot moot this case. Plaintiffs are entitled to injunctive relief requiring that Defendants make permanent and fully implement their new policies. "It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 189 (2000) (citations omitted). Defendants have a "heavy burden" to show "that the challenged conduct cannot reasonably be expected to start up again …." *Id.*; *Nat. Res. Def. Council v. Cty. of L.A.*, 840 F.3d 1098, 1104 (9th Cir. 2016) ("[A] defendant must demonstrate that it is *absolutely clear* that no violations will recur." (citation omitted; emphasis added)). Where, as here, Defendants have failed to make a "sufficient showing that there is no longer any threat of continuing constitutional … violations, a court order is necessary to ensure that Defendants will not revert to their past practices." *Prison Legal News v. Cty. of Ventura*, No. 14-0773-GHK (EX), 2014 WL 2736103, at *9 (C.D. Cal. June 16, 2014). As demonstrated below, serious constitutional violations continue, as does Plaintiffs' urgent need for the entry of their Proposed Order directing Defendants to develop adequate remedial plans to address these violations. *See* Proposed Order at 5.

F. Defendants' Attack on Prisoner Declarations Lacks Merit

Defendants attempt to impugn a number of prisoner declarations and records relied on by Plaintiffs. *See* Opp'n at 30-31. Defendants' audit of certain prisoner records does little to cast doubt on the veracity of Plaintiffs' evidence. *See* Decl. Re Inmate Complaints Supp. Defs' Opp'n to Pls' Mot. to Enforce, filed under seal, ¶ 2. First, this "audit" is by definition incomplete and represents only a drop in the bucket of Plaintiffs' overall evidence. Second, Plaintiffs rely largely on records created by Defendants. If the Jail's own records are not to be trusted, Defendants do not explain why. Third, far from casting doubt on Plaintiffs' evidence, the account of events in Defendants' audit is substantially consistent with that presented by Plaintiffs' Motion. Likewise, Defendants' experts Dr. Jason Roof and Kathryn Wild express disagreement with some of Plaintiffs' declarations, but do not explain why Plaintiffs' evidence is unreliable. *See* Decl. Dr. Jason Roof Supp. Defs.' Opp'n to Pls' Mot. to Enforce ("Roof Decl."), Dkt. No. 180-3, Ex. 1 at 10-12; Decl. Kathryn J. Wild Supp. Defs.' Opp'n to Pls.' Mot. to Enforce ("Wild Decl."), Dkt. No. 180-2, Ex. 2 at 11-13; *see also* Pls.' Objections to Expert Declarations of James Sida, Kathryn Wild, and Dr. Jason Roof Supp. Pls.' Mot. ("Pls.' Objections"), filed herewith at 7-8, 10. District courts regularly rely on prisoner declarations in deciding motions such as this one. *See, e.g.*, *Hernandez*, 110 F. Supp. 3d at 954 (granting preliminary injunction based in part on prisoner declarations); *Hernandez v. Cty. of Monterey*, 305 F.R.D. 132, 139 (N.D. Cal. 2015) (certifying class based in part on prisoner declarations); *Armstrong v. Brown*, 939 F. Supp. 2d 1012, 1021 (N.D. Cal. 2013) (granting remedial orders based in part on prisoner declarations); *Armstrong v. Brown*, 857 F. Supp. 2d 919, 931 (N.D. Cal. 2012) (same), *order enforced* (Aug. 28, 2012), *order aff'd*, *appeal dismissed*, 732 F.3d 955 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 2725 (2014).

III. DEFENDANTS' DELIBERATE INDIFFERENCE TO PLAINTIFFS' MEDICAL AND MENTAL HEALTH NEEDS REQUIRES FURTHER REMEDIAL ORDERS

The parties agree that a "prison official's 'deliberate indifference' to a substantial

risk of serious harm to an inmate violates the Eighth Amendment." *Farmer*, 511 U.S. at 828; *see* Mot. at 7-8; Opp'n at 10 (citing *Farmer*, 511 U.S. at 834). While Defendants are correct that "a mere difference of opinion as to what constitutes a medically acceptable course of treatment does not qualify as deliberate indifference," Opp'n at 10-11 (citing *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989)), the numerous violations identified in Plaintiffs' Motion to Enforce cannot be reduced to a simple difference in medical judgment.

Defendants' principal response to the mountain of evidence in Plaintiffs' Motion is the repeated citation to various declarations, including from their experts, which merely recite provisions of the Yuba County Jail Manual and related policies. Defendants' expert declarations and reports fail to shed light on the actual provision of medical and mental health care at the Jail. *See* Pls.' Objections at 2-3. That care is fundamentally flawed; Plaintiffs' evidence shows "serious systemic deficiencies in the [Jail's] health program" and a "pattern of negligent acts." *Madrid v. Gomez*, 889 F. Supp. 1146, 1256 (N.D. Cal. 1995); *see also Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988) (officials may be deliberately indifferent if they "deny, delay or intentionally interfere with medical treatment," or if the method by which they provide care is inadequate).

Contrary to Defendants' claims, Defendants have long known about the risks posed by these problems, as demonstrated by admissions in Defendants' SB 863 BSCC grant application, Grunfeld Decl. ¶ 82 & Ex. KKK § 5.1, the numerous letters exchanged with Plaintiffs over the past two years, in addition to in-person meetings, in which Plaintiffs have specifically raised all of the issues identified in this Motion, *id.* ¶¶ 14-28, 30 & Exs. F, G, H, I, J, K, L, M, N, third-party inspections of the Jail, *id.* ¶ 83 & Ex. LLL at 31, 33, and numerous prisoner incident reports and grievances, Decl. Jennifer L. Stark Supp. Pls' Mot. to Enforce Consent Decree & For Further Remedial Orders ("Stark Decl."), filed under seal, ¶ 29 & Exs. B, F, J, L, AA. *See also* Mot. at 6, 12-13, 34-35, 39, 42. Despite these risks, Defendants have consciously failed to act. Due to Defendants' ongoing deliberate indifference which endangers class members' health and safety, Plaintiffs seek

relief from the Court.

A. Contrary to Defendants' Representations, the Jail Does Not Provide Inpatient Psychiatric Hospitalization

Defendants do not dispute that they are constitutionally required to provide "a system of ready access to *adequate* [mental health] care," which includes inpatient care. *Compare* Mot. at 40 (citing *Coleman v. Brown*, 938 F. Supp. 2d 955, 981 (E.D. Cal. 2013), and *Hoptowit v. Ray*, 682 F.2d 1237, 1253 (9th Cir. 1982)), *with* Opp'n at 59-60; *see also Brown v. Plata*, 563 U.S. 493, 516 (2011) (evidence of ongoing constitutional violations included evidence of "an absence of timely access to appropriate levels of care at every point in the system," including access to inpatient care) (citation omitted).

Instead, Defendants argue that "the County complies with all of the[ ] terms" of the Consent Decree which require the Jail to provide inpatient mental health care. Opp'n at 59 (citing Roof Decl. ¶¶ 4(i), 4(k) & Decl. Regarding Provisions of Consent Decree Supp. Defs' Opp'n to Pls' Mot. to Enforce("Decl. Re Provisions of Consent Decree"), Dkt. 180-6, ¶ 11). Defendants' evidence does not support their claim to provide inpatient care.

The Consent Decree has specific provisions governing inpatient care:

- Section V.A.3 requires that "[t]he Sutter County Crisis Clinic and the Bi-County Mental Health Department … provide inpatient … mental health care as needed." Grunfeld Decl., Ex. C, § V.A.3.
- Section V.A.4 requires that "[t]he [mental health] counselor … be able to … provide inpatient … treatment as indicated …." *Id.*, § V.A.4.
- Section V.G. states that "Emergency … psychiatric care must be available twenty-four hours per day." *Id.*, § V.G.
- Section V.P of the Consent Decree provides 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.*, § V.P (emphasis added).
- Section V.R. of the Consent Decree states that "[i]nmates with emergency crisis situations shall be able to receive care at Sutter General Hospital." *Id.*, § V.R.

According to Plaintiffs' expert, Dr. Stewart, inpatient mental health care, or inpatient psychiatric hospitalization, is the most intensive level of psychiatric care:

> It requires multidisciplinary assessments and multimodal interventions that are provided in a 24-hour secure and protected, medically staffed and

> psychiatrically supervised treatment environment. Twenty-four hour skilled psychiatric nursing care, daily medical care, and a structured treatment milieu are required. The goal of inpatient care is to stabilize individuals who display acute psychiatric conditions associated with a relatively sudden onset and a short, severe course, or a marked exacerbation of symptoms associated with a more persistent, recurring disorder. Typically, the individual poses a significant danger to self or others, or displays severe psychosocial dysfunction.

Stewart Reply Decl. ¶ 8.[1]

Dr. Roof, Defendants' mental health expert, does not opine that the Jail provides inpatient mental health care. *See* Roof Decl. ¶ 4(k). While Captain Barnes—who does not have any mental health expertise—states that "[m]ental health services are provided on an inpatient and outpatient basis, as determined by Sutter-Yuba Behavioral Health [SYBH] staff," *see* Decl. Re Provisions of Consent Decree ¶ 11, this representation is directly contradicted by the Declaration of Dr. Tony Hobson, the Behavioral Health Director for SYBH. *See* Decl. Re Mental Health Services Supp. Defs.' Opp'n to Pls.' Mot. to Enforce ("Decl. Re Mental Health Services"), Dkt. No. 180-4, ¶ 16. Instead, Dr. Hobson states only that SYBH provides "mental health services … at the Jail on an **outpatient** basis." *Id*. (emphasis added). In fact, Dr. Hobson has specifically informed Plaintiffs' counsel that SYBH does not admit prisoners from the Jail for inpatient psychiatric care once they have been booked into the Jail, allegedly due to safety concerns for other patients at SYBH. *See* Reply Decl. Jennifer L. Stark Supp. Pls.' Mot. to Enforce Consent Decree & Further Remedial Orders ("Stark Reply Decl. Under Seal"), filed under seal, ¶ 2.

Defendants concede that the Jail "does not currently have a dedicated set of rooms specific for addressing those in psychiatric need," Opp'n at 59, and that the Jail does not have medical and mental health staff at the Jail twenty-four hours a day, seven days a

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[1] Defendants' Objections to the testimony of Dr. Stewart, an eminently qualified correctional psychiatrist, consist of mere boilerplate objections that fail to undermine his opinions that the medical and mental health care at the Jail fails to meet constitutional muster. *See* Pls.' Response to Defs.' Objections to Expert Declarations of Pablo Stewart, M.D., and Phil Stanley ("Pls.' Response to Defs.' Objections to Expert Declarations"), filed herewith, at 2-3.

week, all of which are required for an inpatient psychiatric facility. Opp'n at 55-58. Therefore, the Jail clearly does **not** provide inpatient mental health care at the Jail. *See* Stewart Decl. ¶ 250; Stewart Reply Decl. ¶ 8.

Defendants also assert that, "[i]f emergency services are required, the person is transported to Rideout or SYBH." Opp'n at 60. Although somewhat ambiguous from Defendants' Opposition, it does not appear that SYBH actually provides inpatient psychiatric hospitalization to prisoners from the Jail despite Jail policies which explicitly permit such care. *See, e.g.*, Grunfeld Decl. ¶¶ 68, 69 & Exs. WW (YCJ order No. D-401, § III.E & F (rev'd June 1, 2015)) & XX (YCJ Order No. C-154 § III). Rather, "[d]ue to basic security concerns, the Jail endeavors to keep inmates with mental issues at the Jail" Opp'n at 59; *see also* Stark Reply Decl. Under Seal ¶ 2 (Plaintiffs' counsel was informed by Dr. Hobson that SYBH does not accept prisoners from the Jail for inpatient psychiatric hospitalization due to safety concerns for other patients); Grunfeld Reply Decl. ¶ 5, Ex. C; Decl. Re Mental Health Services ¶ 5 (nowhere stating that prisoners are transferred to SYBH's Adult Psychiatric Hospital Facility for inpatient psychiatric hospitalization).

