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*Via Email*

January 13, 2022

Rick Heyer  
Supervising Deputy County Counsel  
County of Sacramento

Matthew Petersen  
Chief Deputy, Correctional Services  
Sacramento County Sheriff's Office

Ann Edwards  
County Executive  
County of Sacramento

**Re: Sacramento County Jail, Demand for Action to Combat COVID-Omicron Surge  
*Mays v. County of Sacramento* (E.D. Cal., No. 2:18-cv-02081-TLN-KJN)**

Dear Mr. Heyer, Ms. Edwards, and Chief Peterson:

We write as class counsel in *Mays v. County of Sacramento* (E.D. Cal., Case No. 2:18-cv-02081-TLN-KJN) – through which we represent the people held in Sacramento County Jail (the “Jail”) – during a distinctively challenging and dangerous moment in the COVID pandemic.

We have unfortunately seen the County take its eye off the ball in the Jail’s COVID response – specifically, with respect to the size of the Jail population, which has nearly reached pre-pandemic levels, resulting in levels of crowding that first, make essentially impossible efforts to mitigate mass transmission of the highly infectious Omicron variant, and second, set the stage for a complete breakdown of the Jail’s health care system and custodial operations, particularly given the pre-existing and worsening staffing deficits at the Jail during this surge in COVID cases.

### **I. COVID Response Efforts to Date**

Since March 2020, the County has engaged constructively with class counsel and the *Mays* court-appointed subject matter experts. County leadership took meaningful steps early in the pandemic to address the grave risk of COVID transmission in the congregate, crowded Sacramento County Jail facilities. The County reduced the Jail population by more than 30 percent in the early months of the pandemic and developed COVID response protocols, with input from the subject matter experts. Sheriff’s Office and Adult Correctional Health leadership and staff are to be commended for their efforts and fortitude during these perilous times.

We have over the last several months raised concerns regarding aspects of the Jail’s COVID response, on issues that include vaccinations, testing, quarantine protocols,

masks, cleaning supplies, the provision of mental health and general medical treatment, programming, and the protection of people with CDC-recognized high-risk factors for severe COVID illness.

Some issues have required use of the Consent Decree's dispute resolution process and the involvement of the designated Dispute Resolution mediator, Magistrate Judge Nathanael Cousins, and the *Mays* court-appointed subject matter experts. *See, e.g., Memorandum of Agreement: Quarantine and Isolation Protocols and Practices for the Management of COVID-19 in Sacramento County Jails* (Jan. 11, 2022) (Attachment A); *Memorandum of Agreement: Face Coverings for Staff as Precaution Against COVID-19 Transmission in Sacramento County Jail Facilities, and Other COVID-19 Matters* (Jun. 24, 2020) (Attachment B).

## **II. The Pandemic Is Not Over, and the County Must Not Lose Focus.**

To be clear, the pandemic is not over. In fact, Sacramento County's jails may be facing the most significant outbreak since the beginning of the pandemic. Our clients – people incarcerated at the Jail – have demonstrated remarkable resilience, patience, and care through the pandemic, but they remain at extraordinary risk of harm. The level of stress, fear, and uncertainty is extreme among our clients.

The Omicron surge has reached the Jail system in recent days – rising from 3 confirmed positives on December 29, 2021, to 124 on January 12, 2022, a 40-fold increase. Jail leadership has indicated that they expect that the peak of the current surge is still weeks away.

Yet at this precarious moment, the County has allowed the population to rise to an unacceptably dangerous level. The Jail population has increased from 2,500 in summer 2020 to almost 3,600 today, remarkably close to the pre-pandemic population. Quarantine and medical isolation protocols cannot be appropriately implemented with this level of crowding. Such crowding entirely undermines the work of Jail leadership and staff to develop effective protocols to prevent or mitigate mass COVID transmission and to manage the situation.

Staffing deficits have also begun to undermine general care and operations. We understand that an increasing number of custody, health care, and administrative staff are out based on positive COVID tests and exposures requiring quarantine. There are currently insufficient resources to administer vaccinations, complete necessary health care tasks, and complete important quality assurance efforts.

