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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DEPARTMENT CX102

HON. PETER J. WILSON, JUDGE

CYNTHIA CAMPBELL, MONIQUE CASTILLO, )  
SANDY GONZALEZ, CECIBEL CARIDAD ORTIZ, )  
MARK TRACE, AND DON WAGNER, ON BEHALF )  
OF THEMSELVES AND ALL OTHERS SIMILARLY )  
SITUATED, )

PETITIONERS, )

VS. )

) CASE NO. 30-2020-  
) 01141117-CU-WM-CJC

DON BARNES, IN HIS OFFICIAL CAPACITY )  
AS SHERIFF OF ORANGE COUNTY, )  
CALIFORNIA, )

RESPONDENT. )  
----- )

REPORTER'S TRANSCRIPT OF TELEPHONIC PROCEEDINGS

MONDAY, DECEMBER 7, 2020

751 WEST SANTA ANA BOULEVARD

SANTA ANA, CALIFORNIA

LORI ANASTASIOU, CSR NO. 4345

COURT-APPROVED REPORTER PRO TEMPORE

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APPEARANCES OF COUNSEL: (VIA COURTCALL)

FOR PETITIONERS: MUNGER TOLLES & OLSON LLP  
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-AND-

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

BY: ZOE BRENNAN-KROHN, ESQ.  
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-AND-

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APPEARANCES OF COUNSEL: (CONTINUED)

FOR RESPONDENT: OFFICE OF THE COUNTY COUNSEL - ORANGE  
COUNTY  
BY: KAYLA N. WATSON, DEPUTY  
DONALD K. DUNN, DEPUTY  
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(714) 834-5241  
KAYLA.WATSON@COCO.OCGOV.COM

1       1    CASE NUMBER:                   30-2020-01141117-CU-WM-CXC  
2       2    CASE NAME:                    CAMPBELL, ET AL. V BARNES  
3       3    SANTA ANA, CA.                MONDAY, DECEMBER 7, 2020  
4       4    DEPARTMENT CX102            HON. PETER J. WILSON, JUDGE  
5       5    REPORTER:                   LORI ANASTASIOU, CSR NO. 4345  
6       6    TIME:                      10:00 A.M.

7

8                    (THE FOLLOWING PROCEEDINGS WERE HELD REMOTELY  
9                    THROUGH COURTCALL, WITH THE COURT REPORTER  
10                   IN A REMOTE LOCATION, SEPARATE AND APART FROM  
11                   THE ATTORNEYS AND THE COURT. THE PROCEEDINGS  
12                   WERE TRANSCRIBED TO THE BEST ABILITY OF THE  
13                   COURT REPORTER TO HEAR THE PROCEEDINGS.)

14

15                   THE COURT:   GOOD MORNING TO EVERYBODY.                   10:00

16                   MADAM COURTCALL OPERATOR, I ASSUME THE LINE  
17                   IS LIVE FOR ANYONE WHO WANTS TO DIAL IN TO LISTEN TO THIS  
18                   APPEARANCE?

19                   THE OPERATOR:   YES, YOUR HONOR.

20                   THE COURT:   ALL RIGHT.   THANK YOU.                   10:00

21                   WE ARE HERE ON THE MATTER OF CAMPBELL VERSUS  
22                   DON BARNES IN HIS CAPACITY AS ORANGE COUNTY SHERIFF.

23                   COULD I HAVE APPEARANCES, PLEASE, STARTING  
24                   WITH THE PETITIONERS.

25                   MR. TEMPLETON:   TREVOR TEMPLETON FROM MUNGER                   10:00

26                   TOLLES FOR PETITIONERS.

1 MS. BRENNAN-KROHN: ZOE BRENNAN-KROHN FROM THE  
2 ACLU FOR PETITIONERS.

3 MS. STUBBS: AND CASSANDRA STUBBS, ALSO FROM THE  
4 ACLU FOR PETITIONERS.

5 THE COURT: AND ON BEHALF OF RESPONDENT, PLEASE? 10:00

6 MR. DUNN: KEVIN DUNN WITH THE ORANGE COUNTY  
7 COUNSEL'S OFFICE ON BEHALF OF RESPONDENT.

8 MS. WATSON: KAYLA WATSON, DEPUTY COUNTY COUNSEL  
9 ON BEHALF OF RESPONDENT.

10 THE COURT: ALL RIGHT. GOOD MORNING TO ALL OF 10:01  
11 YOU.

12 WE ARE HERE THIS MORNING TO HEAR ORAL  
13 ARGUMENT ON THE PETITION FOR WRIT OF HABEAS CORPUS AND  
14 WRIT OF MANDATE.

15 WE HAVE A COURT REPORTER. MADAM COURT 10:01  
16 REPORTER, IF AT ANY TIME YOU CANNOT HEAR ANY OF US OR NEED  
17 US TO REPEAT, PLEASE SO INDICATE. MY LINES ARE VERY CLEAR  
18 FROM MY SIDE. CAN YOU HEAR EVERYBODY CLEARLY AT THIS  
19 TIME?

20 THE REPORTER: YES, YOUR HONOR, I CAN. IF THEY  
21 CAN STATE THEIR NAMES, THE LADIES, BECAUSE THERE'S THREE  
22 OF THEM. IF THEY CAN STATE THEIR NAMES BEFORE THEY SPEAK.

23 THE COURT: I'M SORRY, I'M NOT SURE WHAT YOU'RE  
24 REFERRING TO.

25 THE REPORTER: WELL, THERE'S TWO LADIES FOR  
26 PETITIONER AND ONE FOR RESPONDENT; IF THEY CAN SAY THEIR

1 NAMES BEFORE THEY SPEAK, PLEASE, AS I CAN'T DIFFERENTIATE,  
2 YOU KNOW, RIGHT AT THIS MOMENT.

3 THE COURT: OH, I UNDERSTAND NOW.

4 COUNSEL, THROUGHOUT -- I KNOW IT BECOMES  
5 AWKWARD -- BUT ALWAYS JUST STATE YOUR NAME BRIEFLY BEFORE 10:02  
6 YOU SPEAK SO THAT AT ALL TIMES AS WE CHANGE SPEAKERS, WE  
7 KNOW WHO THE SPEAKER IS.

8 MR. TEMPLETON IS PROBABLY NOT -- WELL, NO,  
9 MR. TEMPLETON AND MR. DUNN, YOU'LL NEED TO DO THE SAME.

10 THE COURT HAS RECEIVED AND REVIEWED ALL OF 10:02  
11 THE PAPERS FILED IN SUPPORT OF THE PETITION AND IN SUPPORT  
12 OF THE RESPONSE. THAT INCLUDES THE DENIAL TO THE  
13 RESPONSE. SO I HAVE BEEN THROUGH THESE DOCUMENTS,  
14 INCLUDING ALL OF THE SUPPORTING DOCUMENTS.

15 AS WE GO THROUGH THE ARGUMENTS, I DO NOT 10:02  
16 EXPECT COUNSEL EVERY SINGLE TIME THEY MAKE AN ARGUMENT, TO  
17 REFER ME TO THE RECORD. BUT, WHERE IN YOUR ARGUMENT YOU  
18 ARE REFERRING TO EVIDENCE IN THE RECORD, GIVE ME THAT  
19 CITATION. ALL I NEED IS A PAGE NUMBER BY REFERENCE TO THE  
20 APPENDIX SO THAT MY NOTES -- AFTER THE HEARING -- ARE 10:03  
21 USEFUL TO ME IN RECAPPING FOR MYSELF AND SEEING WHAT I  
22 WANT TO RE-REVIEW AFTER THE ARGUMENTS.

23 THE PETITIONERS ARE THE MOVING PARTIES AND  
24 BEAR THE BURDEN. I WILL ACCORDINGLY START WITH THE  
25 PETITIONERS. 10:03

26 BEFORE STARTING THE ARGUMENTS ON THE PETITIONS,

1 ANYTHING ELSE THAT WE NEED TO ADDRESS OR BE AWARE OF?

2 MR. TEMPLETON: NOTHING FROM PETITIONERS, YOUR  
3 HONOR.

4 MR. DUNN: NOT FROM RESPONDENTS.

5 THE COURT: IN THAT CASE WE WILL COMMENCE THE 10:03  
6 ARGUMENTS, BEGINNING WITH PETITIONERS, PLEASE.

7 MR. TEMPLETON: THANK YOU, YOUR HONOR. THIS IS  
8 TREVOR TEMPLETON ON BEHALF OF PETITIONERS.

9 I WANT TO THANK YOU FOR SCHEDULING THIS  
10 HEARING FOR REVIEWING THE PAPERS AND FOR YOUR ATTENTION TO 10:04  
11 THIS IMPORTANT MATTER.

12 IF THE COURT WILL PERMIT, MY CO-COUNSEL FROM  
13 THE ACLU AND I WILL BE SPLITTING OUR TIME. I WILL BEGIN  
14 BY ADDRESSING PETITIONERS' REQUEST FOR A WRIT OF HABEAS  
15 CORPUS BASED ON UNCONSTITUTIONAL CONDITIONS IN ORANGE 10:04  
16 COUNTY JAIL; ZOE BRENNAN-KROHN OF THE ACLU WILL ADDRESS  
17 PETITIONERS' DISABILITY DISCRIMINATION CLAIMS; AND  
18 CASSANDRA STUBBS OF THE ACLU WILL ADDRESS PETITIONERS'  
19 REQUEST FOR A WRIT OF MANDATE AND THE ISSUE OF REMEDY.

20 SO WITH THAT PREFACE, I'LL LAUNCH INTO IT. 10:04

21 THE ORANGE COUNTY JAIL PETERS ON THE EDGE  
22 OF A PUBLIC HEALTH CATASTROPHE. THE JAIL CONFINES  
23 THOUSANDS OF PEOPLE IN OLD AND POORLY-VENTILATED HOUSING  
24 UNITS WHERE SOCIAL DISTANCING IS IMPOSSIBLE. MANY ARE IN  
25 BARRACKS AND DORMS WITH BEDS JUST INCHES APART. THEIR 10:04  
26 LIVES ARE DEFINED BY CONSTANT CLOSE CONTACT. THE

1 CONDITIONS ARE IDEAL FOR OUTBREAKS THAT WOULD ENDANGER  
2 EVERYBODY IN THE JAIL, BUT PARTICULARLY PETITIONER  
3 GONZALEZ AND THE HUNDREDS OF OTHER DETAINEES WHOSE AGE OR  
4 HEALTH CONDITION LEAVES THEM MEDICALLY VULNERABLE TO  
5 COVID-19. FOR THEM, CONTRACTING THE DISEASE CAN COST THEM 10:05  
6 THEIR LIVES.

7 THE SHERIFF KNOWS HOW TO PREVENT THIS  
8 VULNERABLE POPULATION. EIGHT MONTHS AGO ORANGE COUNTY'S  
9 CORRECTIONAL HEALTH SERVICES URGED THE SHERIFF TO REDUCE  
10 THE JAIL POPULATION BY 50 PERCENT TO FACILITATE SOCIAL 10:05  
11 DISTANCING AND OTHER COVID-19 MITIGATION MEASURES.

12 THE UNDISPUTED EVIDENCE IN THIS CASE SHOWS  
13 THAT THE SHERIFF HAS FAILED TO FOLLOW THAT ADVICE.  
14 ALTHOUGH THE POPULATION DID BRIEFLY DURING THE SUMMER  
15 MONTHS, IT HAD REBOUNDED DRAMATICALLY, ERASING VIRTUALLY 10:05  
16 ALL OF THE INITIAL PROGRESS. MONTHS OF UNCHECKED GROWTH  
17 HAVE PUSHED THE POPULATION TO ITS HIGHEST LEVEL SINCE THE  
18 FIRST DAYS OF THE PANDEMIC, WHILE THE SHERIFF'S CLOSURE OF  
19 ONE OF THE FOUR JAIL FACILITIES HAS LEFT LESS SPACE THAN  
20 EVER FOR PHYSICAL SEPARATION. 10:06

21 INCREASED POPULATION AND DECREASED SPACE HAS  
22 PUSHED THE JAIL BEYOND DESIGN LIMITATIONS. THE SYSTEM IS  
23 NOW OPERATING ABOVE ITS RATED CAPACITY. AND THE LARGEST  
24 FACILITY, THEO LACEY, IS AT A STAGGERING 117 PERCENT OF  
25 CAPACITY, LARGELY CROWDED TO FACILITATE MEANINGFUL SOCIAL 10:06  
26 DISTANCING.



1 THE SHERIFF HAS AUTHORITY TO FIX THIS  
2 PROBLEM. GOVERNMENT CODE SECTION 8658 PROVIDES A SORT OF  
3 SAFETY RELEASE VALVE THAT AUTHORIZES AND PERMITS THE  
4 SHERIFF TO RELEASE ANYBODY FROM THE JAIL WHEN NECESSARY TO  
5 PROTECT THE INCARCERATED POPULATION. THE SHERIFF HAS 10:06  
6 REFUSED TO EXERCISE THAT AUTHORITY IN A MANNER BEFITTING  
7 THE PUBLIC HEALTH DISASTER.

8 HE'S INSTEAD STOOD IDLE AS THE JAIL HAS  
9 BECOME DANGEROUSLY OVERCROWDED. THAT DANGER IS MAGNIFIED  
10 BY THE SHERIFF'S FAILURE TO IMPLEMENT AND ENFORCE BASIC 10:06  
11 SAFETY PROTOCOLS, SUCH AS SOCIALLY DISTANCED  
12 TRANSPORTATION, UNIVERSAL MASK USE IN THE JAIL, AND  
13 BROAD-BASED COVID-19 TESTING. THESE FAILURES CREATE  
14 OBVIOUS PATHWAYS FOR COVID-19 TO ENTER THE JAIL AND  
15 UNDERMINE ANY SUGGESTION THAT THE JAIL IS SOMEHOW 10:07  
16 IMPERVIOUS TO FUTURE OUTBREAKS.

17 GIVEN THE DANGEROUS CONDITIONS, IT IS ONLY A  
18 MATTER OF TIME BEFORE COVID-19 TEARS THROUGH THE OVER-  
19 POPULATED JAIL FACILITIES.

20 AS THIS COURT IS AWARE, SOUTHERN CALIFORNIA 10:07  
21 AND THE NATURE AT LARGE ARE EXPERIENCING A NEW AND  
22 DANGEROUS PHASE OF THE COVID-19 PANDEMIC. FACED WITH  
23 SKYROCKETING INFECTION RATES, THE STATE HAS ISSUED NEW  
24 LOCKDOWN ORDERS THAT SEEK TO FLATTEN THE CURVE. IF THE  
25 SHERIFF RUNS THE JAIL AS IF IT WERE BUSINESS AS USUAL, 10:07  
26 CRAMMING IN EVER MORE PEOPLE WITHOUT REGARDS TO THE NEED

1 FOR SOCIAL DISTANCING AND OTHER SAFETY MEASURES, THIS  
2 COURT SHOULD INTERVENE IMMEDIATELY BEFORE IT IS TOO LATE.

3 NOW, THE PETITIONERS IN THIS CASE SEEK TO  
4 PROVE A CONSTITUTIONAL CLAIM OF DELIBERATE INDIFFERENCE.

5 AS THE COURT IS AWARE, THE CONSTITUTION PROHIBITS 10:07  
6 CORRECTIONAL OFFICIALS FROM TREATING INCARCERATED PEOPLE  
7 WITH DELIBERATE INDIFFERENCE TO A SERIOUS MEDICAL NEED.

8 DELIBERATE INDIFFERENCE HAS TWO ESSENTIAL  
9 SHOWINGS. FIRST, THERE IS ACTUAL. OR IN THE CASE OF  
10 PRETRIAL DETAINEES LIKE MISS GONZALEZ, CONSTRUCTIVE 10:08  
11 KNOWLEDGE OF A SERIOUS MEDICAL RISK. ELEMENT ONE.

12 ELEMENT TWO IS A FAILURE ON THE PART OF THE SHERIFF TO  
13 TAKE REASONABLE ACTION TO ADDRESS THE RISK.

14 AS FOR THE FIRST ELEMENT, THERE'S NO  
15 QUESTION THAT THE SHERIFF HAD KNOWLEDGE OF THE RISKS THAT 10:08  
16 COVID-19 POSES TO MEDICALLY VULNERABLE PEOPLE IN THE JAIL.  
17 THE COMPLAINT ALLEGES -- AND THE RETURN OFFERS NO FACTS TO  
18 DISPUTE -- THAT COVID-19 IS A DANGEROUS DISEASE. THAT IT  
19 SPREADS RAPIDLY, PARTICULARLY IN CONGREGATE SETTINGS LIKE  
20 JAILS. AND THAT IT CAN BE TRANSMITTED BY PEOPLE WHO ARE 10:08  
21 ASYMPTOMATIC.

22 THE COMPLAINT ALSO ALLEGES WITHOUT DISPUTE,  
23 THAT COVID 19 IS PARTICULARLY DANGEROUS TO MEDICALLY  
24 VULNERABLE PEOPLE, DEFINED IN THE COMPLAINT -- AGAIN  
25 WITHOUT DISPUTE -- AS PEOPLE 55 YEARS OR OLDER OR WHO HAVE 10:08  
26 CERTAIN CHRONIC HEALTH CONDITIONS.

1 ALL THOSE FACTS ARE UNDISPUTED.

2 THE SHERIFF IS AWARE OF THE SEVERE RISKS TO  
3 MEDICALLY VULNERABLE PEOPLE IN THE JAIL AND THE ONLY  
4 QUESTION IS WHETHER HE HAS TAKEN REASONABLE STEPS TO ABATE  
5 THAT RISK. AND AGAIN, THE UNCONTROVERTED EVIDENCE IN THE 10:09  
6 CASE PROVES THAT HE HAS NOT DONE SO.

7 THE SHERIFF HAS FAILED TO TAKE BASIC  
8 PRECAUTIONS AGAINST COVID-19, INCLUDING FACILITATING  
9 SOCIAL DISTANCING AND IMPLEMENTING OTHER MITIGATION  
10 MEASURES. 10:09

11 THE SHERIFF KNOWS THAT SOCIAL DISTANCING IS  
12 AN ESSENTIAL ASPECT OF ANY COVID-19 MITIGATION PLAN. THE  
13 SHERIFF'S OWN MEDICAL EXPERTS HAVE CALLED SOCIAL  
14 DISTANCING THE CORNERSTONE OF COVID-19 MITIGATION AND HAS  
15 ADVISED THE SHERIFF TO DEPOPULATE BY 50 PERCENT. AND I'M 10:09  
16 GOING TO FIND THE CITATION FOR YOU, YOUR HONOR. THE  
17 E-MAIL I'M REFERRING TO CAN BE FOUND AT DENIAL APPENDIX  
18 363 AND 364, AN EXHIBIT ATTACHED TO THE PETITIONERS'  
19 DENIAL.

20 IT'S AN E-MAIL FROM DR. CHIANG OF 10:10  
21 CORRECTIONAL HEALTH SERVICES AND ERIN WINGER OF  
22 CORRECTIONAL HEALTH SERVICES. BOTH OF THEM INSPECTED THE  
23 JAIL IN MARCH, EIGHT MONTHS AGO, FOR PURPOSES OF  
24 DEVELOPING COVID-19 RECOMMENDATIONS FOR THE JAIL. THEY  
25 INSPECTED THE JAIL FACILITIES. AND THEY SENT AN E-MAIL 10:10  
26 MEMO, SUMMARIZING THEIR GUIDANCE TO THE JAIL. AND THE

1 GUIDANCE WAS TO MANAGE THE JAIL POPULATION IN A MANNER  
2 THAT WOULD ALLOW SOCIAL DISTANCING IN THE JAIL, WHICH THEY  
3 REFER TO AS THE CORNERSTONE OF COVID-19 MITIGATION. AND  
4 SPECIFICALLY THEY ADVISED REDUCING THE JAIL POPULATION BY  
5 50 PERCENT OF ITS PRE-PANDEMIC LEVEL. 10:10

6 THE SHERIFF HAD CLEAR AUTHORITY TO ACT ON  
7 THAT ADVICE, AS I MENTIONED EARLIER. GOVERNMENT CODE  
8 SECTION 8658 AUTHORIZES EMERGENCY RELEASES FROM THE JAIL  
9 IN ORDER TO PROTECT THE POPULATION. THE SHERIFF HAS  
10 SOUGHT AND OBTAINED A CLARIFYING RULING FROM THE ORANGE 10:10  
11 COUNTY SUPERIOR COURT, CONFIRMING THAT THAT AUTHORITY  
12 ALLOWS HIM TO RELEASE ANYONE THAT HE DEEMS NECESSARY TO  
13 RELEASE WITHOUT NEED FOR A PRIOR COURT ORDER.