Notably, Defendants provide **no** examples of prisoners in need of psychiatric hospitalization being transferred to SYBH for inpatient mental health treatment. If Defendants have started transferring prisoners to SYBH for inpatient psychiatric hospitalization, this is a new practice that needs to be investigated. Plaintiffs' counsel have received no incident reports or medical records that support this practice. *See* Grunfeld Reply Decl. ¶¶ 13-14.

Captain Barnes also claims that "[i]nmates with emergency crisis situations are transferred to Rideout Hospital, where SYBH have staff on site 24/7." Decl. Re Provisions of Consent Decree ¶ 11. However, Dr. Hobson states that only one or two crisis counselors from SYBH work at Rideout. Decl. Re Mental Health Services ¶ 4. As explained by Dr. Stewart, "inpatient psychiatric hospitalization requires more resources than what can be provided by one or two crisis counselors." Stewart Reply Decl. ¶ 16.

Based on numerous incident reports and class members' medical records which

Plaintiffs have submitted to the Court, it appears that the only instances in which the Jail will transport a prisoner in acute psychological distress to Rideout is if that prisoner commits an act of self-harm that requires emergency medical care. Stewart Decl. ¶ 260. Hospitalizing prisoners only after they have attempted to commit suicide or commit serious acts of self-harm is not an appropriate or constitutional practice. *See Helling v. McKinney*, 509 U.S. 25, 33, 35 (1993). Further, it appears that prisoners who are transferred to Rideout generally only receive treatment for their physical injuries, not psychiatric care. Stewart Decl. ¶¶ 260-261. Therefore, this does not suffice for access to inpatient psychiatric hospitalization.

Finally, Defendants state that "[t]hose with significant mental health issues are transferred to state hospitals" but concede that "space is very limited, and it can take months for a transfer to occur." Opp'n at 60; Roof Decl. ¶ 4(k). In the interim, the Jail does not provide any additional mental health treatment, enhanced supervision, and additional out-of-cell time for prisoners in need of inpatient psychiatric care. *See* Stewart Decl. ¶ 272; Stewart Reply Decl. ¶ 23. In fact, the Jail does not even have a system for tracking individuals who have been deemed incompetent to stand trial and are awaiting transfer to a state hospital. Stewart Decl. ¶ 271; Stewart Reply Decl. ¶ 22.

Class members in acute psychological distress frequently lack **any** means of receiving timely access to inpatient psychiatric hospitalization, placing them at substantial risk of serious harm. For example, Bertram Hiscock, a 34-year-old pre-trial detainee who was mentally ill and deemed incompetent to stand trial, died at Yuba County Jail on January 29, 2017 while in a "safety" cell. Grunfeld Reply Decl. ¶ 3. "[T]he fact that this prisoner was mentally ill, deemed incompetent to stand trial, and was being held in a 'safety' cell indicates that he required a level of care beyond what the Jail was able to safely provide." Stewart Reply Decl. ¶ 23; *see also* Mot. at 43 (providing another example of a "floridly mentally ill" prisoner at the Jail who Dr. Stewart concluded "require[d] inpatient hospitalization, not prolonged isolation" and whom Defendants conceded was an "example of an inmate with mental health issues who presents a serious problem for the

Jail."); *see also Bock v. County of Sutter*, Case No. 2:11-cv-00536-MCE-KJN (E.D. Cal. Feb. 25, 2011) (prisoner in Yuba County's sister Jail, Sutter County, committed suicide while awaiting transfer to a state psychiatric hospital).

Defendants do not dispute that they have long known about the dangers presented by the Jail's failure to provide inpatient psychiatric hospitalization to seriously ill class members. *See* Grunfeld Decl., Ex. F at 2. Defendants' counsel has even conceded that "there are inmates in the Jail that should be in more suitable mental health treatment facilities" but stated that "there are not always suitable options available." Grunfeld Decl., Ex. J at 2, Mot. at 42.

The County has the ultimate responsibility of ensuring the safety of prisoners at the Jail who are suffering from serious mental illnesses and at risk of committing suicide. The Jail's ongoing failure to provide prisoners in psychiatric distress with access to inpatient psychiatric hospitalization violates the Consent Decree and subjects prisoners to substantial risk of serious harm in violation of the Eighth, Fourteenth, and Fifth Amendments.

Plaintiffs' Proposed Order will begin to remedy this violation by requiring Defendants to develop a plan to provide timely inpatient psychiatric care in a licensed facility for individuals who are in acute psychiatric distress and in need of urgent inpatient psychiatric care, whether or not awaiting transfer to a state hospital pursuant to court order. *See* Proposed Order at 11. The Proposed Order also requires Defendants to provide prisoners with adequate care when they are awaiting transfer to and have returned from such facilities. *Id.*

B. The Limited Number of Completed Suicides at the Jail Does Not Render the Jail's Suicide Prevention and Emergency Response Policies and Practices Safe

Defendants claim that the absence of completed suicides during the last ten years "demonstrates jail staff is aware of and properly address suicide risks." Opp'n at 37-38; Roof Decl., Ex. 1 at 14; Wild Decl., Ex. 2 at 5. While we do not yet know the circumstances of Mr. Hiscock's death, Defendants' premise is incorrect. As Dr. Stewart

opines, "[t]he fact that the Jail has been fortunate enough to have few-to-no prisoners die recently from suicide attempts provides no assurance about the adequacy of the Jail's policies and procedures to prevent future suicides." Stewart Reply Decl. ¶ 25; *see also Helling*, 509 U.S. at 33 (Jail 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.)

Dr. Stewart and Mr. Stanley have opined on numerous suicide attempts and/or examples of individuals engaging in self-injurious behavior which show significant deficiencies in the Jail's ability to protect prisoners from serious harm. *See*, *e.g.*, Stewart Decl. ¶¶ 99, 103, 128, 129, 134, 135, 143, 201, 260, 261; Stanley Decl. ¶¶ 40, 41, 46, 48, 50; Stanley Reply Decl. ¶ 34.[2] Notwithstanding Defendants' recent efforts, the Jail remains a dangerous place for suicidal and mentally ill prisoners for at least four reasons: (1) the Jail's ongoing placement of mentally ill and suicidal prisoners in isolation cells and administrative segregation for prolonged periods of time; (2) rampant suicide hazards available throughout the Jail; (3) the Jail's limited suicide prevention policies and emergency response practices; and (4) poor mental health care and lack of access to inpatient psychiatric care.

1. Defendants' Policies and Practices Regarding Isolation / "Safety" Cells Subject Prisoners to Substantial Risk of Serious Harm and Violate Sections V.R., V.J., and V.G. of the Consent Decree

Defendants argue that Plaintiffs' Motion should be denied because "[t]here are no provisions in the Consent Decree that address what standards the Jail is to apply for housing inmates in the cells designated as 'safety cells.'" Opp'n at 43. Defendants are incorrect. While the Consent Decree does not specifically use the term "safety cell," it

[2] Defendants' Objections to the testimony of Mr. Stanley, a highly qualified correctional administrator, consist of mere boilerplate that fail to undermine his opinions that provision of exercise and out-of-cell time, staffing levels, and the physical condition at the Jail fails to meet constitutional muster. *See* Pls.' Response to Defs.' Objections to Expert Declarations at 1-2.

contains provisions that are being violated by the Jail's current "safety" cell policies and practices. 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." *See* Grunfeld Decl., Ex. C., § V.R. Currently, the Jail uses an unlicensed and, at times, unsupervised crisis counselor to determine whether an individual is suicidal. *See* Stewart Reply Decl. ¶ 41; Wild Decl., Ex. 2 at 6; Decl. Re Mental Health Services ¶ 13. If an individual is determined to be a "danger to self or others or … appear[s] … ***gravely*** disabled," prisoners are then assigned to an isolation cell otherwise known as a "safety" cell. Grunfeld Decl., Ex. XX (YCJ Order No. C-154) (emphasis added).

In these "safety" cells—which are tiny, dimly lit, windowless isolation rooms without a bed or toilet so that the person must eat, sleep, and defecate in the same space—prisoners are generally stripped naked, provided limited access to food and water, deprived of any social interaction, deprived of access to light and exercise such that they cannot distinguish day from night, and provided no medical or mental health treatment. Stewart Reply Dec. ¶¶ 35, 42. Pursuant to the Jail's "safety" cell policy, prisoners are not required to receive a medical assessment by medical staff for 12 hours, and a mental health evaluation is not required for 24 hours. Grunfeld Decl., Ex. XX (YCJ Order No. C-154); *see* Stewart Reply Decl. ¶ 39. The "safety" cell policy does not include a cap on the amount of time that individuals may be held in a "safety" cell, so suicidal prisoners can be held in a "safety" cell for several days at a time or more than a week. Stewart Decl. ¶ 154; Stewart Reply Decl. ¶ 40.

Rather than taking steps to "assure the safety" of a suicidal inmate, as the Consent Decree requires, Grunfeld Decl., Ex. C, § V.R., the Jail's practices regarding the use of "safety" cells risk exacerbating a prisoner's suicidality. Stewart Reply Decl. ¶ 35. In addition, due to the dehumanizing, counter-therapeutic conditions of the "safety" cells, placing a suicidal prisoner in these "safety" cells increases 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*. ¶ 36.

Section V.J. of the Consent Decree requires that the Jail "be maintained in a safe and sanitary condition." Grunfeld Decl., Ex. C, § V.J. However, prisoners report being placed in "safety" cells covered in blood, feces, and urine. Stewart Decl. ¶ 126; Grunfeld Decl., Ex. Z, ¶¶ 5, 13, 23; Stark Decl., Ex. B (Incident Report No. 57639). Further, Section V.G. of the Consent Decree requires that "[e]mergency … medical[] and psychiatric care … be available twenty-four hours per day." Grunfeld Decl., Ex. C, § V.G. Yet, as already noted, the Jail does not provide access to inpatient psychiatric hospitalization if a prisoner is in acute psychiatric distress.

Further, the Jail's policies and practices relating to the use of "safety" cells subject prisoners to a substantial risk of serious harm. *See* Stewart Decl. ¶ 129. The recent death of Mr. Hiscock while being held in a "safety" cell—including the Jail's refusal to respond to his "pounding and banging on the door of his cell"—illustrates the potentially life-threatening danger created by the Jail's inadequate "safety" cell policies and procedures. Stewart Reply Decl. ¶ 43; Grunfeld Reply Decl. ¶¶ 2, 4, Ex. P (Decl. of Kasey Geist ¶ 4).

Defendants have long known about the dangers of placing suicidal and mentally ill prisoners in punitive, counter-therapeutic "safety" cells for prolonged periods of time. Defendants' own "safety" cell policy specifically states that "[i]ndividuals 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., Ex. XX (YCJ Manual Order No. C-154, § IX). Nonetheless, Defendants have failed to adopt adequate policies and procedures to keep these highly vulnerable class members safe, in violation of Sections V.R., V.J., and V.G of the Consent Decree and the Constitution.

Plaintiffs' Proposed Order will begin to remedy these violations by requiring revisions to the Jail's "safety" cell policies and practices, including: (1) prohibiting prisoners from being held in "safety" cells for prolonged periods of time; (2) requiring prompt medical assessments by Qualified Medical Professionals and suicide risk assessments by Qualified Mental Health Professionals; (3) requiring steps to improve the

punitive and unsanitary conditions in the "safety" cells; and (4) precluding "gravely disabled" prisoners from being held in "safety" cells at all. *See* Proposed Order at 9-10.

2. Defendants' Administrative Segregation Policies, Procedures, and Practices Place Mentally Ill Prisoners in Substantial Risk of Serious Harm

Defendants argue that a "prisoner has no constitutional right to a particular classification status or housing." Opp'n at 40. Defendants' argument misses the point.[3] Plaintiffs are not arguing that class members should receive a "particular classification status or housing." *Id*. Plaintiffs instead assert that Defendants' current policies and practices that allow mentally ill prisoners to be placed in administrative segregation—which is tantamount to solitary confinement—expose them to substantial risk of serious harm. *See* Mot. at 18-22.

