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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

18 LATRILL WILKERSON, DARRELL
ROBINSON, STEVEN WOLVERTON,
19 NATIONAL ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS, CALIFORNIA
20 ATTORNEYS FOR CRIMINAL JUSTICE,
and ACLU OF NORTHERN CALIFORNIA,

Petitioners,

vs.

23 GREGORY J. AHERN, Sheriff of Alameda
24 County, in His Official Capacity, and DOES
1-10,

Respondents.

Case No. _____

CLASS ACTION

**VERIFIED PETITION FOR WRIT OF
MANDATE AND HABEAS CORPUS AND
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1. Writ of Habeas Corpus
(Cal. Pen. Code §§ 1473 et seq.;
Cal. Const. Art. I § 11)
2. Writ of Mandate
(Cal. Code Civ. Proc. § 1085)
3. Taxpayer Claim
(Cal. Code Civ. Proc. § 526a)
4. Declaratory and Injunctive Relief
(Cal. Code Civ. Proc. §§ 526, 527, 1060;
Cal. Civ. Code § 3420 et seq.)

IMMEDIATE RELIEF SOUGHT

1 **PETITION FOR WRIT OF MANDATE AND HABEAS CORPUS AND COMPLAINT**
2 **FOR DECLATORY AND INJUNCTIVE RELIEF**
3

4 **INTRODUCTION**

5 1. Petitioners bring this action to prevent avoidable illness and death from COVID-19
6 among medically vulnerable people incarcerated at Santa Rita Jail. The case follows on the heels
7 of an action filed in the California Supreme Court by Petitioners National Association of Criminal
8 Defense Lawyers and California Attorneys for Criminal Justice. There, Petitioners asked the
9 Supreme Court to exercise its original jurisdiction over a petition seeking the release of people
10 from county jails across the state. In an Order dated May 4, 2020, the Court declined to exercise
11 jurisdiction, citing differences among individual jails. But the Court did so “without prejudice to
12 the institution of actions raising similar claims . . . in the superior courts of appropriate counties.”
13 Appx. 261. The Court observed that the petition “raise[d] urgent questions concerning the
14 responsibility of state authorities to ensure the health and safety of individuals confined in county
15 jails” and that such questions “call for prompt attention” and “tailored resolution[.]” Appx. 259.
16 The Court directed, *inter alia*, that the superior courts should “give the matter expedited
17 consideration for evidentiary hearings, briefing, and any joint discussions for resolution”
18 Appx. 261. This action is filed at the Supreme Court’s invitation, with a request for expedited
19 relief to follow shortly.

20 2. COVID-19 is a highly contagious respiratory disease with no cure or vaccine
21 currently available. Infection can be deadly, particularly for older people and those with
22 underlying health conditions such as diabetes, respiratory illness, and heart disease. To reduce
23 viral spread, California authorities have ordered social distancing and halted ordinary economic
24 and social life for people across the state. At Santa Rita Jail, however, the response has been slow
25 and inadequate. This Petition seeks expedited relief for high-risk people incarcerated at Santa Rita
26 Jail, who face an imminent risk of serious illness or death as a result of the Jail’s inaction.

27 3. Jails and prisons have become hotspots for COVID-19. Congregate living, resource
28 constraints, and unsanitary conditions conspire to facilitate rapid disease transmission. Public

1 health officials have urged jails to ensure that incarcerated people can eat, sleep, and recreate
2 while maintaining at least six feet of physical distance from others. Incarcerated people must be
3 given masks, soap, and sanitizer; common areas and cells must be frequently disinfected. Because
4 turnover is high, jails must quarantine newly-arrived people for at least 14 days before releasing
5 them into the general population. And given the risk of asymptomatic transmission, quarantine
6 should be paired with testing of everyone in the facility. Those who fall ill must be identified and
7 humanely isolated. And sick people must be given appropriate medical treatment responsive to
8 their condition.

9 4. None of this is happening at Santa Rita Jail. Social distancing is not practiced.
10 Transfer procedures continue to expose infected people to new units, and medically vulnerable
11 people living on those units to possible infection. Isolation of infected people is plainly
12 inadequate. Rather than isolating people with confirmed COVID-19 until they are no longer
13 contagious, the Jail places people in quarantine for a brief period before moving them to
14 unquarantined units where they continue to mix with other incarcerated people, sometimes while
15 they are still symptomatic.

16 5. Although the Jail has an in-house medical unit, it is utterly unequipped to handle a
17 COVID-19 outbreak. People who contract COVID-19 receive little or no care. Many convalesce
18 on thin mattresses over filthy concrete floors. One man recalls gasping for breath in a cell stained
19 with someone else’s blood. Another was placed in a cell strewn with feces, which Jail staff
20 “cleaned” with a few squirts of a bleach solution. Medical check-ins are infrequent, even for those
21 suffering from severe COVID-19 symptoms. In one case, a man lost consciousness in a COVID-
22 19 cell and remained immobile for several hours before anyone checked on him.

23 6. Despite the hazardous conditions, Santa Rita Jail has taken no steps toward a
24 targeted release of its most vulnerable populations. Administrators have identified a sliver of the
25 at-risk population for group confinement in a designated unit. The group is under-inclusive,
26 omitting people whose chronic medical conditions carry grave risk, per CDC guidance. Even those
27 who meet the Jail’s narrow criteria receive only the barest of precautions. At-risk people are often
28 confined together in small cells with shared toilets and sinks. At-risk units are continuously

1 exposed to people from other parts of the Jail through work details, doctor visits, mixing in
2 common areas, and forced movement through the Jail's narrow corridors and sally-ports. This
3 indiscriminate movement defeats the Jail's ham-handed attempt at isolation, creating an
4 intolerable risk of viral outbreak in the very units where people require the most protection.

5 7. These conditions are dangerous and unconstitutional. The Sheriff has actual
6 knowledge of the risk facing medically vulnerable people in his custody and care, and he has
7 failed to take reasonable measures to reduce that risk in violation of the Eighth and Fourteenth
8 Amendments to the United States Constitution and article I, sections 7 and 17 of the California
9 Constitution. He has offered only poorly executed half-measures, which are ineffective, self-
10 defeating, and deliberately indifferent to the dangers of COVID-19 infection.

11 8. To address these systemic constitutional violations, the named Petitioners bring this
12 action on behalf of themselves and a class of medically vulnerable people who are incarcerated at
13 Santa Rita Jail. Petitioners seek writs of mandate and habeas corpus ordering the Sheriff to release
14 medically vulnerable people from custody or, in cases where there are no less restrictive
15 alternatives, home confinement. Medically vulnerable people must be given a chance to protect
16 themselves against infection. Santa Rita Jail will not, and cannot, provide that opportunity.

17 **JURISDICTION AND VENUE**

18 9. Venue is proper in this Court because the causes of action alleged in this Petition
19 arose in the County of Alameda, where all the parties are located.

20 10. The relief requested is within the jurisdiction of this Court.

21 11. Petitioners are not required to perform any other conditions precedent or exhaust
22 any administrative remedies because pursuit of an administrative remedy would result in further
23 irreparable harm from contracting COVID-19. Fighting COVID-19 in the Santa Rita Jail is a
24 matter of compelling, countywide public interest, not only for medically vulnerable incarcerated
25 people and staff, but also for the surrounding community. Requiring Petitioners to pursue
26 administrative remedies within the Jail is also futile where, as here, grievances concerning the
27 conditions of confinement during COVID-19 go unanswered. *E.g.*, Appx. 061 (Powell ¶ 13).

28

1 **PARTIES**

2 12. **Petitioner National Association of Criminal Defense Lawyers (“NACDL”)** is a
3 membership organization of practicing criminal defense attorneys. NACDL members have
4 numerous clients and former clients now incarcerated in the Santa Rita Jail, including clients who
5 fit within the Centers for Disease Control’s (“CDC”) definition of people who are medically
6 vulnerable to COVID-19. NACDL’s mission is to serve as a leader, alongside diverse coalitions,
7 in identifying and reforming flaws and inequities in the criminal justice system, redressing
8 systemic racism, and ensuring that its members and others in the criminal defense bar are fully
9 equipped to serve all accused persons at the highest level to safeguard fundamental constitutional
10 rights. NACDL has approximately 800 members who reside in locations throughout California.
11 NACDL also has members who live in other states but practice in California. NACDL members
12 handle criminal cases in every county in California, including Alameda County. Petitioner
13 NACDL has members who have paid Alameda County taxes within the last year, including
14 Alameda County property taxes.

15 13. **Petitioner California Attorneys for Criminal Justice (“CACJ”)** is a membership
16 organization of criminal defense attorneys practicing in California. CACJ members have
17 numerous clients and former clients now incarcerated at the Santa Rita Jail, including clients who
18 fit within the CDC’s definition of people who are medically vulnerable to COVID-19. CACJ has
19 approximately 1,300 attorney members, who handle criminal cases in every county in the state,
20 including Alameda County. CACJ routinely engages in advocacy to advance justice, fairness, and
21 constitutional protections in the criminal system in the courts and the Legislature. Petitioner CACJ
22 has members who have paid Alameda County taxes within the last year, including Alameda
23 County property taxes.

24 14. The American Civil Liberties Union is a nationwide nonprofit, nonpartisan
25 organization with over 1.5 million members dedicated to the defense and promotion of the
26 guarantees of individual rights and liberties embodied in the state and federal constitutions.
27 **Petitioner American Civil Liberties Union of Northern California (“ACLU-NC”)**, founded in
28 1934 and based in San Francisco, is one of the largest ACLU affiliates. Many of its 138,892

1 members are assessed and pay local and California taxes every year, including members who have
2 paid Alameda County taxes within the last year.

3 15. **Petitioner Latrill Wilkerson**, PFN BAE009, is incarcerated at Santa Rita Jail. He
4 suffers from high blood pressure and asthma. Mr. Wilkerson has asthma attacks on a regular basis,
5 suffering several attacks every week. His hypertension and asthma subject Mr. Wilkerson to
6 frequent seizures, which he experiences despite taking medication. These medical conditions place
7 Mr. Wilkerson at a significantly heightened risk of severe illness or death in the event he becomes
8 infected with COVID-19.

9 16. **Petitioner Darrell Robinson**, PFN AXB859, is incarcerated at Santa Rita Jail. Mr.
10 Robinson suffers from asthma and needs an inhaler to breathe. Mr. Robinson is not, however,
11 permitted to keep an inhaler on his person in custody—he has to wait until the nurse visits before
12 he is able to use the device. Mr. Robinson’s condition places him at a significantly heightened risk
13 of severe illness or death in the event he becomes infected with COVID-19.