14 AND YET, THE UNDISPUTED EVIDENCE SHOWS THAT  
15 HE HAS FAILED TO EXERCISE THAT AUTHORITY APPROPRIATELY. 10:11  
16 RATHER THAN KEEPING THE JAIL AT A SAFE POPULATION, AS  
17 DEFINED BY HIS OWN MEDICAL ADVISORS, HE HAS ALLOWED THE  
18 POPULATION TO SPIRAL OUT OF CONTROL. THE CROWDING IN THE  
19 JAIL PREVENTS SOCIAL DISTANCING AND IT HAS ALSO ACQUIRED  
20 DANGEROUS NEW PRACTICES, SUCH AS TRANSFERRING LARGE GROUPS 10:11  
21 OF PEOPLE WHO ARE SUPPOSED TO BE UNDER NEW INTAKE  
22 QUARANTINE AT THE JAILS INTAKE AND RELEASE CENTER, BETWEEN  
23 THE INTAKE AND RELEASE CENTER AND THE THEO LACEY FACILITY.  
24 THIS IS THE DEPOSITION OF DALLAS HENNESSEY ATTACHED TO OUR  
25 DENIAL EXPLAINS THIS PROCESS. 10:11

26 JUST ONE EXAMPLE OF MANY OF THE JAIL HAVING

1 TO TAKE DANGEROUS MEASURES AS A RESULT OF THE RISING  
2 POPULATION.

3 NOW, IN ADDITION TO POPULATION  
4 MISMANAGEMENT, THE SHERIFF HAS FAILED TO IMPLEMENT  
5 ESSENTIAL SAFETY PROTOCOLS. WE'RE NEARLY A YEAR INTO THE 10:11  
6 PANDEMIC, AND YET THE JAIL CONTINUES TO TRANSPORT LARGE  
7 NUMBERS OF INCARCERATED PEOPLE TO COURT APPEARANCES,  
8 MEDICAL APPOINTMENTS AND OTHER LOCATIONS IN CONDITIONS  
9 THAT PRECLUDE SOCIAL DISTANCING. THE COMPLAINT ATTACHES  
10 DECLARATIONS THAT ATTEST TO THIS AGAIN AND AGAIN. PEOPLE 10:12  
11 ARE CROWDED INTO BUSES WITH VERY LITTLE VENTILATION OR AIR  
12 FLOW, DOZENS AT A TIME, AND DRIVEN TO COURT FOR COURT  
13 APPEARANCES. PLACED IN HOLDING CELLS WITH PEOPLE FROM ALL  
14 MANNER OF JAIL FACILITIES IN CONDITIONS WHERE SOCIAL  
15 DISTANCING IS IMPOSSIBLE AND THEN LATER RETURNED TO THEIR 10:12  
16 OVERCROWDED HOUSING UNITS, CLEARLY AND OBVIOUSLY CREATING  
17 PATHWAYS FOR COVID-19 TO ENTER THE JAIL.

18 MASK USAGE IN THE JAIL REMAINS DANGEROUSLY  
19 CONSISTENT. AGAIN, NUMEROUS DECLARATIONS ATTACHED TO OUR  
20 PAPERS AFFIRM THAT WHATEVER THE POLICY OF MASK USAGE IN 10:12  
21 THE JAIL, THE ACTUAL PRACTICE IS THAT LARGE NUMBER OF  
22 CORRECTIONAL OFFICERS EITHER FAIL OR REFUSE TO WEAR MASKS  
23 WHEN THEY'RE INTERACTING WITH INCARCERATED PEOPLE. AND I  
24 COULD GO ON.

25 THE POINT IS THAT BY IGNORING BASIC PUBLIC 10:13  
26 HEALTH GUIDANCE ON THESE ISSUES, THE SHERIFF HAS KNOWINGLY

1 EXPOSED INCARCERATED PEOPLE TO AN UNREASONABLE RISK OF  
2 COVID-19 INFECTION. AND THAT IS TEXTBOOK DELIBERATE  
3 INDIFFERENCE.

4 NOW, CRITICALLY FOR PURPOSES OF THIS  
5 HEARING, ALTHOUGH THE RETURN ARGUES GENERALLY THAT THE 10:13  
6 JAIL IS SAFE, IT DOES NOT DISPUTE ANY OF THE FACTS THAT  
7 SUPPORT PETITIONERS' DELIBERATE INDIFFERENCE CLAIMS.

8 LET'S START WITH THE FACT THAT SOCIAL DISTANCING IS THE  
9 CORNERSTONE OF COVID-19 PROTECTION AND IT IS ESSENTIAL TO  
10 PROTECTING PEOPLE. 10:13

11 THE COMPLAINT ALLEGES THAT SOCIAL DISTANCING  
12 IS THE ONLY MEASURE THAT CAN PROTECT MEDICALLY VULNERABLE  
13 PEOPLE INCARCERATED IN THE JAIL. AND I'LL REFER YOUR  
14 HONOR TO PARAGRAPH 5 OF THE COMPLAINT AND PARAGRAPH 28 OF  
15 THE COMPLAINT ARE JUST TWO LOCATIONS WHERE PETITIONERS 10:13  
16 MAKE THIS ALLEGATION. IT'S THE CORE THEORY OF THE  
17 LAWSUIT. AND IT APPEARS THROUGHOUT THE COMPLAINT.

18 THE COMPLAINT SUPPORTS THOSE ALLEGATIONS  
19 WITH DECLARATIONS FROM TWO MEDICAL EXPERTS: DR. PARKER  
20 AND DR. GOLDENSON. BOTH OF THEM OPINE THAT THE JAIL MUST 10:14  
21 DEPOPULATE TO A LEVEL THAT FACILITATES MEANINGFUL SOCIAL  
22 DISTANCING IN ORDER TO PROTECT MEDICALLY VULNERABLE  
23 PEOPLE.

24 BOTH EXPERTS EXPLAIN THAT WHILE OTHER  
25 MITIGATION EFFORTS ARE IMPORTANT AND NECESSARY, THEY ARE 10:14  
26 NOT SUFFICIENT UNLESS THEY ARE PAIRED WITH EFFORTS TO

1 FACILITATE SOCIAL DISTANCING IN THE JAIL, INCLUDING BY  
2 REDUCING THE POPULATION TO A LEVEL THAT ALLOWS SOCIAL  
3 DISTANCING.

4 THE RETURN DOES NOT DISPUTE ANY OF THOSE  
5 ALLEGATIONS OR ANY OF THAT EXPERT OPINION EVIDENCE. THE 10:14  
6 RETURN SCARCELY MENTIONS SOCIAL DISTANCING OR  
7 DEPOPULATION. AND WHEN IT DOES MENTION THOSE CONCEPTS,  
8 RETURN ACTUALLY SUPPORTS THE PETITIONERS' POSITION. AND  
9 I'LL REFER YOUR HONOR TO PAGE 37 OF THE RESPONDENT'S  
10 RETURN. PAGE 37, THERE'S ONE FULL PARAGRAPH, TAKES UP THE 10:14  
11 SECOND HALF OF THE PAGE.

12 AND IN THAT PARAGRAPH THE RESPONDENT WRITES,  
13 QUOTE, "THE FACT THAT THE ORANGE COUNTY JAIL ARE NOT  
14 EXIGENT, END QUOTE. AND IT EXPLAINS THAT THIS IS BECAUSE  
15 THE SHERIFF REDUCED THE JAIL POPULATION BY 50 PERCENT. 10:15  
16 NOW, THAT APPEARS TO BE A REFERENCE TO THE DIP IN THE  
17 POPULATION THAT OCCURRED DURING THE SUMMER MONTHS, THAT I  
18 REFERRED TO EARLIER. AND IN THAT SENTENCE, YOUR HONOR,  
19 THE RETURN PRESENTS SORT OF AN IMAGE FROZEN IN TIME, AS IF  
20 CONDITIONS IN THE JAIL WERE THE SAME TODAY AS THEY WERE 10:15  
21 DURING THE SUMMER MONTHS WHEN THE POPULATION WAS  
22 SIGNIFICANTLY LOWER.

23 THE RETURN FAILS TO ADDRESS THAT THIS DIP IN  
24 THE POPULATION WAS ONLY TEMPORARY AND THAT THE JAIL  
25 POPULATION HAS SKYROCKETED SINCE THE SUMMER MONTHS, EVEN 10:15  
26 AS THE CAPACITY HAS DROPPED WITH THE CLOSURE OF ONE OF THE

1 JAIL AFFILIATES.

2 IF -- AS THE RETURN APPEARS TO CONCEDE --  
3 THE DEPOPULATION WAS ESSENTIAL TO PROTECTING PEOPLE IN THE  
4 JAIL, THEN IT FOLLOWS THAT ABANDONING THOSE EFFORTS AND  
5 ALLOWING THE POPULATION TO SKYROCKET IS RECKLESS AND 10:15  
6 DANGEROUS, JUST AS THE PETITIONERS AND THEIR EXPERTS  
7 CONTEND IN THIS LAWSUIT.

8 THERE'S NO DISPUTE AND THE RETURN CREATES NO  
9 DISPUTE ON THAT ISSUE.

10 AND NEITHER DOES A DISPUTE ARISE FROM THE 10:16  
11 DECLARATIONS THAT THE RETURN ATTACHES. THE RETURN  
12 INCLUDES A DECLARATION FROM A MEDICAL EXPERT, DR. CHIANG  
13 OF CORRECTIONAL HEALTH SERVICES. DR. CHIANG'S DECLARATION  
14 DOES NOT DISPUTE THE PETITIONERS' CONTENTION THAT SOCIAL  
15 DISTANCING IS ESSENTIAL AND THAT THE POPULATION MUST BE 10:16  
16 REDUCED TO A LEVEL THAT ALLOWS SOCIAL DISTANCING TO BE  
17 PRACTICED.

18 AND THAT'S NOT A MERE OVERSIGHT OR CARELESS  
19 DRAFTING OF THE CHIANG DECLARATION. THE EXPLANATION FOR  
20 THIS IS CLEAR. DR. CHIANG HIMSELF HAS CALLED FOR 10:16  
21 DEPOPULATION TO FACILITATE SOCIAL DISTANCING IN THE JAIL.  
22 I REFERENCED HIS E-MAIL FROM MARCH EARLIER. AGAIN, IT'S  
23 DENIAL AT 63 TO 364. DR. CHIANG IS THE HEALTH AUTHORITY  
24 FOR CORRECTIONAL HEALTH SERVICES, WHO ADVISED THE SHERIFF  
25 TO DEPOPULATE BY 50 PERCENT BACK IN MARCH, A 10:16  
26 RECOMMENDATION THAT THE SHERIFF HAS KNOWINGLY REFUSED TO



1 IMPLEMENT.

2 SO, IN OTHER WORDS, NOT ONLY DOES THE RETURN  
3 FAIL TO PLEAD FACTS, THE DISPUTE AND NEED FOR DEPOPULATION  
4 AND SOCIAL DISTANCING, BUT THE SHERIFF'S OWN EXPERT IN  
5 THIS CASE HAS CALLED FOR A SIMILAR COURSE OF ACTION. THE 10:17  
6 NECESSITY OF SOCIAL DISTANCING AND DEPOPULATION IS SIMPLY  
7 NOT IN DISPUTE IN THIS CASE.

8 THERE IS ALSO NO DISPUTE THAT AT THE CURRENT  
9 POPULATION IN THE JAIL, SOCIAL DISTANCING IS NOT POSSIBLE.  
10 THIS IS CLEAR FROM THE SHERIFF'S OWN PLEADINGS, WHICH 10:17  
11 REVEAL THAT THE POPULATION RECENTLY HIT 3,830, WHICH IS  
12 103 PERCENT OF THE RATED CAPACITY OF THE SYSTEM AND 117  
13 PERCENT OF THE CAPACITY OF THE LARGEST JAIL.

14 THE PETITIONERS SUBMIT A DECLARATION FROM  
15 DR. GOLDENSON, ATTACHED TO THE PETITION, WHICH EXPLAINED 10:17  
16 THAT A POPULATION AT OR NEAR THE RATED CAPACITY OF THE  
17 JAIL FACILITY DOES NOT FACILITATE SOCIAL DISTANCING WITHIN  
18 THE FACILITIES. AND THE REASON FOR THAT IS BECAUSE THE  
19 REGULATIONS THAT DEFINE RATED CAPACITY ARE BASED ON SQUARE  
20 FOOTAGE REQUIREMENTS THAT WERE NOT DESIGNED WITH THE 10:18  
21 PANDEMIC IN MIND. THEY DO NOT PERMIT SIX FEET OF PHYSICAL  
22 SEPARATION BETWEEN PEOPLE. IN OTHER WORDS, IN ORDER TO  
23 FACILITATE MEANINGFUL SOCIAL DISTANCING IN A CORRECTIONAL  
24 INSTITUTION, THE POPULATION MUST BE REDUCED SUBSTANTIALLY  
25 BELOW THE RATE OF CAPACITY. THE JAIL IS NOW OPERATING 10:18  
26 ABOVE ITS RATED CAPACITY.

1           IN ADDITION, THE PETITIONERS ATTACH  
2       DECLARATIONS, BOTH TO THE COMPLAINT ITSELF AND TO THE  
3       DENIAL BRIEF FROM DOZENS OF PEOPLE INCARCERATED IN THE  
4       JAIL, WHO WILL TESTIFY TO THE CONFINED, CRAMPED CONDITIONS  
5       IN THE JAIL FACILITIES.       THEY EXPLAIN SLEEPING IN BEDS       10:18  
6       THAT ARE JUST INCHES APART FROM ONE ANOTHER.   HAVING TO  
7       LINE UP SHOULDER TO SHOULDER TO USE PHONES IN COMMON AREAS  
8       IN THE DAY ROOM, FOR EXAMPLE.

9           THE RETURN DOES NOT DISPUTE ANY OF THAT  
10      EVIDENCE.   AND, IN FACT, THE SHERIFF'S OWN WITNESSES HAVE   10:19  
11      ADMITTED THAT SOCIAL DISTANCING IS NOT POSSIBLE AT THE  
12      CURRENT POPULATION.

13           I WILL REFER YOUR HONOR TO THE DEPOSITION OF  
14      ERIN WINGER, DENIAL APPENDIX PAGE 361, TESTIFIED IN EARLY  
15      JULY AT DEPOSITION WHEN THE POPULATION WAS SIGNIFICANTLY   10:19  
16      LOWER THAN IT IS TODAY, THAT SOCIAL DISTANCING WAS NOT  
17      POSSIBLE AT THE THEN CURRENT POPULATION.

18           VON NORDHEIM, DEPOSITION.   SHE IS THE  
19      CAPTAIN OF THE CENTRAL MEN'S JAIL.   DENIAL APPENDIX 338.  
20      SHE SIMILARLY TESTIFIED TO AN INABILITY TO PRACTICE SOCIAL   10:19  
21      DISTANCING IN THE JAIL.

22           AND DALLAS HENNESSEY, DENIAL APPENDIX 241  
23      AND 242.   HIS DEPOSITION SIMILARLY ATTESTED THAT SOCIAL  
24      DISTANCING IS NOT POSSIBLE IN THE JAIL FACILITIES.

25           ADDITIONAL UNCONTROVERTED EVIDENCE ON THIS       10:20  
26      POINT IS THE DECLARATION OF THE PETITIONERS' EXPERT,

1 DR. PARKER, WHO INSPECTED THE JAIL PERSONALLY IN JULY AND  
2 OBSERVED THAT IT WAS TOO CROWDED. THE HOUSING UNITS WERE  
3 TOO CROWDED TO PRACTICE SOCIAL DISTANCING. THAT WAS,  
4 AGAIN, IN JULY, WHEN THE POPULATION WAS SIGNIFICANTLY  
5 LOWER THAN IT IS TODAY. AND THAT'S PARKER DECLARATION IS 10:20  
6 AT APPENDIX 635, 636 AND I'LL REFER YOUR HONOR TO  
7 PARAGRAPH 49 OF THE DECLARATION.

8 NONE OF THESE FACTS ARE IN DISPUTE. SOCIAL  
9 DISTANCING IS ESSENTIAL AND THE SHERIFF HAS FAILED TO  
10 IMPLEMENT A POPULATION MANAGEMENT POLICY THAT ALLOWS 10:20  
11 SOCIAL DISTANCING TO BE PRACTICED. AS A RESULT, THE JAIL  
12 IS NOW MORE CROWDED THAN AT ANY POINT SINCE THE FIRST DAYS  
13 OF THE PANDEMIC AND THE CONDITIONS IN THE JAIL ARE  
14 EXTREMELY OVERCROWDED AS A RESULT.

15 I'LL ALSO NOTE THAT THE SHERIFF'S OWN 10:21  
16 WITNESSES HAVE EXPRESSED CONCERN ABOUT THIS STATE OF  
17 AFFAIRS. I'LL REFER YOUR HONOR TO THE DEPOSITION OF JAIL  
18 COMMANDER JOSEPH BALICKI. THAT'S THE APPENDIX ATTACHED TO  
19 THE -- THE COMPLAINT APPENDIX, PAGE 627. IN HIS  
20 DEPOSITION JOSEPH BALICKI CALLED THE RISING JAIL 10:21  
21 POPULATION A, QUOTE, "VERY HUGE CONCERN FOR US." HE ALSO  
22 EXPRESSED HIS HOPE THAT THE JUDICIAL COUNCIL WOULD SOLVE  
23 THE OVER-POPULATION PROBLEM FOR THE JAIL BY REINSTATING  
24 ITS ZERO BAIL ORDER, AND THUS REDUCING THE NUMBER OF  
25 PRETRIAL DETAINEES HELD IN THIS FACILITY. 10:21

26 DALLAS HENNESSEY -- HIS NAME I MENTIONED A

1 MINUTE AGO -- HE RUNS THE POPULATION MANAGEMENT UNIT.  
2 HE'S RESPONSIBLE FOR HOUSING ASSIGNMENTS AT THE JAIL.  
3 DURING HIS DEPOSITION HE ADMITTED THAT THE JAIL HAS HAD TO  
4 PLACE A FREEZE OR A HOLD ON ADA COMPLIANCE WORK WITHIN THE  
5 JAIL, QUOTE, "UNTIL WE CAN FIGURE OUT THE POPULATION." 10:22  
6 THAT'S HENNESSEY DEPOSITION, DENIAL APPENDIX, PAGE 240.

7 SO NOT ONLY IS THERE NO DISPUTE THAT THE  
8 SHERIFF HAS NOT IMPLEMENTED SOCIAL DISTANCING IN A MANNER  
9 SUGGESTED BY HIS OWN HEALTH AUTHORITIES, BUT CORRECTIONAL  
10 OFFICERS, PEOPLE IN CHARGE OF RUNNING THE JAIL ON A 10:22  
11 DAY-TO-DAY BASIS HAVE EXPRESSED CONCERN ABOUT THIS.

12 AND, YOUR HONOR, I WOULD SUBMIT THAT UNDER  
13 THESE UNCONTESTED FACTS, THE CASE IS INDISTINGUISHABLE  
14 FROM THE VON STAICH DECISION. AND I SPEAK OF COURSE OF IN  
15 RE VON STAICH, 56 CAL.APP.5TH, 53. VON STAICH FOUND 10:22  
16 DELIBERATE INDIFFERENCE BASED ON A SIMILAR OR, IN FACT, A  
17 LESSER SHOWING OF DELIBERATE INDIFFERENCE, AND THE  
18 REASONING REQUIRES THE SAME CONCLUSION HERE.

19 BRIEFLY, THAT CASE INVOLVED THE COVID-19  
20 PANDEMIC RESPONSE AT THE SAN QUENTIN STATE PRISON. THE 10:23  
21 FACTS, THE UNCONTROVERTED FACTS SHOWED THAT THE STATE HAD  
22 BEEN ADVISED BY PUBLIC HEALTH AUTHORITIES TO REDUCE THE  
23 POPULATION BY 50 PERCENT IN ORDER TO FACILITATE SOCIAL  
24 DISTANCING AT THE JAIL. WHEN THE STATE REFUSED, A  
25 PRISONER BROUGHT A HABEAS ACTION. 10:23

26 THE STATE SUBMITTED A RETURN THAT DENIED THE

1 DEPOPULATION AS NECESSARY, BUT OFFERED NO EVIDENCE TO  
2 SUPPORT THAT CONCLUSION. INSTEAD, THE STATE DID EXACTLY  
3 WHAT THE SHERIFF DOES IN HIS RETURN IN THIS CASE, WHICH IS  
4 TO SAY THE STATE POINTED TO OTHER COVID-19 MITIGATION  
5 MEASURES THAT HAD BEEN IMPLEMENTED AT SAN QUENTIN JAIL 10:23  
6 AND ALSO TO THE LOW NUMBER OF ACTIVE INFECTIONS AT THE SAN  
7 QUENTIN JAIL AT THE TIME OF BRIEFING ON THE ISSUE.

8 THE COURT FOUND THAT THAT RESPONSE WAS  
9 INSUFFICIENT TO CREATE A FACT QUESTION ABOUT THE  
10 PETITIONER'S RIGHT TO RELIEF. BECAUSE THE STATE FAILED TO 10:23  
11 PLEAD FACTS DISPUTING THE NECESSITY OF DEPOPULATION, THE  
12 NECESSITY WAS DEEMED ADMITTED FOR PURPOSES OF THE HABEAS  
13 PROCEEDING UNDER TEXTBOOK, HORNBOOK HABEAS PLEADING RULES  
14 AS SET FORTH IN PEOPLE VERSUS DUVAL, A CASE THAT'S  
15 DISCUSSED AT LENGTH IN VON STAICH. 10:24

16 AND BECAUSE THE NECESSITY OF DEPOPULATION  
17 WAS DEEMED ADMITTED AND THERE WAS NO DISPUTE THAT THE  
18 STATE HAD FAILED TO ACT ON THAT REQUIREMENT, THE COURT  
19 FOUND DELIBERATE INDIFFERENCE ON THE PAPERS WITHOUT AN  
20 EVIDENTIARY HEARING. 10:24

21 LIKE THE STATE IN VON STAICH, THE SHERIFF  
22 HAS BEEN WARNED EXPRESSLY OF THE NEED TO DEPOPULATE. THE  
23 PETITIONERS' EXPERTS IN THIS CASE SAY THAT DEPOPULATION IS  
24 ESSENTIAL. AND IN SO DOING, THEY NEARLY ECHO THE  
25 RECOMMENDATION OF THE SHERIFF'S OWN PUBLIC HEALTH ADVISOR, 10:24  
26 WHO, AGAIN, EIGHT MONTHS AGO ADVISED THE SHERIFF TO REDUCE

1 THE JAIL POPULATION IN ORDER TO FACILITATE SOCIAL  
2 DISTANCING.

3 LIKE THE STATE IN VON STAICH, THE SHERIFF  
4 HAS REJECTED THAT ADVICE, AND YET HIS RETURN OFFERS NO  
5 FACTS OR EVIDENCE TO SUPPORT HIS POSITION THAT 10:24  
6 DEPOPULATION IS NOT NECESSARY.