Defendants do not respond to or dispute the cases cited by Plaintiffs which show that federal courts have repeatedly recognized the severe risk of harm to seriously mentally ill prisoners housed in segregation or isolation. *Compare* Mot. at 18 (citing *Madrid*, 889 F. Supp. at 1265-66; *Coleman v. Brown*, 28 F. Supp. 3d 1068, 1099 (E.D. Cal. 2014)); *with* Opp'n at 40-43. Defendants similarly do not respond to the scientific literature introduced by Plaintiffs which documents the risks of placing mentally ill prisoners in segregation. *See, e.g.*, Stewart Decl. ¶¶ 96, 105; Grunfeld Decl., Exs. YY, ZZ. Defendants also do not dispute that prisoners with mental illness are placed in administrative segregation regularly, and that Defendants have long known about the risks of housing mentally ill prisoners in administrative segregation. *See* Opp'n at 42; Grunfeld Decl., Ex. J.

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[3] Defendants' reliance on *Moody v. Daggett*, 429 U.S. 78, 88 (1976), and *Giba v. Cook*, 232 F. Supp. 2d 1171, 1183 (D. Or. 2002), is misplaced. *Moody* raises the question of whether a parolee is constitutionally entitled to an immediate parole revocation hearing. This question is wholly different than the one presented here, namely, whether mentally ill prisoners can subjected to substantial risk of serious harm by being placed in the Jail's administrative segregation units. In addition, in *Giba*, the District Court of Oregon found that a prisoner does not have a constitutional right to a particular risk classification status. Here, Plaintiffs are not seeking a particular risk classification status. They are merely seeking safe housing conditions that allow them the same privileges as the prisoners without mental illnesses and treatment.

Defendants simply argue that they do not segregate "every person with a mental illness." Opp'n at 42 (emphasis in original). According to Defendants, "[a] person's mental condition is a factor in housing decisions, in order to make sure the person is housed in a circumstance which is safe." *Id.*

However, as already demonstrated, the conditions in the Jail's administrative segregation units are actively **unsafe** for prisoners with mental illness due to the social isolation, reduced environmental stimulation, and loss of control over all aspects of daily life. *See* Mot. at 18-19; Stewart Decl. ¶¶ 91-106; Grunfeld Decl., Exs. YY at 17, ZZ. Even when a mentally ill class member specifically informs the Jail that he or she feels suicidal due to being housed in administrative segregation, Defendants frequently maintain these class members in segregation. *See, e.g.*, Stewart Decl. ¶ 99, 103; Stark Decl. ¶¶ 23, 29, 31 & Exs. U, AA, CC; Grunfeld Decl., Ex. GG; *see also* Stewart Reply Decl. ¶ 47; Stark Reply Decl. Under Seal, Ex. E at 64-66 (although Jail learned that mentally ill class member "bec[a]me suicidal due to housing location," Jail returned class member to same isolated medical cell for several weeks "where there is little stimulation. Clt reports he lays on bed all day and stares at wall. Cannot do puzzles, read or write, and there is no television. He is also housed in same hallway as another clt who continuously floods his cell with urine and feces, the smell of which permeates medical cells.").

Despite these known risks, Defendants argue that "Plaintiffs' claims regarding administrative segregation and suicide risk, are not supported by any evidence." Opp'n at 42. Defendants are sorely mistaken. *See* Mot. at 21-22; Stewart Decl. ¶¶ 98, 143; Grunfeld Decl., Exs. X at 2, GG; Stark Decl. ¶¶ 23, 26, 29, 31, Exs. U, X, AA, CC. Defendants also argue that "[t]here is no evidence of 'rampant' suicide attempts by those in administrative segregation." Opp'n at 42. But Defendants offer no evidence to contradict Plaintiffs' evidence, which proves that the risk of harm to mentally ill Plaintiffs placed in segregation is quite real and, unfortunately, common at Yuba County Jail. *See* Mot. at 21-22; Stewart Decl. ¶¶ 98-101, 103, 143; Stewart Reply Decl. ¶¶ 47, 49, 51, 53; Stanley Decl. ¶ 42; Stanley Reply Decl. ¶¶ 26, 31, 34, 62; Grunfeld Decl., Exs. X ¶¶ 8-13,

GG ¶¶ 3-5, 10, 15-16; Grunfeld Reply Decl., Ex. D; Stark Decl. ¶¶ 23, 26, 29, 31, Exs. U (Incident Report Nos. 51526, 51830 & June 14, 2014 medical records), X (Incident Report Nos. 37811, 51340), AA (Incident Report Nos. 54577, 60720), CC (Incident Report Nos. 54389, 60598, 60604, 61486); Stark Reply Decl. Under Seal ¶¶ 7, 9-12 & Exs. E (Feb. 13, 2016 medical records), G, H, I, J.

Defendants further argue that, "[p]er Order C-153 (Administrative Segregation), assignment to administrative segregation does not involve the deprivation of other privileges except those that are necessary to obtain the objective of protecting the inmate and staff." Opp'n at 42-43 (emphasis in original) (citing YCJ Order No. C-153). According to Defendants, "[t]hose in administrative segregations… are offered out-of-cell recreation time just like any other inmate." Opp'n at 43; Decl. Regarding Types and Uses of Cells Supp. Defs' Opp'n to Pls' Mot. to Enforce ("Decl. Re Types and Uses of Cells"), Dkt. No. 180-5, ¶ 9. However, the vast majority of prisoners in the administrative segregation units continue to receive little-to-no outdoor exercise. *See* Stanley Reply Decl. ¶¶ 22-25. More importantly, Defendants' claim does not acknowledge that individuals placed in administrative segregation are subjected to very different conditions than all other prisoners by virtue of being socially isolated, deprived of natural light, and locked in a cell for approximately 23 hours a day. As a result of the negative effects that administrative segregation can have on mentally ill individuals, mentally ill individuals in segregation require greater intervention, such as more structured and unstructured out-of-cell time, in order to maintain mental health. Stewart Reply Dec. ¶ 48. The Jail does not have any policies that recognize and accommodate the special needs of mentally ill prisoners in administrative segregation.

Finally, Defendants argue that "[t]here are no provisions in the Consent Decree that address what standards the Jail is to apply for classification or housing of inmates identified with mental illness." Opp'n at 40. However, Section VIII of the Consent Decree states that "[a]ssignment to deep felony [which is now administrative segregation] shall not involve a deprivation of privileges other than those necessary to protect the

welfare of inmates and staff," and Section V.J. of the Consent Decree requires that the Jail "be maintained in a safe and sanitary condition." Grunfeld Decl., Ex. C, §§ V.J., VIII. As discussed, the Jail is not complying with these provisions.

Plaintiffs' Proposed Order will begin to remedy these serious violations of the Consent Decree and Constitution by requiring Defendants to limit the use of administrative segregation or isolation for prisoners with serious mental illness and adopt procedures to mitigate the impact of administrative segregation or isolation on persons with mental illness. *See* Proposed Order at 9.

3. Defendants Have Not Eliminated Suicide Hazards at the Jail

Defendants again argue that Plaintiffs' Motion should be denied because "[t]here are no provisions in the Consent Decree that address what standards the Jail is to apply for prevention of suicide hazards." Opp'n at 38. However, Section V.J. of the Consent Decree specifically requires that the Jail "be maintained in a safe and sanitary condition," which includes the elimination of safety hazards. *See* Grunfeld Decl., Ex. C, § V.J. Regardless, the Constitution "requires that inmates be furnished with the basic human needs, one of which is reasonable safety." *Helling*, 509 U.S. at 33 (citation omitted); *Hoptowit v. Spellman*, 753 F.2d 779, 784 (9th Cir. 1985) (holding that "safety hazards found throughout the penitentiary's occupational areas, exacerbated by the institution's inadequate lighting, seriously threaten the safety and security of inmates and create an unconstitutional infliction of pain."); *see also Hernandez*, 110 F. Supp. 3d. at 960 (requiring defendants to "remove all hanging points and other hazards in the jail's administrative segregation units that pose a risk of being used by inmates to harm themselves or commit suicide").

Defendants seek to deflect the dangerousness of the Jail by claiming that two suicide attempts which occurred with men who were not properly identified as suicide risks by the Jail, who hung themselves from exposed pipes in the same shower in the H-tank, and who received dangerously delayed first aid treatment by custody staff, *see* Stewart Decl. ¶ 134; Stark Decl. ¶¶ 14, 17 & Exs. L & O, should have exhausted their

individual claims. Opp'n at 39. Again, this argument is misplaced. *See* Part II.A.

Defendants make the bold claim that "Yuba has addressed suicide hazards in the old part of the Jail." Opp'n at 39; Decl. Regarding Operation of Yuba County Jail Supp. Defs' Opp'n to Pls' Mot. to Enforce ("Decl. Re Operation of the Yuba County Jail"), Dkt. No. 180-8, ¶ 11. Defendants do appear to have made some improvements to the Jail since Plaintiffs filed their Motion to Enforce, *see* Decl. Re Operation of Yuba County Jail ¶ 11, which is an admission that the Jail has hazards that "seriously threaten the safety and security of inmates and create an unconstitutional infliction of pain." *Hoptowit*, 753 F.2d at 784.

Even still, Defendants' own corrections expert acknowledges that "some areas of the old jail facility … could pose some hazard of suicide risk." Decl. James Sida Supp. Defs' Opp'n to Pls' Mot. to Enforce ("Sida Decl."), Dkt. No. 180-1, Ex. 1 at 20. As Mr. Stanley notes, "there remain[] numerous accessible tie-off points throughout the Old Jail, including the linear-style open bar front cells and many exhaust grates in the ceiling and high on the walls." Stanley Reply Decl. ¶ 30; *see also id*. ¶ 31 (identifying ongoing problems with video surveillance, hazardous piping, the ongoing presence of soap dishes welded into the Old Jail walls, and shower curtains with "seriously obstructed visual observation"). In addition, Mr. Stanley identified suicide hazards in the new portion of the Jail, including the presence of small cages around the smoke detectors on the sobering cell ceilings. *See* Stanley Reply Decl. ¶ 32. Defendants' failure to eliminate this hazard is striking because a prisoner attempted to use this metal grate as a tie off point for an "improvised noose" more than two-and-a-half years ago. *Id*.; *see* Stark Decl. ¶ 29 & Ex. AA at 914-917. As noted by Mr. Stanley, "the types of tie-off points present in the Jail are among those most commonly used for suicide." Stanley Reply Decl. ¶ 33.

Defendants' corrections expert claims that suicide risk in the Old Jail is "effectively managed" through inmate classification, despite the admitted presence of hazards. Sida Decl., Ex. 1 at 20. Mr. Sida did not observe the classification process in practice. *See* Pls.' Objections at 4. In fact, there is "no evidence that the Jail ha[s] implemented any policy

against placing prisoners with serious mental illness or histories of suicidality in the Old Jail." Stanley Reply Decl. ¶ 34. According to Mr. Stanley, the Jail routinely places mentally ill females in the women's administrative segregation area, the S-tank, despite the fact that it is the farthest away from the main control room, and continues to have abundant suicide hazards and limited supervision. *See* Stanley Reply Decl. ¶¶ 31, 34, 60, 62; Stark Reply Decl. Under Seal, Exs. H, I, J.