## **III. Reduction of Jail Crowding Is Necessary to Combat the COVID Surge**

Efforts to provide safe conditions and adequate treatment at the Jail *must* be paired with considered population reduction efforts – the former simply cannot be achieved without the latter. We are in receipt of Sheriff Jones' January 13, 2022 correspondence to All Sacramento County Law Enforcement Agencies regarding *COVID-19 Related*

*Arrestee Booking Temporary Restrictions* (Attachment C). These measures to limit new intakes at the Jail are a positive step, but they will not be sufficient on their own to address the already existing level of Jail crowding during this Omicron surge.

Deliberate action now is necessary to prevent the Jail system – now bending from the strains of overcrowding, understaffing, and the exigencies of COVID – from breaking in ways that result in avoidable deaths and irreparable harm, as well as costly litigation. The situation stands to worsen if the County does not take action.

As *Mays* class counsel, we are prepared to do what is necessary to prevent the unfolding crisis. We appreciate Jail leadership’s recent agreement to supplement its current COVID updates with regular meetings with us and the *Mays* subject matter experts, to present on COVID response efforts, to identify any gaps, and to discuss solutions. This letter demands something beyond that – a rebalancing of public health and safety priorities towards safe and immediate decompression of Jail crowding to combat this COVID surge.<sup>1</sup>

We understand that the Sheriff and the County have already taken the position that safe and reasoned population reduction measures (such as releases up to 90 days ahead of individuals’ projected release dates, with some exclusionary criteria) “are again necessary. . . to effectively manage” critical aspects of the Jail’s COVID response. County and Sheriff Response, *In re: All Public Defender Clients in the Sacramento County Jail Facilities*, Sup. Ct. Case No. 21HC00511 (Dec. 16, 2021).

Reinstatement of population reduction measures that were implemented during the last major COVID surge in January 2021 are urgently needed. Our review of Jail data produced through the *Mays* case suggests that reinstatement of the 90-day release policy stands to safely reduce the Jail population by approximately 10% to 15%. Such a measure is urgently necessary and cannot wait. The County will need to allocate sufficient resources to ensure adequate discharge planning for those individuals being released.

Other jurisdictions have gone significantly further, with positive results. Orange County, for example, implemented a plan to release people meeting public safety criteria with less than *180 days* remaining on their sentence, and to release medically vulnerable

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<sup>1</sup> While the *Mays* Consent Decree clearly covers the County’s response to the COVID pandemic as it impacts people in custody at the Jail, there is no court order, stipulation, or any other legal requirement preventing other County actors – *e.g.*, the superior courts, district attorney, probation department, public defender, *etc.* – from seeking or implementing measures to meet the moment of the current COVID surge, particularly as to population reduction. Indeed, we urge all relevant actors and stakeholders to take action now, to reduce the extraordinary risks and strains on the incarcerated population and Jail staff in a timely way.

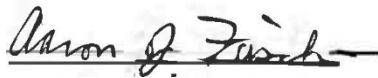
Class Counsel Letter: Demand for Action to Combat COVID-Omicron Surge  
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people meeting such criteria with less than 270 days remaining on their sentence. These measures proved instrumental in the Orange County Sheriff Department's efforts to turn the tide on out-of-control transmission within its Jail facilities, and we are not aware of significant negative impacts on public safety.

We strongly encourage the County to explore and implement other mechanisms to safely reduce the jail population, including through additional diversion initiatives to reduce the overwhelming bottleneck of Jail intake quarantine, alternatives to confinement (*see, e.g.*, Penal Code § 4024.2, including subsection (b)(1)(F) addressing people with special needs related to medical condition, physical disability, or age), and expanded pretrial release. Thoughtful expansions of pretrial release will likely prove particularly critical given the existing, and likely to grow, delays in pending criminal proceedings.

Thank you for your attention and ongoing efforts during these challenging times. We request a County response to this letter no later than January 20, 2022.

