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Via Email

January 6, 2022

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

**RE: *Murray, et al., v. County of Santa Barbara*, 2:17-cv-08805-GW-JPR (C.D. Cal.)
COVID-19 Outbreak Response**

Dear Ms. Holderness:

We write as class counsel in *Murray v. County of Santa Barbara* – through which we represent the people held in Santa Barbara County Jail (the “Jail”) ¹ – during a distinctively challenging and dangerous moment in the COVID pandemic. Nearly one-quarter of the incarcerated population has tested positive for COVID during the outbreak that began last month. And to be clear, without a full, all-hands-on-deck response, the situation stands to get worse.

With this letter, we are raising concerns for discussion and resolution through the Dispute Resolution process as set forth in the parties’ settlement.² *Murray* Stipulated Judgment ¶¶ 43-48. We are hopeful that the County will take prompt steps to address the unresolved COVID-related concerns outlined below, such that judicial enforcement proceedings do not become necessary.

Since March 2020, the County has engaged constructively with class counsel and the *Murray* court-appointed Remedial Plan experts and has been responsive to our requests for information about COVID-related developments at the Jail. County leadership, including Sheriff Brown, took meaningful steps early in the COVID

¹ Further information about the case is available at:

<https://www.disabilityrightsca.org/cases/murray-v-county-of-santa-barbara>

² The *Murray* court-ordered Stipulated Judgment covers COVID health and safety as issues among the monitoring and implementation components of the case. *Murray* Stipulated Judgment ¶ 17.

pandemic to address the grave risk of COVID transmission in the congregate, crowded Jail facility. The County reduced the Jail population by approximately 37 percent in the first months of the pandemic and developed COVID response protocols. Sheriff's Office and Wellpath leadership and staff are to be commended for their efforts during these perilous times.

Our clients – people incarcerated at the Jail – have themselves demonstrated remarkable resilience, patience, and care throughout this difficult period.

But the pandemic is not over, and the County cannot take its eye off the ball. In this letter, we emphasize first, that the County's recent response to address the new COVID wave at the Jail has been inadequate in several respects. Today's situation requires concerted, coordinated action across County stakeholders. Second, the County has allowed its Jail population to again rise to near pre-pandemic levels, creating an intolerable situation of crowded housing units, dangerous staffing deficits, and unsafe conditions. Third, the County must recommit to providing adequate care and conditions to detained people with mental health needs, particularly in the midst of this dangerous outbreak. And fourth, the anticipated activation of the North Branch Jail must proceed with the greatest of care, to prevent what could otherwise be a nightmare of out-of-control COVID transmission and a catastrophic staffing crisis.

I. The Jail's Recent COVID Outbreak Response Has Been Inadequate and Requires Concerted Action Across County Actors

A. The Outbreak, and Inadequate Resources to Meet the Challenge

In the final days of 2021, the Jail experienced a significant COVID outbreak. On December 28, during a meeting with class counsel, county counsel, Remedial Plan experts, Sheriff's Office leadership, and Wellpath administrators, the County reported that approximately 119 incarcerated people had contracted COVID during this outbreak, with many dozens more being held in quarantine units due to COVID exposure. By January 5, the number of in-custody positives during the outbreak reached 182, one-quarter of the Jail population.

Due to the physical plant limitations and population pressures at the Jail, large numbers of positive and COVID-exposed individuals have been held in crowded dorm settings with poor ventilation. This is a very problematic practice, undermining both the prevention of further transmission and the monitoring of people for COVID symptoms and emergent treatment needs. Jail bed data has shown that at least one basement dorm unit has been over-capacity, leaving at least one COVID-positive patient to sleep on the floor. This violates the *Murray* Stipulated Judgment's prohibition of "floor-sleepers" and simply cannot occur. *Murray* Remedial Plan at p.54.