Defendants also dispute that there is a lack of accountability regarding razor blades and access to toxic chemicals. *Compare* Mot. at 17-18, *with* Opp'n at 39-40. Defendants' representations are contradicted by the Jail's own records which show that, in practice, razor blades and toxic chemicals are readily available to suicidal inmates. For example, incident reports and medical records show that, on May 12, 2016, a prisoner in administrative segregation advised jail staff that he "wanted to kill himself" and "was going to use a razor to cut himself." *See* Stark Reply Decl. Under Seal, ¶ 9 & Ex. G at 118. A crisis counselor then "discussed with custody that razors be restricted and was told that **they could not do so in A-pod** (where clt was housed)." *Id*. at 115 (emphasis added)). The next day, the prisoner was returned to his cell in administrative segregation and attempted suicide by cutting his wrists with a razor, eating a tube of muscle rub, and drinking toxic cleaning chemicals. *Id.* at 119-121. This is just one example of many. *See, e.g.*, Stewart Decl. ¶ 143; *see also* Stark Decl., Ex. T at 733 & 739; Grunfeld Decl., Ex. X, ¶¶ 11-13. As noted by Dr. Stewart, "[i]t is striking … that, given the elevated risk for suicide in any jail population, the Jail does not take extra precautions to prevent suicidal inmates from ready access to the means to commit suicide." Stewart Reply Decl. ¶ 54.

In order to remedy these dangerous hazards, Plaintiffs' Proposed Order requires Defendants to conduct a safety assessment of the Jail, with a particular focus on the Old Jail, to identify and remove tie-off points and other hazards that pose an unreasonable risk of being used by prisoners to harm themselves or attempt suicide, and to identify any locations where the absence of security cameras creates an unreasonable risk to prisoner safety. *See* Proposed Order at 8. The Proposed Order also requires Defendants to adopt

safe and appropriate housing for prisoners with mental illnesses and/or who are at risk of suicide in which suicide hazards have been eliminated and where custody staff will provide for increased observation and supervision commensurate with the prisoner's risk of suicide. *Id.*

4. Defendants' Suicide Prevention and Emergency Response Policies and Practices Are Inadequate to Protect Plaintiffs From Harm

Defendants have specifically acknowledged that "suicide prevention and emergency response is a major concern in our Jail" and that "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., Ex. J at 2. Officials at facilities where there are known suicide risks "are required to take all reasonable steps to prevent the harm of suicide." *Coleman*, 938 F. Supp. 2d at 975.

Defendants assert that "[t]he Jail maintains specific policies and practices regarding suicide risk identification and prevention." Opp'n at 38. However, these policies and procedures are wholly inadequate. First, Yuba County Jail Order Number C-101 (Classification Plan) does not contain any provision that specifically applies to suicide risk identification; it merely assigns correctional officers the authority to identify "high-risk prisoners." *See* Defs.' App., Ex. C. at 9099-9104. Correctional officers are not, however, in a position to conduct any type of suicide risk assessment, particularly since they are not trained to evaluate gradations of suicide risk. *See* Stewart Decl. ¶ 48. Second, Yuba County Jail Order Number C-154 pertains to assignment to a "safety" cell. *See* Defs.' App., Ex. C at 9119-9121. This policy does not set forth criteria for identifying individuals at risk of suicide, and is inadequate as written and as implemented at the Jail for the reasons set forth above. *See* Part III.B.1; *see also* Stewart Decl. ¶¶ 154-166; Stewart Reply Decl. ¶¶ 33-43. Rather than preventing individuals from committing suicide and acts of self-harm, this policy increases prisoners' suicidal ideation and decreases their likelihood of honestly reporting such feelings. *See* Stewart Reply Decl. ¶¶ 35-36. Further, Yuba County Jail Order Number C-1151, which deals with "Attempted

Suicide, Suicides and Deaths" provides no guidance about preventing suicide attempts and fails to provide much-needed, specific guidance to officers responding to and providing first aid to prisoners who attempt suicide. *See* Stanley Decl. ¶ 44; Stanley Reply Decl. ¶ 29.

In a clear acknowledgement of the dangers posed by the Jail's failure to use any suicide risk assessment forms or screening devices, it appears that SYBH revised its Suicide Risk Assessment Protocol #08-023 on January 21, 2016, *see* Defs.' App., Ex. E, and developed a Suicide Risk Assessment Worksheet on December 29, 2016, *see id.* Ex. R3, both of which are supposedly in use at the Jail now. *See* Decl. Re Mental Health Services ¶ 20; Defs.' App., Ex. E & R3.

While these suicide risk assessment tools are an improvement to the Jail's policies on suicide prevention, it is unclear how these forms are being used in practice. As noted by Dr. Stewart, several concerns regarding these policies remain. For example, the Suicide Risk Assessment Protocol states that it is to be used "when information regarding a possible risk of suicide comes to the attention of mental health staff." Stewart Decl. ¶ 79; *see* Defs.' App., Ex. E. However, as noted previously, "with custody officers conducting the initial intake/booking process and no requirement that licensed mental health/medical professionals participate in an initial mental health screening, it is unlikely that a person presenting with a possible risk of suicide will 'come[] to the attention of mental health staff.'" Stewart Reply Decl. ¶ 58. Additionally, according to the suicide risk assessment protocol, initial suicide evaluations may be conducted by crisis counselors. *Id.*; *see* Defs.' App., Ex. E, § B. But crisis counselors are not qualified to conduct suicide risk evaluations. *See* Stewart Decl. ¶¶ 79, 228, 229 (discussing instance in which crisis counselor discounted mentally ill prisoner's request for help as a "perceived emergency" and the next day the prisoner attempted suicide by cutting his wrists with a plastic spoon stating "the voices made me do it"). Moreover, the protocol requires that individuals "who score 4.0 or higher on the Suicide Risk Assessment (indicating a medium to high risk) will be considered for psychiatric hospitalization." *Id.* § D. However, it continues to be unclear

whether individuals at the Jail are ever provided access to psychiatric hospitalization. *See supra* at Part III.A. Further, the suicide risk assessment tool is generic and not tailored appropriately to a jail setting, as reflected by provisions about what to do in case of a minor, even though juveniles are not held at the Jail. Stewart Reply Decl. ¶ 59.

The Jail's suicide prevention and emergency response polices are also lacking because they do not contain "any policy or protocol for suicide watch, which is where staff observes an acutely suicidal prisoner based on his or her degree of suicidality up to and including constant observation." Stewart Reply Decl. ¶ 60; Stewart Decl. ¶ 150. The Jail also does not have any policy that requires periodic reevaluation of a prisoner's risk of suicide, despite the fact that a prisoner's risk of suicide may vary significantly over the course of his/her time in the Jail due to a person's criminal or immigration case, events related to family and friends, and the psychiatric toll of being incarcerated. Stewart Reply Decl. ¶ 61; Stewart Decl. ¶ 153.

Finally, in light of the recent death of Jail prisoner Mr. Hiscock and prisoners' accounts of how deputies have responded to past suicide attempts at the Jail, it appears that the Jail staff does not consistently know how to provide CPR to prisoners, does not know how to properly use emergency response devices, and does not respond to emergencies with sufficient urgency. *See* Stanley Decl. ¶¶ 33, 62; Stanley Reply Decl. ¶ 60; Stewart Decl. ¶¶ 170, 171; Stewart Reply Decl. ¶¶ 60, 62. For example, a witness to the recent death of Mr. Hiscock states that she heard "pounding and banging on the door" of Mr. Hiscock's "safety" cell for approximately 30 to 45 minutes. Grunfeld Reply Decl., Ex. P (Decl. of Kasey Geist ¶¶ 4-6). During this time, she did not see anyone come to check on Mr. Hiscock. *Id.* When Mr. Hiscock was finally discovered, it took approximately five minutes for medical staff to arrive and perform CPR and approximately seven to ten minutes more for the paramedics to arrive. *Id.* Mr. Hiscock was pronounced dead approximately ten to fifteen minutes later. *Id.*

Defendants' inadequate suicide prevention and emergency response policies and protocols show that they have not in fact "take[n] all reasonable steps to prevent the harm

of suicide." *Coleman*, 938 F. Supp. 2d at 975. Because Defendants' policies and practices violate Sections V.J., V.G., and V.R. of the Consent Decree and fail to protect suicidal and mentally ill prisoners from substantial risk of serious harm, a remedial order is necessary.

Plaintiffs' Proposed Order seeks to remedy these dangers by requiring that a physician, physician's assistant, nurse practitioner, or registered nurse conduct appropriate, confidential, and timely evaluations of all arriving prisoners to assess whether a prisoner poses a risk of suicide and to quantify the level of risk for all prisoners who display signs of suicidality, using a comprehensive suicide risk assessment tool. *Id.* at 8. Prisoners displaying signs of suicide risk shall be referred to an on-site psychiatrist, psychologist, or licensed clinical social worker for a confidential evaluation. This professional should then determine whether a prisoner's mental illness or risk of suicide requires that he or she be sent to SYBH or an inpatient setting for evaluation and treatment and shall issue all suicide precaution orders. *Id.* Defendants shall also develop a plan to improve suicide prevention and emergency response procedures, including having mental health staff with expertise in correctional suicide prevention provide such trainings. *Id*. at 10-11.

C. Defendants' Use of Correctional Officers at Intake Continues to Expose Class Members to Substantial Risk of Serious Harm

Defendants dispute that "having trained Correctional Officers conduct the intake screening, including asking questions about medical and mental health issues … constitute[s] any undue risk to the inmate." Opp'n at 33. In support of this position, Defendants rely on state standards, Title 15 sec. 1207, which they claim "do not require medical personnel to be used at the intake stage." *Id*. However, the mere fact that the County's intake and booking practices comply with Title 15 does not render them safe. *See* Part II.D., *supra*.

Defendants also argue that "Plaintiffs have cited to no law that requires a healthcare professional to conduct intake." Opp'n at 33. In fact, Plaintiffs have already cited to several cases which show that by failing to adequately screen incoming prisoners for medical and mental illnesses, Defendants are deliberately indifferent to Plaintiffs' serious

medical needs. *See, e.g.*, Mot. at 14 (citing *Lareau v. Manson*, 651 F.2d 96, 109, 111 (2d Cir. 1981) (requiring newly admitted inmates to receive a medical screening "by a physician, or by a nurse or medically trained technician operating under the direction of a physician, with specific instructions as to when the physician is to be consulted" to test for communicable diseases); *id*. at 14 (citing *Hernandez*, 110 F. Supp. 3d at 942-43 (defendant jail's screening process, which involved corrections officers conducting health screenings at intake that were "well beyond their ability to perform" created "an excessive risk of harm to all inmates"). Defendants have not responded to any of this legal authority.

As Plaintiffs have already demonstrated, in practice, the Jail's use of correctional officers to conduct medical and mental health intake screenings is highly dangerous.[4] First, correctional officers do not have the specialized medical or mental health training to enable them to adequately identify individuals with these conditions. *See* Mot. at 11; Stewart Decl. ¶ 41; Stewart Reply Decl. ¶¶ 66, 68; Stanley Decl. ¶¶ 57-58. Consequently, a correctional officer may not appreciate the need for a person to be sent to the emergency room. *See* Stewart Reply Decl. ¶ 114. Second, prisoners are frequently reluctant to self-report medical and mental health information to correctional officers due to stigma associated with certain conditions, fear that doing so will impact their criminal or immigration cases, and/or a prisoner's inability to correctly identify his or her own condition due to symptoms of mental illness or developmental disability. *See* Mot. at 11, Stanley Decl. ¶ 57; Stewart Decl. ¶¶ 45; 53-55; Stewart Reply Decl. ¶ 66. Even Defendants' corrections expert notes that, "[s]ince many individuals who may be withdrawing from narcotic substances may also have a charge pending for a narcotics violation, those individuals may not choose to come forward out of fear of jeopardizing their pending criminal cases." Sida Decl., Ex. 1 at 25.

[4] Defendants are incorrect that Plaintiffs' argument conflates "screening" and "diagnosis." *See* Opp'n at 33. Plaintiffs nowhere indicate that the screening process is intended to "diagnose" medical or mental health conditions.

Defendants do not respond to Plaintiffs' numerous examples of class members with serious medical and mental health issues failing to be properly identified by correctional officers during the screening process, and experiencing significant harm as a result. *See, e.g.*, Stark Decl. ¶ 29(a), Ex. AA at 898-907; Stewart Decl. ¶ 69 & Stark Decl. Ex. F; *see also* Stewart Reply Decl. ¶ 71 & Grunfeld Reply Decl. Ex. D. Defendants also do not respond to the allegations that they are well aware of the dangerous deficiencies in their intake and booking process. *Compare* Mot. at 12-13, *with* Opp'n at 32-35; *see also* Grunfeld Decl. ¶ 66; Ex. UU.

