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VIA E-MAIL AND U.S. MAIL

The Honorable Tani Cantil-Sakauye
Chief Justice
Supreme Court of California
Chair, Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688
judicialcouncil@jud.ca.gov

Dear Honorable Justice Cantil-Sakauye:

As counsel for plaintiffs in numerous class action lawsuits involving conditions of confinement in California county jails, we write to express our concern about the manner in which incarcerated people are held while awaiting appearances in Superior Court.

Our organizations, Prison Law Office and Rosen Bien Galvan and Grunfeld LLP, represent certified classes of incarcerated people in the jails in the Alameda, Fresno, Monterey, Riverside, Sacramento, San Bernardino, Santa Barbara, Santa Clara, and Yuba counties. In that capacity, we have received reports that incarcerated people are being held for hours in crowded, poorly ventilated rooms while they await their appearances. We are informed that, in many cases, defendants from different jail facilities or multiple housing units within a single jail are comingled in close proximity. We understand that use of face masks among incarcerated people in these settings is inconsistent.

Detainees in Los Angeles County Jail, for example, report being required to wait for court appearances for hours in crowded rooms with dozens of other detainees, many of whom do not wear facial masks. Detainees in Alameda County report being mixed in holding areas with detainees from other units while awaiting video court appearances, which are held inside the Jail. In Sacramento County, detainees report that they are comingled with others in small, windowless holding areas under the courtrooms while awaiting Superior Court appearances.

Such conditions are highly troubling and dangerous. Comingling detainees in small, confined spaces exposes them to an unacceptable risk of contracting COVID-19 and also creates a serious risk of transmission to other people who live and work in the jails. These

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practices threaten to harm people irreparably and further strain overtaxed county jail medical systems. They also undermine the COVID-19 precautions for which our offices are advocating in multiple counties in order to protect the health and safety of our clients.

As you know, COVID-19 has wreaked havoc on jails and prisons in the United States. In July 2020, researchers at Johns Hopkins Bloomberg School of Public Health found that the number of U.S. prison residents who tested positive for COVID-19 was 5.5 times higher than the general U.S. population. *See* Johns Hopkins University Bloomberg School of Public Health, *COVID-19 Cases and Deaths in Federal and State Prisons Significantly Higher Than in General U.S. Population*, Science Daily (July 8, 2020). Adjusted for age and sex difference, the death rate for incarcerated people was three times higher than the general U.S. population. *Id.* California county jails have experienced serious and widespread outbreaks. In Fresno County Jail, more than 1,100 people tested positive for COVID-19. *See* Alexandra Hall, Julie Small & Kerry Klein, *Why a Massive COVID-19 Outbreak at Fresno County Jail Flew Under the Radar*, KQED (Aug. 27, 2020). The Fresno County outbreak was so widespread as to rank as the twelfth largest cluster of cases at a single facility in the United States. *Id.* As of August 23, 2020, the Los Angeles County Sheriff's Department reported 3,133 COVID-19 infections among incarcerated people and 826 among staff. *Id.*

Incarcerated people are more vulnerable to contracting COVID-19 because of their conditions of confinement: “[o]vercrowding, poor ventilation, close habitation, or dormitory-style housing will increase COVID-19 transmission.” Andre G. Montoya-Barthelemy et al, *COVID-19 and the Correctional Environment: The American Prison as a Focal Point for Public Health*, 58 Am. J. Prev. Med. 888-91 (2020). Jails face particular challenges limiting COVID-19 transmission because of high turnover among the incarcerated population and the constant presence of people entering custody from surrounding communities. The CDC has recognized that transportation to court, in particular, poses an opportunity for COVID-19 to be introduced into jail. *See* Center for Disease Control and Prevention, Interim Guidance on Management of Coronavirus Disease 2019 in Correctional and Detention Facilities (rev. Oct. 7, 2020); *see also* Montoya-Barthelemy et al. (noting that transfer for court appearances is “a potential route of transmission” for the virus).

In the face of these tremendous challenges, our offices work daily with county jail systems to implement precautions to limit the introduction and spread of COVID-19. These measures include strict intake quarantine procedures, medical isolation protocols, testing regimens for staff and the incarcerated population, and masking mandates. We are working with county jails to implement social distancing measures among the incarcerated population, including by creating small housing cohorts and limiting physical contact between people in separate cohorts. In some counties, litigation has resulted in federal court orders to implement COVID-19 precautions. *See, e.g.,* Order on Defendant's COVID-19 Plan, Dkt. 202, *Gray v. Riverside*, No. 13-cv-0444-VAP-OPx (C.D. Cal. July 22, 2020) (requiring County to implement social distancing in the jails, conduct COVID-19 surveillance testing, increase access to

hygiene items, provide masks); Joint Status Report, Dkt. 118-1, *Mays v. County of Sacramento*, No. 2:18-cv-02081-TLN-KJN (E.D. Cal. June 24, 2020) (stipulation that custody officers will wear face masks when interacting with incarcerated people).

Inadequate measures to protect people from transmission of COVID-19 while they await court appearances threaten to undermine the efforts we are undertaking in the county jails. Given the large pretrial populations in California county jails and the frequency of court appearances, exposure to COVID-19 during transport to or while awaiting court appearances is a substantial source of concern. Stated plainly, the impact of measures to separate populations within the jail and quarantine people who are booked into the jail is substantially reduced if people who live in the jail are comingled with people from other jails and other housing units while awaiting court appearances.

The Judicial Council has exercised leadership on this issue in the past. In enacting the statewide order on March 23, 2020, the Judicial Council stated that:

The CDC, the California Department of Public Health, and local county health departments have recommended increasingly stringent social distancing measures of at least six feet between people, and encouraged vulnerable individuals to avoid public spaces. Courts cannot comply with these health restrictions and continue to operate as they have in the past. Court proceedings require gatherings of court staff, litigants, attorneys, witnesses, and juries, well in excess of the numbers allowed for gathering under current executive and health orders. Many court facilities in California are ill-equipped to effectively allow the social distancing and other public health requirements required to protect people involved in court proceedings and prevent the further spread of COVID-19.

This grave assessment remains true today, particularly for in-custody defendants, as superior courts reopen for judicial proceedings. The lack of appropriate social distancing for in-custody defendants jeopardizes the health of these defendants, undermines the safety of people in county jails, and poses serious threat to public health in California communities.

We ask that the Judicial Council issue a clear directive to Superior Courts to ensure social distancing among criminal defendants. The Judicial Council should direct courts to conduct symptom screenings and temperature checks when people arrive to the courts or court holding areas, limit the number of people who are comingled in waiting spaces, prohibit close contact between people incarcerated in different jails, and require use of N95 masks when awaiting or appearing in court and in the course of transport to and from court. Alternatively, the Judicial Council should consider establishing a workgroup of stakeholders to promulgate COVID-19 standards for in-custody defendants in the Superior Courts.

Thank you for your consideration of these important issues.

Sincerely,

/s/ Margot Mendelson
Margot Mendelson
Staff Attorney

/s/ Gay Crosthwait Grunfeld
Gay Crosthwait Grunfeld
Rosen Bien Galvan & Grunfeld LLP

cc: Governor Gavin Newsom
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