14 17. **Petitioner Steven Wolverton**, PFN AYW836, is incarcerated at Santa Rita Jail. Jail
15 administrators classify him as a medical high-risk vulnerable individual. Mr. Wolverton has had
16 numerous hospitalizations in recent years for Acute Respiratory Distress Syndrome (“ARDS”),
17 most recently a year and half ago. When Mr. Wolverton has an ARDS attack, he cannot breathe.
18 The experience feels like drowning and gives him a persistent hacking cough. Each time Mr.
19 Wolverton has been hospitalized for ARDS (including the last time), he required the assistance of
20 a ventilator to breathe and remained on the ventilator for several hours. Mr. Wolverton’s medical
21 condition places him at a significantly heightened risk of severe illness or death in the event he
22 becomes infected with COVID-19.

23 18. **Respondent Gregory Ahern** is the Sheriff of Alameda County. He is sued in his
24 official capacity and as an official of Alameda County. As Sheriff, Respondent Ahern has
25 immediate custody of Petitioners Wolverton, Wilkerson, and Robinson, and everyone else who is
26 incarcerated in the Santa Rita Jail. It is Respondent’s duty under California law “to keep the
27 county jail and the prisoners in it” Cal. Gov’t Code § 26605. Like all public officials,
28 Respondent must execute this important public function in a manner that complies with California

1 law and the requirements of the United States and California constitutions. Sheriff Ahern expends
2 taxpayer money to operate the Santa Rita Jail in Alameda County.

3 **FACTS¹**

4 **I. COVID-19 is a Global Pandemic that Endangers Correctional Facilities**

5 **A. COVID-19 is a Highly Infectious and Potentially Deadly Disease**

6 19. We are in the midst of a global pandemic without modern precedent. As of May 17,
7 2020, there were more than 4.6 million confirmed COVID-19 cases throughout the world.² Appx.
8 002 (Goldenson ¶ 6).³ The United States accounts for nearly 1.5 million confirmed cases of
9 infection and at least 89,420 deaths. *Id.* By May 2020, California accounted for 76,793 confirmed
10 COVID-19 cases, and 3,204 deaths. *Id.* Alameda County has seen at least 2,500 confirmed cases
11 and 88 reported deaths.⁴ *Id.* Experience shows that, without significant steps to contain the spread,
12 these figures will grow exponentially. *Id.*

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15 ¹ All the exhibits in the Appendix filed in support of this Petition are true and correct copies of the
16 provided documents that have been obtained by Petitioners and their counsel. The exhibits are
17 incorporated herein by reference as if fully set forth in this Petition.

18 ² Unless otherwise noted, allegations followed by a citation to a declaration or other document are
19 made on information and belief on the part of the Petitioners.

20 ³ Petitioners cite to the Appendix page where each document can be found. Where a cited
21 document is a declaration, Petitioners include a short form reference to the declarant’s last name
22 and the paragraph in which the supporting statement may be found. “Appx. 002 (Goldenson ¶ 6)”
23 thus refers to the Declaration of Dr. Joe Goldenson, paragraph 6, which can be viewed at page 002
24 of the accompanying Appendix.

25 ⁴ Appx. 337 (McDermott Decl. ¶ 4); *See* Alameda County “COVID-19 Dashboard,” [https://ac-
26 hcsa.maps.arcgis.com/apps/opsdashboard/index.html#/1e0ac4385cbe4cc1bffe2cf7f8e7f0d9](https://ac-hcsa.maps.arcgis.com/apps/opsdashboard/index.html#/1e0ac4385cbe4cc1bffe2cf7f8e7f0d9).
27 Alameda County reported its first coronavirus death on March 23, 2020. Press Release, Alameda
28 County Public Health Dep’t (Mar. 23, 2020), [http://www.acphd.org/media/561376/alameda-
county-press-statement-confirms-first-death-covid-19-20200323final.pdf](http://www.acphd.org/media/561376/alameda-county-press-statement-confirms-first-death-covid-19-20200323final.pdf). Media report that local
cases continue to multiply. As of May 14, Alameda County reportedly had the second highest
number of coronavirus deaths in the Bay Area. Evan Webeck, *Coronavirus: Alameda County still
seeing regular deaths, large case loads*, East Bay Times (May 14, 2020),
[https://www.eastbaytimes.com/2020/05/14/san-francisco-bay-area-coronavirus-covid-19-cases-
deaths-may-14/](https://www.eastbaytimes.com/2020/05/14/san-francisco-bay-area-coronavirus-covid-19-cases-deaths-may-14/). During the first week of May, Alameda County reportedly saw an average of 45.2
new cases per day. *Id.* And according to data published by the Alameda County Public Health
Department, the number of new cases continues to increase. Alameda County “COVID-19
Dashboard,” [https://ac-
hcsa.maps.arcgis.com/apps/opsdashboard/index.html#/1e0ac4385cbe4cc1bffe2cf7f8e7f0d9](https://ac-hcsa.maps.arcgis.com/apps/opsdashboard/index.html#/1e0ac4385cbe4cc1bffe2cf7f8e7f0d9)

1 20. On March 4, 2020, Governor Gavin Newsom declared a state of emergency due to
2 COVID-19. Appx. 091. On March 13, 2020, the President declared a national state of emergency.⁵
3 Normalcy has ceased to exist. All California residents have been ordered to shelter in place,
4 leaving their homes only for essential functions. Numerous counties, including Alameda, have
5 ordered residents to wear masks while moving through public spaces.⁶ Non-essential businesses
6 have closed, and those that continue to operate are subject to a host of new rules and restrictions
7 designed to reduce viral spread. In short, the need to contain COVID-19 has been universally
8 recognized and has fundamentally altered social and economic life in California.⁷

9 21. These extreme measures are necessary to address extreme risk. COVID-19 can
10 cause severe damage to lung tissue, including a permanent loss of respiratory capacity. Appx. 007-
11 009 (Goldenson ¶ 22). Infection can also damage other vital organs, including the heart and
12 kidneys. *Id.* In severe cases, infection can result in respiratory failure, heart failure, and death.
13 Appx. 003, 007-009 (*Id.* ¶¶ 8, 22). The fatality rate for people with COVID-19 has been estimated
14 to range from 2.5 to 30 times the rate associated with influenza infection. Appx. 002 (Goldenson ¶
15 6). The White House has projected that, even taking into account the sweeping interventions of
16 federal and state authorities, the total number of COVID-19 deaths in the United States may be as
17 high as 240,000 people.⁸ Already, a staggering 93,000 people in the U.S. have died of the virus.
18 Appx. 337 (McDermott ¶¶ 2-3).

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21 ⁵ Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease
(COVID-19) Outbreak, (March 13, 2020), <https://cutt.ly/EtJLZQZ>.

22 ⁶ Alameda County Health Care Services Agency, *Alameda County FAQ for the Order Requiring*
23 *Residents and Workers to Wear Face Coverings* (Apr. 17, 2020),
24 <http://acphd.org/media/569816/faq-face-coverings-order-2020.04.19.pdf>

25 ⁷ Reporting in the New York Times shows that as of April 7, at least 42 states, 3 counties, 9 cities,
26 and the District of Columbia were under stay-at-home orders similar to California's. Sarah
27 Mervosh et al., *See Which States and Cities Have Told Residents to Stay at Home*, The New York
28 Times (updated Apr. 7, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>

⁸ Rick Noack, et al., *White House Task Force Projects 100,000 to 240,000 Deaths in U.S., Even*
With Mitigation Efforts, Wash. Post. (April 1, 2020, 12:02 a.m.), <https://cutt.ly/5tYT7uo>

1 22. COVID-19 is highly infectious and passes easily from person to person. Experts
2 believe that the virus spreads through respiratory droplets, close personal contact, and from
3 contact with contaminated surfaces and objects. Appx. 002-003 (Goldenson ¶ 7). Infected
4 respiratory droplets can remain airborne for up to three hours after exhalation; they can survive on
5 surfaces for periods ranging from a few hours to several days. *Id.* This means that infected people
6 spread the disease even without direct contact with others. Merely breathing the same air or
7 touching common objects can be enough for transmission.

8 23. Compounding the challenge of containment, many infected persons are temporarily
9 or permanently asymptomatic. COVID-19 has a prolonged incubation period: Signs of infection
10 may not emerge until as many as 14 days after exposure. Appx. 003 (Goldenson ¶ 8). For many
11 people, symptoms may never emerge. *Id.* ¶ 9. The CDC reports that up to 25 percent of people
12 infected with COVID-19 will exhibit no symptoms, while others will show only mild signs of
13 illness. *Id.* As a result, untold numbers are likely carrying a potentially fatal, easily transmitted
14 disease but are unaware of their condition—or the infection risk they present to everyone in their
15 community.

16 24. There is currently no COVID-19 vaccine available and no known medication to
17 treat it. Appx. 003 (Goldenson ¶ 10). Accordingly, public health officials and experts urge all
18 persons to practice “social distancing”—maintaining at least six feet of space between individuals
19 at all times. *Id.* ¶ 11. Other recommended precautions include frequent hand-washing, regular
20 cleaning and disinfecting of surfaces, and respiratory hygiene (covering the nose and mouth). *Id.*
21 ¶ 11. The threat of COVID-19 transmission by asymptomatic persons has prompted the CDC and
22 other experts to recommend that all persons wear a mask any time they leave their homes. *Id.* ¶ 9.

23 **B. COVID-19 is Particularly Dangerous for Medically Vulnerable People**

24 25. While COVID-19 threatens everyone, certain individuals are at a heightened risk.
25 Appx. 007-009 (Goldenson ¶ 22). Experts believe that older people and those suffering from
26 certain underlying medical conditions are at a higher risk of serious illness or death from the
27 disease. *Id.*

28

1 26. Specifically, the CDC has advised that people 65 or older are particularly
2 vulnerable to COVID-19. Appx. 007-009 (Goldenson ¶ 22). As explained by correctional
3 healthcare expert Dr. Joe Goldenson, this age is appropriately reduced to 55 for people who are
4 incarcerated. *Id.* Experts widely agree that because of their high rates of chronic disease, poor
5 previous health care, and histories of drug and alcohol abuse, incarcerated people are
6 physiologically 10 years older than their chronological age. *Id.* Incarcerated people aged 55 or
7 older face a heightened risk of severe illness or death.

8 27. The CDC has also advised that people with the following underlying medical
9 conditions are at heightened risk, regardless of their age:

- 10 a. Diabetes mellitus;
- 11 b. Lung disease, including asthma or chronic obstructive pulmonary disease
12 (chronic bronchitis or emphysema) or other chronic conditions associated
13 with impaired lung function or that require home oxygen;
- 14 c. Heart disease;
- 15 d. Blood disorders, including sickle cell disease and disorders that require the
16 use of blood thinners;
- 17 e. Chronic kidney disease;
- 18 f. Chronic liver disease;
- 19 g. Compromised immune system (*i.e.*, immunosuppression);
- 20 h. Current or recent pregnancy in the last two weeks;
- 21 i. Endocrine disorders;
- 22 j. Metabolic disorders; and
- 23 k. Neurological, neurologic, and neurodevelopment conditions, including
24 disorders of the brain, spinal cord, peripheral nerve, and muscle, such as
25 cerebral palsy, epilepsy (seizure disorders), stroke, intellectual disability,
26 moderate to severe developmental delay, muscular dystrophy, or spinal cord
27 injury.