Seemingly in recognition of the inadequacies in their intake screening, Defendants revised their intake form in January of 2017 to "expand[] on the questions regarding medical/mental health issues." Opp'n at 34; Defs' App., Ex. A. This form does not, however, cure the deficiencies with the Jail's intake and booking process because the new intake form is still completed by correctional officers and because "some of the questions on the new intake form are not grounded in clinical practice." Stewart Reply Decl. ¶ 65. It is also unclear whether this new intake form is currently in use and what training has been provided in connection with this form.

Further, Defendants dispute that the Jail fails to refer and conduct timely medical and mental health evaluations. However, there is no policy or procedure that requires a Jail psychiatrist or licensed clinical social worker to evaluate every new prisoner, let alone a time by which this mental health evaluation must take place. *See* Stewart Reply Decl. ¶ 73. As a result, prisoners are frequently forced to wait days-to-weeks to obtain a mental health evaluation, if they ever obtain one at all. *Id.*; Stewart Decl. ¶ 44 & Stark Decl., Ex. M; Stewart Decl. ¶ 62 & Grunfeld Decl. Ex. EE; *see also* Grunfeld Reply Decl. Ex. D (Decl. of Jorge Alberto Manriquez ¶ 5). 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. Mot. at 12; Stewart Decl. ¶ 63; Defs' App., Ex. C (YCJ Order C-155, § II). Here too, 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. ¶¶ 60-65; *see Helling*, 509 U.S. at 35.

Plaintiffs' Proposed Order seeks to remedy these dangers by requiring that Defendants develop and implement an Intake and Booking Screening Plan that specifies standards and timelines to ensure that arriving prisoners are promptly screened for urgent and emergent medical and mental health needs by a physician, physician's assistant, nurse practitioner, or registered nurse in a location that permits confidentiality and with any necessary accommodations for effective communication. *See* Proposed Order at 5-6. The Intake Screening Plan should also include standards and timelines for referrals to an on-site psychiatrist, psychologist, or licensed clinical social worker, as necessary. *Id.*

D. Defendants' Inadequate Outpatient Medical and Mental Health Care Continues to Expose Class Members to Substantial Risk of Serious Harm

Defendants dispute that they violate the Constitution or any provisions of the Consent Decree related to out-patient physical and mental health care, including Sections V.A.3, V.A.4, V.Q, and V.R. of the Consent Decree. Opp'n at 47. Contrary to Defendants' representation, Plaintiffs' unrebutted evidence shows that Defendants' system of providing outpatient medical and mental health care violates the Consent Decree and is constitutionally inadequate on multiple fronts.

1. Defendants' Medication Policies and Practices Constitute Deliberate Indifference to Prisoners' Serious Medical Needs

Defendants rely on several of the Jail's written policies to dispute that they delay or deny the continuation of community prescribed medications. Opp'n at 48 (citing Defs.' App., Ex. C (YCJ Order No. D-215), *id.*, Ex. D (Jail Medical Order No. A-14), *id.*, Ex. E (SYBH No. 17-003)). However, these Jail policies do not impose any clear time limits by which: (1) staff must verify community prescriptions; or (2) a psychiatrist or doctor must conduct a face-to-face assessment of a patient. *See* Stewart Decl. ¶ 186; Stewart Reply Decl. ¶ 86. As a result, Plaintiffs' unrebutted evidence shows that, in practice, there have

been multiple instances in which class members' community-prescribed medications have been interrupted, thereby causing unnecessary pain and suffering. *See*, *e.g.*, Stewart Decl. ¶¶ 189, 190, 191; Grunfeld Decl. EE; Stark Decl. Exs. A, C; *see also* Stark Reply Decl. Under Seal, Ex. B (prisoner's community-prescribed medications were discontinued and patient stopped taking new medication due to side effects); *see Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (deliberate indifference "may appear when prison officials deny, delay, or intentionally interfere with medical treatment.") (citations omitted).

In addition, there are instances in which community-based prescriptions are continued or ordered under a psychiatrist's name without the psychiatrist's knowledge, placing the prisoner in grave risk of harm. *See, e.g.*, Stark Reply Decl. Under Seal, Ex. A at 17 (Dr. Odom discontinuing medication because "it was ordered by someone else under my name, without my knowledge. I did not advise/authorize Nortryptyline for this patient."); *see also* Stewart Reply Decl. ¶ 106 (noting that the medication that was erroneously continued for this patient, Nortryptyline, in conjunction with the other medications prescribed, Celexa and Trazodone, "is contraindicated as it can cause life-threatening cardiac arrhythmias."). Further, prisoners have difficulty obtaining prescription medications if there has been any gap in their taking this medication while in the community. *See* Mot. at 26; Stewart Decl. ¶ 197; *see also* Grunfeld Reply Decl. Ex. D (Decl. of Jorge Alberto Manriquez ¶ 5).

Defendants also dispute that the County engages in a 30-day detoxification protocol for prisoners with a history of substance abuse, *see* Opp'n at 49, though do not address the medical records submitted by Plaintiffs and reviewed by Dr. Stewart which show otherwise. *See* Stewart Decl. ¶¶ 195, 196; Stark Decl., Exs. H & K; *see also* Stewart Reply Decl. ¶ 92 & Stark Reply Decl. Under Seal Ex. C (showing that Jail psychiatrist discontinued class member's community prescription for Mirtazapine "due to drug intoxication" and crisis counselor then wrote "discussed with clt **protocol of being 30 days clean**; clt familiar") (emphasis added). If the County has recently changed its 30-day detoxification protocol, this is an issue that should be investigated and monitored through a

remedial plan ordered by the Court. *See* Proposed Order at 7.

2. Defendants Are Deliberately Indifferent to Plaintiffs Suffering from Alcohol and Drug Withdrawal

Section V.Q. of the Consent Decree requires that prisoners suffering from withdrawal must receive appropriate medical care. Mot. at 29; Grunfeld Decl., Ex. C at § V.Q. Prisoners suffering from withdrawal must also receive appropriate medical care under the Eighth Amendment. *See* Mot. at 28-29 (collecting cases).

Defendants assert that their "practices and procedures regarding drug and alcohol withdrawal are appropriate, within applicable standards, and comply with the Consent Decree." Opp'n at 49. However, Defendants do not deny that correctional officers are tasked with identifying intoxicated individuals at intake/booking. Opp'n at 50. As a result, there continues to be serious concern that individuals at risk of suffering from a drug and/or alcohol overdose or from severe withdrawal will not be properly identified by correctional officers and referred for necessary medical care. *See* Mot. at 30; Stewart Decl. ¶ 47; Stark Decl. ¶¶ 27(b), 27(d) & Ex. Y; *Hernandez*, 110 F. Supp. 3d at 948-49 (finding deliberate indifference where Defendants entrusted custody staff with primary role in identifying and treating prisoners in withdrawal).

Likewise, Defendants do not deny that the Jail lacks 24/7 medical care and that, pursuant to Jail policy, a medical evaluation is not required for any "sobering inmate" unless an individual needs to be in a sobering cell for more than six hours. *See* Opp'n at 51; Decl. Regarding Medical Staffing Supp. Defs' Opp'n to Pls' Mot. to Enforce ("Decl. Re Medical Staffing"), Dkt. No. 180-7, ¶ 2; Defs' App., Ex. C (YCJ Order C-155, § II.B). Consequently, there are circumstances in which plaintiffs are placed in grave danger by being forced to wait for six hours or more before obtaining any sort of medical evaluation. *See* Stewart Decl. ¶ 64; Stark Decl. ¶ 27(a) & Ex. Y; *see, e.g.*, *Borges v. City of Eureka*, No. 15-00846, 2017 WL 363212(N.D. Cal. Jan. 25, 2017) (intoxicated prisoner died in sobering cell after correctional officers decided that prisoner should be placed in sobering cell before receiving medical evaluation and prisoner did not receive emergency medical

care for approximately one hour-and-a-half; noting prior deaths in similar cells at Humboldt County Jail).

While Defendants emphasize that "[m]edical staff has established protocols regarding detoxification," Opp'n at 49, the Jail's heroin and alcohol withdrawal policies do not properly account for the need that many prisoners have for medical assistance, even when dealing with mild and moderate withdrawal. *See* Stewart Reply Decl. ¶ 98; Stewart Decl. ¶¶ 205-208. The Jail also lacks a protocol for psychostimulants and it is unclear from the Benzodiazepine Withdrawal Flow Sheet what subjective or objective measures are identified and what actions are undertaken in response to these findings. *See* Stewart Reply Decl. ¶ 98; Defs' App., Ex. F10.

Accordingly, Defendants' acts and omissions violate Section V.Q. of the Consent Decree and continue to expose Plaintiffs to substantial risk of serious harm. *See, e.g.*, Stewart Decl. ¶¶ 207-208; Stark Decl., Exs. N, V. II. Plaintiffs' Proposed Order requires Defendants to develop a remedial plan that includes timely medical assessments performed by a physician, physician's assistant, nurse practitioner, or registered nurse to determine whether an arriving prisoner is intoxicated and/or suffering from withdrawal or at high risk for withdrawal from alcohol or other drugs. *See* Proposed Order at 6. The Proposed Order also requires Defendants to develop a plan to ensure that prisoners suffering withdrawal symptoms receive medication as clinically indicated and are appropriately housed based on their clinical condition. *Id*.

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

Defendants also contend that "[e]very inmate at the Jail has access to psychosocial treatment—the same treatment that is available to community members who seek such care from community provided resources." Opp'n at 51. This is incorrect.

While Dr. Hobson states that the new Licensed Clinical Social Worker (LCSW) at the Jail "**is able** to provide individual and group psychotherapy," Decl. Re Mental Health Services ¶ 7 (emphasis added), it is wholly unclear from Defendants' Opposition whether

the LCSW actually provides individual and group psychotherapy. To the extent that she does, it is unclear "how often these forms of treatment are provided, who receives this treatment, and where the treatment is provided." Stewart Reply Decl. ¶ 107. All of this information is necessary to determine the adequacy of psychosocial services available at the Jail. *Id*.

In order to demonstrate that the provision of psychosocial services is adequate, Defendants also rely on the presence of one crisis counselor who works at the Jail (and one additional position that is not filled), two tele-psychiatrists, and a substance abuse counselor. Opp'n at 52. In addition, crisis counselors from SYBH are available via telephone. *Id*. However, these additional staff members do not provide psychosocial care. According to Dr. Stewart, "crisis counselors are [not] educationally [or] professionally trained to provide any level of therapeutic psychosocial treatment." Stewart Decl. ¶ 228, Ex. U. Dr. Hobson does not represent that crisis counselors are actually responsible for providing mental health treatment services at the Jail. *See* Decl. Re Mental Health Services ¶ 9. In addition, it is unclear what services are provided by the substance counselor. Decl. Re Provisions of Consent Decree ¶ 2(d). If this counselor merely offers a weekly substance abuse class, this "does not constitute psychosocial treatment for mentally ill individuals." Stewart Decl. ¶ 176. Further, it does not appear that any of the psychiatrists consider individual or group therapy to be part of their practice. *See*, *e.g.*, Stewart Decl. ¶ 177. For example, in the words of one immigration detainee at the Jail:

> I was diagnosed with depression and PTSD and schizophrenia with auditory hallucinations before I was detained. I have been taking medication since 2005 and have been on SSI since April 2008. On the outside, I was also seeing a therapist about my condition. Here at the Jail, I am getting the medications, but whenever I see a psychiatrist it's a video appointment, and they just talk[] about my medications. It's frustrating for me, because I need to talk to a professional doctor and get therapy, not just drugs.

Stark Reply Decl. Under Seal, Ex. N ¶¶ 3-4.

