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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

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11 TERRY LEROY JONES and GABRIEL)
CAMPOS on behalf of themselves and all)
12 others similarly situated;)

13 Plaintiffs,)

14 v.)

15 WILLIAM D. GORE, in his official capacity as)
Sheriff of San Diego County, California,)

16 Defendant.)

Case No. 37-2021-00010648-CU-MC-CTL
Action Filed: March 10, 2021

**REPLY IN SUPPORT OF DEMURRER
TO FIRST AMENDED PETITION FOR
WRITS OF MANDATE AND HABEAS
CORPUS AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

Date: July 16, 2021
Time: 9:00 a.m.
Judge: Hon. Joel R. Wohlfeil
Dept.: 73
Trial Date: None set

[IMAGED FILE]

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21 Defendant WILLIAM D. GORE, in his official capacity as Sheriff of San Diego County
22 (“Defendant”), hereby submits the following reply in support of his demurrer to Plaintiffs’ First
23 Amended Petition for Writs of Mandate and Habeas Corpus and Complaint for Injunctive and
24 Declaratory Relief (“Petition”).

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1 **I. INTRODUCTION**

2 Plaintiffs want this Court to ignore reality. According to Plaintiffs, this Court must disregard
3 all of the information that it may judicially notice and overrule Defendant’s demurrer despite the
4 fact that there is **no active case of COVID-19 across all County jails¹ and there has been only**
5 **one death.**² It is not possible for Defendant to be “deliberately indifferent” to the medical needs of
6 jail inmates while at the same time having no active case and only one death over the last 16
7 months. While the standard on demurrer is favorable to a plaintiff, the standard is not so favorable
8 that it requires this Court to suspend reality and common sense. Accordingly, the Court should
9 sustain the County’s demurrer without leave to amend.

10 **II. ARGUMENT**

11 **A. Standard for Taking Judicial Notice of Evidence**

12 On demurrer, “a court may take judicial notice of something that cannot reasonably be
13 controverted, even if it negates an express allegation of the pleading.” *Evans v. California*
14 *Trailer Court, Inc.*, 28 Cal. App. 4th 540, 549 (1994) disapproved of on other grounds by *Black*
15 *Sky Capital, LLC v. Cobb*, 7 Cal. 5th 156 (2019). Contrary to Plaintiffs’ contentions, the Court
16 may take judicial notice of the existence of certain records as well as facts set forth therein. *Scott*
17 *v. JPMorgan Chase Bank, N.A.*, 214 Cal. App. 4th 743, 753-755 (2013) (court properly took
18 judicial notice of several documents and facts therein on demurrer); *see also Belen v. Ryan*
19 *Seacrest Productions LLC*, No. B304642, 2021 Cal. App. LEXIS 542, at *23 n.2 (Ct. App. June
20 29, 2021) (court took judicial notice of the contents of a filing with the California Secretary of
21 State). Accordingly, the Court should take judicial notice of the documents in Defendant’s
22 request for judicial notice, particularly the official government statistics regarding the number of
23 COVID-19 cases and deaths as these statistics are not reasonably in dispute. (See footnotes 1
24 and 2 below.)

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28 ¹ <https://www.sdsheriff.gov/home/showpublisheddocument/3793>

² <https://www.sdsheriff.gov/home/showpublisheddocument/3797>

1 **B. Plaintiffs’ First and Second Causes of Action Should be Dismissed**

2 “Deliberate indifference to serious medical needs of prisoners entails unnecessary and
3 wanton infliction of pain. Mere negligence is insufficient to meet this standard which describes a
4 state of mind more blameworthy.” *Lucas v. Cty. of L.A.*, 47 Cal. App. 4th 277, 287 (1996)
5 (internal citations and quotations omitted). “[E]ven if prison officials actually knew of a
6 substantial risk to inmate health or safety, they may be found free from liability if they
7 responded reasonably to the risk, even though the harm ultimately was not averted.” *Ibid.* This
8 standard applies whether analyzed under Article I, Sec. 7 of the California Constitution or
9 Article I, Sec. 17. *See Ochoa v. Superior Court*, 39 Cal. 3d 159, 174 (1985).

10 According to Plaintiffs’ opposition, Defendant is acting with deliberate indifference
11 unless he releases more inmates and/or essentially forces nearly all inmates to accept COVID-19
12 vaccines. (Oppo. 8:5-16, 12:20-13:14.) First, Plaintiffs do not dispute that Defendant released a
13 substantial number of inmates at the start of the pandemic and continues to book far fewer
14 inmates because of the emergency bail schedule that is still in place. (Request for Judicial Notice
15 (“RJN”) [submitted with original moving papers], Exs. 3-4, 15.) Second, Defendant has shown
16 that he can safely mitigate against the spread of COVID-19 without releasing more inmates.
17 (RJN, Exs. 19-20; <https://www.sdsheriff.gov/home/showpublisheddocument/3793>;
18 <https://www.sdsheriff.gov/home/showpublisheddocument/3797>.)