1 28. By virtue of their conditions, people falling in any of the categories discussed in the
2 preceding two paragraphs (collectively, the “Medically Vulnerable”) are particularly vulnerable to
3 the dangers of COVID-19 and require precautionary measures responsive to their heightened risk.

4 **C. Correctional Facilities are Uniquely Primed for Viral Outbreak**

5 29. Correctional facilities like Santa Rita Jail face a significant risk for rapid and
6 deadly spread of COVID-19. Several factors contribute to this risk. Correctional facilities are
7 “congregate environments” where people live and sleep in close proximity. Appx. 0004
8 (Goldenson *Id.* ¶ 13). They are designed not for reducing infection, but for maximizing security by
9 grouping many people into a confined space—an arrangement antithetical to social distancing. (*Id.*
10 ¶¶ 12–19, 25). Correctional facilities often provide insufficient medical and hygiene supplies, such
11 as soap, hand sanitizer, and face coverings. (*Id.* ¶ 15). Space and staffing limitations make it
12 difficult to quarantine newly-admitted persons and those with potential COVID-19 exposure. (*Id.*
13 ¶ 17). Incarcerated people are subject to frequent internal movement—between housing units, to
14 congregate eating areas, through commissary, laundry, and medication lines, etc.—which
15 facilitates rapid disease transmission. (*Id.* ¶ 19.)

16 30. Additionally, compared to the general population, correctional facilities house a
17 disproportionate number of Medically Vulnerable persons. Appx. 0007 (Goldenson ¶ 22).
18 Incarcerated populations have high rates of chronic illnesses such as diabetes, respiratory illness,
19 and heart disease that increase the risk of serious illness from COVID-19. (*Id.*) They often arrive
20 at jails or prisons with poor or absent prior health care, alcohol or drug abuse, and other factors
21 that further heighten the risk of contracting or dying from the disease. (*Id.*) Thus, not only is
22 COVID-19 more likely to spread in correctional facilities, but the consequences of viral outbreak
23 are more severe than among healthier populations.

24 31. Viral outbreaks in jails and prisons have serious public health ramifications, which
25 extend beyond the incarcerated population. Even when jail visitation is reduced, staff, vendors,
26 and others travel between jails and outlying communities, creating conduits for infectious disease.

27
28

1 Appx. 10-11 (Goldenson ¶¶ 26, 27).⁹ Incarcerated populations have high turnover, as people are
2 released while others are continuously admitted to the jail or prison. The revolving door creates an
3 ever-present risk that persons, including asymptomatic carriers, will carry the virus into and out of
4 the jail, spread infection, and trigger outbreaks both inside and outside the jailhouse walls.

5 32. For all of these reasons, public health officials warn that without significant,
6 sustained intervention, the “epicenter of the pandemic will be jails and prisons.”¹⁰ The CDC has
7 identified jails and prisons as at-risk environments, which are especially susceptible to rapid
8 COVID-19 outbreaks. Appx. 0025 (CDC Guidance). The World Health Organization (“WHO”)
9 cautions that incarcerated people “are likely to be more vulnerable to the [COVID-19] outbreak
10 than the general population because of the confined conditions in which they live”¹¹

11 33. Echoing these concerns, a federal District Court recently observed that “[p]risons
12 are ‘powder kegs for infection’ and have allowed ‘the COVID-19 virus [to] spread[] with
13 uncommon and frightening speed,’” Appx. 0249 (quoting *United States v. Skelos*, No. 15-CR-317,
14 2020WL 1847558, at *1 (S.D.N.Y. Apr. 12, 2020)). Here in California, Scott Kernan, who
15 previously served as Secretary of the California Department of Corrections and Rehabilitation,
16 called California prisons and jails “a tinderbox of potential infection. . . .”¹²

17 34. COVID-19 outbreaks have already crippled correctional facilities across the
18 country. Recent outbreaks in the Cook County Jail in Chicago and at the Rikers Island Jail in New
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20 _____
21 ⁹ See also Josiah Rich, et al., *We Must Release Prisoners to Lessen the Spread of Coronavirus*,
22 The Washington Post (Mar. 17, 2020), [www.washingtonpost.com/opinions/2020/03/17/we-must-
release-prisoners-lessen-spread-coronavirus](http://www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lessen-spread-coronavirus)

23 ¹⁰ Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction*
24 *Continues*, The New York Times (Mar. 12, 2020), [https://www.nytimes
.com/2020/03/16/opinion/coronavirus-in-jails.html](https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html).

25 ¹¹ *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*
26 (Mar. 15, 2020), [http://www.euro.who.int/
_data/assets/pdf_file/0019/434026/Preparedness-
prevention-and-control-of-COVID-19-in-prisons.pdf](http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf).

27 ¹² Sukey Lewis, et al., *California Prisons Are a 'Tinderbox of Potential Infection,' Former CDCR*
28 *Secretary Warns*, KQED (Mar. 25, 2020), [https://www.kqed.org/news/11808282/california-
prisons-are-a-tinderbox-of-potential-infection-former-cdcr-secretary-warns](https://www.kqed.org/news/11808282/california-prisons-are-a-tinderbox-of-potential-infection-former-cdcr-secretary-warns)

1 York are estimated to reflect the highest COVID-19 transmission rates observed anywhere in the
2 world.¹³ The Legal Aid Society in New York reported that infection rates at Rikers Island Jail are
3 more than *seven times* higher than the rate across New York City—itsself an epicenter of
4 infection—and *85 times* greater than the country at large. Appx. 0122-0162 (NYLAS Petition). As
5 of April 13, 2020, more than 500 people at Cook County Jail in Chicago had tested positive for
6 COVID-19, and at least six of those people had died from the disease. Appx. 0009 (Goldenson ¶
7 23).¹⁴

8 35. Other jails and prisons have experienced the same tragic outcomes, including
9 facilities in California. As of May 21, 2020, the Federal Bureau of Prisons reported more than
10 1,000 cases, and 2 deaths, among people incarcerated at FCI Lompoc and USP Lompoc
11 (collectively, “Lompoc”) in Central California—a startling increase from the 92 cases Lompoc
12 reported on April 29. Appx. 0337-0338 (McDermott Dec. ¶¶ 7-8). As of May 21, 2020, the
13 Federal Bureau of Prisons reported 691 cases and 8 deaths among people incarcerated at FCI
14 Terminal Island in Southern California. *Id.* ¶ 9.¹⁵ On April 20, 2020, approximately 1,828
15 prisoners and 109 staff at the Marion Correctional Institution in Ohio reportedly tested positive for
16 COVID-19. Appx. 0009 (Goldenson ¶ 23); Appx. 0221 0241 (N.D. Ohio Order (*Wilson*)). This
17 outbreak was discovered through mass testing of all prisoners, implying that infection numbers in
18 correctional facilities that have not implemented universal testing—such as Santa Rita Jail—may
19 be far higher than reported. *Id.* Even without mass testing, as of May 21, 2020, Santa Rita Jail
20 reported 53 confirmed cases of COVID-19. Appx. 0337 (McDermott Dec. ¶ 5).

21
22 ¹³ See Alleen Brown, Inside Rikers: An Account of the Virus-Stricken Jail from a Man Who
23 Managed to Get Out, Intercept, April 21 2020, <https://theintercept.com/2020/04/21/coronavirus-rikersisland-jail-nyc/>; Timothy Williams & Danielle Ivory, Chicago’s Jail Is Top U.S. Hot Spot as
24 Virus Spreads Behind Bars, N.Y. Times, April 8, 2020, <https://www.nytimes.com/2020/04/08/us/coronaviruscook-county-jail-chicago.html>.

25 ¹⁴ COVID Cases at CCDOC, <https://www.cookcountysheriff.org/covid-19-cases-at-ccdoc/> (last
26 visited Apr. 24, 2020).

27 ¹⁵ The Guardian, ‘People are sick all around me’: inside the coronavirus catastrophe in California
28 prisons (May 20, 2020), <https://www.theguardian.com/us-news/2020/may/20/california-prisons-covid-19-outbreak-deaths>

1 36. Shaken by these disasters, law enforcement and correctional officials have
2 recognized the need for drastic action to prevent jails from becoming COVID-19 hotspots. Thirty-
3 one elected prosecutors—including District Attorneys in California—signed a letter calling on the
4 criminal justice system “to dramatically reduce the number of incarcerated individuals and the
5 threat of disastrous [COVID-19] outbreaks.”¹⁶ In Southern California, the Association of Orange
6 County Deputy Sheriffs recently urged their Sheriff to reduce the jail population and shutter jail
7 dormitories and barracks as precautions against COVID-19.¹⁷ In jurisdictions around the country,
8 courts, law enforcement officials, and advocates continue to grapple with the acute and serious
9 danger COVID-19 poses in correctional facilities. *See also, e.g.*, Appx. 0221-0241 (*Wilson*)
10 (granting preliminary injunction ordering the government to identify prisoners eligible for transfer
11 “through any means, including but not limited to compassionate release, parole or community
12 supervision, transfer furlough, or non-transfer furlough”); Appx. 0242-0258 (*Salvagno*) (ordering
13 immediate release of prisoner); Appx. 0262-0335 (*Martinez-Brooks*) (granting temporary
14 restraining order requiring warden to speedily identify medically vulnerable prisoners appropriate
15 for home confinement and compassionate release).

16 **II. As Currently Designed and Operated, Santa Rita Jail is Incapable of Protecting**
17 **Medically Vulnerable People from COVID-19**

18 **A. Santa Rita Jail’s Medical Unit is Unequipped to Handle the COVID-19**
19 **Outbreak**

20 37. Medical care in Santa Rita Jail is hard to come by in the best of circumstances.
21 Detainees put in “sick calls” when they need a medical provider, but these often go unanswered.
22 Appx. 0056 (Neal ¶ 10). One person—diagnosed with bipolar disorder, depression, and post-
23

24 _____
25 ¹⁶ Fair and Just Prosecution, Joint Statement from Elected Prosecutors on COVID-19 and
26 Addressing the Rights and Needs of Those in Custody (updated Mar. 25, 2020),
<https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf>.

27 ¹⁷ Letter from Tom Dominguez, President of the Association of Orange County Deputy Sheriffs to
28 Don Barnes, Orange County Sheriff (Mar. 25, 2020), <https://voiceofoc.org/wp-content/uploads/2020/03/OC-deputy-sheriffs-union-letter-re-COVID-inmate-releases-March-25-2020.pdf>.

1 traumatic stress disorder—recalled that despite multiple requests for mental health care, he was
2 forced to file a grievance before receiving any medical attention. *Id.* ¶ 11. Others are deterred from
3 seeking medical care altogether for fear that money will be deducted from their accounts. *Id.*;
4 Appx. 0080 (Williams ¶ 13).