7 AS IN VON STAICH, THESE UNCONTROVERTED  
8 ALLEGATIONS OF POPULATION MISMANAGEMENT ESTABLISH THAT THE  
9 SHERIFF IS DELIBERATELY INDIFFERENT TO THE RISKS THAT  
10 COVID-19 POSES TO PEOPLE INCARCERATED IN THE ORANGE COUNTY 10:25  
11 JAIL.

12 AND, IN FACT, YOUR HONOR, I WOULD SUBMIT  
13 THAT THE FACTS OF THIS CASE ARE EVEN MORE COMPELLING THAN  
14 VON STAICH BECAUSE THE UNCONTROVERTED -- BECAUSE THERE'S  
15 ADDITIONAL EVIDENCE IN THIS CASE THAT WAS NOT EVIDENT IN 10:25  
16 VON STAICH, OF FAILURE TO IMPLEMENT BASIC COVID-19 SAFETY  
17 PROTOCOLS.

18 IN VON STAICH THE ONLY ISSUE WAS WHETHER THE  
19 STATE WAS DELIBERATELY INDIFFERENT BY FAILING TO ACT ON  
20 THE RECOMMENDATION TO DEPOPULATE BY 50 PERCENT. WE HAVE A 10:25  
21 SIMILAR DYNAMIC HERE IN THAT THE SHERIFF HAS REFUSED  
22 ADVICE BY HIS OWN ADVISORS TO DEPOPULATE BY 50 PERCENT.  
23 BUT WE ALSO HAVE UNCONTROVERTED EVIDENCE THAT THE SHERIFF  
24 HAS FAILED TO IMPLEMENT ADDITIONAL SAFETY PROTOCOLS. THEY  
25 MAKE THE CONDITIONS IN THE ORANGE COUNTY JAIL EVEN MORE 10:25  
26 DANGEROUS THAN THEY WERE AT SAN QUENTIN.

1 I SPOKE EARLIER OF MASK USAGE. AGAIN, THE  
2 PETITIONERS SUBMIT EXTENSIVE EVIDENCE THAT WHATEVER THE  
3 POLICY, THE ACTUAL USE OF MASKS IN THE ORANGE COUNTY JAIL  
4 IS DANGEROUSLY INCONSISTENT. STAFF ARE AS LIKELY TO BE  
5 SEEN WITHOUT MASKS AS WITH MASKS ON, ACCORDING TO THE 10:26  
6 DECLARATIONS THAT WE'VE SUBMITTED IN THIS CASE.

7 THE RETURN DOES NOT ADDRESS ANY OF THOSE  
8 ALLEGATIONS OR ANY OF THE EVIDENCE THAT PETITIONERS  
9 SUBMIT. ALL THE RETURN SAYS WITH REGARD TO MASK USAGE IS  
10 THAT THE SHERIFF HAS DISTRIBUTED PPE TO UNSPECIFIED 10:26  
11 INDIVIDUALS, BUT THEY TAKE NO ISSUE WITH AND DO NOT PUT IN  
12 DISPUTE THE NOTION THAT PEOPLE ARE NOT ACTUALLY WEARING  
13 MASKS WITHIN THE JAIL AND THIS CREATES AN OBVIOUS DANGER,  
14 GIVEN THAT THE DEPUTIES IN THE JAIL WHO ARE INTERACTING  
15 WITH INCARCERATED PEOPLE MASKLESS ARE COMMUTING FROM 10:26  
16 COMMUNITIES THAT ARE EXPERIENCING SURGING COVID-19  
17 NUMBERS.

18 I REFERRED EARLIER TO OUR FACTS AND EVIDENCE  
19 ABOUT THE DANGEROUS TRANSPORTATION PRACTICES, THAT PEOPLE  
20 ARE MOVED IN CONDITIONS THAT PRECLUDE MEANINGFUL SOCIAL 10:27  
21 DISTANCING, HELD FOR EXTENDED PERIODS OF TIME IN THE  
22 HOLDING CELLS WHERE SOCIAL DISTANCING IS IMPOSSIBLE, MIXED  
23 WITH PEOPLE FROM OTHER JAIL FACILITIES AND THEN RETURNED  
24 TO THEIR HOUSING UNITS. THIS IS A DANGEROUS PRACTICE FOR  
25 OBVIOUS REASONS. AND THERE'S NOTHING IN THE RETURN TO 10:27  
26 DISPUTE ANY OF THE FACTS OR EVIDENCE THAT WE SUBMIT THAT

1 SHOW THAT THIS IS AN ONGOING PROBLEM AT THE JAIL.

2 ONE OTHER THING I'LL NOTE BEFORE MOVING ON,  
3 IS THE COMPLAINT ALSO ALLEGES THAT THE SHERIFF HAS FAILED  
4 TO IMPLEMENT AN ADEQUATE COVID-19 TESTING PROGRAM. THE  
5 UNDISPUTED FACTS SHOW THAT THE SHERIFF LIMITS COVID-19 10:27

6 TESTING TO BASICALLY TWO CATEGORIES OF PEOPLE. ONE ARE  
7 PEOPLE WHO ARE NEWLY ARRIVED AND BOOKED INTO THE JAIL.  
8 THEY ARE TESTED AS PART OF A NEW INTAKE QUARANTINE PROCESS  
9 BEFORE DOING THE GENERAL JAIL POPULATION. THAT'S ONE  
10 CATEGORY. 10:28

11 THE SECOND CATEGORY IS PEOPLE IN THE JAIL  
12 POPULATION WHO SHOW COVID-19 SYMPTOMS.

13 THE UNDISPUTED FACTS ALSO SHOW THAT STAFF  
14 TESTING IS PURELY VOLUNTARY. THE JAIL DOES NOT REQUIRE  
15 ANY OF THE CORRECTIONAL STAFF TO SUBMIT TO COVID-19 10:28  
16 TESTING.

17 THE PROBLEM WITH THIS POLICY IS THAT THE  
18 JAIL CANNOT -- UNDER THIS PROGRAM -- IDENTIFY PEOPLE  
19 WITHIN THE JAIL OR STAFF WHO WORK IN THE JAIL WHO ARE  
20 ASYMPTOMATIC BUT NONETHELESS INFECTIOUS. THIS IS A 10:28

21 MASSIVE BLIND SPOT THAT ALLOWS COVID-19 TO ENTER THE JAIL  
22 UNDETECTED. AND I'LL JUST NOTE THAT THE UNDISPUTED FACTS  
23 IN THIS CASE ARE THAT DURING AN EARLIER ROUND OF TESTING  
24 IN A JAIL THAT FOLLOWED THE COVID-19 OUTBREAK DURING THE  
25 SUMMER MONTHS, NEARLY 90 PERCENT OF THE PEOPLE WHO WERE 10:28  
26 TESTED DURING THAT PERIOD WERE ASYMPTOMATIC -- WHO TESTED



1 POSITIVE -- WERE ASYMPTOMATIC AT THE TIME THAT THEY TOOK  
2 THEIR TEST. NEARLY 90 PERCENT OF PEOPLE WHO TESTED  
3 POSITIVE WERE ASYMPTOMATIC. AND I'LL REFER YOUR HONOR TO  
4 THE BALICKI DEPOSITION, APPENDIX 625 FOR THAT STATISTIC.

5 THAT'S UNDISPUTED. AND THE SHERIFFS CURRENT 10:29  
6 COVID-19 TESTING PROGRAM WOULD BE INCAPABLE OF IDENTIFYING  
7 ANY OF THOSE ASYMPTOMATIC PEOPLE AS DENIED AND  
8 IMPLEMENTED.

9 NOW, THIS -- AND TO CLOSE, NONE OF THOSE  
10 FACTS WERE PRESENT IN THE VON STAICH CASE. VON STAICH WAS 10:29  
11 JUST ABOUT POPULATION MISMANAGEMENT. WE HAVE AN IDENTICAL  
12 POPULATION MISMANAGEMENT DYNAMIC HERE, PLUS NUMEROUS  
13 ADDITIONAL FAILINGS AT THE JAIL THAT CREATE CLEAR PATHWAYS  
14 FOR COVID-19 TO ENTER THE JAIL AND CAUSE DANGEROUS  
15 OUTBREAKS. 10:29

16 NOW, THE SHERIFF PRESENTS THREE PRIMARY  
17 ARGUMENTS IN DEFENSE TO THE DELIBERATE INDIFFERENCE CLAIMS  
18 IN HIS RETURN. AND I WANT TO ADDRESS THEM EACH IN TURN  
19 BRIEFLY.

20 FIRST, THE SHERIFF ARGUES THAT BECAUSE HE 10:29  
21 HAS IMPLEMENTED OTHER COVID-19 MITIGATION MEASURES, HE  
22 CANNOT BE DELIBERATELY INDIFFERENT FOR THE CONDUCT ALLEGED  
23 IN THE COMPLAINT.

24 SECOND, HE ALLEGES THAT BECAUSE THERE IS NOT  
25 EVIDENCE OF AN ACTIVE COVID-19 OUTBREAK AT THE JAIL, HE 10:30  
26 CANNOT BE FOUND DELIBERATELY INDIFFERENT.

1                   AND THIRD, HE ALLEGES THAT HE CANNOT BE  
2 FOUND DELIBERATELY INDIFFERENT FOR THE CONDUCT ALLEGED IN  
3 THE COMPLAINT BECAUSE THE OVERCROWDING AT THE JAIL IS THE  
4 RESPONSIBILITY OF OTHER PEOPLE, NOT HIM.

5                   SO I WANT NOT JUST GO THROUGH THOSE BRIEFLY, 10:30  
6 BEFORE WRAPPING UP.

7                   AS TO THE FIRST ARGUMENT ABOUT OTHER  
8 MITIGATION MEASURES, THE VON STAICH CASE CONSIDERED AND  
9 REJECTED THIS EXACT ARGUMENT, AND IT FARES NO BETTER IN  
10 THIS CASE. IN VON STAICH, THE STATE POINTED TO VARIOUS 10:30  
11 PROTECTIVE MEASURES IMPLEMENTED AT THE SAN QUENTIN PRISON  
12 AS PROOF THAT DEPOPULATION WAS UNWARRANTED. AND THAT THEY  
13 CANNOT BE FOUND DELIBERATELY INDIFFERENT BY FAILING TO  
14 DEPOPULATE.

15                   AND YOU'RE INSTRUCTED TO LOOK AT THE RETURN 10:30  
16 THAT THE STATE FILED IN THE VON STAICH CASE TO UNDERSTAND  
17 THE COURT'S REASONING HERE. AND WE ATTACHED THAT RETURN  
18 AS AN EXHIBIT. IT'S DENIAL APPENDIX PAGE 420. SECTION  
19 2(C) OF THAT BRIEF WALKS THROUGH -- AT SOME DETAIL -- AND  
20 NUMBER OF MITIGATION MEASURES THAT SAN QUENTIN HAD 10:31  
21 IMPLEMENTED INSTEAD OF OR IN LIEU OF DEPOPULATION. THESE  
22 ARE LISTED AT DENIAL APPENDIX 453 TO 457. I'M NOT GOING  
23 TO GO THROUGH ALL OF THEM BUT I'LL JUST FLAG A FEW TO  
24 ILLUSTRATE A POINT.

25                   THE PRISON DISTRIBUTED N95 RESPIRATORS AND 10:31  
26 CLOTH MASKS TO ALL STAFF AND INCARCERATED PEOPLE IN THE

1 PRISON. IT OFFERED TESTING TO EVERY INCARCERATED PERSON  
2 IN THE JAIL, REGARDLESS OF WHETHER THEY PRESENTED WITH  
3 SYMPTOMS. AND IT IMPLEMENTED A POLICY OF MANDATORY STAFF  
4 TESTING ON 14 DAY INTERVALS IN ORDER TO IDENTIFY  
5 ASYMPTOMATIC BUT INFECTIOUS STAFF MEMBERS WHO CAN BRING 10:31  
6 THE DISEASE INTO THE PRISON.

7 IN ADDITION TO THAT, THE PRISON IMPLEMENTED  
8 A RELEASE PROGRAM THAT ALLOWED A NUMBER OF HIGH RISK  
9 MEDICALLY VULNERABLE PEOPLE TO BE RELEASED EARLY FROM THE  
10 PRISON. 10:32

11 THERE ARE OTHERS BUT THE POINT IS, YOUR  
12 HONOR, I OFFER THESE NOT TO COMPARE THE ORANGE COUNTY JAIL  
13 TO SAN QUENTIN -- ALTHOUGH ANY COMPARISON WOULD SHOW THAT  
14 THE JAIL HAS DONE FAR LESS TO PROTECT PEOPLE THAN SAN  
15 QUENTIN HAS -- BUT THE POINT, RATHER, IS THAT THE COURT IN 10:32  
16 VON STAICH FOUND THAT ALL OF THOSE MITIGATION MEASURES  
17 WERE A HELPFUL FIRST STEP BUT THEY WERE NOT RESPONSIVE TO  
18 THE ALLEGATION IN THE PETITION THAT DEPOPULATION WAS  
19 ESSENTIAL.

20 AND I'LL JUST READ A QUOTE FROM THE OPINION 10:32  
21 HERE. SO THIS IS IN RE VON STAICH, 56 CAL.APP.5TH, 53 --  
22 I'M SORRY, THE CAL. RPTR. IS WHERE THE PIN CITE IS -- 270  
23 CAL.RPTR.3D, 128 AND THIS IS AT PAGE 142. QUOTE, "THE  
24 TARGET OF THE PETITION IS NOT WHAT RESPONDENTS HAVE DONE  
25 BUT WHAT THEY REFUSE TO DO. NONE OF THE COMMENDABLE STEPS 10:33  
26 RESPONDENTS HAVE TAKEN TO CONTAIN THE SPREAD OF COVID-19

1 WILL BE EFFECTUAL, PETITIONER AND HIS EXPERTS MAINTAIN,  
2 UNLESS CONSIDERABLE ROOM IS MADE FOR INMATES TO PHYSICALLY  
3 DISTANCE THEMSELVES FROM ONE ANOTHER EFFECTIVELY BECAUSE,  
4 IN THE ABSENCE OF A VACCINE, PHYSICAL DISTANCING IS NOW BY  
5 FAR THE MOST EFFECTIVE WAY OF LIMITING TRANSMISSION OF 10:33  
6 COVID-19."

7 THE COURT CONCLUDED THAT BECAUSE THERE WAS  
8 NO RESPONSE TO THIS ALLEGATION AND THE EVIDENCE SHOWING  
9 THE IMPORTANCE OF SOCIAL DISTANCING BY THE STATE, THE  
10 NECESSITY OF SOCIAL DISTANCING WAS DEEMED ADMITTED AND THE 10:33  
11 FAILURE TO DEPOPULATE TO FACILITATE SOCIAL DISTANCING WAS  
12 DELIBERATE INDIFFERENCE.

13 THE SAME CONCLUSION APPLIES TO THIS CASE.  
14 AS IN VON STAICH, THE PETITIONERS SUBMIT EXTENSIVE  
15 EVIDENCE IN THE FORM OF EXPERT DECLARATIONS, ESTABLISHING 10:33  
16 THAT THE JAIL'S EXISTING MITIGATION MEASURES ARE NOT  
17 SUFFICIENT TO PROTECT THE POPULATION UNLESS THEY'RE SOCIAL  
18 DISTANCING. THAT EVIDENCE IS CONSISTENT WITH THE  
19 SHERIFF'S OWN MEDICAL EXPERT, WHO HAS ADVISED THE SHERIFF  
20 TO REDUCE THE POPULATION BY 50 PERCENT. 10:34

21 AS IN VON STAICH, THE SHERIFF SUBMITTED A  
22 RETURN THAT LISTS VARIOUS ALTERNATIVE MEASURES BUT PLEADS  
23 NO FACTS TO DISPUTE THE NECESSITY OF INCREASED DISTANCING  
24 IN THE JAIL. THUS, JUST AS IN VON STAICH, THE COURT  
25 SHOULD DEEM THAT MATTER ADMITTED AND FIND DELIBERATE 10:34  
26 INDIFFERENCE BASED ON THE SHERIFF'S INACTION AND

1 MISMANAGEMENT OF THE POPULATION.

2 THE SECOND ARGUMENT THAT I MENTIONED IS THE  
3 INFECTION RATE. THE SHERIFF ARGUES THAT BECAUSE THERE IS  
4 NO EVIDENCE OF AN OUTBREAK IN THE JAIL, THERE CANNOT BE  
5 DELIBERATE INDIFFERENCE. AS AN INITIAL MATTER, THE JAIL 10:34  
6 IS NOT CONDUCTING UNIVERSAL TESTING, AND THEREFORE THERE  
7 IS NO WAY TO KNOW WHAT THE TRUE INFECTION RATE ACTUALLY IS  
8 IN THE JAIL.

9 I MENTIONED EARLIER THAT DURING AN EARLIER  
10 ROUND OF TESTING, 90 PERCENT OF THE PEOPLE WHO TESTED 10:35  
11 POSITIVE WERE ASYMPTOMATIC. NONE OF THOSE PEOPLE COULD BE  
12 IDENTIFIED BY THE CURRENT TESTING REGIME BY DESIGN. SO,  
13 THEREFORE, THE FACTUAL PREMISE OF THIS ARGUMENT IS FLAWED.  
14 BUT EVEN IF THE SHERIFF'S NUMBERS WERE ACCEPTED AND IT WAS  
15 TRUE THAT THERE WERE VERY FEW ACTIVE INFECTIONS IN THE 10:35  
16 JAIL TODAY? THAT STILL WOULD NOT DEFEAT THE PETITIONERS'  
17 DELIBERATE INDIFFERENCE CLAIMS. BECAUSE UNDER BLACK  
18 LETTER DELIBERATE INDIFFERENCE LAW, YOUR HONOR, THE  
19 PETITIONERS ARE NOT REQUIRED TO PROVE THE EXISTENCE OF AN  
20 ACTIVE OUTBREAK. 10:35

21 AS THE SUPREME COURT EXPLAINED IN HELLING  
22 VERUS MCKINNEY, 509 U.S. 25 AT PAGE 33, QUOTE: "IT WOULD  
23 BE ODD TO DENY INJUNCTION TO INMATES WHO PLAINLY PROVED AN  
24 UNSAFE LIFE THREATENING CONDITION IN THE PRISON ON THE  
25 GROUNDS THAT NOTHING HAD HAPPENED TO THEM. A REMEDY FOR 10:35  
26 UNSAFE CONDITIONS NEED NOT AWAIT A TRAGIC EVENT."

1 AS THIS LANGUAGE MAKES CLEAR, THAT THE  
2 INQUIRY, THE TEST FOR DELIBERATE INDIFFERENCE IS NOT  
3 WHETHER THERE IS A CURRENT HARM HAPPENING IN THE JAIL.  
4 IT'S WHETHER THERE IS A SUBSTANTIAL RISK OF FUTURE HARM  
5 FROM INFECTION BY COVID-19. IT'S IRRELEVANT WHETHER THE 10:36  
6 HARM HAS YET COME TO PASS.

7 VON STAICH IS, AGAIN, USEFUL TO CONSIDER.  
8 THE STATE ARGUED IN THAT CASE THAT EXISTING MEASURES --  
9 I'M SORRY, THE STATE ARGUED IN THAT CASE THAT A  
10 DEPOPULATION WAS NOT NECESSARY BECAUSE THE COVID-19 COUNT 10:36  
11 WAS LOW. AT THE TIME THE STATE SUBMITTED ITS RETURN,  
12 THERE WERE 37 REPORTED COVID-19 INFECTIONS AT THE SAN  
13 QUENTIN PRISON. AND THAT FIGURE CAN BE FOUND IN THE  
14 RETURN SUBMITTED IN VON STAICH AT DENIAL APPENDIX 546.

15 BY THE TIME THE COURT ISSUED ITS OPINION IN 10:36  
16 VON STAICH, THE COUNT WAS DOWN TO ONE. JUST ONE INFECTION  
17 IN THE ENTIRE PRISON. AND THAT'S IN THE VON STAICH  
18 OPINION THE COURT NOTES THIS, FOOTNOTE 14.

19 DESPITE THE LOW NUMBERS OF INFECTIONS AT THE  
20 JAIL, THE COURT REJECTED THE ARGUMENT THAT THIS SOMEHOW 10:37  
21 PROVIDED A DEFENSE TO THE DELIBERATE INDIFFERENCE CLAIM.  
22 IT REASONED THAT BECAUSE THE UNCONTROVERTED EVIDENCE  
23 SHOWED THAT CONDITIONS REMAINED DANGEROUS IN THE JAIL  
24 BECAUSE OF THE OVER-POPULATION, THE OFFICIALS WERE STILL  
25 DELIBERATELY INDIFFERENT BY FAILING TO DEPOPULATE TO 10:37  
26 ADDRESS THAT NO RISK OF FUTURE COVID-19 OUTBREAKS BASED ON

1 THE OVER-POPULATION.

2 AND THE SAME ARGUMENT APPLIES HERE. THE  
3 INQUIRY IS ABOUT THE RISK OF FUTURE HARM. AND PETITIONERS  
4 HAVE SUBMITTED EXTENSIVE, UNREBUTTED EVIDENCE OF AN  
5 INTOLERABLY HIGH RISK OF HARM FROM FUTURE COVID-19 10:37  
6 OUTBREAKS.