Defendants do not dispute that the Jail lacks the physical space to facilitate individual and group psychosocial treatment. *See* Stewart Decl. ¶¶ 179-181. While Captain Barnes states that the $20 million SB 863 grant will enable the Jail to develop a

mental health inmate services area, Decl. Re Operation of Yuba County Jail ¶ 14(e), this project will not be finished until at least late 2019-early 2020, *id*. ¶ 13. Given that the project was on hold as of November 2016, *see* Grunfeld Reply Decl. ¶ 8 & Ex. F, and the well-known delays encountered by public building projects, the new mental health space is unlikely to be built until well into the 2020s.

Without providing meaningful psychosocial treatment to prisoners at the Jail, the County is continuing to violate Sections V.R. and V.A.4 of the Consent Decree and exposing prisoners to substantial risk of serious harm. The Proposed Order will address this deficiency by requiring Defendants to develop and implement a remedial plan which includes services that resemble what is provided in the community, including developing treatment plans and providing individual and group therapy in confidential settings as clinically indicated, with the intent of coordinating care beyond the walls of the Jail and into the community upon release. *See* Proposed Order at 7-8.

4. Defendants Are Deliberately Indifferent To Plaintiffs' Need for Timely Medical Care

Defendants do not dispute that intentionally denying or delaying access to medical care may constitute deliberate indifference. *Compare* Mot. at 33 (citing *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976)), *with* Opp'n at 53-54. However, Defendants argue that there is no violation of the Constitution or the Consent Decree because, as required by Section V.F. of the Consent Decree, the Jail provides daily sick call. *See* Opp'n at 53.

Daily sick call does not, however, address Plaintiffs' primary concern, which is that the Jail perpetually delays or denies responding to sick call requests, creating a system in which Plaintiffs are forced to file grievances in order to be seen by medical staff and receive treatment, often for serious medical needs. *See* Mot. at 32. For example, a prisoner informed the Jail at the time of intake that he had a CT scan scheduled in the community which he was going to miss due to incarceration. *See* Stark Reply Decl. Under Seal, Ex. D at 56. The prisoner submitted four sick call slips over the course of three weeks attempting to obtain a referral for the CT scan due to ongoing pain in his shoulder

and abdomen. *Id*. at 54, 57, 58, 59. After not receiving the referral he needed, this prisoner filed a grievance "due to not receiving an outside appointment with his physician and a CT scan." *Id*. at 61. The class member was finally referred for a CT scan three days later, at which time Dr. Cassady wrote: "not sure why he was not seen due to his concerns before today." *Id*. at 52; *but see Graves v. Arpaio*, 48 F. Supp. 3d 1318, 1326 (D. Ariz. 2014); *amended* No. 77-00479, 2014 WL 6983316 (D. Ariz. Dec. 10, 2014) (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.").

Ms. Wild seeks to undermine the evidence submitted by Plaintiffs by arguing that several of Plaintiffs' examples show that prisoners received care after filing grievances. *See* Wild Decl., Ex. 2 at 11-12. This misses the point; Plaintiffs should not be required to file grievances in order to receive proper medical care. *See, e.g.*, Stark Reply Decl. Under Seal, Ex. N at ¶ 7 (prisoner with diabetes states that Jail does not check her blood or insulin regularly and she needed to file a grievance to see a doctor); *see also* Stark Decl. ¶ 36(e) & Exs. HH & TT.[5]

Defendants also dispute that they regularly deny necessary medical care or provide woefully inadequate care, arguing that "[d]ecisions regarding care and treatment, including who has priority in treatment, is [*sic*] made by medical staff, depending all the facts and circumstances." Opp'n at 53. According to Defendants, "[j]ust because an inmate states he or she has a condition that requires immediate attention, does not mean that it does." *Id*. at 53-54. But neither Defendants nor their experts offer any real response to the overwhelming evidence that Defendants' system of medical care is dysfunctional and

[5] Ms. Wild's review of Plaintiffs' evidence repeatedly asserts that, "[w]ithout the benefit of the medical file, it is not possible to determine what was done for the patient." *See* Wild Decl., Ex. 2 at 11-12. However, in contrast to Plaintiffs, Ms. Wild had unfettered access to these class members' complete medical files and declined to review them. *See* Pls.' Objections to Expert Declarations of James Sida, Kathryn Wild, and Dr. Jason Roof at 7-8.

places prisoners at a substantial risk of harm. *See* Mot. at 32-33. For example, an immigration detainee who is HIV positive, has Hepatitis C, suffers from depression, and is currently detained, has been seeking treatment for his Hepatitis C for months. *See* Stark Reply Decl. Under Seal, Ex. F. Despite learning about this prisoner's Hepatitis C infection on December 2, 2016, the Jail doctor did not order additional testing until the first week of January. *Id*. As a result, ICE had to contact the Jail and demand that the patient "have Hep. C testing now rather than in January as ordered by pt.'s provider and Medical Director." *Id*. As of January 19, 2017, this patient still had not received any treatment for Hepatitis C. *Id*. (Decl. ¶ 9). According to the CDC, Hepatitis C infection advances much more quickly in patients who have HIV, is far more likely to result in liver disease or liver-related death, and requires expert diagnosis and treatment. *See* Grunfeld Reply Decl., Ex. M. This is one of several instances in which the Jail's delay and/or denial of medical care causes Plaintiffs to endure unnecessary suffering and be subjected to grave risk of harm. *See also* Mot. at 32-33; Grunfeld Reply Decl., Ex. D (Decl. of Jorge Alberto Manriquez) ("I … suffer from angina and need medication to prevent a heart attack. It took two weeks before I started getting this medication at Yuba County Jail); *id*. (Decl. of Antonio Lule) (prisoner with broken molar has not gotten dental car for over four months despite numerous requests).

Defendants' delay, denial, and/or interference with Plaintiffs' medical care violates Sections V.F., V.G., and V.P. of the Consent Decree and constitutes deliberate indifference. *See Jett*, 439 F.3d at 1096. The Proposed Order requires Defendants to remedy these deficiencies by developing and implementing a plan to expand the provision of care for prisoners with serious medical and/or mental health needs and to ensure they receive timely treatment appropriate to the acuity of their conditions. Proposed Order at 7.

5. Defendants Fail to Provide Adequate Confidentiality and Language Interpretation

Defendants dispute that their limited treatment space for medical and mental health care compromises confidentiality. Opp'n at 54. Notably, this claim is directly

contradicted by representations made in Yuba County's BSCC grant application, where Defendants state that they "provid[e] mental health services in hallways, sallyports and open holding rooms," which "is unsafe and also not in the best interest of the confidentiality for the service provider, or the inmate." Grunfeld Decl., Ex. KKK at 3.

Defendants again point to their stalled SB 863 grant which will be "used to construct a new building which will provide space for medical and mental health services" and "is expected … to be completed in late 2019/early 2020." Opp'n at 54-55. As already noted, the new construction is years from completion, far too long to wait for class members to be afforded confidential medical and mental health care. As a prisoner with HIV and depression put it: "there is no confidentiality [at Yuba County Jail] and it's always in open spaces, so I can't be open with the doctors. I'm particularly worried about this because I'm taking medication for HIV and depression, and in the past, the medications at time made my health worse, so I need to be able to talk openly about my symptoms. I can't do that when there are other inmates and officers around. This was a big problem for me at the other jail, because word of my status got out and people got mad at me and threatened me." Stark Reply Decl. Under Seal, Ex. F (Decl. ¶ 10).

Defendants claim to have recently improved confidentiality, but point to only one example: with the January 2017 intake form, "now the booking officer does not ask any medical questions at the booking counter." *Id*. Yet this claim is directly contradicted by Defendants' other statement that the booking "officer does ask booking related questions, which can include medical questions … at a counter…." *Id*. at 54. Defendants' counsel refused to allow Mr. Stanley to ask questions about the new intake procedures at the Jail tour, leaving many questions unanswered. Stanley Reply Decl. ¶ 5. It is unclear what happens when all four holding cells are occupied and how a prisoner's confidentiality is protected when he or she needs to use a language line or to speak with a SYBH crisis counselor over the phone, which takes place openly at the booking counter, Stewart Reply Decl. ¶ 78, and **is** in close proximity to the prisoner waiting area and office area, where others can easily hear conversations that take place at the booking counter, *see* Stanley

Reply Decl. ¶¶ 52-53.

Defendants also dispute that there are any issues with language interpretation at the Jail, which now houses approximately 50% immigration detainees, because "there are Spanish speakers available to provide language interpretation." Opp'n at 55, Decl. Re. Operation of Yuba County Jail ¶ 19. Defendants do not state which employees are used to perform these services. As Dr. Stewart notes, the Jail's interpretation services could inappropriately include janitorial, secretarial, or custody staff, which violates HIPAA requirements and could cause a patient to self-censor or alter his or her communications with the provider, "depriving the provider of critically important information." Stewart Reply Decl. ¶ 83. Moreover, language services provided over the telephone can be highly cumbersome and disruptive. *Id*.; Stewart Decl. ¶¶ 219-220.

In order to remedy these violations, Plaintiffs' Proposed Order requires Defendants to develop a plan that ensures the provision of services in confidential settings as clinically indicated, with appropriate language interpretation services. *See* Proposed Order at 7-8.

E. Defendants Are Deliberately Indifferent to Dangerous Medical and Mental Health Understaffing

Defendants do not dispute that currently there is **no** psychiatrist who physically meets with prisoners at the Jail and there is **no** mental health staff at the Jail at all on the weekends and for thirteen hours each day--between 5:00 pm and 6:00 am. Decl. Re Mental Health Services ¶ 6; Decl. Re Medical Staffing ¶ 6. There is also one less crisis counselor employed at the Jail than SYBH believes to be necessary. Decl. Re Mental Health Services ¶ 6(g). Further, the 2015-2016 Grand Jury specifically recommended that the Jail 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 350. Sheriff Durfor rejected the Grand Jury's recommendation. *Id*. ¶84 & Ex. MMM at 357.

While Defendants contend that the use of telepsychiatry "is a completely accepted, and necessary, practice," Opp'n at 58 (citing Roof Decl. ¶ 4(e)), Defendants do not acknowledge that the practice guidelines on tele-psychiatry set forth by the American

Psychiatric Association ("APA") and the American Telemedicine Association ("ATA") specifically indicate that tele-psychiatry referrals should be made only after an initial **in-person evaluation** by a psychiatrist to determine its appropriateness. *See* Stewart Decl. ¶ 234, Exs. V & W; Stewart Reply Decl. ¶ 104. This is necessary because "certain conditions 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.'" *Id*. Given that tele-psychiatry may not be appropriate for a number of prisoners at the Jail, particularly given the high number of immigration detainees who do not speak English, the Jail's failure to have any psychiatrist who can meet with patients in person at the Jail creates serious risk for prisoners. Stewart Reply Decl. ¶ 106.

In addition, based on the fact that there are instances when medical and/or mental health staff members impermissibly order prescriptions under a tele-psychiatrist's name, it appears that there are not sufficient psychiatrists available at the Jail to adequately keep track of and respond to class members' medication needs. *See, e.g.*, Stewart Reply Decl. ¶ 106; Stark Reply Decl. Under Seal ¶ 3, Ex. A at 17. By virtue of medical and/or mental health staff members effectively practicing medicine outside of their scope of authority, prisoners have been subjected to significant risk of harm. *See id.*

Finally, nothing submitted by Defendants mitigates Plaintiffs' concerns about the Jail's overreliance on unlicensed crisis counselors—both in person and over the phone—to make life or death decisions over prisoners in mental health crises. *See* Stewart Decl. ¶¶ 228–230; Stewart Reply Decl. ¶¶ 108–111.