Sincerely,



Aaron J. Fischer  
Law Office of Aaron J. Fischer



Margot Mendelson  
Prison Law Office



Jennifer Stark  
Disability Rights California

Enclosures

Cc: Hon. Nathanael Cousins  
Karen Saylor, M.D, FACP., *Mays* Court Expert, Medical Care  
Madeline L. LaMarre, MN, FNP-BC, *Mays* Court Expert, Medical Care  
Mary Perrien, Ph.D., *Mays* Court Expert, Mental Health Care  
Lindsay Hayes, *Mays* Court Expert, Suicide Prevention  
Sandy Damiano, Ph.D., Deputy Director, Primary Health Division, County of Sacramento Department of Health Services

# **Attachment A**

(Exhibits Omitted)

## MEMORANDUM OF AGREEMENT

Quarantine and Isolation Protocols and Practices for the  
Management of COVID-19 in Sacramento County Jails  
*Mays v. County of Sacramento* (Case No. 2:18-cv-02081-TLN-KJN)

**Whereas**, Plaintiffs' class counsel and Defendant County of Sacramento (the "Parties") reached a settlement agreement in *Mays v. County of Sacramento* (Case No. 2:18-cv-02081-TLN-KJN), with a Consent Decree approved by the Court on January 13, 2020; and

**Whereas**, the novel coronavirus (COVID-19) poses serious challenges to the health and well-being of incarcerated persons in criminal detention facilities like the Sacramento County Jail's Main Jail and Rio Cosumnes Correctional Center (RCCC) (together, "the Jail"); and

**Whereas**, the spread of COVID-19 within correctional facilities poses risks to the broader community and community health systems; and

**Whereas**, pursuant to the parties' agreement (Stipulation, Dkt. 118, Apr. 27, 2020), the management and handling of COVID-19 in the Jail falls within the scope of this matter; and

**Whereas**, Plaintiffs' class counsel sent written correspondence (attached as **Exhibit A**), dated November 11, 2021, demanding that the County immediately cease its practice of housing incarcerated people who tested positive for COVID-19 in the same dormitory housing as those who have not; and

**Whereas**, consistent with the Dispute Resolution provisions set forth in the Consent Decree, the parties notified by written correspondence dated November 16, 2021, the designated Dispute Resolution mediator, the Hon. Nathanael Cousins, as to the dispute (attached as **Exhibit B**); and

**Whereas**, the parties and court-appointed expert on medical care, Karen Saylor, M.D., participated in a video conference mediation with Magistrate Judge Cousins on November 18, 2021, as part of the Dispute Resolution process;

**Now therefore**, the Parties agree as follows:

1. Sacramento Sheriff's Office will house all people who test positive for COVID-19 in designated COVID-case isolation housing, which is to be occupied only by people who have tested positive for COVID-19.

2. Sacramento Sheriff's Office will house all people who are symptomatic for COVID-19 in designated *suspected* COVID-case isolation housing, which shall not be occupied by people who have tested positive for COVID-19.
3. These practices shall be followed irrespective of space and population constraints.
4. The Sacramento Sheriff's Office will adhere to the following quarantine practices:
  - a. All new intakes shall be quarantined and monitored for symptoms at least daily, including temperature checks, for 14 days. All new intakes shall be tested within 48 hours of arrival and again on day 12.
  - b. All detainees who are transferred between jail facilities shall be quarantined upon arrival at the receiving institution for 10 days, with testing on day 3 and day 10 before release from quarantine.
  - c. All detainees who are asymptomatic close contacts of a known COVID-19 case shall be quarantined and monitored for symptoms at least daily, including temperature checks, for 14 days.
  - d. All individuals in Close Contact quarantine for COVID-19 shall be tested on day 5 and on day 12. Testing shall continue every 7 days until two consecutive negative tests.
  - e. Close contacts should be quarantined individually whenever possible.
  - f. Cohorting multiple close contacts should only be practiced if there are no other available options for individual quarantine.
  - g. If cohorting close contacts, the Sheriff shall follow the guidance from CDC on social distancing strategies.
  - h. When placed in Close Contact quarantine, the following people shall be quarantined individually or in cells housing no more than two people with the same common exposure: people who are 65 or older, people who are immunosuppressed due to a medical condition or medical therapy, and others at substantially increased risk for severe illness from COVID-19 as designated by the Medical Director.
  - i. If an individual who is part of a Close Contact quarantine becomes symptomatic, s/he shall be placed under COVID Case isolation immediately.
    - i. If s/he tests positive for COVID-19, or refuses to be tested, the 14-day quarantine clock for the remainder of the cohort shall be reset to 0.
    - ii. If s/he tests negative for COVID-19, they may return to the cohort for the remainder of the quarantine period
  - j. No individuals shall be added to an existing Close Contact quarantine cohort after the 14-day quarantine clock has started.