Of further and extreme concern are the current staffing deficiencies at the Jail. Staff have described a "staffing crisis" that has made it nearly impossible for health care

staff to implement important COVID protocols and to ensure day-to-day provision of health care. We learned that health care staffing has been operating at 45% of intended levels, with mental health care staffing facing a 50% vacancy rate.

We have learned that, due to the staffing crisis, the Jail went multiple weeks without providing COVID vaccinations to *anyone* in custody, resulting in a substantial backlog of people who had consented to and were awaiting vaccination. Health care delivery has been reduced significantly, with people in COVID exposure quarantine units going without vital sign or wellness checks necessary to timely identify and respond to COVID symptoms.

Staff are doing their best to manage the situation, but they are clearly exhausted and without the resources to do what needs to be done. Class counsel and the court-appointed Remedial Plan experts have expressed concern about the Jail's staffing deficits and COVID protocols, and identified specific areas requiring action.

B. Positive Steps by the County

On December 29, 2021, the day after the parties met, we were informed that the County had convened a multi-department meeting to discuss the matter. The County has since informed us of the following positive actions:

1. The County requested that the California Department of Public Health (CDPH) provide teams to assist with COVID testing and related efforts at the Jail for the next several weeks. We understand that one CDPH team has been deployed, with another to follow in the coming days.
2. The County restarted administration of vaccinations to people in custody, and estimated that well over 250 individuals had consented to and were awaiting vaccination. On December 30 and January 2, approximately 150 vaccinations were reportedly administered. The County is rolling out a vaccination incentive program, which provides a modest contribution to the commissary account for each person in custody who gets vaccinated. These efforts must continue through regular vaccination provision to all who consent and are eligible.
3. The Sheriff's Office requested that County partners provide additional health care staffing resources, to assist with Jail health care delivery, including chronic care, mental health care, COVID testing, and vaccination. We understand that County Public Health has provided three health care staff (2 RNs, 1 NP) to supplement Wellpath's staffing resources, and that the Department of Behavioral Wellness will be supplementing mental health staffing with two clinicians. These are positive developments. Further staffing assessments and enhancements, in close coordination with Wellpath, will likely be necessary in the weeks ahead.
4. The County is taking additional steps to ensure provision of KN95 or N95 masks to all staff and incarcerated people. It is essential that staff take affirmative steps

to encourage and even mandate that staff and incarcerated people properly utilize their masks.

C. Additional Steps that Must Be Taken Now

On December 29, 2021, Dr. Homer Venters, the *Murray* Remedial Plan expert on Medical Care, provided the County written recommendations for managing this stage of the COVID pandemic at the Jail. These recommendations are based on Dr. Venters' uniquely extensive monitoring of COVID protocols in detention systems across the country. They are highly practical and should be adopted as quickly and fully as feasible.

Two of Dr. Venters' recommendations have not been implemented as yet and warrant prompt attention:

First, identification and targeted monitoring of high-risk people in quarantine units is a life-saving practice; it should be implemented now, during the current outbreak and moving forward.

Jail staff does not currently utilize a list of incarcerated people at high risk for severe COVID illness (*i.e.*, people with CDC high-risk factors, non-fully vaccinated people, etc.).

In-custody, COVID-related deaths across the country have occurred in quarantine units where people (generally with high-risk factors) develop severe symptoms, essentially slip through the cracks, and deteriorate without timely intervention.

Thus, Dr. Venters has recommended that Jail nursing staff conduct a daily vital signs and symptoms check for each high-risk person in intake and exposure quarantine, consistent with basic CDC guidelines. To the extent current staffing resources make this infeasible, Dr. Venters recommends interim response actions: 1) giving nursing staff a list of high-risk patients in quarantine units and having them conduct a wellness check for those people when doing COVID testing, and/or 2) giving custody staff the same list for them to conduct a daily wellness check, with a referral to medical staff for anyone showing new symptoms.