7 AND FINALLY THE THIRD ARGUMENT, THE SHERIFF  
8 CLAIMS THAT THEY CANNOT BE DELIBERATELY INDIFFERENT FOR  
9 THE OVER-POPULATION OF THE JAIL BECAUSE OTHER PEOPLE ARE  
10 RESPONSIBLE FOR THAT ISSUE. AND SPECIFICALLY THE SHERIFF 10:37  
11 BLAMES THE RISING POPULATION ON THE SUSPENSION OF THE  
12 JUDICIAL COUNCIL'S ZERO BAIL ORDER. THIS ARGUMENT APPEARS  
13 BOTH IN THE RETURN ITSELF AND IN THE DECLARATION OF JOSEPH  
14 BALICKI SUBMITTED WITH THE RETURN. PARAGRAPH 11  
15 SPECIFICALLY IS WHERE COMMANDER BALICKI DISCUSSES THIS. 10:38

16 THE ARGUMENT IGNORES THE FACT THAT IT IS THE  
17 SHERIFF AND NOT THE JUDICIAL COUNCIL THAT IS RESPONSIBLE  
18 FOR CONDITIONS IN THE JAIL. AS I MENTIONED, GOVERNMENT  
19 CODE SECTION 8658 AUTHORIZES THE SHERIFF TO RELEASE ANYONE  
20 FROM THE JAIL AT ANY TIME IN ORDER TO PROTECT THE 10:38  
21 POPULATION FROM AN EMERGENCY. NO PRIOR COURT ORDER IS  
22 REQUIRED. AND ALL IT TAKES IS A STROKE OF THE SHERIFF'S  
23 PEN.

24 IF THE SHERIFFS TRULY BELIEVED THAT THE ZERO  
25 BAIL ORDER WAS NECESSARY TO KEEP THE POPULATION AT AN 10:38  
26 APPROPRIATE LEVEL, HE COULD AND SHOULD USE HIS SECTION

1 8658 AUTHORITY TO RELEASE ALL PRETRIAL DETAINEES IN THE  
2 JAIL WHO WOULD HAVE QUALIFIED FOR RELEASE IF THE ZERO BAIL  
3 ORDER WERE IN EFFECT. OR, HE COULD DO OTHER THINGS. FOR  
4 EXAMPLE, HE COULD EXPAND THE CRITERIA OF HIS EXISTING VERY  
5 NARROWLY DEFINED EMERGENCY RELEASE PROGRAM TO PERMIT SOME 10:39  
6 ADDITIONAL GROUP OF DETAINEES TO BE CONSIDERED FOR  
7 RELEASE.

8 WHAT HE CANNOT DO -- BUT WHAT HE HAS DONE  
9 ANYWAY -- IS SIT ON HIS HANDS WHILE THE JAIL POPULATION  
10 SPIRALS OUT OF CONTROL. IT MAY BE CONVENIENT FOR THE 10:39  
11 SHERIFF TO RELY ON OTHER PEOPLE TO MANAGE THE JAIL  
12 POPULATION FOR HIM. BUT CONVENIENCE IS NOT THE  
13 CONSTITUTIONAL TEST. THE SHERIFF HAS A CONSTITUTIONAL  
14 DUTY TO PROVIDE REASONABLE PROTECTION AGAINST COVID-19 FOR  
15 THE MEDICALLY VULNERABLE PEOPLE IN HIS CUSTODY OR CARE. 10:39  
16 THESE ARE INDIVIDUALS WHO, BECAUSE OF THEIR INCARCERATION,  
17 CANNOT PROTECT THEMSELVES FROM COVID-19. THEY ARE  
18 ENTIRELY DEPENDENT ON THE SHERIFF AND HIS STAFF TO PROVIDE  
19 THOSE PROTECTIONS FOR HIM.

20 AND WHEN THE JAIL BECOMES TOO CROWDED TO 10:40  
21 PROVIDE THOSE PROTECTIONS, IT IS THE SHERIFF'S  
22 RESPONSIBILITY TO REMEDY THE ISSUE THROUGH RELEASES.

23 THE SHERIFF'S REFUSAL TO TAKE THAT ACTION  
24 AND HIS EFFORT TO SHIFT BLAME TO THE JUDICIAL COUNCIL  
25 SIMPLY UNDERSCORES HIS DELIBERATE INDIFFERENCE TO THE 10:40  
26 NEEDS OF THE MEDICALLY VULNERABLE PEOPLE IN THE JAIL.



1                   AND WITH THAT I'LL PASS IT TO MY COLLEAGUE,  
2 MISS BRENNAN-KROHN.

3                   THE COURT: THANK YOU, MR. TEMPLETON.

4                   MISS BRENNAN-KROHN?

5                   MS. BRENNAN-KROHN: GOOD MORNING, YOUR HONOR.           10:40  
6 ZOE BRENNAN-KROHN FOR PETITIONERS.

7                   THE SINGLE ALARMING AND ESCALATING FACT THAT  
8 MR. TEMPLETON JUST LAID OUT - OVER-CROWDING, LACK OF  
9 TESTING, INABILITY TO SOCIALLY DISTANCE, LACK OF PPE USAGE  
10 ARE NOT JUST EVIDENCE OF DELIBERATE INDIFFERENCE AND           10:40  
11 CONSTITUTIONAL VIOLATIONS. THEY'RE ALSO EVIDENCE OF  
12 DISABILITY DISCRIMINATION.

13                   AND RESPONDENTS DOESN'T CONTEST THIS.  
14 NOWHERE IN HIS RETURN DID HE SAY THAT HE IS NOT ENGAGING  
15 IN DISABILITY DISCRIMINATION. NOWHERE IN HIS RETURN DOES   10:41  
16 HE STATE THAT HE IS MAKING REASONABLE ACCOMMODATIONS  
17 REQUIRED BY STATE DISABILITY LAWS. NOWHERE DOES HE ASSERT  
18 THAT HE IS TRACKING WHO IN HIS JAIL IS DISABLED AND WHO  
19 AMONG THOSE IS VULNERABLE TO COVID. OR THAT HE'S ENSURED  
20 THAT HIS POLICIES ARE NON-DISCRIMINATORY AS REQUIRED BY       10:41  
21 DISABILITY RIGHTS LAWS.

22                   THIS COURT CAN ORDER THE RELIEF REQUESTED BY  
23 PETITIONERS SOLELY ON THE BASIS OF THESE UNCONTESTED AND  
24 EFFECTIVELY CONCEDED DISABILITY DISCRIMINATION CLAIMS. SO  
25 I JUST WANT TO SPEND A FEW MINUTES TALKING THROUGH HOW       10:41  
26 THESE CLAIMS WORK. BECAUSE BOTH THE CONSTITUTIONAL CLAIMS

1 AND GOVERNMENT CODE 11135 -- WHICH IS THE STATE DISABILITY  
2 RIGHTS CODE -- ARE INDEPENDENT AND FULLY BRIEFED AVENUES  
3 FOR RELIEF IN THIS CASE.

4 SO THE DISABILITY RIGHTS CLAIM HERE APPLY TO  
5 ALMOST EVERYONE WHO IS MEDICALLY VULNERABLE, AS DEFINED IN 10:41  
6 PETITIONERS' PAPERS. THAT IS TO SAY, ALMOST EVERYONE WHO  
7 IS MEDICALLY VULNERABLE TO COVID IS ALSO A PERSON WITH A  
8 DISABILITY. THEY'RE MEDICALLY VULNERABLE BECAUSE OF THE  
9 DISABILITY.

10 THIS INCLUDES, FOR EXAMPLE, PEOPLE WITH 10:42  
11 DIABETES, WITH HIV, CANCER, KIDNEY FAILURE, AUTOIMMUNE  
12 DISORDERS, LIVER DISEASE, AMONG OTHERS.

13 SO MOST OF THE MEDICALLY VULNERABLE PEOPLE  
14 IN THE JAIL ARE MEDICALLY VULNERABLE BECAUSE OF THEIR  
15 DISABILITIES. AND AS PEOPLE WITH DISABILITIES ARE 10:42  
16 PROTECTED UNDER 11135, THESE DISABLED DETAINEES ARE  
17 ENTITLED TO SPECIFIC DISABILITY BASED PROTECTIONS, ALONG  
18 WITH THE PROTECTIONS THAT THE CONSTITUTION AFFORDS THEM.

19 AND THESE PROTECTIONS UNDER 11135 PROTECT  
20 DISABLED PEOPLE FROM OUTRIGHT DIRECT DISCRIMINATION OF 10:42  
21 COURSE. BUT THEY ALSO -- THESE DISABILITY STATUTES ALSO  
22 IMPOSE AFFIRMATIVE OBLIGATIONS ON ENTITIES LIKE THE JAIL  
23 AND ON INDIVIDUALS LIKE RESPONDENT.

24 AND THAT'S THE CORE OF THE ISSUE HERE. THAT  
25 THE JAIL'S FAILURE TO AFFIRMATIVELY ACCOMMODATE AND 10:43  
26 PROTECT DISABLED PEOPLE IN ITS CUSTODY IS DISABILITY

1 DISCRIMINATION. BY TREATING DISABLED PEOPLE EXACTLY LIKE  
2 NON-DISABLED PEOPLE IN THE FACE OF A PANDEMIC THAT IS FAR  
3 MORE DANGEROUS TO DISABLED PEOPLE, RESPONDENT IS VIOLATING  
4 11135.

5 SO 11135 REQUIRES RESPONDENT TO MAKE CHANGES 10:43  
6 IN HIS JAIL. TO MAKE SURE THAT INCARCERATION ISN'T WORSE  
7 FOR DISABLED PEOPLE. AND TO MAKE SURE THAT ANY PROGRAMS  
8 HE IMPLEMENTS - INCLUDING HOUSING, EMERGENCY PLANNING AND  
9 PANDEMIC RESPONSES - ARE EQUALLY AVAILABLE TO DISABLED  
10 PEOPLE AND BENEFIT DISABLED PEOPLE EQUALLY. 10:43

11 11135 AND DISABILITY RIGHTS LAWS GENERALLY  
12 REQUIRE RESPONDENT TO TAKE DISABILITY INTO ACCOUNT. THIS  
13 IS THE CONTEXT IN PROVIDING REQUIREMENTS LIKE REASONABLE  
14 ACCOMMODATIONS OR REASONABLE MODIFICATIONS, AS WELL AS THE  
15 OBLIGATION TO ENSURE THAT THE JAIL'S POLICIES AND METHODS 10:43  
16 OF ADMINISTRATION ARE NON-DISCRIMINATORY.

17 SO HOW THAT WORKS IN THIS CASE IN THE TIME  
18 OF COVID IN ORANGE COUNTY JAILS IS THIS. BEING IN THE  
19 JAIL, BEING IN JAIL IN THE TIME OF COVID-19 IS MORE  
20 DANGEROUS FOR DISABLED PEOPLE. THIS IS UNCONTESTED. AND 10:44  
21 GOVERNMENT CODE 11135 PROHIBITS THE RESPONDENT FROM  
22 IGNORING THIS. IT REQUIRES HIM TO TAKE THIS FACT INTO  
23 ACCOUNT.

24 IN A CASE LIKE THIS, WHERE EQUAL TREATMENT  
25 IS GOING TO YIELD UNEQUAL OUTCOMES FOR DISABLED PEOPLE, 10:44  
26 RESPONDENT IS REQUIRED TO CHANGE HIS POLICIES AND

1 PRACTICES TO MITIGATE THAT INEQUALITY. IT'S UNDISPUTED  
2 THAT RESPONDENT HAS THESE OBLIGATIONS AND IT'S UNDISPUTED  
3 THAT HE'S BOUND TO MEET THEM.

4 TAKE JUST A FEW SPECIFIC EXAMPLES, STARTING  
5 AT THE MOST BASIC OF TRACKING. RESPONDENT HAS OBLIGATIONS 10:44  
6 TO KNOW WHO IN HIS JAIL IS DISABLED AND WHO AMONG THOSE  
7 PEOPLE WHO ARE DISABLED ARE MEDICALLY VULNERABLE TO COVID.  
8 THERE IS NO WAY HE CAN ASSESS ON AN INDIVIDUALIZED BASIS  
9 OR ON A LARGE SCALE BASIS WHAT ACCOMMODATIONS THESE  
10 DISABLED DETAINEES NEED IF HE DOESN'T KNOW WHO THEY ARE. 10:45  
11 AND HE DOESN'T.

12 TAKE ANOTHER EXAMPLE. HOUSING ASSIGNMENTS.  
13 RESPONDENT HAS OBLIGATIONS TO TAKE INTO ACCOUNT,  
14 DISABILITY IN HOUSING ASSIGNMENTS. THIS IS A ROUTINE  
15 PRACTICE IN JAILS AND PRISONS. IT'S BREAD AND BUTTER 10:45  
16 DISABILITY RIGHTS LAWS. FOR EXAMPLE, IF YOU HAD A  
17 DETAINEE WHO USED A WHEELCHAIR, YOU WOULDN'T HOUSE THEM IN  
18 AN UPPER TIER CELL, EVEN IF BUT FOR HIS DISABILITY THAT  
19 MIGHT BE THE CORRECT ASSIGNMENT. YOU MAKE A MODIFICATION  
20 TO THE ASSIGNMENT SO THAT THE HOUSING WAS ACCESSIBLE TO 10:45  
21 THE DETAINEE USING THE WHEELCHAIR.

22 THE SAME CONCEPT APPLIES HERE FOR PEOPLE WHO  
23 ARE MEDICALLY VULNERABLE BECAUSE OF DISABILITIES, THAT IS  
24 BEING HOUSED IN A LARGE, CROWDED OPEN AIR BARRACKS IS  
25 WORSE FOR DISABLED PEOPLE IN THE CONTEXT OF COVID IF IT'S 10:45  
26 MORE EXCLUSIONARY BECAUSE THEY'RE MORE LIKELY TO BECOME

1 SEVERELY ILL AND DIE? THEN RESPONDENT MUST MAKE CHANGES  
2 TO HIS HOUSING ASSIGNMENT TO TAKE THAT INTO ACCOUNT. HE'S  
3 BOUND TO DO SO.

4 ANOTHER EXAMPLE. SOCIAL DISTANCING ITSELF  
5 CAN BE A REASONABLE ACCOMMODATION. IT'S NECESSARY FOR 10:46  
6 RESPONDENT TO PROVIDE TO PEOPLE WHO BECAUSE OF THEIR  
7 DISABILITIES, ARE VULNERABLE TO COVID. AND IT'S  
8 UNDISPUTED THAT SOCIAL DISTANCING IS NOT CURRENTLY  
9 AVAILABLE FOR PEOPLE IN THE JAIL ,INCLUDING DISABLED  
10 PEOPLE. 10:46

11 AND JUST ONE MORE EXAMPLE. EMERGENCY  
12 PLANNING. RESPONDENT HAS SPECIFIC OBLIGATIONS TO ENSURE  
13 THAT HIS EMERGENCY PLANS AND POLICIES TAKE DISABILITY INTO  
14 ACCOUNT. AND HE'S FAILED. HE IS CURRENTLY IMPLEMENTING  
15 PLANS AND PROCEDURES TO RESPOND TO A PANDEMIC THAT IGNORES 10:46  
16 DISABILITY. TO BE CLEAR, THE PLAN TO IGNORE DISABILITY  
17 AGAINST THE PANDEMIC THAT TARGETS DISABILITY.

18 I CAN GO ON. BUT THE SAME CONDUCT THAT  
19 DEMONSTRATES DELIBERATE INDIFFERENCE THAT MAKES THE JAIL A  
20 POWDER KEG FOR COVID-19 INFECTION IS ALL EVIDENCE ALSO OF 10:47  
21 DISABILITY. BECAUSE THERE'S THE SHERIFF FAILURES, THE  
22 RISKS THAT HE IS TAKING, THE INABILITY OR UNWILLINGNESS TO  
23 MAKE POLICIES TO PROTECT PEOPLE IN THE JAIL WHO ARE  
24 MEDICALLY VULNERABLE, ALSO FAILURE TO MAKE ACCOMMODATIONS  
25 THAT ARE REQUIRED TO TAKE DISABILITY INTO ACCOUNT. 10:47

26 RESPONDENT HAS NO RESPONSE WHATSOEVER TO

1 THESE ARGUMENTS. THE FACTS ARE -- THE CORE FACTS ARE  
2 UNCONTESTED, AS MR. TEMPLETON ALREADY LAID OUT. AND THE  
3 LEGAL ARGUMENTS ARE ENTIRELY UNCONTESTED.

4 RESPONDENT'S REFUSAL TO CONSIDER DISABILITY  
5 IN HIS JAIL'S OPERATION IN THE FACE OF A PANDEMIC THAT IS 10:47  
6 KILLING DISABLED PEOPLE AT STAGGERING RATES IS DISABILITY  
7 DISCRIMINATION.

8 THIS COURT CAN AND SHOULD ORDER RELEASE  
9 BASED ON RESPONDENT'S VIOLATION OF SECTION 11135 AS WELL  
10 AS THE CALIFORNIA CONSTITUTION. 10:47

11 AND IF YOUR HONOR HAS NO QUESTIONS, I WILL  
12 TURN OVER TO MY COLLEAGUE, MISS STUBBS.

13 THE COURT: THANK YOU, MISS BRENNAN-KROHN.

14 MISS STUBBS?

15 MS. STUBBS: GOOD MORNING, YOUR HONOR. THIS IS 10:48  
16 CASSANDRA STUBBS ON BEHALF OF PETITIONERS.

17 MY COLLEAGUES HAVE ADDRESSED THE MERITS OF  
18 WHY PETITIONERS ARE ENTITLED TO RELEASE BECAUSE OF  
19 RESPONDENT'S CONDUCT. I WILL ADDRESS HERE, THE SPECIFIC  
20 RELEASE THAT WE'RE REQUESTING, FOCUSING FIRST ON THE 10:48  
21 HABEAS CLAIM AND THEN BRIEFLY, MORE BRIEFLY THE MANDAMUS  
22 CLAIM.

23 WITH RESPECT TO OUR HABEAS CLAIMS,  
24 PETITIONERS ASK THAT THIS COURT FIRST ORDER PETITIONER  
25 GONZALEZ' IMMEDIATE RELEASE FROM ORANGE COUNTY JAIL, UNDER 10:48  
26 THE HABEAS STATUTE PENAL CODE SECTION 1484. MISS GONZALEZ

1 IS MEDICALLY VULNERABLE. SHE HAS ALREADY ONCE CONTRACTED  
2 COVID-19 WHILE IN RESPONDENT'S CUSTODY. SHE SHOULD BE  
3 RELEASED TO A SETTING WHERE SHE CAN SOCIALLY DISTANCE,  
4 WHERE SHE CAN HAVE FRESH AIR VENTILATION, WHERE SHE WILL  
5 NOT BE EXPOSED TO INDIVIDUALS WHO DO NOT WEAR MASKS. 10:49

6 PETITIONERS ALSO ASK THAT THIS COURT  
7 EXERCISE ITS BROAD POWERS UNDER THE HABEAS REMEDY TO ORDER  
8 RESPONDENT TO DEVELOP A PROGRAM FOR RELEASE AND EVALUATION  
9 FOR RELEASE OF ALL MEDICALLY VULNERABLE AND DISABLED  
10 PEOPLE IN THE JAIL. 10:49

11 THE FIRST STEP OF THIS RELEASE THAT WE'RE  
12 REQUESTING IS A DECLARATION THAT ALL MEDICALLY VULNERABLE  
13 PEOPLE AND DISABLED PEOPLE SHOULD BE CONSIDERED FOR  
14 RELEASE BY THE JAIL BECAUSE OF THE DELIBERATE INDIFFERENCE  
15 AND DISABILITY DISCRIMINATION SHOWN. 10:49

16 WE ASK THAT THE COURT ORDER RESPONDENT TO  
17 DEVELOP A PLAN TO IDENTIFY THOSE FOR CATEGORICAL RELEASE  
18 OF THE MEDICALLY VULNERABLE, AS WELL AS INDIVIDUAL  
19 RELEASES.

20 THE PRINCIPLE UNDERLYING THE CATEGORICAL 10:49  
21 REQUEST IS THAT WE KNOW THAT THOSE INDIVIDUALS WHO ARE  
22 MEDICALLY VULNERABLE ARE THE MOST SUSCEPTIBLE TO THE  
23 DISEASE AND THE MOST -- AND THEY'RE AT THE HIGHEST RISK.

24 IT'S URGENT THAT THE RESPONDENT IDENTIFY A  
25 SYSTEM OF RELEASE WHICH CAN BE ACCOMPLISHED QUICKLY. FOR 10:50  
26 EXAMPLE, THERE ARE THOSE THAT ARE IN THE JAIL TODAY WHO

1 ARE DETAINED ON TECHNICAL, SHORT-TERM VIOLATIONS OF  
2 PROBATION. WE ASK THAN RESPONDENT CONSIDER A CATEGORICAL  
3 RULE THAT SUCH INDIVIDUALS WOULD NOT BE BOOKED INTO THE  
4 JAIL AND WOULD BE SUBJECT TO IMMEDIATE RELEASE.

5 THERE ARE OTHERS IN THE JAIL WHO ARE THERE, 10:50  
6 AS MY COLLEAGUE MR. TEMPLETON DISCUSSED, BECAUSE OF THE  
7 EXPIRATION OF THE ZERO BAIL ORDER. IT IS FULLY WITHIN  
8 RESPONDENT'S POWER TO ADOPT A RELEASE PROGRAM THAT WOULD  
9 ESSENTIALLY RE-IMPLEMENT THE ZERO BAIL ORDER AND APPLY  
10 BOTH INDIVIDUALS WHO'VE BEEN CONVICTED OF CHARGES THAT 10:50  
11 WOULD BE SUBJECT TO THE PRIOR ZERO BAIL ORDER, AS WELL AS  
12 THOSE WHO ARE BEING HELD PRETRIAL, FOR ALLEGATIONS OF  
13 CHARGES THAT WERE SUBJECT TO THE PRIOR ZERO BAIL ORDER.

14 THOSE COULD ALL BE CATEGORICAL RELEASES THAT THIS COURT  
15 CAN ORDER RESPONDENT TO CONSIDER ADOPTING AS A RELEASE 10:51  
16 PLAN.