Defendants also do not dispute that the Jail lacks any medical staff from 11:30 pm until 5:00 a.m. Mondays through Fridays, and for even longer over the weekends. Decl. Re Medical Staffing ¶ 2; Grunfeld Decl., Ex. III. In addition, there are no doctors or nurse practitioners on staff at the Jail from approximately 5:00 p.m. until 6:00 a.m. Monday through Friday and at all on Saturday and Sunday. *Id.*; *see Ortiz v. City of Imperial*, 884 F.2d 1312, 1314 (9th Cir. 1989) ("[A]ccess to medical staff is meaningless unless that staff is competent and can render competent care") (citations omitted). The 2015-2016 Grand

Jury specifically recommended that the Jail hire a full-time medical doctor "that could reduce the pressure on the medical staff and decrease the time it takes to see a doctor or the Family Nurse Practitioner." Grunfeld Decl., Ex. LLL at 350. Here again, Defendants refused to follow the Grand Jury recommendation. *Id*. ¶ 84; Ex. MMM at 357. Defendants claim that the Jail doctor "is on call 24 hours per day," Opp'n at 56, but fail to explain what happens when the Jail doctor is ill or takes vacation.

Defendants contend that any emergencies that arise when no medical or mental health staff are on duty can be addressed by sending prisoners to Rideout or contacting SYBH by telephone. Opp'n at 58. However, correctional officers will not always accurately assess whether a prisoner's medical or mental health condition constitutes an emergency. For example, there have been at least two instances in which women came to the Jail and claimed to have been raped. According to an October 27, 2016 email to Captain Barnes, "The doctor requested that they go to the ER, but the Captain said no to that request. The doctor had to go to the Sheriff to get those decisions overturned." Grunfeld Reply Decl. ¶ 10, Ex. I. As noted by Dr. Stewart, "[t]his indicates that custody staff is not reliable to accurately determine when an individual needs to be sent to the emergency room even when medical staff is onsite, let alone when medical staff is absent." Stewart Reply Decl. ¶ 114. This also shows that, at times, Jail correctional staff ignores medical decisions made by Jail medical staff. Grunfeld Reply Decl. ¶ 10, Ex. I; *but see Wakefield v. Thompson*, 177 F.3d 1160, 1165 (9th Cir. 1999) ("[A]llegations that a prison official has ignored the instructions of a prisoner's treating physician are sufficient to state a claim for deliberate indifference.").

Notably, Defendants do not even respond to the numerous examples provided by Plaintiffs which show that class members have been exposed to an unreasonable risk of harm when no qualified medical staff or mental health staff were on duty. *See* Mot. at 38-39; *see, e.g.*, Stewart Decl. ¶ 244; Stark Decl. ¶ 41, Ex. MM. As a result of these staffing deficiencies, class members are forced to wait hours, days, and weeks to receive medical care, if such care is ever forthcoming. *Id.*; *see also* Part III.D.

Although Defendants have made some improvements to the medical and mental health staffing in the past two years, Defendants have not shown these improvements to be permanent, sufficient, or sustainable. Defendants' knowing 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).

The fact that Defendants recognize the dangers posed by their lack of 24/7 medical coverage is clearly evidenced by Sheriff Durfor's December 13, 2016 Request to the Yuba County Board of Supervisors "for proposals (RFPs) to provide 24 hour/7 day per week on-site contract medical and mental health services for the Yuba County Jail." Grunfeld Decl., Ex. Q. In this proposal, Sheriff Durfor writes: "Despite our best efforts to work through budget constraints and recruitment and retention issues, we have been unable to provide 24 hour/7 day per week on-site medical and mental health coverage which appears is to be quickly becoming industry standard."

Plaintiffs' Proposed Order seeks to remedy the violations caused by Defendants' dangerous medical and mental health understaffing by requiring Defendants to develop and implement a plan to establish and maintain Qualified Medical Professional and Qualified Mental Health Professional staffing at the Jail sufficient to ensure medical and mental health care is available twenty-four hours a day, seven days a week, including intake, sick call, chronic and emergency care, detoxification, individual and group therapy, medication management, follow-up medical attention for prisoners discharged from the hospital, and suicide prevention. *See* Proposed Order at 11-12.

IV. DEFENDANTS' DELIBERATE INDIFFERENCE TO PLAINTIFFS' NEED FOR ADEQUATE OPPORTUNITIES FOR OUT OF CELL TIME REQUIRES FURTHER REMEDIAL ORDERS

At the time Plaintiffs filed this Motion, the Jail had no recreation specialist on staff and the Old Jail recreation area was not in regular, if any, use, resulting in ongoing and pervasive denials of exercise to Jail prisoners. *See* Stanley Decl. ¶¶ 17-41. Defendants' opposition concedes that the violations occurred, but claims the recent hiring of the

recreational specialist and painting of the yard are sufficient responses. Opp'n at 62. They are not. To the contrary, the only documentary evidence available confirms that prisoners rarely use the yard, either because it is offered at 5:00 a.m. or one prisoner can decline for all. *See* Stanley Decl. ¶¶ 21, 23, 26; Grunfeld Decl., Exs. V, HH, JJ, VVV; Stark Decl., Ex. SS; Stanley Reply Decl. ¶¶ 14-15; Grunfeld Reply Decl., Ex. D; Stark Reply Decl., Ex. N. The Court should find that constitutional violations are ongoing and then craft an appropriate remedy that includes the training of staff, the adoption of appropriate policies and procedures, adequate proof of practice, and review by Plaintiffs' counsel.

A. The Jail Continues to Violate the Consent Decree and the Eighth Amendment Through its Illusory Offers of Exercise

Defendants have not cured their unlawful exercise regime. As a matter of practice, Defendants continue to operate an unreasonable exercise regime calculated to elicit "refusals" from prisoners in the early hours of the morning. Stanley Reply Decl. ¶ 14; Grunfeld Reply Decl., Ex. D (Lule Decl.); Stark Reply Decl. Under Seal, Ex. O (Magallanes Decl.). The failure to make genuine exercise offers to all prisoners is inconsistent with both the Consent Decree and the Constitution. *See* Mot. at 44-48.

Defendants' only attempt to defend their exercise offer practice is the claim that an inmate who accepts an offer at 5:00 a.m. will be given access to exercise at a later time that day. Opp'n at 61. Defendants' evidence does not support this claim. *See id.* (citing Decl. Re Operation of Yuba County Jail ¶ 20). Plaintiffs' evidence demonstrates that this is not Defendants' practice. Grunfeld Reply Decl., Ex. D (Lule Decl. ¶ 6); Stanley Decl. ¶ 26; Stanley Reply Decl. ¶ 14; Stark Decl., Ex. SS, ¶ 6 ("When we told the guards that we did want to use the roof, the guards told us that we could not go because the roof was full.") & Grunfeld Decl., Ex. U at ¶ 3 ("When I have accepted but other pods are using the exercise area, I have been put on a list but never called to the exercise area.").

Contrary to Defendants' characterization, Plaintiffs' argument has never been "premised on the Jail having only [] one exercise area." Opp'n at 60. Plaintiffs acknowledge that Defendants "[r]ecently" made the repairs to the Old Jail yard, repairs

which Plaintiffs' counsel sought immediately following their first inspection of the Jail nearly two years ago. Decl. Re Operation of Yuba County Jail ¶ 21; Grunfeld Decl., Ex. F (February 10, 2015 Letter from Plaintiffs' Counsel to County Counsel John Vacek requesting that the Jail refurbish Old Jail exercise area so that prisoners have twice the amount of exercise space). Similarly, Plaintiffs acknowledge that Defendants have now replenished the exercise equipment mandated by the Consent Decree and filled the long-vacant position of "recreation aide," although without describing the aide's duties or hours or providing any evidence about how the aide enhances the Jail's ability to offer exercise to prisoners. *See* Decl. Re Provisions of Consent Decree ¶ 12(b); Stanley Reply Decl. ¶ 10. Standing alone, these recent changes are far from sufficient to cure the Jail's unlawful denial of exercise opportunities.

Captain Barnes admits that, due to the Jail's swelling population and a number of other factors, "compliance with the Consent Decree [is] difficult." Decl. Re Operation of Yuba County Jail ¶ 20. If compliance today is difficult, it follows *a fortiori* that compliance has been difficult for the many years when the Jail has relied solely on the small exercise yard above the New Jail for exercise space. *See* Stanley Decl. ¶ 31 ("The New Jail recreation area is not nearly large enough to accommodate the number of prisoners at the Jail."). Despite this difficulty, Defendants seriously delayed repairing and using the Old Jail yard, demonstrating their indifference to the risk to prisoner health created by their failure to provide opportunities for exercise.

Apart from its improved condition, Defendants provide no evidence that the Old Jail exercise yard is regularly being used. Indeed, Defendants strongly imply that it is not, by continuing to blame staffing shortages for their failure to use the Old Jail yard. *See* Opp'n at 62 (stating that the contemplated installation of security cameras in the Old Jail yard "would allow use of the old yard more frequently"). Plaintiffs agree that Defendants lack adequate staffing to satisfy their legal obligations. *See* Stanley Decl. ¶ 63; Stanley Reply Decl. ¶¶ 17, 64. And even if Defendants adequately staffed both Jail exercise yards for regular use, the ultimate question of whether the Jail would then have enough

functional exercise space to satisfy Defendants' legal obligations cannot be determined until Defendants begin to offer exercise opportunities at reasonable times and in a reasonable manner.

By their own measure, Defendants fail to meet their Consent Decree obligations, even under the Jail's current deeply flawed exercise offer regime. *See* Stanley Reply Decl. ¶¶ 16, 18 & Ex. B. Perhaps to address this failure and the other shortcomings in their provision of exercise, Defendants argue that the requirements of the Consent Decree are "in excess of state standards." *See* Opp'n at 61. But Defendants are bound by the express terms of the Consent Decree, regardless of whether it requires more than the state regulations mandate. And many prisoners are not receiving even the three hours per week required by Title 15. Cal. Code Regs., tit. 15 § 1065(a); *see also* Stanley Decl. ¶¶ 19, 38; Stanley Reply Decl. ¶¶ 14, 23; Grunfeld Reply Decl. Ex. D (Lule Decl. ¶ 4) ("[W]e are only offered access [to outdoor exercise] once a week or every two weeks."). The Constitution requires more. *Lopez v. Smith*, 203 F.3d 1122, 1132-33 (9th Cir. 2000) (en banc) (six week deprivation of outdoor exercise constituted cruel and unusual punishment); *Allen v. Sakai*, 48 F.3d 1082, 1087-1088 (9th Cir. 1995) (amended) (45 minutes of outdoor exercise per week for six weeks constituted cruel and unusual punishment). The Jail's lack of genuine exercise opportunities is unlawful by any measure.

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

Defendants do not deny that County prisoners housed in Administrative Segregation regularly receive a mere 30 minutes of out-of-cell time per day, contending nothing more is required. *See* Opp'n at 62-63. Defendants are wrong to argue that the Constitution does not require more. *See* Mot. at 48-49.

The overall lack of out-of-cell time for segregated prisoners is not cured by Defendants' inadequate provision of exercise opportunities, despite Defendants' contention that segregated prisoners receive exercise opportunities "just like any other

inmate." Opp'n at 63. Defendants' promised parity of treatment is of little comfort: exercise opportunities are inadequate as to all prisoners. Moreover, Defendants' own exercise logs specifically demonstrate that exercise offers to those prisoners in Administrative Segregation are wholly inadequate. *See* Mot. at 46; Stanley Decl. ¶ 38; Stanley Reply Decl. ¶ 23 & Ex. E. This is not surprising, given that Defendants admit that the number of prisoners held in Administrative Segregation makes it "especially difficult" for Defendants to meet their legal obligations. Opp'n at 61.

Similarly, Defendants contend that placement in Administrative Segregation "does not involve any deprivation of privileges." Decl. Re Types and Uses of Cells ¶ 9. But Defendants' policy and practice of regularly allowing segregated ICE detainees one hour out of cell per day, while allowing segregated County prisoners only a half hour, demonstrates that Defendants do not provide equal privileges even among segregated prisoners. *See* Grunfeld Reply Decl., Ex. D (Declaration of Antonio Lule ¶ 9) (explaining that other County prisoners get a half hour, "but I get one hour because my cellmate is an ICE detainee and they get one hour out of cell"). More importantly, "[t]o say that the Jail's severe limitation on out-of-cell time for [segregated] prisoners does not represent 'any deprivation of privileges' fails to acknowledge the paramount importance of out-of-cell time to all prisoners, and specifically to those who are kept in segregation." Stanley Reply Decl. ¶ 27. This is especially true where Defendants place many prisoners in Administrative Segregation because they have a mental illness. Stewart Reply Decl. ¶ 47; Stanley Reply Decl. ¶ 34. Defendants' deprivation of out-of-cell time to segregated prisoners continues to create a substantial risk of serious harm.