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- k. Persons undergoing routine intake or transfer quarantine shall not be mixed with those who are quarantined due to a COVID-19 exposure.
5. If at any point, there is not sufficient space or staff to comply with these protocols, the Sacramento Sheriff's Office shall consider exercising its authority to release people in its custody pursuant to California Government Code Section 8658.
6. Within five (5) business days of execution of this Agreement, Adult Correctional Health and Sacramento Sheriff's Office will revise its COVID-19 Staff Guidance and other guidance documents to reflect the requirements set forth above.
7. Within five (5) business days, SSO will a clear directive, via written policy and Inter-Departmental Correspondence, to all Jail staff regarding the requirements set forth above.
8. The Sacramento Sheriff's Office, in coordination with Adult Correctional Health, shall continue to review and adapt its COVID-19 guidance to CDC protocols, as scientific information and recommended public health practices for correctional facilities evolve. Should the County seek to modify its policies based on changing public health guidance, the County agrees to notify Plaintiffs' class counsel and the court experts on medical care prior to any modification to the policy. If Plaintiffs' class counsel objects to the change in policy in whole or in part, the parties will meet and confer – with the assistance of Magistrate Judge Cousins, if available – before any disputed component of the policy change is implemented.
9. The provisions of this MOU will remain in effect until expressly superseded or rescinded. Either party may request to revisit the provisions on a quarterly basis.
10. The terms of this Agreement are subject to the monitoring and enforcement provisions set forth in the *Mays* Consent Decree.

This Agreement shall be deemed fully executed and effective when all Parties have executed it by signature.

Dated: January 10<sup>th</sup>, 2022

  
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Margot Mendelson  
Attorney for Plaintiffs



Case 2:18-cv-02081-TLN-KJN Document 150-1 Filed 01/11/22 Page 4 of 8  
MEMORANDUM OF AGREEMENT – COVID-19 Isolation and Quarantine  
Protocols

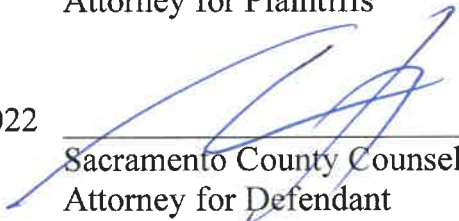
*Mays v. County of Sacramento* (Case No. 2:18-cv-02081-TLN-KJN)

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Dated: January <sup>10</sup>~~7~~, 2022

  
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Aaron Fischer  
Attorney for Plaintiffs

Dated: January 10, 2022

  
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Sacramento County Counsel  
Attorney for Defendant

# **Attachment B**

(Exhibits Omitted)

## MEMORANDUM OF AGREEMENT

Face Coverings for Staff as Precaution Against COVID-19 Transmission in Sacramento County Jail Facilities, and Other COVID-19 Matters  
*Mays v. County of Sacramento* (Case No. 2:18-cv-02081-TLN-KJN)

**Whereas**, Plaintiffs' class counsel and Defendant County of Sacramento (the "Parties") reached a settlement agreement in *Mays v. County of Sacramento* (Case No. 2:18-cv-02081-TLN-KJN), with a Consent Decree approved by the Court on January 13, 2020; and

**Whereas**, the novel coronavirus (COVID-19) pandemic has posed significant challenges to protect the health and well-being of incarcerated persons in criminal detention facilities like the Sacramento County Jail's Main Jail and Rio Cosumnes Correctional Center (RCCC) (together, "the Jail"); and