5 38. Those who catch medical staff’s attention are not guaranteed adequate treatment.
6 Even before COVID-19, the Jail’s medical unit, the Outpatient Housing Unit (“OPHU”), often
7 operated at or near capacity. Appx. 0020 (O’Neill ¶ 7). The OPHU is the primary medical provider
8 for thousands of incarcerated people who suffer from high levels of chronic medical conditions
9 and often have histories of poor prior treatment, substance abuse, and mental illness. But the office
10 is smaller than an average general practitioners’ office, with capacity for a dozen patients at most.
11 *Id.* ¶ 4. The OPHU has fewer than half a dozen small examination rooms, which are connected by
12 narrow corridors that make social distancing impossible. *Id.* ¶¶ 4, 11. Medical staff are often
13 spread thin, responding to the needs of hundreds of patients with only a small workforce. *Id.* ¶ 5.

14 39. By its very design, Santa Rita Jail’s medical unit is unequipped to handle a large
15 coronavirus outbreak. If Santa Rita Jail witnessed a significant influx of acute COVID-19 patients,
16 the OPHU would not have the capacity to care for everyone. *Id.* The burden of treating the
17 infected and seriously ill would strain the OPHU’s resources beyond the breaking point.

18 40. Nor is Santa Rita Jail equipped to effectively outsource patient care to community
19 medical facilities. Santa Rita Jail has a history of “struggl[ing] to refer patients to hospital settings
20 when they needed a higher level of care than the Jail could provide.” Appx. 0021 (O’Neill ¶ 9).
21 One addiction treatment counselor recalled treating patients with broken bones and severe illness
22 whom the Jail never referred for hospital treatment. *Id.* “The Jail also referred overdoses to
23 hospital settings at very low rates.” *Id.* The counselor explained that the Jail was slow to respond
24 to the opioid epidemic. *Id.* ¶ 10. In-custody fatalities are easily prevented by providing the opioid
25 antagonist Naloxone to Sheriff’s Deputies working in the Jail; yet, despite the clear danger—
26 including the death of at least one person incarcerated in Santa Rita—it took a full year for the Jail
27 to implement this basic precaution. (*Id.* ¶ 10.)

28

1 41. The experiences of people at Santa Rita Jail who have actually suffered through
2 COVID-19 infections illustrate how ill-equipped the Jail is to provide appropriate medical
3 treatment. Dylan Hyche is incarcerated at Santa Rita Jail. He tested positive for COVID-19 in
4 early April—an alarming diagnosis given his asthma and bronchitis. Appx. 0041-42 (Hyche ¶¶ 2,
5 8–9). When Jail staff took Mr. Hyche to the OPHU for treatment, nurses denied him a hospital
6 bed, citing lack of space, and instead placed him on a mattress on the floor of a dirty cell. *Id.* ¶ 2,
7 8–10. The ground was covered with bloodstains, which spread “all over the floor of the cell.”¹⁸ *Id.*
8 During his time in the OPHU, Mr. Hyche received no treatment beyond occasional vital checks.
9 *Id.* ¶ 11. He was not allowed to shower, despite multiple requests. *Id.* Because he received no
10 meaningful treatment or care, Mr. Hyche asked to leave the OPHU after just three days of
11 miserable convalescence. *Id.*

12 42. Some individuals who have confirmed or suspected COVID-19 are not housed in
13 the OPHU but are placed instead in unsanitary housing units with inadequate medical care. On
14 March 5, Leonard Wakefield began experiencing COVID-19 symptoms, including body pains,
15 lethargy, and difficulty breathing. Appx. 0067 (Wakefield ¶ 3). Mr. Wakefield requested a
16 COVID-19 test, but the doctor refused, telling Mr. Wakefield he was “fine.” *Id.* ¶ 3. Mr.
17 Wakefield later tested positive for the virus. *Id.* ¶¶ 5, 9. After the belated diagnosis, Jail staff
18 moved Mr. Wakefield and others who tested positive for COVID-19 to Housing Unit 8C. *Id.* ¶¶ 5–
19 6. Mr. Wakefield was placed in a cell strewn with garbage and dirt; the conditions were so filthy
20 that he told deputies he would need suicide watch if he were forced to stay. *Id.* Like Mr. Hyche,
21 Mr. Wakefield has received no meaningful treatment in Housing Unit 8C despite severe COVID-
22 19 symptoms. *Id.* ¶ 7. When he told medical staff that he was struggling to breathe, they offered
23 him a Tylenol. *Id.* Mr. Wakefield has been denied soap and hand wipes, preventing him from
24 taking basic precautions against disease transmission; his filthy cell has not been cleaned. *Id.* ¶ 8.

25
26 _____
27 ¹⁸ Mr. Hyche’s experience is consistent with historical practice at the OPHU. An addiction
28 treatment counselor who worked at Santa Anita Jail reports that before COVID-19, patients
housed at OPHU were often kept in dirty cells, where they slept on mattresses on bare ground.
Appx. 0020 (O’Neill ¶ 6–7). The global pandemic does not appear to have improved the situation.

1 43. According to Mr. Wakefield, Housing Unit 8 lacks meaningful sanitation or
2 hygiene practices. People housed in Unit 8 share a phone and common spaces like tables, which
3 are not sanitized between uses. *Id.* They have not been provided gloves, and the unit has not been
4 cleaned. Appx. 0068 (Wakefield ¶ 10).

5 44. After his confinement in the blood-stained OPHU cell, Mr. Hyche was also taken to
6 Housing Unit 8. *Id.* ¶ 12. Mr. Hyche was very sick, experiencing shortness of breath, headaches
7 and kidney pain. *Id.* Yet he received no treatment apart from occasional vital checks. *Id.* He was
8 rarely allowed out of his cell, spending as many as forty-seven consecutive hours in isolation. *Id.*
9 One day, Mr. Hyche observed another person in Unit 8 passed out in his cell. *Id.* ¶ 13. Hours
10 passed before anyone came to check on him. *Id.* ¶ 14. Officers eventually put the unresponsive
11 man into a wheelchair and “wheeled him out of the unit while his head dangled to the side.” *Id.*
12 Terrified for his life and fearing a similar outcome, Mr. Hyche reported that his symptoms were
13 resolved and moved to Housing Unit 6. *Id.* ¶ 14. Although he still experiences kidney pain,
14 headaches, and difficulty breathing—and although he worries about spreading COVID-19 to
15 others—Mr. Hyche has not sought further medical care out of fear of being returned to Unit 8. *Id.*
16 ¶ 15. Mr. Hyche has been released from indifferent “medical” treatment to spread the disease to
17 others. As Mr. Hyche stated, “What the Jail is doing is inhumane and makes people not want to
18 tell Jail staff if they feel sick.” *Id.* ¶ 16.

19 45. Cedric Henry also tested positive for COVID-19 and was housed in Unit 8A. Appx.
20 0035-0036 (Henry ¶ 6 (p. 1), 6 (p. 2)). Mr. Henry started experiencing symptoms in early April,
21 while in Housing Unit 7. *Id.* ¶ 4 (p. 1). A nurse took his temperature, said it was high, suggested
22 drinking water—and then left him in the unit without further medical attention for the rest of the
23 day. *Id.* Mr. Henry remained, sick, in the company of others in Unit 7. Deputies came in the dead
24 of the night to move Mr. Henry to Unit 8. *Id.* They took him to a cell that had been sprayed with
25 bleach but not wiped down. *Id.* ¶ 5 (p. 1). Dirt covered every surface. *Id.* Feces soiled the floor. *Id.*
26 Mr. Henry was given nothing to clean the cell; deputies handed him only his bedroll before
27 locking him in. *Id.* He slept on a thin mattress over a cold concrete slab. *Id.* ¶ 6 (p. 1). His fever
28 was high, but he was given only a thin blanket to ward off the chill. *Id.* Like Mr. Hyche and Mr.

1 Wakefield, Mr. Henry struggled with personal hygiene. The shower was filled with “flying black
2 bugs” that bit exposed skin and prevented him from showering at all during the two weeks he
3 spent in Unit 8. *Id.* ¶ 4 (p. 2).

4 46. As the disease progressed, Mr. Henry developed difficulty breathing. *Id.* ¶ 4 (p. 2).
5 Despite his deteriorating condition, he received no meaningful treatment. The jail doctor never
6 ordered a chest x-ray, or even listened to his lungs. *Id.* By April 15, Mr. Henry’s fever had
7 dissipated, but breathing was a continuous struggle. *Id.* Nevertheless, the doctor cleared him to
8 return to the general population, telling him: “You’ll breathe better in another building.” *Id.*
9 Deputies cycled Mr. Henry through two more Housing Units; when Mr. Henry expressed concern
10 that his continued symptoms would place others in danger, he was sent to solitary confinement. *Id.*

11 47. The conditions experienced by these individuals would be intolerable for any
12 person incarcerated at Santa Rita Jail. They present a special danger to those who are Medically
13 Vulnerable. Should any Medically Vulnerable person contract COVID-19 and develop serious
14 complications, the Jail’s medical facilities are demonstrably incapable of providing the treatment
15 that person would require. Should *multiple* Medically Vulnerable people contract the disease, the
16 Jail’s overworked medical staff would be overwhelmed.

17 **B. The Jail’s Attempts to Isolate a Small Number of Medically Vulnerable People**
18 **Cannot Protect Them or Those Remaining in the General Population**

19 48. On information and belief, Santa Rita Jail’s third-party medical services provider,
20 Wellpath, has classified a certain number of people in Santa Rita Jail as “high risk” or medically
21 vulnerable. Appx. 0081 (Wolverton ¶¶ 3–4, 7); Appx. 0208-0220. Respondent has taken no action
22 to release these individuals—indeed, although he is aware of his power to release these medically
23 vulnerable people to eliminate their heightened risk of contracting COVID-19 in the Jail, the
24 Sheriff has not released *anyone* pursuant to his power under Government Code section 8658.
25 Appx.2028-0220. Instead, Respondent holds these medically vulnerable people together in a
26 single space. *Id.* ¶ 7. Contrary to the goal of isolation, they share living space and interact with
27 incarcerated people from *other* living areas in the jail, without any assurance those people are
28

1 COVID-19 free. *Id.* ¶ 7. Nor are they given proper sanitation or protective equipment to prevent
2 the virus’ spread. *Id.* ¶ 7.

3 49. Petitioner Steven Wolverton is currently housed in Unit 4F, which he describes as
4 “a pod for medically vulnerable people” *Id.* By the Jail’s own implicit acknowledgment,
5 everyone in Mr. Wolverton’s unit faces a heightened risk of serious illness or death if they
6 contract COVID-19. Nonetheless, as Mr. Wolverton reports, incarcerated people are held two-to-
7 a-cell, where they share bunk beds, a toilet, and a sink. *Id.* ¶ 4.

