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Via Email

June 19, 2020

Amber Holderness
Santa Barbara Office of County Counsel
105 East Anapamu Street, #201
Santa Barbara CA 93101

**RE: Protection of Class Members at High-Risk of COVID-19 Illness/Death
*Murray, et al., v. County of Santa Barbara, 2:17-cv-08805-GW-JPR***

Dear Ms. Holderness:

As class counsel in *Murray, et al. v. County of Santa Barbara*,¹ representing the people incarcerated in the Santa Barbara County Jail, we remain deeply concerned for the health and safety of our clients during the COVID-19 pandemic. With this week's news that nine (9) Sheriff's Office staff members have tested positive for COVID-19, the urgency of our concerns has only intensified.

We sincerely hope that staff members who have tested positive recover without serious illness or complication, and we express our support for them. These are scary and anxious times for all of us. We also respectfully request that the Sheriff's Office and all County agencies respond to these new developments with immediate action to protect our clients incarcerated at the jail – in particular, those with disabilities, medical conditions, and other factors that place them at elevated risk of severe illness and death from COVID-19, with an awareness of the disproportionate impacts on people of color.

¹ Case documents are available at: <https://www.disabilityrightsca.org/cases/murray-v-county-of-santa-barbara>.

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Specifically, we request that: (1) the County take additional affirmative steps to release people at high risk for severe illness and death from COVID-19, unless there is a specific articulable and excessive risk to public safety based on a current, individualized assessment, the results of which are communicated to class counsel; (2) the County expand COVID-19 testing for people incarcerated at the jail; (3) the County take additional steps to maintain and further reduce the jail population in order to prevent dangerous crowding within the jail that facilitates rapid transmission of the virus; and (4) the Sheriff's Office provide class counsel with an updated list of class members with risk factors for severe COVID-19 illness.

I. The Risk of Coronavirus Transmission at the Jail is Very Real.

In light of the new COVID-19 positive cases among Sheriff's Office staff as well as the increase in COVID-19 cases and hospitalizations across Santa Barbara County,² the risk of coronavirus transmission through the County's incarcerated population is very real.

Jails and prisons have been an epicenter of coronavirus transmission. Across the country, at least 70,000 people in jails and prisons have been infected and at least 627 people have died.³ Santa Barbara County need look no further than the federal prison in Lompoc, where more than 1,000 incarcerated people have tested positive for COVID-19, and at least four people have died.

At least one of the positive-testing staff members has had contact with people incarcerated at Santa Barbary County Jail. That this staff member may not have been symptomatic when in contact with people who are incarcerated does not diminish our concerns. Epidemiologic data indicates that there is a risk of coronavirus transmission even from people with COVID-19 who are asymptomatic (will never develop symptoms) or pre-symptomatic (have not yet developed symptoms).⁴

² Santa Barbara County reopening put on pause after spike in hospitalizations, June 17, 2020, <https://keyt.com/health/coronavirus/2020/06/17/santa-barbara-county-reopening-put-on-pause-after-spike-in-hospitalizations/>.

³ Coronavirus in the U.S.: Latest Map and Case Count, *New York Times* (updated June 19, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#hotspots>.

⁴ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>.

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We have been conferring with you and Sheriff's Office leadership weekly since the COVID-19 pandemic began, and we have observed in real time the Sheriff's and County's meaningful efforts to prevent Santa Barbara County Jail from becoming a new epicenter of coronavirus transmission. These efforts include the steps taken to quarantine people newly booked at the jail as well as people with COVID-19 symptoms or possible exposure. They also include the steps taken to reduce the jail population by more than 35% since early March 2020.

We understand from the Sheriff's Office news release that the Sheriff is working with the Public Health Department to conduct contact tracing in light of the new positive tests and to have all remaining jail staff tested for COVID-19. These steps are essential and we fully support them.

But more must be done for our class members.