**Whereas**, pursuant to the Parties' agreement (Stipulation, Dkt. 118, Apr. 27, 2020), the County has provided regular updates and data to Plaintiffs' class counsel, and the Parties have conferred by teleconference on a regular basis to discuss the County's response to the pandemic as relevant to Jail operations; and

**Whereas**, the Parties agree that the issues set forth in the *Mays* Complaint and the *Mays* Consent Decree, including with respect to the provision of health care, environmental health/safety conditions, and custody operations generally cover the County's response to the COVID-19 pandemic as it impacts *Mays* class members; and

**Whereas**, Plaintiffs' class counsel sent a Notice of Dispute letter (attached as **Exhibit A**), dated May 27, 2020, regarding two alleged deficiencies regarding the County's COVID-19 response vis-à-vis Jail operations: first, the failure to require custody staff to wear face coverings in the Jail facilities; and second, the denial of showers and access to phones to class members subject to the mandatory seven-day intake quarantine period for new arrivals and to the fourteen-day quarantine period for people who live in celled housing and have symptoms or possible exposure to COVID-19; and

**Whereas**, consistent with the Dispute Resolution provisions set forth in the Consent Decree (Section G), the Parties notified by written correspondence dated May 30, 2020, the designated Dispute Resolution mediator, the Hon. Nathanael Cousins, as to the dispute; and

**Whereas**, consistent with the Dispute Resolution provisions set forth in the Consent Decree (Section G), the Court-appointed experts on medical care (Michael Rowe, M.D. and Madeleine LaMarre MN, FNP-BC) prepared an expert report entitled *Report Regarding the Sheriff’s Department Face Mask Policy at the Sacramento County Jail in the Setting of the COVID-19 Pandemic*, dated June 8, 2020 (attached as **Exhibit B**); and

**Whereas**, by Sacramento Sheriff’s Office Inter-Departmental Correspondence dated June 1, 2020, the County issued a directive stating that class members will be provided an opportunity to a shower at the start of any quarantine period and that, where an entire housing unit pod is quarantined due to symptoms or potential exposure, the showering of inmates will be coordinated on a case-by-case basis with medical and custody input to achieve the most efficient and safe method of offering showers; and

**Whereas**, the Parties and the Court-appointed experts on medical care participated in a video conference mediation with Magistrate Judge Cousins on June 15, 2020, as part of the Dispute Resolution process;

**Now therefore**, the Parties agree as follows:

1. All Sacramento County Sheriff’s Department Jail custody deputies (“Deputies”) will be required to carry a Department-issued face covering at all times while on their shift.
2. All Deputies will be required to wear a Department-issued face covering when in elevators, day rooms, dorm housing units, transport vehicles, health care treatment areas, and classrooms whenever one or more class member(s) are present in that area.
3. All Deputies will be required to wear a Department-issued face covering in *any* location when they are within six feet of a class member without a physical barrier.
4. All Deputies will be required to wear a Department-issued face covering in the Intake area during all periods when an arrestee or any class member otherwise being housed is present in an unsecured portion of the intake loop (*i.e.* not behind holding cell doors).

5. Within five (5) business days of execution of this Agreement, the Sheriff's Department will issue a clear directive, via written policy and Inter-Departmental Correspondence, to all Jail staff regarding the requirements set forth above, including articulated public health reasons for the new directive and provision for its enforcement.
6. The Jail's Adult Correctional Health staff's existing COVID-19 staff guidance for all mental health and medical staff – which provides that “universal masking is a requirement and the mask is considered part of work attire” – shall remain in place.
7. Jail staff will continue to offer face coverings to all class members (in the intake area and in all housing units), and will provide face coverings upon request by any class member.
8. The County will review its policies regarding face coverings periodically. Should relevant federal or state governmental public health guidance regarding COVID-19 precautions be updated, the County may seek to modify its policies. In such case, the County agrees to notify Plaintiffs' class counsel and the Court experts on medical care prior to any modification to the policy. If Plaintiffs' class counsel objects to the change in policy in whole or in part, the Parties will meet and confer – with the assistance of Magistrate Judge Cousins, if available – before any disputed component(s) of the policy change is implemented.
9. Notwithstanding the above, deputies will not be required to wear a mask in situations where there is an immediate safety threat such that donning a mask would compromise physical safety.
10. Plaintiffs' class counsel may bring concerns regarding reports of alleged Jail staff non-compliance with the face covering directives described herein. The Sheriff's Department will promptly investigate any such reports, and will provide an update to Plaintiffs' class counsel as to any identified non-compliance and the steps taken to address such non-compliance.
11. The Parties will continue to meet and confer through the Dispute Resolution process, with the assistance of Magistrate Judge Cousins as appropriate, regarding the provision of showers and access to phones for class members during the seven- and fourteen- day quarantine periods discussed herein.