19 Third, Defendant cannot force inmates to accept the COVID-19 vaccine. Defendant has
20 offered COVID-19 vaccines to all inmates in his custody, and continues to offer COVID-19
21 vaccines to all new inmates. (RJN, Ex. 21; [https://www.sdsheriff.gov/home/showpublished](https://www.sdsheriff.gov/home/showpublisheddocument/3795)
22 [document/3795](https://www.sdsheriff.gov/home/showpublisheddocument/3795).) While Plaintiffs bemoan that most new inmates refuse the vaccine when it is
23 first offered, over 78% of the County’s population age 12 and older has already received at least
24 one dose and over two-thirds of the County’s population age 12 and older is fully-vaccinated.³
25 There is no reason to believe that the new inmates coming into the jails, a subset of the County’s
26 vaccine-eligible population, would be any different. Thus, while most new inmates are not
27 accepting the vaccines offered by Defendant, those inmates are likely already vaccinated.

28 ³ <https://sdcountry.maps.arcgis.com/apps/dashboards/c0f4b16356b840478dfdd50d1630ff2a>

1 Regardless, by offering the vaccine to all inmates, Defendant is taking reasonable steps to
2 mitigate the spread of COVID-19. Were he to attempt to force inmates to accept the vaccine, as
3 Plaintiffs seem to imply he must, he would then be violating their civil rights.

4 Simply put, it is not plausible for there to be zero active COVID-19 cases and only one
5 death in the jails due to COVID-19 over the last 16 months, and simultaneously for Defendant to
6 be acting with deliberate indifference. Clearly, Defendant is adequately protecting inmates.
7 Accordingly, the Court should sustain Defendant's demurrer to Plaintiffs' first and second
8 causes of action.

9 **C. Plaintiffs' Third Cause of Action Claiming a Violation of Government**
10 **Code Section 8658 Lacks Merit**

11 In their opposition, Plaintiffs claim that this Court can compel Defendant to release more
12 inmates if the Court finds Defendant is abusing his discretion. Yet, Plaintiffs fail to allege facts, nor
13 can they plausibly allege such facts, showing that Defendant is abusing his discretion by not
14 releasing more inmates. There would be no purpose to releasing more inmates given that there are
15 no active COVID-19 cases in County jails. Plaintiffs also do not point to a single case where such a
16 drastic remedy has been ordered. For the Court to order such drastic relief, the Court would have to
17 find a serious constitutional violation which, as discussed above, Plaintiffs cannot allege. Therefore,
18 the Court should sustain Defendant's demurrer to the third cause of action.

19 **D. Plaintiffs' Fourth Cause of Action for an Alleged Violation of**
20 **Government Code Section 11135 Should be Dismissed**

21 In their opposition, Plaintiffs claim that Defendant has failed to provide reasonable
22 accommodations to the "Disability Class," but fail to state what those alleged reasonable
23 accommodations are except to claim that Defendant must release members of the Disability Class
24 from jail. As discussed above, there is no reason to release inmates. It bears repeating: as a result of
25 the protocols implemented by Defendant, there are zero active COVID-19 cases and there has been
26 only one death since the pandemic began.

27 The facts show that Defendant has provided extra protection to medically high-risk inmates.
28 Defendant has obtained stipulated orders to release medically high-risk inmates. (RJN, Ex. 7.) For

1 those medically high-risk inmates that could not be released, Defendant has separated them from the
2 rest of the jail population to protect them from COVID-19. (RJN, Ex. 6.) Defendant also provided
3 COVID-19 vaccines to medically high-risk inmates before the rest of the jail population. (RJN, Exs.
4 15-16.) In short, contrary to Plaintiffs' contention, Defendant is protecting medically high-risk
5 inmates from severe illness and death.


6 Further, contrary to Plaintiffs' opposition, Plaintiffs do not allege any disparate impact.
7 Plaintiffs cite to paragraphs 37-38, 47-48, and 196 to support their position that they alleged a
8 disparate impact. Those paragraphs do not allege any disparate impact; they merely allege that
9 people with disabilities may have an increased risk of severe illness from COVID-19. But that is a
10 far cry from alleging that disabled inmates in San Diego County jails in fact are disparately
11 impacted by Defendant's policies and practices.

12 **III. THE COURT SHOULD NOT GRANT PLAINTIFFS LEAVE TO AMEND**

13 If Defendant's actions were as irresponsible and reckless as Plaintiffs' claim, there would
14 have been substantially more deaths from COVID-19 in the County's jails and there would be active
15 COVID-19 cases in the jails currently. The evidence of which this Court may take judicial notice
16 shows that Defendant is taking reasonable steps to prevent the spread of COVID-19 in the jails.
17 Accordingly, the Court should sustain Defendant's demurrer without leave to amend.

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19 DATED: July 9, 2021

OFFICE OF COUNTY COUNSEL,
SAN DIEGO COUNTY

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21 By: 
22 JOSHUA M. HEINLEIN, Senior Deputy
23 Attorneys for Defendant William D. Gore, in his
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