II. Our Class Members are at Great Risk of Harm.

Our clients incarcerated at Santa Barbara County Jail are legitimately frightened that they are at elevated risk of coronavirus infection and vulnerable to its worst outcomes. Their words, contained in letters sent to class counsel, should be heard by us all:

- **"I am scared for my health."**
- **"I'm in serious danger with this virus."**
- **"Keeping me here is a danger to my health."**
- **"We are in the dark at the jail concerning COVID 19."**
- **"My wife is scared of me catching this knowing my chance of survival is low."**
- **"This is very serious I know my lifestyle has got me to where I am, right here in jail, but for Pete's sakes, my life means and counts to somebody ... my loved ones ... if someone is reading this help us chronic care inmates to be released."**
- **"[Due to pre-existing medical conditions,] if I contract COVID I'm quite possibly a dead man."**

Based on the most recent information the County has provided us, approximately 97 people (or about 15% of the total incarcerated population) have been identified as having one or more factors making them high-risk for severe illness or death from COVID-19.

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Among those on that high-risk list who remain in jail according to the Sheriff's web site, **76% of high-risk people in custody are either Black or Latinx.**

This disproportionately high number of Black and Latinx people with identified COVID-19 risk factors is cause for great concern. Recent data indicates that the coronavirus death rate among people of color is substantially higher than other population groups.⁵ The County must give specific attention and effort to protect against the risks for incarcerated people of color.

III. Now is the Time to Act.

First, and most urgently, the County must take urgent steps now to release people with disabilities, medical conditions, and other risk factors that put them at high risk for severe illness and death from COVID-19, unless there is a specific articulable and excessive risk to public safety based on a current, individualized assessment, the results of which are shared with class counsel.

Importantly, the Sheriff has the statutory authority and obligation to act "in any case in which an emergency endangering the lives of inmates . . . has occurred or is imminent," including the authority to "remove them to a safe and convenient place and there confine them as long as may be necessary to avoid the danger, or, if that is not possible, may release them." Cal. Gov't Code § 8658.⁶

Second, there must be expanded testing of the incarcerated population. As testing capacity expands across Santa Barbara County,⁷ it is critical that testing be expanded at the jail as well.

⁵ Whites far less likely to die from the coronavirus than blacks, Latinos in L.A. County, *L.A. Times*, May 29, 2020, <https://www.latimes.com/california/story/2020-05-29/whites-far-less-likely-to-die-from-the-coronavirus-than-non-whites-in-l-a-county>.

⁶ Other strategies include those outlined in Penal Code § 4024.1 (acceleration of releases based on particular criteria) and Penal Code § 4024.2(b)(1)(F) (addressing people with special needs related to medical condition, physical disability, or age), as well as expanding pretrial release.

⁷ County Public Health Department Encourages Residents to Get COVID-19 Tests, Regardless of Symptoms, *Noozhawk*, May 21, 2020, <https://www.noozhawk.com/article/public-health-department-encourages-residents-covid-19-tests-santa-barbara>.

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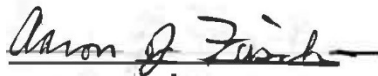
We urge the County to implement a plan for phased testing of people in custody, starting with new intakes, people with COVID-19 risk factors, and those who present with COVID-19 symptoms or have possible exposure. It is in everyone's interest to identify positive cases as part of an effort to prevent mass transmission through the jail.

Third, while we applaud the County's efforts to reduce the jail population, the County must be vigilant to maintain and further reduce that population, in order to prevent dangerous crowding within the jail that facilitates rapid transmission of the virus. The Sheriff, County leadership, the courts, the district attorney, the public defender, and others must all play a role here. For example, ending the current emergency "zero bail" policy would risk undermining the good work that has been done to date to protect the jail population during this pandemic. Several counties – including Alameda, Contra Costa, and Santa Clara – have elected to extend the zero-bail policy.⁸ Santa Barbara County should do the same.

Fourth, as *Murray* class counsel and pursuant to the case protective order, we request an updated list of class members with risk factors for severe COVID-19 illness, including identification number, health condition(s), age, and housing unit.

We look forward to hearing from you, and to continuing to work constructively with you during these challenging times.

Sincerely,



Aaron Fischer
Disability Rights California



Joshua Toll
King & Spalding

cc: Hon. Michael J. Carrozzo, Presiding Judge, Santa Barbara County Superior Court
Joyce E. Dudley, Santa Barbara County District Attorney
Tracy Macuga, Santa Barbara County Public Defender
Michael Ghizzoni, Santa Barbara County Counsel
Tanja Heitman, Probation Department

⁸ Superior Courts Extend Emergency 'Zero Bail', June 18, 2020, <https://sanfrancisco.cbslocal.com/2020/06/18/superior-courts-emergency-zero-bail-alameda-santa-clara-counties/>.