Second, the County has not allocated staff and resources to utilize the State vaccination registry database. This should be fixed as soon as possible. It is essential that the Jail have accurate vaccination data for all people in custody, so that initial, second shot, and booster doses can be timely offered and administered, and so that staff are aware of people who are not fully vaccinated and thus at greater COVID risk. We understand that the administrative burdens to utilize the database are quite minimal.

Healthcare leadership have indicated that they consider these to be important activities, but current resources have been a barrier. We request that appropriate adjustments be made to facilitate timely implementation.

II. The Current COVID Outbreak and Staffing Crisis Demand that the County Recommit to Responsible Jail Population Reduction Measures

In the first months of the COVID pandemic, Santa Barbara County took meaningful action to safely reduce the Jail population. This was a critically important measure to address the serious risks to people in custody, to staff, and to the public health of the community. As the Santa Barbara County Grand Jury found just a few weeks ago, the Jail showed a 37 percent reduction in its average daily population by June 2020, utilizing a range of carefully considered efforts at diversion and release. For the first time in many years, the County's Jail population fell below 580 people. The County emptied some of the most dangerous and deficient housing units at the many decades-old Main Jail facility, and had a population for which COVID response efforts were more manageable. According to the Grand Jury, there is currently no data to suggest that such efforts have led to significant adverse public safety outcomes.

The last couple of months, however, have seen a significant increase in the Jail population, now at 725 people. This increase has necessitated the reopening of housing units that should be closed, including pursuant to the *Murray* Stipulated Judgment. County data indicates that the number of people in jail for only misdemeanors has nearly *tripled* from the summer of 2021.

This is an extraordinarily dangerous time for the County to incarcerate more people than the Jail system can hold consistent with public health needs as well as constitutional and legal requirements.

The current population is a substantial barrier to providing adequate care and conditions to the *Murray* class. The reality of COVID transmission at the Jail – including the inability to safely quarantine and monitor people, the alarming staffing deficits, and the inability to effectively implement key provisions of the court-ordered Remedial Plan – makes plain the need for the County to recommit to available population reduction measures.³

³ The County has acknowledged the importance of addressing the Jail's population-related stressors to achieve implementation of the *Murray* Remedial Plan:

The Parties recognize that if Jail population-related stressors are reduced, particularly as to people with disabilities, Defendants will be better able to ensure implementation of the Remedial Plan. . . . The Parties agree that if the size of the Jail's population prevents timely and sufficient implementation of and compliance with the Remedial Plan, the Parties will meet and confer regarding additional population reduction measures.

While the approaching activation of the North Branch Jail (discussed in Section IV, below) will help to address some of the physical plant-driven population stressors in the Jail system, it will also put enormous stress on staffing. Adequate levels of custody and health care staffing will be needed at *two* facilities rather than one, with substantial resources required to manage the transport of people from the Main Jail to the North Branch. Such a process will be demanding of leadership and staff, particularly with the COVID-related risks and precautions.

The situation stands to become even more difficult if and when Jail staff themselves contract COVID and are unable to report to work. We understand that at least 28 Jail employees have active COVID cases this week.

The County – including the Sheriff’s Office, the courts, and criminal justice partners from Probation, the District Attorney, and the Public Defender – is aware of safe and feasible methods to address today’s Jail population stressors. Action is now required.

For example, we understand that the Sheriff has been doing 30-day early releases since the initial days of the pandemic, and we are not aware of a substantial adverse impact on public safety. Other counties have gone further, also without negative public safety results. The Orange County Sheriff’s Department, for instance, exercised its authority to allow for 90- or 180-day early releases for people who met public safety criteria, and even 270-day early releases for medically vulnerable individuals. Orange County’s carefully calibrated release efforts were instrumental in gaining control over an early 2021 outbreak of an intensity similar to what Santa Barbara County now faces.

Similarly, the recent resumption of arrests and incarceration of people arrested on warrants – including warrants for failing to appear in court for even minor misdemeanors – is contributing to the population increase.⁴ Current circumstances demand a rebalancing of public health and safety priorities.