C. Defendants' Denial of Adequate Opportunities for Exercise at Yuba County Jail Can Be Remedied

In order to remedy the ongoing violations of the Consent Decree and the Constitution, Plaintiffs' Proposed Order requires Defendants to develop an exercise and recreational plan. *See* Proposed Order at 12. The plan will require Defendants to maintain adequate outdoor exercise space and to adopt policies and practices that provide

appropriate exercise opportunities in sufficient amounts to all prisoners, including those in Administrative Segregation. *Id.* The plan will also require Defendants to adequately staff Jail exercise areas while in use, to maintain adequate and appropriate exercise equipment, to keep complete and accurate exercise logs to facilitate review, and to provide a constitutionally adequate amount of out-of-cell time for all segregated prisoners. *Id.*

V. DEFENDANTS CONCEDE THAT ICE AND PRE-TRIAL DETAINEES ARE EVEN MORE PROTECTED

Defendants do not contest that it is appropriate for the Court to evaluate Plaintiffs' constitutional claims as they apply to ICE and pre-trial detainees under the more protective standard of *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) (en banc), *cert. denied sub nom. Los Angeles Cty. v. Castro*, No. 16-655, 2017 WL 276190 (U.S. Jan. 23, 2017). *See* Mot. at 49-52; Opp'n 11 n.6, 63. Since Plaintiffs filed this Motion, courts have continued to apply *Castro* to claims similar to those raised here. *See, e.g., Osegueda v. Stanislaus Cty. Pub. Safety Ctr.*, No. 1:16-CV-1218-LJO-BAM, 2017 WL 202232, at *5 (E.D. Cal. Jan. 17, 2017) (applying *Castro* broadly to pre-trial detainee challenges to conditions of confinement); *Borges*, 2017 WL 363212, at *9 (same); *Trebas v. Corizon Healthcare*, No. 1:16-CV-00461-DAD-EPG-PC, 2017 WL 85790, at *3 (E.D. Cal. Jan. 9, 2017) (applying *Castro* to "serious medical need" indifference claim); *Morehouse v. Kern Cty. Sheriff's Office*, No. 1:16-CV-00986-MJS-PC, 2017 WL 35501, at *3 (E.D. Cal. Jan. 3, 2017) (applying *Castro* to denial of psychiatric medication claim). As *Castro* and its progeny make clear, Yuba's ICE and pre-trial detainees are entitled to be protected from Defendants' unconstitutional conduct which is objectively reckless and disregards the substantial risk of serious harm to ICE and pre-trial detainees.

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CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that Plaintiffs' Motion to Enforce the Consent Decree and for Further Remedial Orders be granted, and the Court enter the Proposed Order.

DATED: February 8, 2017

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: */s/ Gay C. Grunfeld*
Gay C. Grunfeld

Attornevs for Plaintiffs

APPENDIX A

Appendix A

Plaintiffs' Motion identifies specific provisions of the Consent Decree that are being violated:

- **Sections V.A.3, V.A.4 and V.P of the Consent Decree** require that the Jail provide inpatient mental health care as needed. *See* Mot. at 40-43; *see also* Grunfeld Decl. ¶ 4 & Ex. C at 12, § 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.* at 12, § V.A.4. ("The [mental health] counselor must be able to … provide inpatient … treatment as indicated ….), *id.* at 25, § V.P. ("In an emergency situation or at the request of health care personnel, an inmate must be hospitalized for physical **or mental** reasons."); *id*. at 25, § V.R. ("Mental Health Services. Inmates with emergency crisis situations shall be able to receive care at Sutter General Hospital."); *id*. at 20, § V.G. ("Emergency … psychiatric care must be available twenty-four hours per day….").

- **Sections V.J., V.G., and V.R. of the Consent Decree** set forth important suicide prevention and emergency response provisions. *See* Mot. at 16; *see also* Grunfeld Decl. ¶ 4 & Ex. C at 20, § V.J. (requiring that the Jail "be maintained in a safe and sanitary condition," which includes the elimination of safety hazards); *id*. at 26, § V.R. (requiring 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."); *id*. at 20, § V.G. (requiring 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.").

- **Section V.C. of the Consent Decree** requires Defendants to properly identify arriving prisoners with urgent medical and mental health needs. *See* Mot. at 10; *see also* Grunfeld Decl. ¶ 4 & Ex. C at 14-15, § V.C. (requiring identification of (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).

- **Section V.A. of the Consent Decree** requires health care personnel to make medical decisions when present at the Jail. *See* Mot. at 10; *see also* Grunfeld Decl. ¶ 4 & Ex. C at 13, § V.A.

- **Section V.A.3 of the Consent Decree** requires that prisoners at the Jail be provided "outpatient physical health care" and "inpatient and outpatient mental health care as needed." *See* Mot. at 25; Grunfeld Decl. ¶ 4 & Ex. C at 12, § V.A.3; *see also id*. § V.A.4. (stating that a mental health counselor at the Jail must be able to "provide inpatient and outpatient treatment as indicated….").

- **Section V.Q. of the Consent Decree** requires that prisoners suffering from withdrawal must receive appropriate medical care. Mot. at 29; Grunfeld Decl. ¶ 4 & Ex. C at 25, § V.Q.

- **Section V.A.4 and V.R. of the Consent Decree** require the provision of psychosocial treatment. *See* Mot. at 31; *see* Grunfeld Decl. ¶ 4 & Ex. C at 26, § V.R. (requiring assessment and treatment services); *see also id.* at 25, § V.R. (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); *id.* at 12, § 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.")

- **Section V.F. of the Consent Decree** requires that "[d]aily sick call must be provided to all inmates requesting medical attention" and "[t]he nurse must see all inmates requesting attention." Grunfeld Decl. ¶ 4 & Ex. C at 18, § V.F. In addition, "[i]f during sick call the nurse determines that the inmate should see a physician, a dentist, mental health personnel, or other specialist, the nurse shall fill out a referral slip or x-ray permit. This slip shall indicate the maximum time which can elapse before the inmate is either transported to the proper person or facility or the proper person attends the inmate at the Jail." *Id.* at 19, § V.F.

- **Sections V.G. and V.P. of the Consent Decree** require that emergency dental, medical, and psychiatric care be available 24 hours per day. *Id.* at 20, § V.G.; *id.* at 25, § V.P.

- **Section IV and V.A. of 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," which include providing outpatient physical health care and inpatient and outpatient mental health treatment as indicated and require a Registered Nurse. *See* Mot. at 36; Grunfeld Decl. ¶ 4 & Ex. C at 9, § IV; *id.* at 11-13, §§ V.A.1, V.A.4.

- **Section III of the Consent Decree** requires that a Jail Supervisor "establish a program that provides regularly scheduled periods of inmate exercise and recreations" and requires multiple pieces of mandatory equipment for the Jail. *See* Mot. at 44, 46-48; Grunfeld Decl. ¶ 4 & Ex. C at 5, § III.

- **Section IV of the Consent Decree** requires Defendants to hire recreation staff, as expressly required by the Consent Decree. *See* Mot. at 46-48; Grunfeld Decl. ¶ 4 & Ex. C at 10, § IV.

- **Section VIII of the Consent Decree** mandates that "[a]ssignment to deep felony [which is now administrative segregation] shall not involve a deprivation of privileges other than those necessary to protect the welfare of inmates and staff." *See* Reply at 21-22; Grunfeld Decl., Ex. C at 35, § VIII.

APPENDIX B

Appendix B

The constitutional violations raised by Plaintiffs' Motion are well within the scope of the underlying complaint. *See* Declaration of Gay Crosthwait Grunfeld in Support of Motion to Enforce Consent Decree and for Further Remedial Orders ("Grunfeld Decl."), Dkt. No. 163-1, Ex. A (Complaint).

- Plaintiffs' complaint alleges Jail conditions that are "cruel and unusual punishment and which violate rights secured by the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution." *Id.* at 1, ¶ 1.
- Plaintiffs' complaint alleges that Defendants' "fail[ure] and refus[al] to provide an adequate opportunity for exercise and recreation" violates "the Fifth, Eighth, and Fourteenth Amendments to the Constitution." *Id.* at 7, ¶ 22.
- Plaintiffs' complaint alleges that Defendants' staffing shortages violate "the First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution." *Id.* at 9-10, ¶ 28.
- Plaintiffs' complaint alleges that Defendants maintain an inadequate intake process, where "Defendants do not provide adequate preventive and diagnostic medical services to prisoners upon admission to the Jail, or anytime thereafter." *Id.* at 10-11, ¶ 31.
- Plaintiffs' complaint alleges that Defendants fail to continue Plaintiffs on community medication while incarcerated. *Id.* at 11, ¶ 33.
- Plaintiffs' complaint alleges that the Jail's lacks mental health "routine or emergency care," lacks psychological treatment for prisoners, and fails to adequately supervise mentally ill prisoners. *Id.* at 11, ¶ 34.
- Plaintiffs' complaint alleges that "[d]ecisions are made … about whether a prisoner is in need of a doctor by Jail personnel who are totally without medical training and hence, unqualified to make such judgments." *Id.* at 12, ¶ 35.
- Plaintiffs' complaint alleges that Defendants' "fail[ure] and refus[al] to adequately provide for the medical and health needs of plaintiffs" violates "the Fifth, Eighth, and Fourteenth Amendments to the Constitution." *Id.* at 12-13, ¶ 39.
- Plaintiffs' complaint seeks equitable relief against Defendants to enjoin them each from:

- "Failing and refusing to provide adequate facilities for proper exercise and recreation of plaintiffs." *Id.* at 27, ¶ 4(a).
- "Failing and refusing to acquire adequate equipment for the use of plaintiffs in their exercise and recreation." *Id.* at 27, ¶ 4(b).
- "Failing and refusing to provide plaintiffs with an opportunity to be outside their cells for a reasonable period of time each day." *Id.* at 27, ¶ 4(c).
- "Failing and refusing to establish and implement an adequate program for the education, rehabilitation, and counseling of plaintiffs." *Id.* at 27, ¶ 4(e).
- "Failing and refusing to staff the Yuba County Jail so that someone is always available to care for the emergency needs of prisoners." *Id.* at 27, ¶ 4(g).
- "Failing and refusing to staff the Yuba County Jail so that it can adequately and humanely care for the plaintiffs' physical, legal, and emotional needs." *Id.* at 27, ¶ 4(h).
- "Failing and refusing to have a Health Department nurse visit the Jail daily." *Id.* at 27, ¶ 4(j).
- "Failing and refusing to provide reasonable access to a medical doctor at least once per week." *Id.* at 28, ¶ 4(k).
- "Allowing non-medical personnel to control plaintiffs' access to medical treatment." *Id.* at 28, ¶ 4(l).
- "Failing and refusing to provide medical and dental care at a level commensurate with the standards of medical care in Yuba County." *Id.* at 28, ¶ 4(n).
- "Failing and refusing to test for contagious diseases among newly admitted prisoners." *Id.* at 28, ¶ 4(o).
- "Seizing drugs, medicine, or pills, and/or eyeglasses from prisoners entering the Jail who have a medically demonstrated need for such medications and devices." *Id.* at 28, ¶ 4(p).
- "Failing to provide prescription medicine to prisoners when such medicines are medically necessary." *Id.* at 28, ¶ 4(q).
- "Failing to provide psychological and psychiatric care for prisoners who require it." *Id.* at 28, ¶ 4(r).

- "Denying the basic necessities of life to prisoners confined in the isolation cell." *Id.* at 29, ¶ 4(ac).