8 50. In addition to sharing pocket-sized living quarters with another person, everyone in
9 Unit 4 interacts in common areas—both with one another and with workers from other pods in the
10 Unit. *Id.* ¶ 7. In other words, personal interactions are not confined to self-contained ecosystems of
11 medically vulnerable people but instead extend to a wide range of individuals, multiplying
12 opportunities for COVID-19 transmission. Mr. Wolverton recently learned that a few people were
13 transferred out of Unit 4D over concerns they had contracted COVID-19. *Id.* ¶ 8. These
14 potentially-infected individuals are among a group that is known to mingle with people in Mr.
15 Wolverton’s unit, including people who provide food service for Mr. Wolverton and others in Unit
16 4F. *Id.*

17 51. Inexplicably, Santa Rita Jail regularly exposes people who are held in the medically
18 vulnerable units to the general population. These exposures occur, for instance, during transfers to
19 court or for attorney visits. Mr. Wolverton has observed deputies taking two or three people from
20 his medically vulnerable pod to be transferred together with people from other pods to court
21 appearances. *Id.* ¶ 9.

22 52. Santa Rita Jail’s efforts to protect medically vulnerable people from COVID-19 fail
23 even on their own terms. “Isolation” in the medically vulnerable units acknowledges the risk, but
24 fails to reasonably address it. Ill and at-risk individuals are not truly isolated, but are instead mixed
25 with and exposed to others in conditions where social distancing is impossible. In sum, even for
26 those few people whom Wellpath or the Jail has classified as medically vulnerable, acknowledging
27 their infection risk, Respondent is unable to ensure conditions sufficient to protect them from the
28 dangers of COVID-19.

1 53. The problems run deeper still. Santa Rita Jail’s meager protective measures for
2 medically vulnerable persons reach only those persons classified as such by Wellpath or Jail
3 officials. The Jail’s classifications are dangerously under-inclusive. There appear to be many
4 people incarcerated at Santa Rita Jail who meet the CDC’s criteria for medical vulnerability, *see*
5 Appx. 0007 (Goldenson ¶ 22), but are not classified as such by Jail officials. These individuals are
6 Medically Vulnerable. But they are denied even the minimal (and constitutionally insufficient)
7 accommodations provided to high-risk persons, and are forced to reside in the general population
8 where conditions are even less protective.

9 54. Petitioner Wilkerson, for example, has seizures, asthma, and high blood pressure.
10 Appx.0074 (Wilkerson ¶ 3). Petitioner Robinson has severe asthma, which requires use of an
11 inhaler. Appx. 0035 (Robinson ¶ 5). Neither has been afforded any special housing or other
12 protective measures on the basis of his increased risk from COVID-19. To their knowledge,
13 neither has been classified as medically vulnerable by Wellpath or the Jail.

14 55. Numerous other individuals incarcerated in Santa Rita Jail are Medically
15 Vulnerable, yet apparently have not been identified by the Jail as requiring special
16 accommodations. *See, e.g.*, Appx. 0085 (Wayne ¶ 3 (deep vein thrombosis, requiring blood
17 thinners); Appx. 0032 (English ¶ 3) (asthma and bronchitis); Appx. 0032 (Wynne ¶ 4) (potentially
18 compromised immune system and asthma); Appx. 0038 (Howard ¶ 7) (on information and belief,
19 diabetes); Appx. 0045 (King ¶ 4) (asthma); Appx. 0041 (Hyche ¶ 3) (asthma); Appx. 0079
20 (Williams ¶ 5) (asthma). These people continue to reside in the general population, without
21 precautions tailored to their heightened medical risk. Such treatment places all of these individuals
22 at an intolerable risk of contracting COVID-19 and suffering severe illness or death as a result.

23 **C. The Design and Operations of the Santa Rita Jail Make Social Distancing and**
24 **Proper Hygiene Impossible**

25 56. Social distancing is key to preventing COVID-19 infections. Appx. 0096-21. In its
26 pursuit, whole swaths of the California economy have been mothballed. Economic and social life
27 has ground to a halt, as people have been ordered to remain in their homes except to perform
28 essential functions. Appx. 0091-95.

1 57. CDC guidance urges jails and prisons to implement measures that maintain at least
2 six feet of physical space between incarcerated persons. Appx. 0099; Appx. 0004 (Goldenson ¶
3 13). As designed and operated, Santa Rita Jail does not permit such measures, and Respondent has
4 failed to implement the changes necessary to make social distancing possible. Appx. 0004-
5 5,0007,0010 (Goldenson ¶¶ 13, 14, 17, 19, 20, 25). The very structure of the Jail conspires against
6 separation. The jail’s medical unit, the OPHU, includes small examination rooms linked by tight
7 corridors. Appx. 0019 - 0022 (O’Neill ¶¶ 4, 11). Throughout the Jail, sally-ports trap people
8 together in enclosed spaces while moving from one part of the facility to another. *Id.* ¶ 11.

9 58. Despite the global pandemic, many people incarcerated in Santa Rita Jail continue
10 to be housed in barrack-style dorms with rows of closely-spaced bunk beds. Bunk beds are placed
11 just two or three feet apart. Appx. 0028 (Deeds ¶ 7); Appx. 0051 (R. Mendez ¶ 5); Appx. 0058
12 (Nelson ¶ 2); Appx. 0045 (King ¶ 5). Unit 31, a dormitory-style housing unit in Santa Rita Jail,
13 has twelve housing pods, or separated rooms, arranged around a large dayroom area. Appx. 0081-
14 82 (Wolverton ¶ 5). Each housing pod has ten to fifteen double bunk beds, which are spaced two
15 feet apart, making it impossible for residents to maintain six feet of physical separation. *Id.* One
16 individual reported sleeping in Unit 31 only a few feet away from the people in the next bunk and
17 the person in the upper bunk. *Id.* As recently as two weeks ago, he estimates there were still over a
18 hundred people housed in the unit. *Id.* In Unit 32 West, another individual spent two weeks in
19 March sleeping on a mattress on the floor because all ten of the bunkbeds were full. Appx. 0028
20 (Deeds ¶ 7.) Despite limited releases from his unit, people were still sleeping on the floor when he
21 was released from the Jail on April 10. *Id.*

22 59. Those who are spared the dormitories often find themselves in small cells, which
23 they share with at least one other person. Cellmates share a toilet and a sink, leading to constant
24 touching of common objects. Housing Unit 06D in Santa Rita Jail is a celled housing unit, with
25 toilets in the individual cells. Appx. 0079 (Williams ¶ 4). Showers are located outside the cells, in
26 the common area. *Id.* Showers are not cleaned regularly between uses. And the limited supply
27 guarantees that showers are used by numerous individuals, multiplying opportunities for COVID-
28

1 19 transmission. For example, Unit 32 contains only one moldy shower for twenty people. Appx.
2 0029 (Deeds ¶ 9).

3 60. People incarcerated in Santa Rita Jail also interact frequently while in the common
4 areas, during pill calls, mealtimes, and at multiple other times throughout the day. Appx. 0022
5 (O’Neill ¶ 11); *see also* Appx. 0007 (Goldenson ¶ 20). Limited releases from the Jail have not
6 changed this practice. *See* Appx. 0013-15 (Goldenson ¶¶ 34–38). Space limitations prevent people
7 from keeping the CDC-recommended six feet apart from one another, especially during pill call
8 and mealtimes, Appx. 0028 (Deeds ¶ 8); Appx. 0088-89 (Johnson ¶ 5); Appx. 0045-46 (King ¶¶
9 7-8); Appx. 0022 (O’Neill ¶ 11). Meals are served in communal areas, with people from multiple
10 pods intermixed in the dining area. Appx. 0045 (King ¶ 7). Intermixing continues despite
11 Respondent’s inadequate containment measures: Housing Unit 32 West was recently placed under
12 COVID-19 quarantine, but residents continued to be comingled with other pods in communal
13 areas during meals and pill call. *Id.* 0047 (¶ 12).

14 61. Additionally, the Jail relies on incarcerated people to perform the work that
15 supports facility operations, such as food service, laundry, and cleaning. Workers typically travel
16 from their housing units to other parts of the facility. One person detained at Santa Rita Jail
17 reported that in mid-April, two people in his pod became sick with coronavirus symptoms. Appx.
18 0051 (R. Mendez ¶ 5). Both continued working, including serving food to other incarcerated
19 people in the unit. *Id.* Another individual reported that detainees assigned to work in the kitchen
20 do not wear gloves while they serve food. Appx. 0045 (King ¶ 7).

21 62. Social distancing is not the only measure necessary to prevent COVID-19
22 infection. CDC Guidance also describes individual hygiene measures, including frequent cleaning
23 and disinfection of surfaces. Appx. 0003 (Goldenson ¶ 11). Despite this commonsense guidance,
24 people in Santa Rita Jail are forced to use unsanitary toilets, sinks, and showers, without an ability
25 to disinfect any of these between each use. One individual reports that the showers in his Unit, 6D,
26 “are never cleaned. Food, like spilled ramen noodle packs, and apples, litter the floors of the
27 shower stalls. The carpet in the pod has what appears to be dried blood and food stains—the stains
28 look to be years old.” Appx. 0065 (Robinson ¶ 10). Another reports that all twenty people in his

1 Unit, 32 West, share only one shower, which is covered in black mold. Appx. 0027 (Deeds ¶ 9). In
2 some Units, including 6D, people are denied access to their cells while held in the common areas,
3 and thus some resort to urinating in the shower stalls, which smell like an “alleyway.” Appx. 0061
4 (Powell ¶ 14).

5 63. The communal bathing areas are so filthy that insect infestations are common. One
6 individual reported that conditions were so extreme that he refused to shower for two weeks while
7 housed in Unit 8A: “There were swarms of flying black bugs that would bite if you took your
8 clothes off.” Appx. 0036 (Henry ¶ 7). Another reports that Unit 32 West provides no trash bags in
9 the pod or communal bathrooms, leading to bathroom trash piles that become nesting grounds for
10 beetles. Appx. 0046 (King ¶ 11).

11 64. Transportation poses particular social distancing challenges. When moving people
12 through Santa Rita Jail, deputies handcuff them on a chain with other detainees. Appx. 0071
13 (Wayne ¶ 11). Deputies build the chain by going from unit to unit, gradually adding people to the
14 line as they go. The growing chain necessarily exposes each new unit to everyone in the
15 procession and everyone in the procession to each new unit. *Id.* Amplifying the infection risk,
16 detainees on the chain are handcuffed less than a foot apart—their hands almost touching—
17 without protective masks or gloves. *Id.*; *see also* Appx. 0032-33 (English ¶ 6); Appx. 0065
18 (Robinson ¶ 17); Appx. 0079 (Williams ¶ 8). Nor do the deputies consistently wear masks or other
19 protective items. Appx. 0079 (Williams ¶ 7); Appx. 0032-33 (English ¶ 6). Upon arrival at their
20 destination, detainees are kept in cramped holding tanks or multipurpose rooms with dozens of
21 other people. Appx. 0071-72 (Wayne ¶ 11). There the group waits, packed closely together in
22 areas so small it is impossible to stay six feet apart. *Id.*; *see also* Appx. 0039 (Howard ¶ 8); Appx.
23 0079 (Williams ¶ 8).