MEMORANDUM OF AGREEMENT – Face Coverings for Staff  
*Mays v. County of Sacramento* (Case No. 2:18-cv-02081-TLN-KJN)  
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12. The terms of this Agreement are subject to the monitoring and enforcement provisions set forth in the *Mays* Consent Decree.

This Agreement shall be deemed fully executed and effective when all Parties have executed it by signature.

Dated: June 18, 2020



DISABILITY RIGHTS CALIFORNIA  
Attorney for Plaintiffs

Dated: June 18, 2020



PRISON LAW OFFICE  
Attorney for Plaintiffs

Dated: June 18, 2020



SACRAMENTO COUNTY COUNSEL  
Attorney for Defendant

# **Attachment C**



# SACRAMENTO COUNTY SHERIFF'S OFFICE

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SCOTT R. JONES

*Sheriff*

January 13, 2022

All Sacramento County Law Enforcement Agencies

Reference: COVID-19 Related Arrestee Booking Temporary Restrictions

Law enforcement partners,

The Sacramento County Main Jail has experienced a recent increase in COVID cases. In an effort to mitigate elevated potential for COVID-19 exposure, the below temporary measures will be implemented immediately. These measures will remain in effect until the current increase subsides.

Only felony or statutory custodial arrest misdemeanors (to include DUI arrests) will be accepted at Main Jail intake. Misdemeanor arrests outside those mandated by law, such as 647F or 602PC, will be considered on a case by case basis, and require approval of the booking sergeant. Booking sergeant consideration will recognize and prioritize the legitimate need of arresting agencies to book some non-statutory misdemeanor arrestees. Every effort will be made to accommodate such needs on a case by case basis.

The below warrant arrests, including turn-ins, will continue to be accepted:

- All felony warrants
- All NO BAIL warrants
- Warrants involving domestic violence (for example PC 273.5, 243(e)(1), 422, and 646.9)
- Warrants involving sex crimes (including PC 290)
- Warrants involving violence against a peace officer (such as PC 243(b))
- Any violation of a court order directly related to domestic violence (such as PC 273.6 & PC 166(c)(1))

All other warrant arrests are generally discouraged. However, they may be accepted on a case by case basis with approval from the booking sergeant. Arresting officers and their respective agencies should cite and release fresh DUI arrests in the field whenever feasible.

Probation violations with misdemeanor only arrests will not be accepted unless the probation department is the arresting agency.

Booking staff will verify each arrestee is being booked for appropriate charges before accepting custody of the arrestee. If the arrestee's charges are not appropriate for booking, the booking sergeant will be notified and decide whether the arrestee will be accepted. Officers bringing ineligible arrests into the jail will be directed to cite and release in the field.





## SACRAMENTO COUNTY SHERIFF'S OFFICE

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**SCOTT R. JONES**


*Sheriff*

Intake medical staff will provide initial COVID 19 screening. Any arrestee not cleared by intake medical staff will be rejected pending medical clearance by a hospital and provision of Intent to Incarcerate.

Questions regarding this procedure may be directed to Lieutenant Branden Culp (916 874-5520, [bculp@sacsheriff.com](mailto:bculp@sacsheriff.com)).

Very truly yours,

SCOTT R. JONES, SHERIFF



Captain Anthony Paonessa  
Sacramento County Sheriff's Office  
Main Jail Division  
(916) 874-5428