17 SEPARATELY, WE ASK THAT THE COURT ORDER  
18 RESPONDENT TO FORMULATE A RELEASE PLAN THAT CONTEMPLATES  
19 INDIVIDUALIZED RELEASES, FOR THOSE WHO DO NOT FALL WITHIN  
20 THE CATEGORY BUT ARE MEDICALLY VULNERABLE. AND DISABLED. 10:51  
21 FOR THESE INDIVIDUAL RELEASES, IT WOULD BE APPROPRIATE TO  
22 CONSIDER THE NEED FOR POPULATION REDUCTION AT THE SAME  
23 TIME AS THE CONSTITUTIONAL RIGHTS OF THE INDIVIDUALS TO BE  
24 CONSIDERED FOR RELEASE, BALANCED AGAINST ANY COMPETENT  
25 EVIDENCE OF DANGER OR FLIGHT RISK. 10:51

26 AN ADDITIONAL COMPONENT WOULD BE, WAS THERE



1 AVAILABILITY OF ANY ALTERNATIVES FOR PLACEMENT. WHETHER  
2 THERE ARE ANY HALFWAY HOUSES, HOSPITALS, ANY OTHER  
3 CUSTODIAL PLACEMENTS THAT WOULD BE APPROPRIATE.

4 OF COURSE, EVEN UNDER THESE PROGRAMS,  
5 RESPONDENT LIKELY WILL IDENTIFY SOME INDIVIDUALS WHO ARE 10:52  
6 MEDICALLY VULNERABLE AND SHOULD NOT BE RELEASED. IN THAT  
7 CASE, IT'S IMPORTANT THAT THERE BE REMEDIES THAT ARE  
8 BROADER THAT WILL REACH THE ENTIRE JAIL. WITH RESPECT TO  
9 THAT, WE ASK THAT THE COURT ORDER RESPONDENT TO DEVELOP A  
10 PROGRAM TO CONSIDER ADDITIONAL RELEASES NECESSARY, AT A 10:52  
11 MINIMUM, TO ACHIEVE THE 50 PERCENT LEVEL GOAL THAT  
12 RESPONDENT HIMSELF HAS IDENTIFIED AS NECESSARY. IN OTHER  
13 WORDS, TO ACHIEVE A POPULATION APPROXIMATELY 2,650  
14 INDIVIDUALS. THESE ARE THE NUMBERS THAT RESPONDENT HAS  
15 IDENTIFIED IN HIS PAPERS. 10:52

16 AS THIS COURT KNOWS, THE POWERS UNDER HABEAS  
17 ARE EXCEPTIONALLY BROAD. CALIFORNIA STATUTE LANGUAGE OF  
18 COURSE UNDER SECTION 1484 IS BROAD BY ITS TERMS. IT TALKS  
19 ABOUT THE POWER OF THE COURT TO DISPOSE OF ANY PARTY THAT  
20 THE JUSTICE OF THE CASE MAY REQUIRE. IT REFERS TO THE 10:53  
21 FULL POWER AND AUTHORITY TO DO AND PERFORM ALL OTHER ACTS  
22 AND THINGS NECESSARY TO A FULL AND FAIR DETERMINATION OF  
23 THE CASE.

24 THIS BROAD LANGUAGE HAS UNSURPRISINGLY BEEN  
25 INTERPRETED BY THE CALIFORNIA SUPREME COURT REPEATEDLY TO 10:53  
26 AUTHORIZE BROAD SYSTEMIC RELIEF. MOST RECENTLY THE

1 CALIFORNIA COURT OF APPEAL IN THE VON STAICH COURT  
2 RECOGNIZED THIS. AND SPECIFICALLY FOUND A BROADER REMEDY  
3 APPROPRIATE, BEYOND JUST THE REMEDY FOR THE INDIVIDUAL  
4 PETITIONER IN VON STAICH, NOTING THAT HABEAS WAS AN  
5 ACCEPTABLE VEHICLE FOR GENERAL DECLARATION PROCEDURAL 10:53  
6 RIGHTS.

7 OTHER COURT DECISIONS, IN RE WALTERS IS AN  
8 EXAMPLE WHERE THE COURT TALKS ABOUT THE IMPORTANCE OF  
9 RECOGNIZING THE FACT THAT THE RIGHTS OF ALL SIMILARLY  
10 SITUATED PERSONS COULD BE ADDRESSED THROUGH HABEAS. AND, 10:54  
11 SO, IN THAT CASE, FOR EXAMPLE, ALTHOUGH THE CONSIDERATION  
12 OF THE INDIVIDUAL CLAIMS HAD BEEN MOOTED, THE COURT IS  
13 ALLOWED TO CONSIDER THE BROADER RELIEF.

14 IN PEOPLE VERSUS DUCE, THE APPELLATE COURT  
15 FOCUSED ON THE FACT THAT HABEAS CORPUS IS, AT ITS CORE, 10:54  
16 AN EQUITABLE REMEDY AND TALKS ABOUT THE COURT'S BROAD  
17 DISCRETIONS IN FORMULATING REMEDIES. AGAIN, NONE OF THIS  
18 IS CONTROVERSIAL BUT THERE ARE SPECIAL POWERS THAT THIS  
19 COURT CAN AND SHOULD USE IN THIS CASE.

20 HERE, WE'RE ASKING THAT THE COURT USE THESE 10:54  
21 POWERS TO DECLARE THAT THE RESPONDENT HAS VIOLATED ARTICLE  
22 1 SECTION 717 OF THE CALIFORNIA CONSTITUTION, AS WELL AS  
23 GOVERNMENT CODE 11135 AND GOVERNMENT CODE 8568 REGARDING  
24 RELEASES.

25 TURNING DO THE WRIT OF MANDATE. HERE, WE 10:54  
26 ASK THAT THE COURT ENTER A DECLARATION THAT THE RESPONDENT

1 HAS VIOLATED THE CONSTITUTION AND HIS OBLIGATIONS UNDER  
2 DISABILITY LAWS AND THE RELEASE STATUTE BY FAILING TO  
3 CONSIDER FOR IMMEDIATE RELEASE, ALSO MEDICALLY VULNERABLE  
4 INDIVIDUALS.

5 RESPONDENT'S OBJECTIONS ARE ALMOST ENTIRELY 10:55  
6 IN THIS SECTION, CLAIMS THAT THIS COURT HAS ALREADY  
7 PREVIOUSLY REJECTED. THE COURT PREVIOUSLY RULED THAT THE  
8 WRIT OF MANDATE IS AVAILABLE FOR THE CLAIMS THAT  
9 PETITIONER HAD ALLEGED, AND THAT IS THE MAIN THRUST OF  
10 RESPONDENT'S OBJECTIONS IN THEIR RETURN. 10:55

11 THE REMEDY UNDER THE POWER OF MANDATE IS  
12 DIFFERENT. HERE, THE COURT HAS LESS THAN SWEEPING POWER  
13 UNDER HABEAS. AND THIS STEP IS TO DECLARE THE CONDUCT  
14 UNLAWFUL AND LEAVE THE REMEDY TO THE RESPONSIBLE OFFICIAL.

15 PETITIONERS ASK THAT THE COURT ENTER A DECLARATION THAT 10:55  
16 THE RESPONDENT HAS VIOLATED THE CONSTITUTION AND ITS  
17 OBLIGATIONS UNDER DISABILITY LAWS AND RELEASE STATUTES BY  
18 FAILING TO CONSIDER FOR IMMEDIATE RELEASE, ALL MEDICALLY  
19 VULNERABLE INDIVIDUALS.

20 YOUR HONOR, AS COVID-19 NUMBERS RAVAGE THE 10:56  
21 COUNTRY, INCLUDING ORANGE COUNTY, WE COMMEND THE COURT FOR  
22 SCHEDULING THESE PROCEEDINGS AFTER THE DENIAL OF THE  
23 DEMURRER WITH URGENCY. WE ASK THE COURT TO GRANT RELIEF  
24 AND ORDER THE COUNTY TO ADOPT A PLAN WITH EQUAL URGENCY.  
25 TO PROTECT THE LIFE AND HEALTH OF THOSE MOST VULNERABLE IN 10:56  
26 CUSTODY IN ORANGE COUNTY TODAY.

1 THE COURT: MISS STUBBS, JUST BEFORE YOU  
2 CONCLUDE, YOU ADDRESSED SPECIFICALLY PETITIONER GONZALEZ.  
3 ACCORDING TO THE LATEST PAPERS FILED WITH THE COURT,  
4 PETITIONER, MARK TRACE IS ALSO CURRENTLY IN CUSTODY. HAS  
5 HIS STATUS CHANGED? 10:56

6 MS. STUBBS: YOUR HONOR, THAT'S CORRECT, MR.  
7 TRACE WHEN WE FILED THE AMENDED PETITION, WAS OUT OF  
8 CUSTODY, BUT HE HAS BEEN -- HAS NOW RETURNED TO CUSTODY ON  
9 A PROBATION VIOLATION. SO HE IS IN CUSTODY, AND WE WOULD  
10 ASK THAT HE BE RELEASED AS WELL. 10:57

11 THE COURT: I HAVE NOT IN ANY OF THE FILINGS TO  
12 DATE, SEEN ANYTHING THAT IS THE EQUIVALENT OF A PROPOSED  
13 ORDER OR ORDERS ALONG THE LINES YOU HAVE BEEN DESCRIBING.  
14 HAVE ANY SUCH PROPOSED ORDERS HAVE BEEN FILED AT ANY STAGE  
15 OF THE PETITION? 10:57

16 MS. STUBBS: YOUR HONOR, MUCH OF THE RELIEF, AS I  
17 DESCRIBED IT, IS SET OUT IN OUR AMENDED PETITION IN THE  
18 SECTION OF RELIEF AS WELL AS AT THE END OF OUR MEMORANDUM  
19 OF POINTS AND AUTHORITIES. BUT WITH RESPECT TO THE  
20 COURT'S SPECIFIC QUESTION, WHETHER WE SUBMITTED A PROPOSED 10:57  
21 ORDER, I BELIEVE -- AND I'LL DEFER TO MY COLLEAGUES TO  
22 CORRECT ME IF I'M WRONG -- BUT I BELIEVE THAT WE HAVE NOT  
23 SUBMITTED ONE OF THOSE. AND WE OF COURSE WOULD BE HAPPY  
24 TO DO SO TODAY.

25 THE COURT: ALL RIGHT. BEFORE TURNING TO THE 10:58  
26 RESPONDENT'S ARGUMENTS, I'M GOING TO TAKE A -- IS 10

1 MINUTES ENOUGH FOR COUNSEL?

2 MR. DUNN: FOR RESPONDENT, YES.

3 THE COURT: LET'S TAKE A 10-MINUTE ADJOURNMENT.

4 BY MY WATCH IT IS A MINUTE OR SO SHY OF 11. WE WILL

5 RESUME AT 11:10. 10:58

6 EVERYBODY JUST KEEP YOUR LINES OPEN, PLEASE,

7 SO WE RESUME WHERE WE LEFT OFF. WE ARE ADJOURNED FOR 10

8 MINUTES. THANK YOU.

9 (A RECESS WAS TAKEN.)

10 THE CLERK: COUNSEL ON COURTCALL, COURT IS AGAIN 11:10

11 IN SESSION.

12 THE COURT: ALL RIGHT. GOOD MORNING AGAIN,

13 EVERYBODY.

14 WE ARE PROCEEDING WITH THE ARGUMENTS. WHO

15 WILL SPEAK FIRST FOR THE RESPONDENT? 11:10

16 MR. DUNN: GOOD MORNING, YOUR HONOR THIS IS KEVIN

17 DUNN WITH THE COUNTY COUNSEL'S OFFICE; I WILL BE

18 PROCEEDING WITH ARGUMENT.

19 THE COURT: YES, MR. DUNN.

20 MR. DUNN: THANK YOU. 11:11

21 YOUR HONOR, WE'RE HERE THIS AFTERNOON --

22 THIS MORNING I SHOULD SAY -- FOR A VERY IMPORTANT REASON.

23 AND THAT IS BECAUSE COVID-19 IS A PANDEMIC. IT IS A

24 SCOURGE. IT IS A DANGER TO THE INMATES AND STAFF AT THE

25 ORANGE COUNTY JAIL. IT CAN TRANSMIT IN CUSTODY AND IT CAN 11:11

26 NEGATIVELY AFFECT THE MEDICALLY VULNERABLE INMATES IN OUR

1 JAILS.

2 BUT AT THE END OF THE DAY THIS IS A LEGAL  
3 CASE. AND IT IS A LEGAL CASE FOR WHICH IT IS THE  
4 PETITIONER'S BURDEN TO PROVE, NOT ONLY TO BRING FORWARD  
5 ENOUGH EVIDENCE TO ELICIT THE HEARING WE'RE IN TODAY, BUT 11:11  
6 THEN, IN FACT, TO PROVE BY A PREPONDERANCE OF THE EVIDENCE  
7 THAT THEIR CLAIMS HAVE MERIT AND ARE FACT BASED.

8 THAT, THEY HAVE NOT DONE. THE GRAVAMEN OF  
9 THE CASE IS MISSING HERE. IT IS BASED ON PAST FACTUAL  
10 MATTERS AND IS BASED ON SPECULATION ABOUT THE FUTURE. BUT 11:12  
11 IT IS NOT BASED ON THE CURRENT FACTUAL CIRCUMSTANCES AS  
12 THEY EXIST TODAY AT THE ORANGE COUNTY JAILS.

13 THE FACT IS THOUGH THAT EVEN IF ALL OF THE  
14 FACTS -- AS THE PETITIONERS HAVE ALLEGED IN THEIR  
15 COMPLAINTS AND IN THEIR DENIAL -- WERE TRUE AND 11:12  
16 UNCONTROVERTED AS THEY CLAIM THEM TO BE, IT WOULD STILL  
17 NOT BE A CLAIM OF DELIBERATE INDIFFERENCE UNDER ANY  
18 STANDARD. AND IT WOULD NOT SUPPORT A CLAIM FOR DISABILITY  
19 DISCRIMINATION UNDER ANY STANDARDS.

20 THE COURT CAN SIMPLY RULE ON THE PAPERS AT 11:12  
21 THIS POINT, THAT NO VIABLE CLAIMS HAVE BEEN SHOWN TO  
22 SUPPORT THE PETITIONERS' ACTION HERE.

23 THE FUNDAMENTALS OF THE PETITIONERS' CLAIMS  
24 ARE NOW, PRESENTLY, THAT, ONE, THERE IS NOT UNIVERSAL OR  
25 SURVEILLANCE TESTING BEING UNDERTAKEN. AND THAT, TWO, 11:12  
26 STAFF ARE ENTERING AND EXITING THE FACILITY AND THAT THAT

1 IS A VULNERABLE POINT IN THE SYSTEM. I'LL TAKE THESE  
2 QUICKLY IN TURN.

3 FIRST, UNIVERSAL AND SURVEILLANCE TESTING IS  
4 NOWHERE IN THE CDC GUIDANCE. AND UNFORTUNATELY IT  
5 REFLECTS A FUNDAMENTAL MISUNDERSTANDING ABOUT THE PUBLIC 11:13  
6 HEALTH DIRECTIVES THAT HAVE BEEN ISSUED TO CUSTODIAL  
7 INSTITUTIONS HERE. WHAT THE CDC GUIDANCE SAYS -- AND THIS  
8 IS SPECIFICALLY EXHIBIT F AT PAGE 23 OF 33 -- OR PUT A  
9 DIFFERENT WAY, IT'S 71 OF THE EXHIBITS IN SUPPORT OF THE  
10 RETURN, THE BATES STAMPED PAGE 71. 11:13

11 AND WHAT THAT SAYS IS THAT BROAD-BASED OR  
12 THIS UNIVERSAL SURVEILLANCE TESTING IS ONLY CALLED UPON  
13 WHEN CONTACT TRACING IS POSSIBLE. THE JAIL IS CONTRACT  
14 TRACING. CONTACT TRACING, RATHER. AND, THEREFORE, EVEN  
15 WITH THE CDC GUIDANCE, THE PROPOSAL BY THE PETITIONER IS 11:14  
16 NOT WARRANTED UNDER THEIR GUIDANCE.

17 MOREOVER, CONDUCTING UNWARRANTED BROAD BASED  
18 TESTING HAS A RIPPLE EFFECT IN A SEASON WHERE IMPOSED IS  
19 INCREASING OUTSIDE THE WALLS OF THE JAIL. AND THAT IS, WE  
20 USE THE SAME TESTING FACILITIES, THE SAME PUBLIC TESTING 11:14  
21 FACILITIES THAT THE PUBLIC DOES. AND UNWARRANTED TESTING  
22 TO FLOOD THOSE FACILITIES WITH TESTS THAT ARE NOT CALLED  
23 FOR, NOT DIRECTED BY GUIDANCE AND DO NOT INCREASE THE  
24 SAFETY OF INMATES SIMPLY OVERWHELMS THE SYSTEMS THAT ARE  
25 IN PLACE FOR THE PUBLIC, WHO ARE ALSO USING THOSE TESTING 11:14  
26 LOCATIONS. IT COULD ACTUALLY SLOW THE TESTING RESULTS FOR

1 THE INMATES AT OUR JAILS.

2 TAKING NUMBER TWO OF THEIR CONTENTIONS AT  
3 THIS POINT, WHICH IS THE STAFF ENTERING AND EXITING THE  
4 FACILITIES. THE FACT IS THAT SURVEILLANCE TESTING OF ALL  
5 EMPLOYEES, AGAIN, IS NOT IN THE CDC GUIDANCE. EMPLOYEES 11:15  
6 ARE SUBJECTED TO TEMPERATURE CHECKS. THEY ARE SYMPTOMS  
7 SCREENED. THEY ARE GIVEN PPE. AND, AGAIN, WE CONDUCT  
8 CONTACT TRACING IF ANY INDIVIDUAL IS SYSTEMATIC OR TESTS  
9 POSITIVE. AGAIN, THAT IS EXACTLY WHAT IS REQUIRED BY THE  
10 CDC GUIDANCE, NOT THE PETITIONERS' SPECULATIVE PLAN THAT 11:15  
11 IS NOT CALLED FOR BY THE CDC GUIDANCE.

12 WHAT'S INTERESTING IN THIS CASE ALSO IS WHEN  
13 YOU LOOK AT WHAT IS BEING REQUESTED HERE, THERE IS NO  
14 DOUBT THAT THE ONLY SOLUTION THAT PETITIONERS HAVE IS TO  
15 RELEASE INMATES FROM CUSTODY. AND WHAT'S TELLING IS THAT 11:15  
16 THERE'S NOWHERE IN THE REQUEST FOR RELIEF WHERE THERE'S  
17 SIMPLY A REQUEST FOR MORE TESTING. OR FOR MORE PPE. OR  
18 FOR A CHANGE IN HOW PEOPLE ARE TRANSPORTED. IT'S JUST  
19 RELEASE. THAT IS ALL THAT THE PETITIONERS WANT HERE.

20 PETITIONERS HAVE NOT ESTABLISHED THAT THERE 11:16  
21 IS ANY LOCATION THAT IS SAFER THAN THE ORANGE COUNTY  
22 JAILS. THE ORANGE COUNTY JAILS RIGHT NOW ARE OPERATING  
23 MUCH IN THE WAY OF A COVID BUBBLE. AND IT IS A BUBBLE  
24 THAT EVERYONE -- AND I'M SURE THAT'S RESPONDENTS AND  
25 PETITIONERS ALIKE -- ARE HOPING DESPERATELY DOES NOT POP. 11:16  
26 NO HALFWAY HOUSE, NO DRUG REHABILITATION CENTER, NO



1 MEDICAL HEALTH FACILITY, NO SOBER LIVING CENTER, NO  
2 COMMUNITY SUPERVISION OR GPS TRACKING IS SAFER  
3 DEMONSTRABLY THAN THE ORANGE COUNTY JAILS PRESENT. IT'S  
4 FIVE TIMES THE RISKS OUTSIDE THE JAILS. ONE COULD ASK  
5 WHETHER IT WOULD ACTUALLY BE DELIBERATE INDIFFERENCE TO 11:16  
6 THE WELL-BEING OF THE INMATES TO TAKE THEM FROM THEIR SAFE  
7 SITUATION AND PLACE THEM INTO A 5 PLUS HIGHER MAGNITUDE  
8 RISK ENVIRONMENT.

9 I'LL TAKE A COUPLE OF THE ITEMS THAT THE  
10 PETITIONERS RAISED IN THEIR ARGUMENTS. I KNOW THE COURT 11:17  
11 HAS READ ALL OF THE PAPERS. WE ARE HAPPY TO LITIGATE  
12 THESE MATTERS ON THE MERITS, ON THE FACTS AS THEY EXIST.  
13 WHAT WE CANNOT DO IS LITIGATE MATTERS ON MIS  
14 REPRESENTATIONS OF FACTS.

15 I QUOTED MR. TEMPLETON -- AND I WROTE IT 11:17  
16 DOWN WHEN HE WAS ARGUING -- HE STATED THAT THE ORANGE  
17 COUNTY SHERIFF'S EXPERT, QUOTE, "ADVISED THE SHERIFF TO  
18 REDUCE POPULATION BY 50 PERCENT," UNQUOTE. THAT IS FALSE.  
19 THAT IS A FALSE STATEMENT.

20 IF YOU LOOK AT THE EXHIBIT THAT HE 11:17  
21 REFERENCED, WHICH IS FROM THE APPENDIX AT 363, THE LAST  
22 TWO ITEMS -- WHICH INCIDENTALLY ARE IN AN ORDER OF  
23 PREFERENCE AND THESE ARE THE LAST TWO AND THREE OF THE  
24 ORDER OF PREFERENCE -- IF YOU LOOK THERE, YOUR HONOR, IT  
25 SAYS, "REDUCE THE POPULATION OF ALL CENTRAL DORMS." SO 11:18  
26 IT'S LIMITED BY LOCATION AND IT'S LIMITED BY TYPE OF

1 HOUSING ENVIRONMENT.

2 LET'S LOOK AT NUMBER 3. "REDUCE THE  
3 POPULATION BY 50 PERCENT (RECOMMENDATION) OF ALL THEO  
4 LACEY BARRACKS." NOWHERE HAS THE PETITIONERS POINTED TO  
5 ANYTHING THAT INDICATES THAT ANY ONE OF OUR EXPERTS EVER 11:18  
6 RECOMMENDED AN ACROSS-THE BOARD-50 PERCENT REDUCTION IN  
7 POPULATION. THAT'S A FALSE STATEMENT.