24 65. Detainees transported to meet with their attorneys or to the psychiatric clinic to
25 meet with mental health professionals are held in similarly crowded conditions. People are
26 transported to the psychiatric clinic in handcuffs, chained to approximately eight to ten others,
27 each just a few inches away from the next. Appx. 0088 (Johnson ¶ 4). They wait, cheek-to-jowl,
28 with ten other people in a holding cell the size of a typical cell in a housing unit. *Id.* After their

1 appointments, they wait again until they are transported back to their housing unit. *Id.* Detainees
2 waiting to meet with their attorneys are held in similarly small cells, mixed in with people from
3 other housing units. Appx. 0052 (R. Mendez ¶ 9).

4 66. Crowded conditions within the Jail, combined with continued intermixing,
5 intolerably increases the risk of viral outbreaks. While this endangers everyone, the risk is
6 particularly (and intolerably) acute for Medically Vulnerable people, who face a heightened risk of
7 severe illness or death if they contract COVID-19. Shortcomings in the Jail’s quarantine, testing,
8 and contract tracing practices magnify the danger by creating opportunities for asymptomatic
9 carriers to spread the virus undetected.

10 **D. Screening and Quarantine Deficiencies at Santa Rita Jail Expose Medically**
11 **Vulnerable People to COVID-19 Carriers**

12 67. Santa Rita Jail has historically failed to implement screening measures necessary to
13 prevent introduction of the virus into the facility. The CDC recommends that correctional facilities
14 adopt intensive pre-intake screening of all detainees, and screen all staff and individuals entering
15 the facility. Appx. 0096-121 (CDC Guidance). Screening measures should be developed and
16 implemented for all persons who cycle through the facilities on a regular basis, including new
17 intakes, individuals on work release, staff, attorneys, and other visitors. Appx. 0005-6 (Goldenson
18 ¶17). Non-test based verbal screens—*i.e.*, asking a person for a subjective report of symptoms—
19 are inadequate on their own because they cannot detect asymptomatic or pre-symptomatic carriers.
20 *Id.* 0007 (¶ 19). COVID-19’s extended incubation period, and the possibility of asymptomatic
21 carriers, means a sick person can transmit COVID-19 to others long before they realize they are
22 sick or their illness is identified through other screening measures. *Id.* 0003, 001 (¶¶ 9, 27).

23 68. Because of the risk of asymptomatic transmission, the only way to keep COVID-19
24 from entering jails and prisons is to conduct widespread COVID-19 testing and quarantine newly-
25 admitted persons for 14 days before they are introduced into the general population. Appx. 0005-6
26 (Goldenson ¶ 17–18). Without tests, officials cannot know whether a person who appears healthy
27 is actually carrying the virus. And without quarantines on arrival, jails cannot meaningfully reduce
28 the risk of viral outbreaks caused by newly-arrived people who, although symptom free, spread

1 infected respiratory droplets with each exhalation. Responsible quarantine measures require
2 significant amounts of space, and it is currently impossible to implement them in many
3 correctional facilities without significantly reducing the incarcerated population. *Id.* 0005-7 (¶¶
4 17–19).

5 69. Petitioners understand that Respondent very recently indicated he would consider
6 certain reforms to the Jail’s testing and quarantine measures. Until very recently, however, Santa
7 Rita Jail had no policy of widespread COVID-19 testing or appropriate quarantine on arrival,
8 despite their critical importance; and it is unclear if new announced policies regarding testing or
9 quarantine actually have been implemented, and if so, to what extent. Nor, on information and
10 belief, does Respondent have plans to implement any sort of contact tracing within the population.
11 Time will tell whether any of Respondent’s belated policy changes are implemented in an
12 effective manner. But if the Jail’s recent history is any indication, those who are Medically
13 Vulnerable cannot afford the wait to find out.

14 70. Take, for instance, the account of Eric Wayne, a man whose deep vein thrombosis
15 makes him particularly vulnerable to severe illness from COVID-19. Appx. 0070 (Wayne ¶ 3);
16 Appx. 0008-9 (Goldenson ¶ 22). In early May, Mr. Wayne had contact with an incarcerated person
17 with confirmed COVID-19 and later developed itchy eyes, a sore throat, and pain in his chest.
18 Appx. 0071 (Wayne ¶ 9). After submitting a sick call slip, Mr. Wayne was seen by nursing staff;
19 nurses took his temperature and offered him Tylenol but refused to test him for COVID-19. *Id.*
20 Although Mr. Wayne continues to suffer symptoms consistent with COVID-19, medical staff have
21 consistently refused to test him because he does not have a fever. *Id.* 0071 (¶¶ 9–10). Other
22 inmates fear retaliation if they merely ask to be tested. Appx. 0076 (Wilkerson ¶ 11). Or they fear
23 disclosing their symptoms will lead to isolation under punitive, unsanitary circumstances. Appx.
24 0042-43 (Heche ¶¶ 11–15.)

25 71. Testing is not the only area where Santa Rita Jail has fallen short. New detainees
26 booked at Santa Rita Jail have not been properly quarantined, and those with COVID-19 exposure
27 have been frequently returned to the general population far earlier than CDC Guidance dictates.
28 Appx. 0038 (Howard ¶ 5.) Upon being booked at Santa Rita Jail in mid-April, Montrece Howard

1 was placed in the medical unit, OPHU, but remained for only two days before being transferred to
2 a new housing unit. *Id.* Mr. Howard stayed in that new unit, Housing Unit 23, for another three or
3 four days before yet another transfer, this time to Unit 6D. *Id.* 0038-39 (¶ 6-7). Thus, within less
4 than a week of arrival, Mr. Howard cycled through three different housing units, bringing him into
5 contact with multiple populations within the Jail. Had Mr. Howard carried COVID-19 during that
6 time—and it is possible he did—this reckless movement would have exposed dozens or perhaps
7 hundreds of people, including the Medically Vulnerable, to the virus. Mr. Howard is not an
8 isolated case. Another freshly-booked individual reported that Jail staff quarantined him for just
9 three days upon his arrival at the Jail—much shorter than observed COVID-19 incubation periods.
10 Appx. 0085-86 (Wynne ¶ 7).

11 72. Santa Rita Jail has also failed to implement reasonable isolation measures, despite
12 CDC guidance recommending “medical isolation of confirmed or suspected COVID 19 cases.”
13 Appx. 0110 (CDC Guidance). Consider the account of Dylan Hyche, the asthmatic who developed
14 COVID-19 in the Jail and was placed in a blood-stained cell in the OPHU. Before Mr. Hyche
15 contracted COVID-19, a new person was transferred to his unit who was coughing, sneezing, and
16 visibly unwell. Appx. 0041 (Hyche ¶¶ 2, 5). Despite his condition, the sick person exited his cell
17 to eat, go to the dayroom, and join other activities on his unit. *Id.* Deputies came days later to
18 remove the man, and Mr. Hyche began feeling sick the following day. *Id.* 0041 (¶¶ 2, 5, 6).
19 Nonetheless, even after Mr. Hyche became visibly symptomatic, he was held in a multipurpose
20 room with another person with suspected COVID-19, and he was returned to that room multiple
21 times before being transferred to a new housing unit. *Id.* 0041-42 (¶¶ 8, 10).

22 73. Experiences elsewhere in the Jail confirm the inadequacy of its isolation measures.
23 Around the end of March or first of April, a cluster of detainees in Housing Unit 7 began
24 experiencing coronavirus symptoms, including shivering, headaches, sweating, and coughing.
25 Appx. 0035 (Henry ¶ 3). No one was tested, isolated, or given treatment. *Id.* In mid-April, two
26 people in Unit 32 developed coronavirus symptoms. Appx. 0051 (R. Mendez ¶ 5). They were
27 coughing, complaining of muscle aches, and looked visibly ill. *Id.* Both men continued to work
28

1 their assigned jobs in the Jail, even after becoming sick. *Id.* It took Jail staff days to transfer them
2 to another unit. *Id.*

3 74. On May 5, 2020, a man was moved into Housing Unit 03C from a stricken unit,
4 Unit 32, where multiple people had already tested positive for coronavirus. Appx. 0048 (J.
5 Mendez ¶ 4.) Upon arrival, the man entered the dayroom, used the phones, ate with others during
6 mealtimes, and interacted with others in the unit. *Id.* Five days later, deputies removed the man
7 and later informed the other people in Unit 03 that they were being “quarantined” because they
8 had been exposed to the coronavirus. *Id.* 0048-49 (¶ 5). Despite their exposure, the Jail has not
9 conducted universal COVID-19 testing for people in Unit 03. *Id.* 0049 (¶ 7). By testing only those
10 who present symptoms, the Jail ignores the risk that people with confirmed COVID-19 exposure
11 are asymptomatic and capable of transmitting the disease without outward signs of infection.

12 75. In sum, Santa Rita Jail’s indifference to the possibility of asymptomatic spread, its
13 historically lackadaisical approach to testing, new arrival quarantine, and medical isolation, and its
14 crowded and unsanitary conditions reflect an utter failure to protect against COVID-19 outbreaks.
15 These conditions are intolerable, particularly for Medically Vulnerable people, who face a
16 significant risk of serious illness or death if they contract COVID-19. Against this backdrop, the
17 only way for the Jail to ensure that Medically Vulnerable people are protected from the known
18 risks of COVID-19 infection is to release them from custody or, in cases where there are no less
19 restrictive alternatives, transfer them to home confinement.

20 **III. Given the Dangers Presented and Inadequacy of Existing Safeguards, the Sheriff is**
21 **Required—but has Categorically Refused—to Release Medically Vulnerable People**

22 **A. The Only Way for the Sheriff to Protect Medically Vulnerable People is to**
23 **Release them from Custody or (Rarely) to Home Confinement**

24 76. As explained above, Santa Rita Jail continues to operate without sufficient
25 protections against the COVID-19 pandemic. Its spatial arrangements prevent social distancing, it
26 has failed to implement adequate isolation, testing, and quarantine policies, and its medical facility
27 is incapable of handling an influx of sick people.

28

1 77. The Jail’s paltry efforts to protect Medically Vulnerable people are dangerously
2 under-inclusive, excluding many who require enhanced protection, and self-defeating. By
3 clustering high-risk people in a single unit but then exposing that unit to the general population,
4 the Jail accomplishes nothing other than creating a new breeding ground for infection comprised
5 of those who can least afford exposure to the disease.