III. Mental Health Care Must Be a High Priority

Ensuring adequate treatment and monitoring of people at the Jail with mental health needs must be a high priority. Our clients experience extreme stress with each COVID outbreak, and the lockdown conditions of intake quarantine and COVID isolation bring significant risk of psychological harm.

As the County is aware, **two people have died by suicide while in quarantine at the Santa Barbara County Jail.** Many others have attempted suicide while in quarantine housing. In August 2021, with the guidance of Remedial Plan mental health expert Dr. Kahlil Johnson and others, the Jail began to take steps to address the risks of suicide and mental health decompensation in the quarantine units. These steps included

⁴ Jean Yamamura, *Trouble at the Santa Barbara County Jail COVID Infections Rack Lockup, Population Escalates*, Santa Barbara Independent, Jan. 5, 2022.

increasing access to electronic tablet and art/writing supplies, increasing out-of-cell time, improving custody-mental health staff coordination, and safely reducing the quarantine period to 10 days with testing protocols. We understand that the Suicide Risk Mitigation Committee stopped meeting in September, but will restart its work this month.

These efforts are of critical importance, and must continue with adequate staffing and related resources. Dr. Johnson advised at the parties' December 28 meeting that the number of people in quarantine and isolation bring increased suicide risks.

Today's mental health staffing deficits at the Jail are of great concern. The situation requires urgent attention and additional resources, including from Behavioral Wellness or other County departments. We urge the onboarding of the two clinicians from Behavioral Wellness occur as soon as possible.

IV. The North Branch Jail Activation Must Proceed with Great Care, and Only with the Input of Remedial Plan Experts and Class Counsel

We understand that the County plans to move forward with activation of the North Branch Jail facility as soon as January 9, 2022. The process will require great care and input from relevant stakeholders, including the Remedial Plan experts and class counsel.

Opening this new facility will help the County to manage its Jail housing challenges and to comply with court-ordered requirements to cease use of extreme isolation cells and several dozen segregation cells at the Main Jail, and to close the basement dorms once and for all. (Remedial Plan Section VII.C, D, & H.)

We do, however, have grave concerns about the process for activation of the North Branch Jail at the present time. Many other detention systems that have conducted mass transportation of incarcerated people during a COVID outbreak have seen notably adverse outcomes, including further transmission and illness among incarcerated people and staff. Santa Barbara County must avoid a replay of what has occurred at San Quentin and elsewhere.

The transportation and new housing of people must be done with appropriate COVID-related safety precautions. There must be adequate staffing, including health care staffing, at both facilities to meet the needs of all *Murray* class members. Consistent with Dr. Venters' recommendations, we urge the County to conduct the North Branch activation slowly and incrementally. Transports should be small enough such that there is adequate supervision, including to ensure proper use of personal protective equipment. And staff participating in all transportation activities should be fully vaccinated, to minimize the risk of staff-to-prisoner transmission (and vice versa).⁵

⁵ We understand that less than 50% of Santa Barbara County Jail custody staff are vaccinated, which is of great concern.

Additionally, consistent with *Murray* remedial plan, people with disabilities must be provided with all necessary accommodations through the transport process (*i.e.*, accessible transport, access to assistive devices/accommodations, etc.).

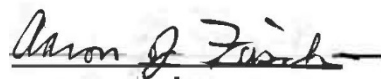
V. Next Steps

We recognize the significant challenges that staff are facing, and emphasize that this moment requires concerted action by the Sheriff and other County leaders. During this difficult and uncertain time, it is our duty to advocate for the rights and well-being of our clients, a responsibility we take seriously.

Class counsel requests that the County provide frequent data updates (daily or every-other-day) on the number of COVID tests, positive cases, quarantine placements, and hospitalizations among the incarcerated population.

We request a meeting with you and appropriate County staff within one week to discuss next steps. Thank you for your attention and efforts.

Sincerely yours,



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