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Via email

January 29, 2021

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Re: *Mays v. County of Sacramento*

COVID-19 Outbreaks at Jail Facilities, Need for Urgent Action

Dear Mr. Heyer, Chief Ramos, Dr. Kasirye, and Dr. Damiano:

As class counsel representing the people held in custody at the Sacramento County Jail (the "Jail"), *Mays v. County of Sacramento* (E.D. Cal., Case No. 2:18-cv-02081-TLN-KJN), we write to express our deep concern about the high COVID-19 infection rates at the Jail, the inadequate rollout of vaccinations of *Mays* class members, and the negative impact on conditions of confinement and progress towards implementation of the *Mays* Consent Decree.

Conditions at the jail remain alarming. In this letter, we set forth steps that must be taken without delay in order to protect *Mays* class members and allow for the timely implementation of the Consent Decree's remedial provisions. We are hopeful that our concerns can be addressed without need for federal court involvement, but will proceed as necessary to protect the rights and well-being of the *Mays* class.

I. Health Risks to the Jail Population Are Enormous and Higher than Ever

According to the Sacramento County Sheriff's Department's web site, as of January 20, 2021, there were a total of 993 confirmed COVID-19 cases among

COVID-19 Outbreaks at Jail Facilities, Need for Urgent Action

Mays v. County of Sacramento

January 29, 2021

Page 2 of 7

people in custody since March 2020, including 715 cases out of the Jail's general population. All but one of the COVID-19 cases in the general population occurred in the last month, when major outbreaks at both Jail facilities materialized.

The crisis level of COVID-19 infection in the Jail persists. On January 20, the Jail reported 192 COVID-19 positive people currently in custody at Main Jail, and another 114 at the RCCC facility. More positives are being identified by the day. Between January 20 and January 27, an *additional* 225 class members were confirmed COVID-19 positive.¹

Because of disparities in the criminal justice system, these outbreaks pose distinctive risks to incarcerated people with disabilities and people of color, who themselves are disproportionately more likely to face severe illness and death from COVID-19 infection.

Even with the considerable efforts of Jail health care and custody leadership and staff, Sacramento County Jail facilities remain an epicenter of infections in the County. It is well-established that the risk of mass COVID-19 transmission is greatest in crowded, confined spaces with limited ventilation and air circulation. These are just the sort of conditions that exist at the Jail.

It is also clear that mitigation efforts have not been effective. The County recently acknowledged that with respect to the recent outbreaks at the Jail, the "spread occurred rapidly" and "confirmed cases appear to be due to inconsistent application of protocol[s]" by staff at the Jail.²

¹ <https://www.sacsheriff.com/pages/covid19.php>

² We have previously worked with the County to address deficiencies in the Jail's COVID-19 prevention and mitigation efforts. In June 2020, the *Mays* parties resolved a dispute regarding the failure of custody staff to wear face coverings inside the jail; the County agreed to require Jail custody deputies to wear Department-issued face coverings when in areas where incarcerated people are present. Jail leadership have also agreed to address certain severe deprivations that class members face while in quarantine and medical isolation units. In early January 2021, the Jail issued a directive that people entering intake observation housing or COVID-19 isolation/quarantine housing be provided a shower upon arrival and every day thereafter, with cleaning after each use of the shower area.

COVID-19 Outbreaks at Jail Facilities, Need for Urgent Action

Mays v. County of Sacramento

January 29, 2021

Page 3 of 7

II. Vaccination of *Mays* Class Members Must Be Accelerated

The situation thus continues to subject *Mays* class members to a grave risk of COVID-19 transmission and terrible health outcomes.

At this stage of the COVID-19 pandemic and public response, it is absolutely essential that our class members, particularly those individuals with disabilities and other risk factors for severe illness and death from COVID-19, be appropriately prioritized for vaccination. ***Based on data provided by the County, there are approximately 900 incarcerated people with risk factors for severe COVID-19 illness, hospitalization, and death.***

We understand that this week, the County began inoculating incarcerated people who are age 65 or older and are considered medically vulnerable to severe COVID-19 illness and are expected to be incarcerated long enough to receive both doses in custody. Just 17 people qualify under these very narrow criteria.