8 THERE IS ADEQUATE SPACE FOR NEW BOOKINGS AND  
9 FOR QUARANTINE.

10 PETITIONERS HAVE ARGUED THAT NOWHERE HAVE WE 11:18  
11 ESTABLISHED THAT WE ARE IMPERVIOUS TO COVID OUTBREAKS AND  
12 WE WOULD DARE NOT EVER SAY WE WERE. THERE IS A RISK EVERY  
13 SINGLE DAY THAT THERE COULD BE AN OUTBREAK AT THE ORANGE  
14 COUNTY JAIL. AND NO ONE -- THE SHERIFF AT LEAST OF ALL --  
15 HAS ANY MISAPPREHENSIONS ABOUT THAT. 11:19

16 THE PLAINTIFFS POINT THIS OUT AS IF THIS  
17 SOMEHOW ENDED. THE SHERIFF HAS RELEASED OVER 1,300  
18 INMATES AS PART OF HIS DISCRETIONARY AUTHORITY. NOT  
19 INCLUDING THE ZERO BAIL ORDER OR TRANSFERS TO STATE  
20 PRISON. AND THOSE RELEASES CONTINUE TODAY. THAT HAS NOT 11:19  
21 CHANGED. THE SHERIFF CONTINUES THE SAME EXACT POLICY THAT  
22 RESULTED IN A DECREASE IN CAPACITY AT THE JAILS. AND IT  
23 IS STILL BELOW THE CAPACITY, EVEN AS THE SHERIFF TRIES TO  
24 RELEASE INMATES TO CONTINUE TO ALLOW FOR ADEQUATE SOCIAL  
25 DISTANCING AT ALL FACILITIES. 11:20

26 THE PETITIONERS HAVE ARGUED THAT EVERY

1 PERSON THAT IS MEDICALLY VULNERABLE IS DISABLED. THAT IS  
2 ALSO FALSE. SIMPLY HAVING A DISABILITY IS NOT A MEDICAL  
3 VULNERABILITY TO COVID-19. HAVING DEAFNESS DOES NOT MAKE  
4 SOMEONE MORE PRONE TO EITHER GETTING COVID OR TO THE  
5 EFFECTS OF COVID. HAVING BLINDNESS. USING A WHEELCHAIR. 11:20  
6 IT IS SIMPLY NOT THE FACT -- AS PETITIONERS WOULD HAVE  
7 THIS COURT BELIEVE -- THAT MEDICALLY VULNERABLE AND  
8 DISABLED ARE THE SAME. THEY ARE NOT.

9 MOREOVER, PLAINTIFFS HERE HAVE NOT SHOWN --  
10 AS FAR AS THEIR DISABILITY DISCRIMINATION CLAIMS -- ANY 11:20  
11 SPECIFIC DISABILITY OF ANY INDIVIDUAL. SPECIFICALLY MARK  
12 TRACE AND SANDY GONZALEZ, WHO ARE BEFORE THE COURT  
13 PRESENTLY, BUT THEY HAVE NOT SHOWN A SPECIFIC DISABILITY,  
14 A QUALIFYING DISABILITY OF ANY PERSON THAT THEY WOULD  
15 PURPORT TO REPRESENT. 11:21

16 PART TWO OF THAT IS THAT THEY HAVE SHOWN NO  
17 SERVICE OR ACCOMMODATION THAT ANY PERSON IS NOT RECEIVING  
18 ON THE BASIS OF THE DISABILITY THAT THEY HAVE NOT SHOWN.  
19 IT IS AN ARGUMENT. IT IS NOT FACT BASED. THE PLAINTIFFS  
20 HAVE FAILED ENTIRELY TO SHOW THEIR CLAIMS ON THIS POINT. 11:21  
21 AND CERTAINLY BY PREPONDERANCE OF THE EVIDENCE, AS THEY  
22 STAND BEFORE THIS COURT TODAY.

23 THE SHERIFF HAS DONE EVERYTHING IN ITS POWER  
24 TO CREATE AN ENVIRONMENT TO ALLOW FOR SOCIAL DISTANCING  
25 AND ALLOW THE INMATES TO FOLLOW THE GUIDANCE THAT THEY ARE 11:21  
26 PROVIDED AT THE JAILS. HERE, THE PETITIONERS SIMPLY THINK

1       THEY HAVE A BETTER MOUSETRAP.   THEY JUST SIMPLY THINK THAT  
2       THEIR EXPERT WOULD RUN THE JAIL BETTER.   NOTWITHSTANDING  
3       THE VOLUMINOUS LEVEL OF EXPERIENCE, BOTH MEDICAL AND  
4       CORRECTIONAL, THAT IS BEING BROUGHT TO BEAR ON THIS ISSUE  
5       OVER AT THE ORANGE COUNTY JAILS.   THEY JUST SIMPLY THINK       11:22  
6       THEY HAVE A BETTER PLAN.   AND THEY DON'T.   WE CAN SEE THAT  
7       BECAUSE THEIR PLAN INVOLVES PUTTING PEOPLE AT HIGHER RISK  
8       THAN THEY'RE CURRENTLY IN NOW.

9                   PLAINTIFFS HIGHLIGHTED SOMETHING THAT WAS --  
10       COMMANDER BALICKI HAD INDICATED THAT "THE RISE IN       11:22  
11       POPULATION IS A VERY HUGE CONCERN FOR US," UNQUOTE.   IT'S  
12       NOT DELIBERATE INDIFFERENCE.   AS I POINTED OUT AT THE  
13       BEGINNING OF THIS, EVERY DAY THE STAFF AT THE ORANGE  
14       COUNTY JAILS IS CONCERNED, ALARMED, ON AN EMERGENCY BASIS  
15       RESPONDING.   AND IT IS, IT'S A VERY HUGE CONCERN FOR US,       11:22  
16       ADMITTEDLY, AS WELL IT SHOULD BE.

17                   YOUR HONOR, THE PLAINTIFFS HAVE ARGUED IN  
18       THIS PROCEEDING BY CITING THE HELING VERSUS MCKINNEY  
19       CASE, WHICH IS AN INJUNCTIVE RELIEF CASE.   THEY'VE ALREADY  
20       REVIEWED THE INJUNCTIVE RELIEF.   MISS STUBBS HAS COME       11:23  
21       FORWARD AND CLARIFIED THE LIST OF RELIEF THAT THEY REQUEST  
22       UNDER ALL OF THEIR CLAIMS.   WE BELIEVE THAT THIS COURT --  
23       BECAUSE ALL OF THE CLAIMS ARISE FROM THE SAME FACTUAL  
24       CIRCUMSTANCES AND ASK FOR THE IDENTICAL RELIEF -- THE  
25       COURT CAN RULE ON ALL OF THESE CLAIMS PART AND PARCEL AS       11:23  
26       THE PETITIONERS HAVE ARGUED HERE TODAY.

1           THERE IS NO CURRENT OUTBREAK, THANKFULLY, AT  
2 THE ORANGE COUNTY JAILS PRESENTLY. WE HOPE TO KEEP IT  
3 THAT WAY. THE SHERIFF IS CONTINUING EVERY SINGLE EVERY  
4 TIME, RELEASES, PPE, TESTING, SCREENING, SOCIAL  
5 DISTANCING, QUARANTINE, EVERY POSSIBLE RECOMMENDATION AND 11:24  
6 UPDATES OF PUBLIC HEALTH GUIDANCE THAT'S BEING PROVIDED.  
7 IT IS WORKING, THANKFULLY. WE HOPE THAT THAT WILL  
8 CONTINUE. I CAN ONLY IMAGINE THAT THE PETITIONERS HOPE  
9 THE SAME.

10           WITH THAT, WE WILL SUBMIT THE MATTER TO THE 11:24  
11 COURT. UNLESS THE COURT HAS QUESTIONS OR MY COLLEAGUE,  
12 MISS WATSON, HAS ANYTHING SHE WOULD LIKE TO DO ADD.

13           MS. WATSON: I HAVE NOTHING FURTHER TO DO ADD,  
14 YOUR HONOR. BUT WE ARE AVAILABLE FOR QUESTIONING.

15           THE COURT: MR. DUNN, ONE QUESTION ON YOUR 11:24  
16 DISCUSSION CONCERNING THE 50 PERCENT REDUCTION. THE  
17 CONTENTION BY PETITIONERS FROM THE GET-GO HAS BEEN THAT  
18 THE SHERIFF'S OWN ADVISOR HAD ADVISED A 50 PERCENT  
19 REDUCTION. I DO NOT RECALL SEEING IN ANY PAPERS FILED ON  
20 BEHALF OF RESPONDENT, ANY CHALLENGE TO THAT CONTENTION 11:25  
21 EITHER BY ANYBODY ELSE OR BY DR. CHIANG HIMSELF.

22           IS THERE ANY PLACE IN ANYTHING FILED BY  
23 RESPONDENT WHERE THERE IS A CHALLENGE TO THE CONTENTION  
24 THAT WHAT DR. CHIANG HAD IN MIND WAS A GENERAL 50 PERCENT  
25 REDUCTION IN POPULATION? 11:25

26           MR. DUNN: YES, YOUR HONOR. SPECIFICALLY

1 REFERRING BACK TO THE ITEM I HAD REFERRED TO THAT THE  
2 PETITIONERS RELY ON ACTUALLY TO FOMENT THIS ALLEGATION.  
3 IF THE COURT TAKES THE TIME TO EXAMINE THAT, IT ACTUALLY  
4 DOES NOT SAY THAT AT ALL.

5 THE COURT: I'VE READ THE E-MAIL IN WHICH THIS IS 11:25  
6 SET FORTH. THE E-MAIL WAS INTERPRETED AND HAS BEEN  
7 INTERPRETED THROUGHOUT BY PETITIONERS AS GENERALLY THE  
8 COURT REQUIRING A 50 PERCENT REDUCTION.

9 IS THERE ANYTHING IN ANY OF RESPONDENT'S  
10 PAPERS WHERE THE RESPONDENT HAS TAKEN ISSUE WITH THAT 11:26  
11 CHARACTERIZATION, INCLUDING -- I DO NOT RECALL SEEING  
12 ANYTHING, FOR EXAMPLE, IN DR. CHIANG'S OWN SUBSEQUENT  
13 DECLARATIONS IN WHICH HE CHALLENGES THEIR CHARACTERIZATION  
14 OF HIS E-MAIL.

15 IS IT ANYWHERE IN RESPONDENT'S PAPERS THAT 11:26  
16 THE E-MAIL IS TO BE NARROWLY INTERPRETED TO MEAN SOME BUT  
17 NOT ALL?

18 MR. DUNN: SO SPECIFICALLY WITH RESPECT TO IN THE  
19 RESPONDENT'S PAPERS, NO. BUT WE RELY ON THE -- AGAIN,  
20 THIS IS COMING BACK TO WE RELY ON THE DOCUMENT THAT THEY 11:26  
21 ARE ACTUALLY USING TO GET TO THAT CONCLUSION TO POINT OUT.  
22 SO, FOR INSTANCE, IN THAT SAME ITEM -- I DON'T KNOW IF THE  
23 COURT HAS IT FRONT OF IT -- BUT ITEM 663, APPENDIX 363, IF  
24 YOU LOOK AT THE ONE, TWO, THREE, FOURTH PARAGRAPH FROM THE  
25 BOTTOM AFTER THE SIX POINT LIST? SPECIFICALLY -- IT SAYS 11:26  
26 RIGHT THERE -- "IN OUR OPINION THE IDEAL SCENARIO IN THE

1 JAIL TO PROMOTE SOCIAL DISTANCING IS THAT ALL CONGREGATE  
2 LIVING AREAS REDUCE POPULATION BY 50 PERCENT."

3 SO THIS DOCUMENT THAT THEY'VE RELIED ON TO  
4 SAY THAT THEY INTERPRET IT AS A GLOBAL OR CATEGORICAL 50  
5 PERCENT REDUCTION ACTUALLY UNDERCUTS THEIR POSITION ON IT 11:27  
6 THROUGHOUT.

7 SO NOWHERE IN THIS DOCUMENT DOES IT REFER TO  
8 ANYTHING OTHER THAN CONGREGATE LIVING SITUATIONS, AND  
9 SPECIFICALLY THE CJX DORMS AND THEO BARRACKS, ARE THE ONLY  
10 PARTS THAT ARE REFERENCED WITH RESPECT TO A 50 PERCENT 11:27  
11 REDUCTION.

12 MS. WATSON: AND, YOUR HONOR, THIS IS KAYLA  
13 WATSON.

14 MAY I JUST POINT OUT THAT PRIOR TO COVID,  
15 FOR EXAMPLE, AS OF MARCH 16TH, THE JAIL POPULATION WAS AT 11:27  
16 5,132. AS OF TODAY IT SITS AT 3,725. IT DID DROP -- WHEN  
17 WE HAD THE ZERO BAIL ORDER IN EFFECT THROUGHOUT THE STATE,  
18 YOU KNOW, WE WERE AT AROUND 2,600. HOWEVER, I JUST WANT  
19 TO POINT OUT TO THE COURT THAT OUR NUMBERS, GENERAL  
20 POPULATION-WISE, STILL REMAIN VERY LOW COMPARED TO WHAT 11:28  
21 THEY WERE PRE COVID.

22 THE COURT: ALL RIGHT. THANK YOU, MR. DUNN AND  
23 MISS WATSON.

24 NOW BACK TO PETITIONERS, FOR YOUR REPLY.

25 MR. TEMPLETON: YES. THANK YOU, YOUR HONOR. 11:28  
26 THIS IS TREVOR TEMPLETON FOR PETITIONERS.

1           A FEW QUICK POINTS BEFORE, BEFORE -- AND I  
2 WANT TO TALK ABOUT THE POPULATION MANAGEMENT THAT WE JUST  
3 FINISHED -- BUT A FEW QUICK POINTS BEFORE WE GET THERE.  
4 AND THAT IS THAT THE PETITIONERS ALLEGE AT LENGTH, A  
5 NUMBER OF UNSAFE PRACTICES IN THE JAIL, SUCH AS -- AS I       11:28  
6 DISCUSSED EARLIER -- A FAILURE TO IMPLEMENT AND ENFORCE A  
7 UNIVERSAL MASKING DIRECTIVE, UNSAFE TRANSPORTATION  
8 PRACTICES AND UNSAFE CLEANING AND DISINFECTION PRACTICES.  
9 ALL OF THOSE ALLEGATIONS WERE LAID OUT AT LENGTH IN OUR  
10 VERIFIED PLEADINGS, SUPPORTED BY SWORN DECLARATIONS BOTH     11:29  
11 WITH OUR COMPLAINT AND ADDITIONAL DECLARATIONS SUBMITTED  
12 WITH THE DENIAL. AND NONE OF THOSE ALLEGATIONS HAVE BEEN  
13 CONTROVERTED OR REBUTTED.

14           IN THE PAPERS OR EVEN IN THE ARGUMENT HERE,  
15 THE FOCUS FROM MR. DUNN WAS ON THE SURVEILLANCE TESTING     11:29  
16 PRIMARILY. AND WHILE WE DO TAKE ISSUE WITH THE ADEQUACY  
17 OF THE TESTING PROTOCOL, THAT IS ONLY ONE PART OF A MUCH  
18 LARGER CASE THAT HANGS ON SYSTEMIC DEFICIENCIES IN THE  
19 IMPLEMENTATION OF COVID-19 MITIGATION PRACTICES AT THE  
20 JAIL. AND MR. DUNN DIDN'T EVEN TRY TO ADDRESS THE VAST     11:29  
21 MAJORITY OF THE DEFICIENCIES THAT WE POINT OUT AT LENGTH  
22 IN OUR PLEADINGS AND THEY WERE UNCONTROVERTED IN THE  
23 RETURN.

24           SPECIFICALLY WITH RESPECT TO POPULATION  
25 MANAGEMENT, MR. DUNN TAKES A DIFFERENT READING OF THE     11:30  
26 EXHIBIT THAT'S NOW BEEN DISCUSSED AT LENGTH HERE THAN WE



1 DO. I WOULD NOTE THAT, AS YOUR HONOR POINTED OUT, THE  
2 PETITIONERS HAVE TAKEN THE POSITION THROUGHOUT THIS  
3 LITIGATION THAT THE RECOMMENDATION WAS FOR A 50 PERCENT  
4 REDUCTION ACROSS THE BOARD.

5 THE RESPONDENT HAS NEVER DISPUTED THAT 11:30  
6 INTERPRETATION. IN FACT, THERE ARE NUMEROUS REFERENCES IN  
7 THE RETURN BRIEF AND IN THE DECLARATION OF -- I BELIEVE  
8 COMMANDER BALICKI SUBMITTED WITH THE RETURN -- WHERE THERE  
9 ARE REFERENCES TO REDUCING THE POPULATION BY NEARLY 50  
10 PERCENT. THIS COMES UP REPEATEDLY IN THE RETURN BRIEF, 11:30  
11 THIS NOTION THAT THE POPULATION WAS REDUCED BY 50 PERCENT.  
12 IT'S AN IMPLICIT -- IT'S IMPLICIT ACKNOWLEDGEMENT THAT THE  
13 50 PERCENT STANDARD WAS VIEWED AS AN ACROSS-THE-BOARD  
14 STANDARD BY PETITIONERS AND WAS NOT -- NEVER REBUTTED OR  
15 ADDRESSED. 11:31

16 IF DR. CHIANG BELIEVES THAT THE PETITIONERS  
17 GOT HIS E-MAIL WRONG OR THAT SOMEHOW CONDITIONS HAVE  
18 CHANGED IN THE TIME PERIOD SINCE MARCH WHEN HE MADE HIS  
19 RECOMMENDATION, SUCH THAT A 50 PERCENT POPULATION  
20 REDUCTION IS NO LONGER NECESSARY IN HIS VIEW, PRESUMABLY 11:31  
21 HE WOULD HAVE SAID AS MUCH IN HIS DECLARATION THAT HE  
22 SUBMITS WITH THE RETURN. INSTEAD, HE SAYS VIRTUALLY  
23 NOTHING ABOUT POPULATION MANAGEMENT OR SOCIAL DISTANCING  
24 ANYWHERE IN THAT DECLARATION.

25 HE CERTAINLY DOES NOT SAY ANYTHING IN HIS 11:31  
26 DECLARATION THAT WOULD PUT AT ISSUE, THE NECESSITY OF A 50

1 PERCENT REDUCTION OF POPULATION. BOTH ACCORDING TO HIS  
2 OWN PRIOR RECOMMENDATION AND ACCORDING TO THE EXPERT  
3 OPINIONS SUBMITTED WITH THE PETITIONERS' APPOINT.

4 BUT I WILL NOTE THAT EVEN IF MR. DUNN IS  
5 CORRECT IN HIS READING OF THE E-MAIL, THAT THE 50 PERCENT 11:31  
6 REDUCTION RECOMMENDATION WAS CONFINED TO DORMITORY MULTI-  
7 PERSON CELLS? THERE'S STILL NO QUESTION OF FACT, THERE'S  
8 NO DISPUTE THAT THE SHERIFF HAS REFUSED TO EVEN IMPLEMENT  
9 THAT NARROW VERSION OF THE GUIDANCE.

10 THE JAIL, AGAIN, IS OPERATING SIGNIFICANTLY 11:32  
11 ABOVE ITS RATED CAPACITY SYSTEM-WIDE. AND THE THEO LACEY  
12 FACILITY, AGAIN, IS AT 117 PERCENT OF CAPACITY. THAT IS  
13 IMPORTANT BECAUSE, AMONG OTHER THINGS, THEO LACEY IS  
14 COMPRISED LARGELY PF VERY LARGE BARRACK-STYLE CELLS AND  
15 MULTI-PERSON DORMITORIES. THAT'S THE BULK OF THE HOUSING 11:32  
16 ARRANGEMENTS THAT'S AT THEO LACEY.

17 THAT'S NOT CONTROVERTED, BY THE WAY. THERE  
18 IS A BSCC INSPECTION REPORT THAT THE PETITIONERS SUBMITTED  
19 WITH THEIR PAPERS THAT EXPLAINS THE EXACT COMPOSITION OF  
20 ALL THE JAIL FACILITIES IN TERMS OF THE TYPES OF CELLS. 11:32  
21 IF YOU LOOK AT THAT, YOU'LL SEE THAT THEO LACEY IS ALMOST  
22 ENTIRELY LARGE BARRACKS AND DORMS. THAT FACILITY IS  
23 OPERATING SIGNIFICANTLY ABOVE ITS RATED CAPACITY, STRONGLY  
24 INDICATING THAT YOU HAVE OVER-POPULATED DORMS AND HOUSING.  
25 AND IT'S PRECISELY THE KINDS OF UNITS THAT EVEN ON MR. 11:33  
26 DUNN'S NARROW VIEW OF DR. CHIANG'S RECOMMENDATION, NEEDED

1 TO BE REDUCED SUBSTANTIALLY IN POPULATION.

2 THIS IS ALSO CONFIRMED IN THE DEPOSITION OF  
3 DALLAS HENNESSEY, WHO I MENTIONED EARLIER. HE'S IN CHARGE  
4 OF HOUSING ASSIGNMENTS AT THE JAIL. IF YOU LOOK AT HIS  
5 DEPOSITION TESTIMONY -- IT'S DENIAL APPENDIX 242 -- HE 11:33  
6 STATES IN HIS DEPOSITION THAT THE THEO LACEY BARRACKS,  
7 WHICH HAVE A RATED CAPACITY OF, I BELIEVE, 100 PEOPLE, ARE  
8 CURRENTLY HOUSING AT THE TIME OF HIS DEPOSITION A COUPLE  
9 WEEKS AGO, ARE HOUSING 140 PEOPLE EACH.