6 78. As a result, confinement in Santa Rita Jail subjects Medically Vulnerable
7 incarcerated people to unacceptable risk of serious illness and death. Under these conditions, the
8 only way for Respondent to provide reasonable protections against COVID-19 is to remove
9 Medically Vulnerable people from Santa Rita Jail—either through outright release or, where there
10 are no less restrictive alternatives, removal to a safe environment, such as home confinement. No
11 measure other than release or (rarely) home confinement would protect Medically Vulnerable
12 incarcerated peoples’ constitutional right to adequate protection from medically dangerous
13 conditions.¹⁹ Appx. 0013 (Goldensen ¶¶ 33–34); *see also Doe v. Barr*, No. 20-cv-02141-LB, 2020
14 WL 1820667, at *10 (N.D. Cal. 2020) (ordering release after finding that detainees at “Yuba
15 County jail live in close quarters, cannot practice social distancing, do not have masks, and do not
16 have access to adequate disinfecting and cleaning supplies”); *Ortuño v. Jennings*, No. 20-CV-
17 02064-MMC, 2020 WL 1701724, at *4 (N.D. Cal. Apr. 8, 2020) (ordering release of petitioners
18 after concluding that detainees at the jail “cannot practice meaningful social distancing.”); Appx.
19 0262-335, *Martinez-Brooks v. Easter*, No. 3:20-cv-00569 (MPS) (D. Conn. May 12, 2020)

20
21
22 _____
23 ¹⁹ Recognizing the threat of COVID-19 and acknowledging the need to “restrict person-to-person
24 contact,” the California Judicial Council issued an emergency order to reduce jail populations. *See*
25 Appx. 0192-207 (Apr. 6 Emergency Rules). The order included adoption of a statewide
26 Emergency Bail Schedule for the COVID-19 pandemic. *See* Appx. 0171 (Slough Report p. 9).
27 While a positive initial step, the April 6 order does not provide for relief for Medically Vulnerable
28 people who are serving sentences at Santa Rita Jail, whose bails will not be reduced to \$0 by the
emergency order, or who are in jail on technical probation or parole violations but whose
underlying substantive offense has a bail amount above \$0 under the emergency order. Such
individuals continue to languish in dangerous carceral conditions that prevent them from
protecting themselves against infection and that violate their constitutional rights.

1 (entering a temporary restraining order providing for the release of federal prisoners to home
2 confinement and on compassionate release).

3
4 **B. The Sheriff has Clear Authority to Release or Safely Relocate Medically**
5 **Vulnerable People**

6 79. California law authorizes precisely this type of remedial action. Section 8658 of the
7 Government Code provides specific direction to county sheriffs in case of emergencies like the
8 COVID-19 pandemic:

9 In any case in which an emergency endangering the lives of inmates
10 of a state, county, or city penal or correctional institution has
11 occurred or is imminent, the person in charge of the institution may
12 remove the inmates from the institution. He shall, if possible,
13 remove them to a safe and convenient place and there confine them
14 as long as may be necessary to avoid the danger, or, if that is not
15 possible, may release them. Such person shall not be held liable,
16 civilly or criminally, for acts performed pursuant to this section.

17 80. Section 8658 recognizes that, during a crisis, the dangers of incarceration might
18 create a constitutional and public safety imperative to release those at the greatest risk. The law
19 does not require a court order before release. Instead, it directs that sheriffs “shall,” whenever
20 possible, remove at-risk people from their custody or, where there are no less restrictive
21 alternatives, transfer them to “a safe and convenient place,” such as home confinement, to avoid
22 unnecessary illness and death.

23 81. On April 14, 2020, Edward Medrano, Chief Division of Law Enforcement for the
24 California Department of Justice, issued a memorandum to all County Sheriffs, including Sheriff
25 Ahern, reminding them of their Section 8658 authority.²⁰ The memorandum notified Sheriffs that
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27

28 ²⁰ <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/2020-dle-05.pdf?>

1 Section 8658 applies to the COVID-19 pandemic and provides a tool for responding to the risk of
2 viral outbreak within confinement facilities.

3
4 **C. Despite an Urgent Request from Advocates, the Sheriff has Categorically**
5 **Refused to Protect the Medically Vulnerable by Releasing Them**

6 82. Sheriff Ahern knows he can protect Medically Vulnerable people by releasing them
7 from custody or (rarely) to home confinement. Not only did he receive Mr. Medrano’s letter, but
8 advocates in another lawsuit recently urged him to invoke his Section 8658 authority. That
9 lawsuit, *Babu, et al. v. County of Alameda, et al.*, No. 5:18-cv-07677 (N.D. Cal.), centers primarily
10 on allegations of inadequate mental health treatment at Santa Rita Jail. Following an April 10
11 status hearing regarding COVID-19, defendants—including Sheriff Ahern—filed a summary of
12 measures taken to address the pandemic. Appx. 0208-220. In that submission, defendants,
13 including Sheriff Ahern, expressly rejected plaintiffs’ request to release at-risk incarcerated
14 people, explaining: “While the Sheriff’s Office will continue to work with justice stakeholders to
15 safely reduce the jail’s population as to those inmates who are not in custody for serious and
16 violent felonies, out of concern for public safety, *the Sheriff respectfully declines to invoke*
17 *California Government Code Section 8658.*” *Id.* 00219.

18 83. As the Sheriff’s submission makes clear, he has no plans to invoke his Section
19 8658 authority to identify Medically Vulnerable people and remove them from their dangerous
20 confinement. Nor is he making case-specific evaluations to identify individual Medically
21 Vulnerable people whose age or medical conditions make it impossible for them to be confined
22 safely. Instead, the Sheriff has categorically determined that everyone who is incarcerated at Santa
23 Rita Jail will remain in confinement, regardless of health concerns.

24 84. This blanket determination evinces deliberate indifference to the danger that
25 COVID-19 poses to Medically Vulnerable persons in violation of the Eighth and Fourteenth
26 Amendments to the United States Constitution and article I, sections 7 and 17 of the California
27 Constitution.

1 **CLASS ALLEGATIONS**

2 **I. Petitioners Wilkerson, Robinson, and Wolverton and bring this action on**
3 **behalf of themselves and the following proposed class:**

4 All people who are now, or in the future will be, incarcerated at Santa Rita Jail who
5 are aged 55 or older, or who are identified by the CDC as being particularly
6 vulnerable to severe illness from COVID-19, regardless of age, because they have
7 the following medical conditions:

- 8 • Diabetes mellitus;
- 9 • Lung disease, including asthma or chronic obstructive pulmonary disease
10 (chronic bronchitis or emphysema) or other chronic conditions associated
11 with impaired lung function or that require home oxygen;
- 12 • Heart disease;
- 13 • Blood disorders, including sickle cell disease and disorders that require the
14 use of blood thinners;
- 15 • Chronic kidney disease;
- 16 • Chronic liver disease;
- 17 • Compromised immune system (*i.e.*, immunosuppression);
- 18 • Current or recent pregnancy within the past two weeks;
- 19 • Endocrine disorders;
- 20 • Metabolic disorders; and
- 21 • Neurological, neurologic, and neurodevelopment conditions, including
22 disorders of the brain, spinal cord, peripheral nerve, and muscle, such as
23 cerebral palsy, epilepsy (seizure disorders), stroke, intellectual disability,
24 moderate to severe developmental delay, muscular dystrophy, or spinal cord
25 injury.

26 85. The precise number of members in this class is unknown to Petitioners. A certain
27 number of people incarcerated at Santa Rita Jail, including Petitioner Steven Wolverton, have, on
28 information and belief, been classified as medically vulnerable by the Jail’s third-party medical

1 services provider, Wellpath; however, (as described *supra*, sec. II.B) the Jail has failed to identify
2 many people who meet the CDC's definition of medically vulnerable. Thus, the precise population
3 can be discerned only through discovery. Petitioners are informed and believe that the class is so
4 numerous, making up a significant percentage of the current jail population, that joinder of all
5 members of the class in a single action is impractical and that disposition of claims through the
6 procedure of a class action will be of benefit to the parties and the Court.

7 86. Petitioners will fairly and adequately represent and protect the interests of the
8 members of the class. Petitioners are committed to the vigorous prosecution of this action and
9 have retained counsel who are competent and experienced in both class actions and civil rights
10 litigation.

11 87. Petitioners' claims are typical of the class members' claims because Petitioners and
12 the unnamed class members face a similarly heightened, unreasonable risk of contracting COVID-
13 19 in Santa Rita Jail; the conditions putting them at unreasonable risk, including the inability of
14 the OPHU to handle an influx in serious cases of COVID-19 and the Jail's transfer practices, are
15 common across the Jail; the risk faced by Petitioners and the unnamed class members arises in
16 significant part from Respondent's refusal to exercise his authority under Government Code
17 section 8658 to remove to a safe place or release Medically Vulnerable people incarcerated at
18 Santa Rita Jail; and because other class members have been injured by Respondent's same course
19 of conduct.

20 88. Common questions of law and fact exist as to all members of the class and
21 predominate over the questions, if any, affecting only individual members of the class. The
22 common questions include, but are not limited to, the following:

- 23 a. Whether current conditions of confinement in Santa Rita Jail place class
24 members at a substantial risk of contracting COVID-19, in violation of the
25 Eighth and Fourteenth Amendments to the United States Constitution and
26 article I, sections 7 and 17 of the California Constitution;
- 27 b. Whether Respondent's refusal to exercise his authority under Government
28 Code section 8658 constitutes deliberate indifference to the clear hazard

1 posed by continuing to keep class members incarcerated in Santa Rita Jail,
2 in violation of the Eighth and Fourteenth Amendments to the United States
3 Constitution and article I, sections 7 and 17 of the California Constitution;

4 c. Whether the immediate consideration of all class members for release or
5 removal to another safe location is necessary to cure Respondent's ongoing
6 violations of the Eighth and Fourteenth Amendments to the United States
7 Constitution and article I, sections 7 and 17 of the California Constitution;

8 d. Whether immediate testing of all class members is necessary to cure
9 Respondent's ongoing violations of the Eighth and Fourteenth Amendments
10 to the United States Constitution and article I, sections 7 and 17 of the
11 California Constitution;

12 e. Whether declaratory relief ordering that Respondent's practices and conduct
13 are unconstitutional and unlawful should be granted by the Court; and

14 f. Whether injunctive relief restraining further unconstitutional and unlawful
15 acts by Respondent should be ordered by the Court, and, if so, the nature of
16 that injunctive relief.

17 89. A class action is superior to other available methods for the fair and efficient
18 adjudication of the claims asserted in this action. Were separate actions to be brought individually
19 by members of the class, the resulting duplication of lawsuits would cause undue hardship and
20 expense to the Court and the litigants. The prosecution of separate individual actions would also
21 impair the interest of individual class members and create a risk of inconsistent rulings against
22 Respondent, thus substantially prejudicing all litigants. Time is of the essence for all of the class
23 members, and a requirement to pursue individualized relief would result in further dangerous
24 delay and possible exposure to COVID-19. Absent a class action, Respondent will likely continue
25 his wrongdoing, resulting in a failure of justice, illness, and possibly death.

26 90. Petitioners know of no difficulty that would be encountered in the management of
27 this litigation that would preclude its maintenance as a class action. Notice can be provided to the
28 members of the class by posting signs in common areas in the Jail and posting notices in the

1 newspaper. To the extent that class members have a known mailing address, notice can be
2 provided by mailing information to that known address by first class mail.