While recognizing challenges to vaccine supply in Sacramento County and across the state, we consider the extremely narrow criteria for inoculation of the incarcerated population to be unacceptable.

First, all *Mays* class members with any age-, disability-, or medical condition-related vulnerability should be offered vaccination without further delay.

Second, it should not matter whether an incarcerated person is guaranteed to remain in custody to receive both doses (especially among the Jail's post-intake general population). We are informed that 37 people were identified as age 65 or older and medically vulnerable, but 20 were found ineligible for vaccination because they did not have a projected release date. Application of such criteria immediately excludes the pretrial and unsentenced population at the Jail – in other words, the vast majority of the population. A huge proportion of this group remains in custody for many months (and even years). Such an excluding factor is unconscionable and must be modified by Jail health care and County Public Health leadership. The Jail's discharge planning and coordination with County Public Health can and must allow for vaccination across the Jail population, with arrangements made to allow for a second dose in the community if someone is released. This is a logistical challenge, but one that can be solved.

Sacramento is currently vaccinating people in long-term and intermediate care facilities in its Phase 1a. The incarcerated population at the Jail warrants the

COVID-19 Outbreaks at Jail Facilities, Need for Urgent Action

Mays v. County of Sacramento

January 29, 2021

Page 4 of 7

same prioritization given the Jail's similarly dangerous congregate living settings and its disproportionately high-risk population. It is the right thing to do not only for the incarcerated population, but also for the County staff who must interact with them every day (and their families) and for the community. People in jail who contract COVID-19 and require acute hospitalization must use the same precious ICU beds that serve the community at large.³

The persistence of the COVID-19 crisis in the Jail also continues to compromise the County's efforts to comply with the *Mays* Consent Decree, which, in turn, may serve to extend federal court oversight and monitoring activities by Class Counsel and the court-appointed experts. On January 22, 2021, the County submitted its second status report to the Court, in which it stated that the Jail's response to the COVID-19 outbreaks "continues to delay [the] County's efforts to meet many of the requirements of the Consent Decree." The County further reported that the situation "has overshadowed all operations, required leadership to develop protocols, daily ongoing work managing the population, and greatly impacted staffing levels." The Sheriff's Department identified at least 20 remedial plan requirements on which it could not make any progress "due to COVID-19 concerns." *Mays* Docket No. 137. Prompt vaccination of the incarcerated population will give Jail staff much needed relief from the relentlessly intense COVID-19 pressures and allow the County to refocus on Consent Decree implementation that will move the *Mays* case to a resolution.

Prompt vaccination of people incarcerated at the Jail may also help to facilitate long-delayed transfers of people to California's prison system (CDCR) and psychiatric hospitals (DSH), agencies that continue to restrict admissions from county jails in light of COVID-19 transmission concerns.

CDCR and DSH have themselves committed to vaccinating all incarcerated and civilly detained individuals. DSH has already completed first dose inoculation of a significant majority of detained residents.⁴ We understand that a number of

³ We understand that Sheriff's deputy staff working in the jail have consented to receiving vaccinations at alarmingly low rates. To the extent the County believed that the vaccination of Jail staff through Phase 1a prioritization would reduce risk to the incarcerated population, this has unfortunately proven to be a false promise.

⁴ <https://www.dsh.ca.gov/COVID-19/Vaccination.html>

COVID-19 Outbreaks at Jail Facilities, Need for Urgent Action

Mays v. County of Sacramento

January 29, 2021

Page 5 of 7

other California counties are in the process of vaccinating a significant percentage of their jail populations. Sacramento County should act now by immediately beginning vaccination of all vulnerable *Mays* class members.

III. Concerns about COVID-19-related Conditions of Confinement

So long as the enormous risk of COVID-19 infection and mass transmission continues in the Jail, we will continue to take all necessary steps to protect *Mays* class members from the associated harms.