10 SO YOU HAVE LARGE BARRACKS, PRECISELY THE 11:33  
11 KIND THAT -- EVEN ON MR. DUNN'S VIEW -- NEEDED TO BE  
12 DEPOPULATED SUBSTANTIALLY. THOSE ARE NOT ONLY NOT  
13 DEPOPULATED, BUT THEY ARE CURRENTLY 40 PERCENT ABOVE THEIR  
14 RATED CAPACITY.

15 140 PEOPLE IN A DORM THAT WAS DESIGNED TO 11:34  
16 HOLD 100 PEOPLE? THERE'S NO WAY THAT SOCIAL DISTANCING  
17 CAN BE PRACTICED IN THAT KIND OF ARRANGEMENT. THERE'S NO  
18 DISPUTED FACT ABOUT THAT. IT'S DELIBERATELY INDIFFERENT  
19 FOR THE SHERIFF TO CONFINE LARGE NUMBERS OF PEOPLE,  
20 INCLUDING MEDICALLY VULNERABLE PEOPLE IN THAT KIND OF AN 11:34  
21 ARRANGEMENT, PARTICULARLY GIVEN THE PRIOR RECOMMENDATION  
22 OF HIS OWN EXPERT TO PRIORITIZE THOSE PRECISE AREAS FOR  
23 DEPOPULATION.

24 ON STAFF ENTERING AND EXITING, THE  
25 PETITIONERS EXPLAIN AT LENGTH IN THEIR PAPERS THAT THIS 11:34  
26 NOTION THAT THE JAIL IS SOMEHOW HERMETICALLY SEALED FROM

1 THE SURROUNDING COMMUNITY IS FALSE. "THAT COVID-19 WILL  
2 INEVITABLY ENTER THE JAIL FACILITY THROUGH THE REGULAR  
3 MOVEMENT OF BOTH STAFF AND INCARCERATED PEOPLE INTO AND  
4 OUT OF THE FACILITY."

5 MR. DUNN'S RESPONSE TO THIS WAS -- AS I 11:35  
6 UNDERSTOOD IT -- THAT EMPLOYEES DON'T NEED TO BE SUBJECTED  
7 TO SURVEILLANCE TESTING TO PREVENT THE DISEASE FROM COMING  
8 IN.

9 HE ALSO MADE SOME REFERENCE TO HOPING  
10 DESPERATELY THAT THE BUBBLE WILL NOT POP. FRANKLY, HOPE 11:35  
11 AND DESPERATION IS NOT THE CONSTITUTIONAL TEST. THE TEST  
12 IS WHETHER THE JAIL HAD TAKEN SUFFICIENT REASONABLE  
13 MEASURES TO MITIGATE THE RISK OF COVID-19 ENTERING THE  
14 JAIL FACILITIES. AND THE NEED TO DO THIS IS PARTICULARLY  
15 HEIGHTENED, GIVEN THE RAMPANT OVERCROWDING IN THE JAIL 11:35  
16 FACILITIES, WHICH MEANS THAT IF COVID DOES ENTER THE  
17 GENERAL POPULATION, IT WILL -- AS THE PETITIONERS' EXPERTS  
18 SAY WITHOUT DISPUTE IN THE RETURN -- IT WILL SPREAD LIKE  
19 WILDFIRE IN THE OVER-POPULATED FACILITIES.

20 THE UNCONTROVERTED EVIDENCE SHOWS THAT THERE 11:36  
21 IS NOT ONLY NO REGULAR SURVEILLANCE TESTING OF STAFF, BUT  
22 ALSO, AGAIN, STAFF ROUTINELY INTERACT WITH INCARCERATED  
23 PEOPLE AT THE JAIL IN CIRCUMSTANCES WHERE THEY EITHER FAIL  
24 TO OR REFUSE FOR SOME REASON TO WEAR MASKS. THIS IS A  
25 CHRONIC PROBLEM OUTLINED IN DOZENS OF INCARCERATED 11:36  
26 PERSONS' DECLARATIONS, NONE OF WHICH WERE CONTROVERTED.

1 STAFF, AGAIN, TRANSPORT PEOPLE TO THE COURT  
2 AND OTHER FACILITIES IN LOCATIONS WHERE SOCIAL DISTANCING  
3 IS IMPOSSIBLE.

4 AND I COULD GO ON. THE POINT IS THAT THE  
5 JAIL IS INTERCONNECTED WITH THE BROADER COMMUNITY. THE 11:36  
6 BROADER COMMUNITY IS EXPERIENCING A SPIKE IN COVID-19  
7 CASES. AND THE SHERIFF HAS FAILED TO TAKE REASONABLE  
8 MEASURES TO PREVENT THE DISEASE FROM ENTERING THE  
9 FACILITIES.

10 THOSE FAILURES, COMBINED WITH A RAMPANT 11:36  
11 OVER-POPULATION DUE TO THE SHERIFF'S MISMANAGEMENT OF THE  
12 POPULATION, THOSE CREATE AN INTOLERABLE RISK OF FUTURE  
13 COVID-19 OUTBREAKS, WHICH IS DELIBERATELY INDIFFERENT TO  
14 THE RIGHTS OF MEDICALLY VULNERABLE PEOPLE IN THE JAIL,  
15 YOUR HONOR. 11:37

16 AND WITH THAT, I BELIEVE MY COLLEAGUE WOULD  
17 LIKE TO ADDRESS THE DISABILITY CLAIMS. MISS BRENNAN-  
18 KROHN.

19 MS. BRENNAN-KROHN: YES, YOUR HONOR, THIS IS ZOE  
20 BRENNAN-KROHN -- I'M SORRY? 11:37

21 THE COURT: YES, YOU MAY PROCEED.

22 MS. BRENNAN-KROHN: THANK YOU, YOUR HONOR.

23 I JUST WANTED TO CLARIFY BRIEFLY THE  
24 DISABILITY CLAIMS IN THIS CASE, BECAUSE RESPONDENT  
25 MISCHARACTERIZED THEM AND I WANT TO BE CLEAR ABOUT HOW 11:37  
26 THESE CLAIMS WORK.

1                   AND, SO, THE DISABILITY CLASS, AS WE'VE  
2 IDENTIFIED HERE IN PARAGRAPH 81 OF OUR PETITION, IS A  
3 SUBSET OF THE MEDICALLY VULNERABLE CLASS. SO THEY'RE NOT  
4 TALKING ABOUT PEOPLE WHO HAVE DISABILITIES THAT DO NOT  
5 MAKE THEM MEDICALLY VULNERABLE TO COVID. 11:38

6                   NOW, AS A FACTUAL MATTER, SOME PEOPLE WITH  
7 OTHER TYPES OF DISABILITIES, LIKE WHEELCHAIR USERS, DO  
8 SEEM TO BE AT HIGH RISK FOR COVID. BUT THAT'S NOT WHAT  
9 WE'RE TALKING ABOUT HERE. SO WE'RE TALKING ABOUT PEOPLE  
10 WHO ARE MEDICALLY VULNERABLE BECAUSE OF DISABILITY. 11:38

11 THEY'RE ALREADY IN A MEDICALLY VULNERABILITY CLASS AND THE  
12 REASONS FOR THAT VULNERABILITY, YOUR HONOR, ARE PROTECTED  
13 DISABILITIES.

14                   AND THE DISABILITIES OF THE PETITIONERS AT  
15 ISSUE ARE -- CONTRARY TO MR. DUNN'S CONTENTION -- ARE, I 11:38  
16 LAID OUT IN OUR PAPERS, WE IDENTIFY THAT MISS GONZALEZ HAS  
17 DIABETES, WHICH IS AN ESTABLISHED DISABILITY UNDER SECTION  
18 11135. WE ESTABLISH THAT MR. TRACE HAS MULTIPLE  
19 DISABILITIES, INCLUDING HEPATITIS, INCLUDING ASTHMA AND  
20 TUBERCULOSIS. THESE ARE ALL DISABILITIES PROTECTED 11:38  
21 SECTION 11135 AND ARE CONDITIONS THAT MAKE THEM MEDICALLY  
22 VULNERABLE TO COVID-19.

23                   AND TO THE EXTENT THAT IN ORAL ARGUMENT  
24 RESPONDENTS ARE NOW COMING FORWARD AND SAYING THAT THEY  
25 DON'T THINK THOSE DISABILITIES COUNT OR THEY DON'T THINK 11:39  
26 THAT THERE ARE PROGRAMS THAT THE JAIL IS DENYING ACCESS

1 TO, THOSE ARE ALL ARGUMENTS THAT WERE WAIVED BY NOT BEING  
2 PUT FORTH IN THE PAPERS. THIS ORAL ARGUMENT IS NOT THE  
3 TIME TO COME FORWARD WITH AFFIRMATIVE DEFENSES THAT WERE  
4 NOT RAISED IN THE PAPERS. AND THIS WASN'T A CLAIM THAT WE  
5 HAVE KNOCKED INTO THIS CASE. THIS ISN'T A "GOTCHA" 11:39  
6 MOMENT.

7 THE RESPONDENT ADDRESSED OUR DISABILITY  
8 CLAIMS IN THE DEMURRER PLEADINGS. THE RESPONDENT HAS BEEN  
9 ON NOTICE THROUGHOUT THE ENTIRE LIFE OF THIS CASE AND THE  
10 PARALLEL FEDERAL CASE, THAT THESE ARE CLAIMS BASED ON 11:39  
11 DISABILITY DISCRIMINATION AND CONSTITUTIONAL VIOLATIONS.  
12 AND RESPONDENT FAILED TO COME FORWARD WITH ANY AFFIRMATIVE  
13 DEFENSES UNTIL NOW, AND THE MOMENT HAS PASSED.

14 WE BELIEVE VERY STRONGLY THAT THESE  
15 ARGUMENTS WOULD FAIL, EVEN IF THEY HAD BEEN FULLY BRIEFED 11:40  
16 ON THE PAPERS, BUT THEY SIMPLY HAVE NOT.

17 AND I'M HAPPY TO HAVE FURTHER QUESTIONS.  
18 AND IF NOT, I BELIEVE THAT'S ALL PETITIONERS HAVE AT THIS  
19 TIME.

20 THE COURT: I DO NOT HAVE QUESTIONS BUT I WILL IF 11:40  
21 YOU WANT IT, MR. DUNN, GIVE YOU A FINAL OPPORTUNITY TO BE  
22 HEARD ON ANYTHING IN THE REPLY?

23 MR. DUNN: THANK YOU, YOUR HONOR. I WILL DEFER  
24 TO MISS WATSON.

25 MS. WATSON: YOUR HONOR, A COUPLE OF THINGS. 11:40

26 I WOULD JUST LIKE TO POINT OUT TO THE COURT

1 THAT IF DR. CHIANG'S RECOMMENDATION IN THAT E-MAIL SEEMS  
2 TO BE AT ISSUE IN THIS HEARING, IT IS, IN FACT, AN ISSUE  
3 AND THE COURT IS, YOU KNOW, FACING A ROADBLOCK AS TO IT  
4 AND IS RELYING ON IT IN MAKING ITS DECISION, WE WOULD ASK  
5 THAT WE BE GIVEN AN OPPORTUNITY TO PUT DR. CHIANG ON THE 11:41  
6 STAND AND PROVIDE TESTIMONY FROM HIM SO HE CAN EXPLAIN  
7 EXACTLY WHAT HE MEANT BY THAT E-MAIL AND WHAT THE MEANING  
8 OF THAT E-MAIL SAID.

9 AND I WOULD ALSO JUST POINT OUT THAT, YOU  
10 KNOW, PETITIONERS REPEATEDLY SAY THAT NONE OF THIS IS 11:41  
11 CONTROVERTED. "NONE OF THIS IS CONTROVERTED." AND I'M NOT  
12 SURE HOW THEY GET THERE, WHEN WE HAVE COMPETING  
13 DECLARATIONS SPECIFICALLY ABOUT THE MASK WEARING, SOCIAL  
14 DISTANCING, PPE, TRACKING OF INMATES, ET CETERA.

15 SO IF THE COURT IS IN SOME WAY, YOU KNOW, 11:41  
16 BUYING THAT ARGUMENT, THAT THESE FACTS ARE UNCONTROVERTED  
17 BECAUSE THEY PUT FORTH A DECLARATION AFTER OUR RETURN, WE  
18 WOULD ALSO LIKE THE OPPORTUNITY TO CROSS-EXAMINE THOSE  
19 WITNESSES AND PRESENT EVIDENCE AS TO EACH ONE OF THOSE  
20 FACTS. 11:42

21 AND I JUST WANT TO VERY BRIEFLY TOUCH ON  
22 RATED CAPACITY AND EXPLAIN TO THE COURT THAT RATED  
23 CAPACITY IS NOT ACTUAL CAPACITY OF THE JAIL. RATED  
24 CAPACITY IS A SERIES THAT IS BROUGHT OUT BY -- IT'S UNDER  
25 TITLE 15 AND IT'S MINIMUM STANDARDS FOR CUSTODIAL 11:42  
26 FACILITIES. AND IT'S QUITE HONESTLY A RED HERRING IN



1 TERMS OF THIS HEARING.

2 BUT I WILL TELL THE COURT THAT WE ARE  
3 CURRENTLY AT 2,434 INMATES BELOW ACTUAL CAPACITY. AND AS  
4 I STATED, YOU KNOW, WE ARE QUITE BELOW POPULATION PRE-  
5 COVID, WHAT WE WERE PRE-COVID. AND I THINK THAT'S 11:42  
6 COMPELLING.

7 AND THEN I WILL JUST END WITH, TO REITERATE  
8 THAT WE HAVE ZERO INMATES IN THE GENERAL POPULATION OF THE  
9 JAIL THAT HAVE COVID. AND IF ANY OF THESE, YOU KNOW,  
10 FACTS OR STATEMENTS -- WHATEVER YOU WANT TO CALL THEM -- 11:43  
11 THAT HAVE BEEN PUT FORTH BY PETITIONERS WERE TRUE, THE  
12 EVIDENCE WOULD SHOW OTHERWISE. AND IT DOESN'T SHOW THAT,  
13 YOUR HONOR.

14 AND I WILL JUST END WITH THAT WE HAVE ZERO  
15 COVID IN THE JAIL. AND THE PETITIONERS HAVE NOT MET THEIR 11:43  
16 BURDEN OF SHOWING THAT THEY'RE ENTITLED TO RELEASE FROM  
17 THE ORANGE COUNTY JAIL.

18 THE COURT: MR. DUNN OR MISS WATSON, THE ISSUE  
19 THAT THE RESPONDENT DID NOT ADDRESS IN THE RESPONSE OR THE  
20 RETURN AND HAS BY AND LARGE NOT RESPONDED TO TODAY, 11:43  
21 RELATES TO SOCIAL DISTANCING. THE 50 PERCENT ISSUE  
22 SPECIFIC TO THE E-MAIL, I DO NOT SEE ANY NEED FOR AN  
23 EVIDENTIARY HEARING TO HAVE DR. CHIANG NOW TELL US  
24 ANYTHING DIFFERENT FROM WHAT'S IN THE PAPERS. BUT EVEN IF  
25 I NARROWLY READ THAT THE WAY THAT RESPONDENT DOES TODAY, 11:44  
26 IF NOT PREVIOUSLY, IT STILL DOESN'T ADDRESS THE

1 FUNDAMENTAL QUESTION -- WHICH IS NOT CONTROVERTED AND  
2 WHICH THE RESPONDENT'S OWN WITNESSES HAVE TESTIFIED TO --  
3 WHICH IS THAT UNDER CURRENT CONDITIONS IN THE JAIL, SOCIAL  
4 DISTANCING IS NOT POSSIBLE. PEOPLE IN BARRACKS ARE NOT  
5 SOCIALLY DISTANCED, CANNOT BE BECAUSE OF THE SPACING OF 11:44  
6 THE BEDS, ET CETERA.

7 AND MR. DUNN IN HIS PRIMARY INITIAL ARGUMENT  
8 ADDRESSED THE TWO ISSUES OF UNIVERSAL TESTING AND STAFF  
9 GOING IN AND OUT, TREATED THOSE AS THE PRIMARY POINTS OF  
10 HIS ARGUMENT, AND THEN FOCUSSED ON THE 50 PERCENT IN THE 11:44  
11 CONTEXT OF IT APPLIES TO SOME PARTS BUT NOT OTHERS.

12 BUT THROUGHOUT THE CASE AND TO THIS POINT IN  
13 THE ARGUMENT, WHAT I'VE NOT YET HEARD FROM THE RESPONDENT  
14 IS, "WE CANNOT SOCIALLY DISTANCE UNDER CURRENT NUMBERS AND  
15 IT DOESN'T MATTER." THAT'S THE -- CALL IT MY DILEMMA AT 11:45  
16 THE MOMENT. IF I CONCLUDE THAT SOCIAL DISTANCING IS AN  
17 ESSENTIAL COMPONENT OF ANY EFFECTIVE COVID PLAN, THE  
18 SHERIFF HAS EFFECTIVELY WHOLLY CONCEDED THAT HE CANNOT  
19 TODAY ACHIEVE SOCIAL DISTANCING.

20 HAVE I MISSED THAT ARGUMENT SOMEWHERE IN 11:45  
21 EITHER YOUR PAPERS OR YOUR ORAL PRESENTATION?

22 MS. WATSON: YOUR HONOR, THIS IS KAYLA WATSON; I  
23 CAN ADDRESS THIS.

24 SOCIAL DISTANCING, WE BELIEVE, HAS BEEN  
25 ADDRESSED IN OUR PAPERS BUT I WILL PUT IT TO YOU THIS WAY. 11:46  
26 THE TESTIMONY THAT'S BEEN PROVIDED BY THE RESPONDENTS THUS

1 FAR, WHETHER THAT BE IN DECLARATIONS OR IN DEPOSITIONS,  
2 HAS STATED THAT SOCIAL DISTANCING, WHEREVER YOU ARE IN THE  
3 JAIL -- WHETHER THAT BE IN THE BARRACKS, IN THE DAY ROOMS,  
4 ET CETERA -- CANNOT BE ACCOMPLISHED AT ALL TIMES. IN  
5 OTHER WORDS, WE CREATE THE ENVIRONMENT FOR THE INMATES. 11:46  
6 WE HAVE REDUCED THE POPULATION. WE TELL THE INMATES TO  
7 WEAR A MASK AND SPREAD OUT WHEN YOU CAN. AND THEY DON'T  
8 ALWAYS DO THAT. AND WE, QUITE FRANKLY, YOUR HONOR, CAN'T  
9 CHAIN PEOPLE TO THE WALLS TO FORCE THEM TO BE SIX FEET  
10 APART. 11:46

11 SO, YOU KNOW, WE CREATE THE ENVIRONMENT. WE  
12 DO THE BEST WE CAN. AND WE PROVIDE THE MOST SPACE FOR  
13 THESE INMATES AT CERTAIN TIMES. IS IT POSSIBLE AT ALL  
14 TIMES OF THE DAY? NO, IT IS NOT. BUT WE DO PROVIDE IT  
15 WHEN IT'S POSSIBLE. 11:46

16 SECONDLY, SOCIAL DISTANCING IS NOT A HUGE  
17 CONCERN FOR THE GENERAL POPULATION INMATES BECAUSE WE KNOW  
18 THAT THEY'RE HEALTHY. AND WE KNOW THAT THEY'RE HEALTHY  
19 BECAUSE WE'VE HAD ZERO INMATES INFECTED WITH COVID FOR  
20 QUITE SOME TIME NOW, WITH THE EXCEPTION OF A COUPLE 11:47  
21 RANDOM, YOU KNOW, ONE OFF THAT WE'VE HAD, YOU KNOW, ONE  
22 INMATE HERE OR THERE POP UP POSITIVE, WE'VE BEEN ABLE TO  
23 IMMEDIATELY QUARANTINE THAT INMATE AND PROTECT THE REST OF  
24 THE POPULATION.

25 SO, YES, THE TESTIMONY IS THAT SOCIAL 11:47  
26 DISTANCING CANNOT BE ACHIEVED AT ALL TIMES. CAN IT BE

1 ACHIEVED AT TIMES? YES. CAN IT BE ACHIEVED IF THE INMATE  
2 CHOOSES TO? YES.

3 AND THEN I WOULD ALSO JUST, YOU KNOW, ALSO  
4 POINT OUT THAT THE IT'S NOT CONSIDERED A CLOSE CONTACT  
5 UNDER CDC GUIDANCE. IF YOU ARE IN THE DAY ROOM WITH A 11:47  
6 MASK ON FOR, YOU KNOW, 15 MINUTES. AND, SO, EVEN THOUGH  
7 IT'S NOT PERFECT SOCIAL DISTANCING --

8 THE COURT: ARE YOU --

9 MS. WATSON: YOU KNOW, IT'S NOT PERFECT, BUT IT'S  
10 STILL WITHIN THE CDC GUIDANCE BECAUSE THE CDC GUIDANCE SAY 11:48  
11 "WHERE IDEAL" OR "IDEALLY PROVIDE SIX FEET OF SOCIAL  
12 DISTANCE WHERE POSSIBLE" OR "WHERE PRACTICABLE." SO THE  
13 CDC HAS IMAGINED THIS SITUATION AND WE'RE COMPLIANT WITH  
14 IT.

15 THE COURT: AND IF YOU SLEEP WITHIN SIX FEET OF 11:48  
16 SOMEBODY THROUGHOUT THE ENTIRE NIGHT?

17 MR. DUNN: SO, YOUR HONOR, AS -- THIS IS KEVIN  
18 DUNN.

19 JUST TO BE CLEAR, WE DO NOT -- WE DO NOT  
20 HANDCUFF PEOPLE THAT DECIDE TO SLEEP NEAR ANOTHER INMATE. 11:48  
21 WE DO NOT ROUSE THE BUNKS AND MAKE THEM MOVE APART. WE  
22 PROVIDE THE ENVIRONMENT AND THE TRAINING NECESSARY TO  
23 ALLOW FOR SOCIAL DISTANCING.