3 **CLAIMS ASSERTED**

4 **FIRST CAUSE OF ACTION**

5 **Writ of Mandate (Cal. Code Civ. Proc. § 1085)**

6 91. Respondent has a statutory duty “to keep the county jail and the prisoners in it . . .
7 .” Cal. Gov’t Code § 26605. He must exercise that duty in a manner that does not derogate the
8 constitutional rights of others. Failure to exercise his duties in a constitutional manner is an abuse
9 of discretion. By taking inadequate measures to ensure that Santa Rita Jail is in compliance with
10 the CDC-recommended guidance in response to COVID-19, and by failing to release substantial
11 numbers of Medically Vulnerable people incarcerated there, Respondent is exercising his statutory
12 duties in a manner that violates the constitutional rights of Medically Vulnerable people
13 incarcerated and detained in the Jail. Petitioners are thus entitled to a writ of mandate requiring
14 Respondent to conform his conduct to the requirements of the United States Constitution and
15 California Constitution.

16 92. Given the crisis caused by the COVID-19 pandemic, existing conditions of
17 confinement in the Santa Rita Jail violate the rights of Medically Vulnerable people with criminal
18 convictions under the Eighth Amendment to the United States Constitution and article I, section
19 17 of the California Constitution.

20 93. For those Medically Vulnerable people who are not convicted, but are being
21 detained in the Santa Rita Jail pre-trial, those same conditions violate due process rights secured
22 by the Fourteenth Amendment to the United States Constitution and article I, section 7 of the
23 California Constitution.

24 94. Given the rapid spread of COVID-19, the increased risk associated with medical
25 vulnerability, and the inherent inadequacy of the Santa Rita Jail to comply with recommended
26 measures for reducing the risk of infection, the United States Constitution and California
27 Constitution require Respondent to exercise his authority under Government Code section 8568 to
28 release Medically Vulnerable people in order to protect them from the substantial risk of serious

1 harm posed by COVID-19. Additionally, Respondent must significantly improve conditions of
2 confinement to protect any Medically Vulnerable people who remain in the Jail.

3 95. Rectifying ongoing constitutional deficiencies in the County correctional facilities
4 is a matter of compelling public interest, which implicates both important constitutional rights and
5 matters of public health and safety. Petitioners have public interest standing to pursue relief.

6 96. Further, Petitioners, and where applicable Petitioners' members and members'
7 clients who are incarcerated in the Santa Rita Jail, will suffer irreparable injury unless this Court
8 orders Respondent to exercise his duties in accordance with the United States Constitution and
9 California Constitution.

10 **SECOND CAUSE OF ACTION**

11 **Writ of Habeas Corpus (Cal. Pen. Code §§ 1473 et seq.; Cal. Constitution Art. I § 11)**

12 97. Petitioners Wolverton, Wilkerson, and Robinson, and the class members they
13 represent, are incarcerated at the Santa Rita Jail. They have not previously filed any petition for
14 writ of habeas corpus relating to this action or on the same grounds.

15 98. California Penal Code section 1473 authorizes any person “unlawfully imprisoned
16 or restrained of his or her liberty” to prosecute a writ of habeas corpus. Article I, section 11 of the
17 California Constitution prohibits the suspension of habeas corpus.

18 99. Respondent has subjected Petitioners Wolverton, Wilkerson, and Robinson, and the
19 class members they represent, to unlawful conditions of confinement in violation of the Eighth and
20 Fourteenth Amendments to the United States Constitution and article I, sections 7 and 17 of the
21 California Constitution.

22 100. Respondent has placed Petitioners Wolverton, Wilkerson, and Robinson, and the
23 class members they represent, at a substantial risk of serious harm—including the risk of death—
24 by failing to release a substantial number of them pursuant to his authority under Government
25 Code section 8658, and by failing to ensure the remainder are held in sufficiently protective
26 conditions during the pandemic. Respondent has failed to take reasonable measures to abate that
27 risk, even though reasonable officials in these circumstances would have appreciated the high
28 degree of risk involved, making the consequences of Respondent's conduct obvious. By not taking

1 all reasonable measures, Respondent has caused and will cause injuries to Petitioners Wolverton,
2 Wilkerson, and Robinson, and the class members they represent.

3 101. By the conduct described in this Petition, Respondent has violated the rights
4 guaranteed to Petitioners Wolverton, Wilkerson, and Robinson, and the class members they
5 represent.

6 102. Petitioners have no other plain, speedy, or adequate remedy under the law.
7 Petitioners timely bring this petition and were diligent in pursuing their claims.

8 103. Petitioners are not required to exhaust any administrative remedies because no
9 administrative remedy is available, the administrative process is inadequate, seeking an
10 administrative remedy would be futile, and/or exhausting administrative remedies would present
11 an unreasonable risk of irreparable harm.

12 104. As a direct and proximate result of Respondent's conduct as alleged herein,
13 Petitioners Wolverton, Wilkerson, and Robinson, and the class members they represent, will suffer
14 irreparable harm and are entitled to immediate injunctive relief.

15 105. In addition, Petitioners Wolverton, Wilkerson, and Robinson, and the class
16 members they represent seek release to the maximum extent possible.

17 **THIRD CAUSE OF ACTION**

18 **Taxpayer Claim (Cal. Code Civ. Proc. § 526a)**

19 106. Petitioners NACDL, CACJ, and ACLU-NC have members who have been assessed
20 and found liable to pay taxes, such as sale taxes and other taxes, in Alameda County. They have
21 paid taxes to Alameda County.

22 107. Respondent's administration of the Santa Rita Jail places the Medically Vulnerable
23 at a substantial risk of serious harm from contracting COVID-19, and it is therefore
24 unconstitutional and unlawful. Petitioners NACDL, CACJ, and ACLU-NC have an interest in
25 enjoining the Sheriff's unlawful expenditure of tax funds. Petitioners NACDL, CACJ, and ACLU-
26 NC seek injunctive relief to protect Medically Vulnerable people incarcerated in Santa Rita Jail
27 from continued harm; to protect Petitioners and the public from Respondent's unlawful policies
28

1 and practices, as alleged in this Petition; to enjoin Respondent’s illegal activity; and to enjoin the
2 illegal expenditures that flow from Respondent’s illegal activity.

3 108. Respondent’s illegal actions will—to the extent they have not already—cause
4 irreparable harm to Petitioners and all members of the Medically Vulnerable class, entitling
5 Petitioners to immediate injunctive relief.

6 **RELIEF SOUGHT**

7 Wherefore, Petitioners respectfully request that this Court:

8 109. Certify the proposed class pursuant to Civ. Proc. Code § 382;

9 110. Issue a writ of mandate or writ of habeas corpus directing Respondent to exercise
10 his duties without violating the constitutional rights of Medically Vulnerable people at the Santa
11 Rita Jail by presumptively releasing members of the Class from custody or, where there are no less
12 restrictive alternatives, transferring them to home confinement, and issue an order requiring
13 Respondent to:

- 14 a. Identify within twenty-four (24) hours of the Court’s order all Medically
15 Vulnerable people (as defined in the Petition) then detained at Santa Rita
16 Jail along with a reasonably detailed explanation as to the method used to
17 identify the Medically Vulnerable people;
- 18 b. Submit to the Court within three (3) days of the Court’s order a list of the
19 identified Medically Vulnerable people whom Respondent does not intend
20 to release from custody or, where there are no less restrictive alternatives, to
21 home confinement along with detailed reasons for Respondent’s decision;
22 and
- 23 c. Release from custody or, where there are no less restrictive alternatives, to
24 home confinement all identified Medically Vulnerable people for whom
25 Respondent has not provided cause why release should not be granted.

26 111. Issue a writ of mandate or writ of habeas corpus requiring Respondents to:

- 27 a. Provide immediate COVID-19 testing to all Medically Vulnerable people
28 incarcerated at the Santa Rita Jail;

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- b. Ensure that members of the Class who remain incarcerated at the Santa Rita Jail are separated from the general population in a non-punitive, sanitary setting;
- c. Ensure that members of the Class who remain incarcerated can remain six feet apart from all staff and incarcerated individuals to practice social distancing in compliance with CDC Guidance;
- d. Ensure that incarcerated members of the Class are not required to move to areas of the Jail outside of their designated housing unit;
- e. Ensure, if transportation of an incarcerated member of the Class is unavoidable, that the Class member is transported individually so as to maintain social distance;
- f. Ensure that each incarcerated member of the Class receives a free and adequate personal supply of: masks, gloves, hand soap sufficient to permit frequent hand washing, paper towels, facial tissues, cleaning implements such as sponges or brushes, hand sanitizer containing at least 60% alcohol, and disinfectant products that are effective against COVID-19;
- g. Provide daily access for incarcerated members of the Class to clean showers and laundry, including clean towels after each shower;
- h. Require that at all times all Santa Rita Jail staff wear PPE consistent with CDC Guidance, including masks and gloves, when interacting with visitors and incarcerated individuals or when touching surfaces in common areas;
- i. Provide an anonymous mechanism for incarcerated members of the Class to report staff who violate these guidelines so that appropriate corrective action may be taken;
- j. Provide immediate testing for any incarcerated Class member displaying known symptoms of COVID-19 and provide regular testing for all Class members who remain incarcerated, including testing prior to release;

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k. Provide daily monitoring of Class members to identify potential COVID-19 infections;

l. Ensure that incarcerated individuals identified as having COVID-19 are properly quarantined and consistently monitored in a non-punitive setting, with continued access to showers, recreation, mental health services, reading materials, commissary, phone and video visitation with loved ones, communication with counsel, and personal property;

112. Appoint a special master to make recommendations to the Court regarding appropriate actions Respondent should take to ensure Medically Vulnerable individuals who remain incarcerated are properly protected from COVID-19 and properly treated should they be exposed to the virus;

113. Issue an order for injunctive relief pursuant to California Civil Procedure § 526a enjoining Respondent’s illegal activity in administering the Santa Rita Jail;

114. Issue a judgment declaring that Respondent has violated the rights of Medically Vulnerable people with convictions in the Santa Rita Jail to safe conditions of confinement under the Eighth and Fourteenth Amendments to the United States Constitution and article I, sections 7 and 17 of the California Constitution;

115. Issue a judgment pursuant to California Civil Procedure § 526a declaring Respondent’s actions in administering Santa Rita Jail unconstitutional, resulting in the illegal expenditure of taxpayer monies;

116. Retain jurisdiction over this case until Respondent has fully complied with the orders of the Court, and there is reasonable assurance that he will continue to comply in the future, absent continuing jurisdiction;

117. Award Petitioners attorneys’ fees and costs under Code of Civil Procedure § 1021.5 and other applicable law; and

118. Grant any further relief to which Petitioners are entitled.

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I, Kathleen Guneratne, a citizen of the United States and a resident of the State of California, am an attorney in the above-captioned action for Petitioners. I am authorized to file this Petition on their behalf. I have read the foregoing Petition and know the contents thereof. I am informed, believe, and allege based on that information and belief that the contents of the foregoing Petition are true.

Executed on 22 May, 2020, at San Francisco, California.



Kathleen Guneratne
Senior Staff Attorney
ACLU Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111