The court-appointed medical and mental health care experts in the *Mays* case have identified numerous concerning issues regarding COVID-19 prevention and mitigation protocols at the Jail, as well as the negative impacts on treatment and conditions for the incarcerated population more generally.⁵

Current Jail conditions are extraordinarily harsh due to a combination of COVID-19 risks, plainly deficient facilities, and chronic staffing shortages made worse during the pandemic. We are aware of denials of access to showers, ongoing restrictions on personal visits, phones and mail, and individuals' retention in the highly restrictive quarantine and isolation units beyond what is clinically necessary due to staffing shortages and other factors.

The efforts of the hardworking Jail health care and custody leadership through these challenging times are remarkable, but the day-to-day reality of *Mays* class members remains grave and demands attention.

IV. Meaningful Reduction of the Jail Population Is Essential

We understand that on January 7, 2021, based on an agreement reached by the Sheriff's Department, District Attorney's Office, and Public Defender's Office, the superior court issued an order to release sentenced individuals meeting certain criteria with less than 90 days remaining on their sentence, as a population reduction measure in response to the COVID-19 outbreaks at the Jail. The order, which was set to expire on February 1, has been extended to March 1. The County

⁵ Expert reports are filed at *Mays* Docket No. 129-1, and are available here: <https://www.disabilityrightsca.org/system/files/file-attachments/%5B129-1%5D%20Mays%2C%20Court%20Expert%20COVID%20Reports%2C%2010-27-20.pdf>.

COVID-19 Outbreaks at Jail Facilities, Need for Urgent Action

Mays v. County of Sacramento

January 29, 2021

Page 6 of 7

has provided information that the order was expected to result in the early release of approximately 120 people from the Jail through February 1.

The January 7 order is a positive step, but it is insufficient to meet this moment of crisis. The Jail population today is far higher than the level achieved in the spring of 2020. Population pressures at the Jail continue to undermine the efforts of staff to control COVID-19 transmission. More population reduction is urgently needed to protect people in custody, staff, and the integrity of jail operations.

The January 7 order should be substantially expanded. One model to consider is the Orange County Jail in Southern California. Orange County implemented a plan to release people meeting public safety criteria with less than *180 days* remaining on their sentence, and to release medically vulnerable people meeting such criteria with less than *270 days* remaining. The population reduction has proven important to the Orange County Sheriff's COVID-19 mitigation efforts, and we are not aware of significant negative impacts on public safety.

V. Summary of Recommendations

Mays class counsel asks that the County take prompt action to get the Jail COVID-19 outbreaks under control, as follows:

- 1. Proceed immediately with the vaccination of all incarcerated individuals with any age- or disability- or medical condition-related risk factors for severe COVID-19 illness, and commit to a plan to inoculate the entire Jail population as soon as possible.**
- 2. Petition the superior court to *expand* the January 7, 2021 order allowing for early release of incarcerated people meeting public safety criteria.**
- 3. Address the identified problems with health care access, quarantine/ isolation unit protocols, and the unduly restrictive conditions attendant to those units, particularly at the Main Jail. This should include ensuring the provision of *daily* showers to *Mays* class members in quarantine or isolation, consistent with the recent Sheriff's Department directive.**
- 4. Engage Adult Correctional Health (ACH) leadership and ensure that they have the resources, staffing, and support they need to manage the current COVID-19 outbreak situation.**

COVID-19 Outbreaks at Jail Facilities, Need for Urgent Action

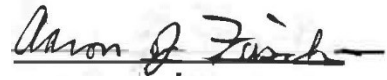
Mays v. County of Sacramento

January 29, 2021

Page 7 of 7

Thank you for your attention and ongoing efforts during these challenging times. We look forward to addressing these matters and discussing a path forward when we meet with Jail leadership and the court-appointed medical care expert in the coming days.

Sincerely,



Aaron J. Fischer
Disability Rights California



Margot Mendelson
Prison Law Office