24 BUT IT IS TRUE THAT WE DO NOT FORCE THEM --  
25 SO, FOR INSTANCE, IF YOU HAVE A ROOM THAT COULD ALLOW FOR 11:49  
26 SOCIAL DISTANCING. AND YOU HAVE 40 INMATES IN THERE. AND

1 AT THE END OF THE DAY THEY'RE ALL HEALTHY BUT THEY DECIDE  
2 TO SLEEP ON BUNKS NEAR EACH OTHER BECAUSE THEY'RE SOCIAL  
3 CREATURES, WE DO NOT PROHIBIT THEM FROM DOING THAT. AND,  
4 IN FACT, THERE ARE REGULATIONS THAT PROHIBIT THE AMOUNT OF  
5 ISOLATION WE CAN PROVIDE TO AN INMATE AND WE WOULD BE 11:49  
6 RUNNING INTO VARIOUS POTENTIAL TITLE 15 PROBLEMS WERE WE  
7 TO MICROMANAGE EVERY ASPECT OF THEIR MOVEMENTS, YOUR  
8 HONOR.

9 MS. WATSON: YOUR HONOR, WE KIND OF LOOK AT IT  
10 THIS WAY. ALL THESE INMATES PROGRAM TOGETHER. IT'S LIKE 11:49  
11 THEY LIVE IN, YOU KNOW, A HOUSE WITH -- THESE ARE THEIR  
12 ROOMMATES. THEY KNOW THEIR ROOMMATE IS HEALTHY. THEY'RE  
13 QUARANTINED TOGETHER WITH THEIR ROOMMATE. THEY GO TO DAY  
14 ROOM WITH THAT SAME ROOMMATE. WE KNOW THAT THEY'RE  
15 HEALTHY. 11:49

16 SO THE CONCERN OF THEM BEING WITHIN SIX FEET  
17 OF EACH OTHER AND SLEEPING WITH EACH OTHER, QUITE HONESTLY  
18 IS NOT THAT CONCERNING.

19 MR. DUNN: NO ONE HAS COVID IN THOSE BARRACKS.

20 MS. WATSON: RIGHT. 11:50

21 THE COURT: MISS WATSON AND MR. DUNN, I'M NOT  
22 SURE YOU ARE HELPING YOUR ARGUMENT. INDEED, I'M NOT SURE  
23 YOU ARE NOT GOING IN EXACTLY THE OPPOSITE DIRECTION. PART  
24 OF THE CONCERN HERE IS AS SIMPLE AS STAFF COMING IN AND  
25 OUT OF A FACILITY WHO MAY BE TRANSMITTERS OF THE DISEASE, 11:50  
26 COMPLETELY UNWITTINGLY AND UNKNOWINGLY AND IF THEY

1 INTERACT WITH ONE OF THESE GROUPS OF HITHER TO UNINFECTED  
2 PEOPLE, THE MEDICAL TESTIMONY IS THAT INFECTION COULD RUN  
3 RAMPANT THROUGH THAT GROUP BECAUSE THAT GROUP IS UNDER THE  
4 FALSE IMPRESSION "WE'RE ALL HEALTHY AND SOMEHOW WE ARE  
5 TRULY IN A BUBBLE AND WE'LL STAY THAT WAY," THAT WOULD 11:50  
6 ONLY BE TRUE IF THE BARRACKS WERE HERMETICALLY SEALED AND  
7 NOBODY WAS GOING IN OR OUT.

8 THERE IS NO DISPUTE THAT STAFF COME AND GO.  
9 ONE OF THE STATISTICS IS 350 PEOPLE DAILY INTO THE INTAKE  
10 RELEASE CENTER. STAFF ARE OPERATING THROUGHOUT THE 11:51  
11 FACILITIES AS THEY MUST. THERE IS NO REQUIREMENT FOR  
12 STAFF TESTING. THEY SELF-REPORT IF THEY HAVE SYMPTOMS.  
13 BUT OTHERWISE WHETHER THEY TEST IS ENTIRELY UP TO THEM.

14 SO THE RESPONSE THAT WE CAN KEEP 100 OR 140  
15 PEOPLE IN A BARRACKS BECAUSE THEY'RE ALL HEALTHY AT THE 11:51  
16 TIME AND THAT THEY SLEEP IN PROXIMITY TO EACH OTHER IS ALL  
17 FINE BECAUSE THEY'RE ALL HEALTHY WOULD ONLY WORK IF THEY  
18 WERE COMPLETELY ISOLATED FROM THE POSSIBLE SOURCE OF ONE  
19 OF THEM GETTING INFECTED.

20 THAT'S WHY THE SHERIFF'S FAILURE TO EVER 11:51  
21 REALLY ADDRESS THE QUESTION OF SOCIAL DISTANCING AND HOW  
22 IT IS, IN FACT, NOT POSSIBLE UNDER CURRENT NUMBERS, IS  
23 NOT -- I DON'T KNOW HOW ELSE TO SUMMARIZE IT -- THE  
24 SHERIFF'S PAPERS ECHO MR. DUNN'S ARGUMENT. LET'S ACCEPT  
25 EVERYTHING AS TRUE. WHAT WE'RE DOING IS ENOUGH AND 11:52  
26 SUFFICIENT. AND IN THAT RESPONSE, COMPLETELY FAILS TO

1 ADDRESS THE COMPONENT OF ADEQUATE SOCIAL DISTANCING.

2 ANY FURTHER RESPONSE FROM EITHER MR. DUNN OR  
3 MISS WATSON?

4 MR. DUNN: YES, YOUR HONOR.

5 FIRST OF ALL, I WILL CONCEDE THIS. IT 11:52  
6 APPEARS THAT THE PETITIONERS HAVE BEEN SUCCESSFUL IN  
7 CONVINCING -- OR AT LEAST PUTTING FORWARD -- AN IDEA THAT  
8 WE ARE SOMEHOW HELD TO A PERFECT SYSTEM OF COVID  
9 MITIGATION.

10 THE STANDARD HERE IS DELIBERATE INDIFFERENCE 11:52  
11 TO THE WELL-BEING OF THE INMATES. DELIBERATE AND  
12 INDIFFERENCE. THAT IS JUST SIMPLY NOT SHOWN HERE.

13 AND, SO, THE BOTTOM LINE IS, THE FACT THAT  
14 THE PLAINTIFFS CAN POINT OUT ISOLATED OR INCIDENTAL  
15 WEAKNESSES IN THE SYSTEM? I MEAN, I GRANT THEM, THEY'RE 11:53  
16 LAWYERS, RIGHT? THIS IS WHAT YOU DO. BUT THAT IS NOT  
17 DELIBERATE. I MEAN, AS A SCIENTER, THERE HAS TO BE A  
18 DELIBERATE INTENTION TO HARM THE INMATES IN THE FACE OF  
19 UNKNOWN RISK.

20 THAT IS SIMPLY NOT WHAT IS HAPPENING HERE 11:53  
21 UNDER ANY CIRCUMSTANCES. I MEAN, IT'S JUST NOT.

22 SO TO THE EXTENT THAT THE PETITIONERS HAVE  
23 CONVINCED THE COURT THAT WE'RE REQUIRED TO HAVE A PERFECT  
24 SYSTEM, I TAKE ISSUE WITH THAT.

25 HAVE WE CREATED A SYSTEM NOT ONLY THAT IS 11:53  
26 NOT DELIBERATELY INDIFFERENT, IT IS ENTHUSIASTICALLY

1 INTERVENTIONIST. IS IT PERFECT? NO. AND WE'VE NEVER  
2 ONCE CLAIMED THAT IT WAS.

3 MOREOVER, I WILL POINT OUT THIS OUT. UNDER  
4 THE THEORY THAT THE COURT JUST GAVE, THE SCENARIO WHERE A  
5 PERSON FROM THE OUTSIDE, AN EMPLOYEE COMES IN AND THEY 11:54  
6 HYPOTHETICALLY HAVE COVID AND THEY HYPOTHETICALLY EXPOSE  
7 THE BARRACKS TO IT, THAT -- SOCIAL DISTANCING WOULDN'T  
8 PREVENT THAT FROM OCCURRING.

9 SO I DON'T BELIEVE THAT THAT'S THE CORRECT  
10 ANALYSIS TO APPLY HERE, BECAUSE THAT PERSON WOULD STILL 11:54  
11 EXPOSE WHOEVER IS IN THAT -- WHETHER IT'S SOCIAL DISTANCED  
12 OR NOT, UNDER THE SCENARIO THAT WAS PRESENTED.

13 SO AT THE END OF THE DAY WE HAVE A SYSTEM  
14 THAT IS AS FAR FROM DELIBERATELY INDIFFERENT AS COULD  
15 POSSIBLY BE SHOWN. THAT'S THE STANDARD THAT'S APPLICABLE 11:54  
16 HERE. AND THAT'S WHY THE PETITIONERS CAN'T PREVAIL, YOUR  
17 HONOR.

18 THE COURT: ONE RELATED QUESTION. WHEN INMATES  
19 REACH THE ORANGE COUNTY COURT, WHO HAS CONTROL OF THE  
20 HOLDING CELLS? IS THAT THE SHERIFFS' PURVIEW OR IS THAT 11:55  
21 THE COURT'S PURVIEW?

22 MR. DUNN: THE SHERIFFS ARE RESPONSIBLE UP UNTIL  
23 THEY ENTER THE COURTROOM.

24 THE COURT: ALL RIGHT. LET ME JUST CHECK MY  
25 NOTES ONE MORE TIME. HOLD ON, PLEASE. 11:55

26 IN ANY OF THE -- IN THE RETURN THERE WAS AN



1 ARGUMENT PRESENTED CONCERNING CRIME VICTIM RIGHTS. THAT  
2 HAS NOT BEEN ADDRESSED IN ORAL ARGUMENT AT ALL.

3 DID THE SHERIFF IN ANY OF THE EARLIER  
4 RELEASES ALREADY IDENTIFIED, ATTEMPT IN ANY WAY TO COMPLY  
5 WITH CRIME VICTIM RIGHTS, LEGISLATION CONCERNING NOTICE 11:55  
6 BEFORE EXERCISING HIS DISCRETION UNDER THE GOVERNMENT  
7 CODE?

8 MR. DUNN: SO THE SHERIFF IS NOT RESPONSIBLE FOR  
9 THAT PORTION. THAT WOULD BE THE DISTRICT ATTORNEY'S  
10 OFFICE. AND I DO NOT KNOW -- THE DISTRICT ATTORNEY WAS 11:56  
11 INVOLVED IN THE RELEASE PROCEDURES AT THE -- WELL, THEY'VE  
12 BEEN INVOLVED THROUGHOUT -- BUT SPECIFICALLY WHEN WE  
13 BROUGHT THEM TO COURT. SO I DO NOT KNOW AS I SIT HERE  
14 TODAY WHAT EFFORTS THE DISTRICT ATTORNEYS OFFICE UNDERTOOK  
15 WITH RESPECT TO THAT ISSUE. I DON'T KNOW. 11:56

16 THE COURT: THE PARTIES FILED UNREDACTED AND  
17 REDACTED PLEADINGS PURSUANT TO THE PROTECTIVE ORDER. I  
18 INTEND TO ULTIMATELY BASE ANY CONCLUSIONS I REACH ON THE  
19 UNREDACTED.

20 IS THERE ANYTHING FURTHER I SHOULD BE AWARE 11:56  
21 OF IN TERMS OF WHY THIS INFORMATION WAS REDACTED, OTHER  
22 THAN THAT IT WAS REDACTED PURSUANT TO THE PROTECTIVE  
23 ORDER?

24 BY WAY OF ONE EXAMPLE, THERE WAS AN  
25 INSPECTION DONE THAT WAS PLACED IN THE REDACTED PORTION. 11:57  
26 TO THE EXTENT THAT THAT INSPECTION IS RELEVANT TO ANY

1 CONCLUSIONS THAT I REACH, ET CETERA, I WOULD OBVIOUSLY  
2 INTEND TO REFER TO IT.

3 ARE THERE ANY ISSUES WITH THAT, THAT I  
4 SHOULD BE AWARE OF?

5 MS. WATSON: YOUR HONOR, THIS IS KAYLA WATSON. 11:57

6 I DID PLAN ON -- COUNSEL AND I DID DISCUSS  
7 THIS. AND I AM FINE WITH EVERYTHING BECOMING UNREDACTED,  
8 EXCEPT FOR THREE ITEMS.

9 AND I WAS GOING TO FILE A MOTION TO SEAL.  
10 IF YOU WANT ME TO GO THROUGH THE PROCEDURAL HURDLE TO DO 11:57  
11 THAT, I CAN DO THAT. OR I CAN JUST TELL YOU RIGHT NOW  
12 THAT THE THREE ITEMS THAT I'M GOING TO ASK REMAIN  
13 REDACTED?

14 THE COURT: CAN YOU IDENTIFY THEM?

15 MS. WATSON: YES. PAGE 1 THROUGH PAGE 53 OF THE 11:57  
16 DENIAL. THOSE PHOTOGRAPHS SHOULD REMAIN REDACTED, TO  
17 PROTECT THE IDENTITY AND PRIVACY OF THE INMATES THAT ARE  
18 SHOWN IN THE PHOTOGRAPHS.

19 THE COURT: JUST A SECOND.

20 OKAY? 11:58

21 MS. WATSON: PAGE 70 OF THE DENIAL. THE VERY  
22 LAST REDACTED SENTENCE ON PAGE 70 THAT READS, "MR. RAMIREZ  
23 HIMSELF ADMITTED?" THAT WHOLE SENTENCE. I OBJECTED  
24 DURING THE DEPOSITION ON THE BASIS OF PRIVACY AND  
25 INSTRUCTED MY CLIENT NOT TO ANSWER THIS LINE OF 11:58  
26 QUESTIONING.

1                   AND THE CORRESPONDING FOOTNOTE 154, THAT  
2 SHOULD ALSO REMAIN REDACTED FOR THE SAME REASON.

3                   AND PETITIONERS' COUNSEL IS IN AGREEMENT TO  
4 KEEP THIS REDACTED.

5                   THE COURT:   AND THE THIRD ITEM?                   11:58

6                   MS. WATSON:   APPENDIX VOLUME 2, DOCUMENT 36, THE  
7 DEPOSITION OF CAPTAIN RAMIREZ.   IT'S THE CORRESPONDING  
8 PAGES THAT I CITED ABOVE, IT'S APPENDIX PAGES 306 TO 307.  
9 DEPOSITION PAGES 232, LINES 23 THROUGH 25 TO DEPOSITION  
10 PAGE 232, LINES 1 THROUGH 3.                   11:59

11                  THE COURT:   ALL RIGHT.   JUST A MOMENT, PLEASE.

12                  OH, I MIGHT HAVE MISHEARD.   IN THE DENIAL,  
13 THE PHOTOGRAPHS THAT ARE IN ISSUE ARE AT PAGES 51 THROUGH  
14 53?

15                  MS. WATSON:   PAGE 51 THROUGH 53.                   12:00

16                  THE COURT:   I THOUGHT YOU SAID PAGE 1 THROUGH 53.  
17 NOW I UNDERSTAND.

18                  WITH RESPECT TO THOSE PHOTOGRAPHS, THE COURT  
19 HEREBY ORDERS THAT THE PETITION WILL REMAIN SEALED,  
20 SUBJECT ONLY TO A FURTHER ORDER OF THE COURT WITH RESPECT   12:00  
21 TO THE PHOTOGRAPHS IN PAGES 51, 52 AND 53 UNREDACTED  
22 FILING.   THOSE SHALL REMAIN UNDER SEAL WITH THE COURT.

23                  JUST A MOMENT.

24                  ON PAGE 70 OF THE DENIAL, THE FULL SENTENCE  
25 AT LINES 14 AND 15 WILL REMAIN REDACTED AND UNDER SEAL, AS   12:01  
26 WELL AS FOOTNOTE 154.

1                   AND IN THE APPENDIX, THE BATES NUMBER 36 --  
2                   306, RATHER -- ON 306 AND 307, WHICH CORRESPONDS TO  
3                   DEPOSITION PAGES 232, LINES 23 THROUGH 25 AND DEPOSITION  
4                   PAGE 233, LINES 1 THROUGH 1, THOSE WILL ALL REMAIN UNDER  
5                   SEAL AND WILL NOT BE PUBLICLY REFERENCED.                   12:03

6                   `ANYTHING ELSE REGARDING THE REDACTION AND/OR  
7                   PROTECTIVE ORDER FOR PURPOSES OF THIS HEARING?

8                   MS. WATSON:   NOT ON BEHALF OF RESPONDENT.

9                   MR. TEMPLETON:  NOTHING FROM PETITIONERS.

10                  THE COURT:  ALL RIGHT.  JUST A MOMENT, PLEASE.                   12:03

11                  I DO NOT HAVE ANY FURTHER QUESTIONS.  I'M  
12                  GOING TO ORDER THE PETITIONERS TO FILE AND SERVE A  
13                  PROPOSED ORDER BY NOT LATER THAN THIS WEDNESDAY.  I WON'T  
14                  SET A TIME ON WEDNESDAY, AS LONG AS IT'S ELECTRONICALLY  
15                  FILED WITH WEDNESDAY'S DATE, WHICH WOULD BE THE 9TH.  IT                   12:04  
16                  WILL BE TIMELY OBVIOUSLY, THAT IS TO BE SERVED AT THE SAME  
17                  TIME IT IS FILED WITH THE COURT.

18                  THE PROPOSED ORDER IS TO ADDRESS ALL THE  
19                  RELIEF THAT PLAINTIFFS ARE REQUESTING FOR EITHER THE  
20                  HABEAS PETITION OR THE WRIT OF MANDATE.  YOU OBVIOUSLY DO                   12:04  
21                  NOT NEED THEREIN TO ADDRESS THE MERITS.  THOSE HAVE NOT  
22                  YET BEEN DECIDED.  BUT ASSUMING A FINDING IN PETITIONERS '  
23                  FAVOR, THE PORTION THAT WE WOULD READ THAT THE COURT  
24                  ACCORDINGLY ORDERS AS FOLLOWS:  PROPOSE YOUR FULL PROPOSED  
25                  ORDER AND SERVE SO THAT, AS NECESSARY, PETITIONERS --                   12:05  
26                  RESPONDENT HAS A CHANCE TO WEIGH IN ON THE PRECISE RELIEF

1 THAT IS BEING DICTATED.

2 I, FOR OBVIOUS REASONS, INTEND TO REACH A  
3 CONCLUSION HERE AS SOON AS I REASONABLY CAN. IF  
4 PETITIONERS -- WITHOUT PRE-JUDGING THE OUTCOME ON THE  
5 HEARING -- IF RESPONDENT SERVED WITH THE PROPOSED ORDER, 12:05  
6 SEES ADDITIONAL REASONS WHY -- EVEN IF THE RELIEF IS  
7 GRANTED -- SOME OTHER ASPECT OF THE PROPOSED ORDER IS  
8 PROBLEMATIC, THE RESPONDENT IS TO FILE ITS RESPONSE TO THE  
9 PROPOSED ORDER BY NO LATER THAN THURSDAY.

10 I REALIZE THAT'S THE VERY NEXT DAY. I DO 12:06  
11 NOT NEED WAR AND PEACE WRITTEN AS TO WHAT THE ISSUES ARE.  
12 BUT ADDRESS ISSUES IN THE PROPOSED ORDER. FOR OBVIOUS  
13 REASONS, THIS CASE NEEDS A RESOLUTION ONE WAY OR THE OTHER  
14 AS SOON AS REASONABLE REALLY POSSIBLE.

15 ANYTHING ELSE FOR TODAY? 12:06

16 MR. DUNN: NOT FROM RESPONDENTS.

17 MR. TEMPLETON: NOTHING FROM PETITIONERS.

18 MS. BRENNAN-KROHN: NOTHING FROM PETITIONERS.

19 THE CLERK: I'M SORRY, THIS IS THE CLERK.

20 WOULD YOU LIKE THE ORDERS SUBMITTED IN WORD 12:06  
21 FORMAT AS WELL?

22 THE COURT: GOOD CATCH. YES, PLEASE.

23 WHEN PETITIONERS FILE THE PROPOSED ORDER,  
24 PLEASE GIVE IT TO ME IN WORD AS WELL SO THAT I CAN  
25 WORDSMITH AS MAY BE NECESSARY. 12:06

26 I'VE SAID IT BEFORE BUT I WILL SAY IT AGAIN.

1 I THANK BOTH SIDES FOR COMPREHENSIVE BRIEFING IN THIS  
2 MATTER AND FOR VERY HELPFUL ARGUMENTS. THIS MATTER IS  
3 UNDER SUBMISSION.

4 PLEASE GET THE PROPOSED AND ANY COMMENTS IN  
5 AS INDICATED. WE ARE ADJOURNED.

12:07

6 THANK YOU.

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8 (AT 12:10 P.M. THE PROCEEDINGS WERE CONCLUDED.)

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STATE OF CALIFORNIA )  
COUNTY OF ORANGE )

REPORTER'S CERTIFICATE

I, LORI ANASTASIOU, CSR NO. 4345, COURT  
REPORTER PRO TEMPORE, IN AND FOR THE SUPERIOR COURT OF THE  
STATE OF CALIFORNIA, COUNTY OF ORANGE, DO HEREBY CERTIFY  
THAT THE FOREGOING TRANSCRIPT CONSISTING OF PAGES 1  
THROUGH 78, IS A TRUE AND CORRECT TRANSCRIPT OF MY  
SHORTHAND NOTES IN THE ABOVE-ENTITLED CASE.

DATED THIS 8TH DAY OF DECEMBER, 2020.



LORI ANASTASIOU, CSR NO. 4345  
OFFICIAL COURT REPORTER PRO TEMPORE

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