

1 PETER J. ELIASBERG (189110)
peliasberg@aclusocal.org
2 MELISSA CAMACHO (264024)
mcamacho@aclusocal.org
3 **ACLU FOUNDATION OF**
4 **SOUTHERN CALIFORNIA**
1313 W. 8th Street
Los Angeles, CA 90017
5 Phone: (213) 977-9500
6

CORENE T. KENDRICK (226642)
ckendrick@aclu.org
MARISOL DOMINGUEZ-RUIZ
(345416)
mdominguez-ruiz@aclu.org
ACLU NATIONAL PRISON
PROJECT
39 Drumm St.
San Francisco, CA 94111
Phone: (202) 393-4930

7 DAVID C. FATHI (*pro hac vice*)*
dfathi@aclu.org
8 **ACLU NATIONAL PRISON**
PROJECT
9 915 15th St., NW
Washington, D.C. 20005
10 Phone: (202) 393-4930

11 *Not admitted in D.C., practice limited
12 to federal courts

13 *Attorneys for Plaintiffs*

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

16 DENNIS RUTHERFORD, *et al.*,

17 Plaintiffs,

18 vs.

19 ROBERT LUNA, Sheriff of Los
20 Angeles County, in his official
21 capacity, and COUNTY OF LOS
22 ANGELES, in their official capacities,
et al.

23 Defendants.

Case No. CV 75-04111 DDP

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR AN ORDER TO
SHOW CAUSE RE: CONTEMPT**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

ORAL ARGUMENT REQUESTED

Date: March 20, 2023

Time: 10:00 a.m.

Judge: Hon. Dean D. Pregerson

Crtrm: Courtroom 9C

NOTICE OF MOTION AND MOTION FOR ORDER TO SHOW CAUSE

TO ALL PARTIES AND ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on **March 20, 2023 at 10:00 a.m.**, or as soon thereafter as this matter may be heard,¹ in Courtroom 9C of the U.S. Courthouse, 350 West First Street, Los Angeles, CA 90012, Plaintiffs will, and hereby do, move for the entry of an Order to Show Cause (“OSC”) why Defendants Sheriff Robert Luna, the County of Los Angeles, and Supervisors Barger, Hahn, Horvath, Mitchell, and Solis (collectively, “Defendants”) should not be adjudged in civil contempt, and setting forth prospective sanctions for future noncompliance with:

- Preliminary Injunction (“PI”), Sept. 27, 2022, Doc. 351, prohibiting and enjoining Defendants from holding an incarcerated person:
 - “in the Inmate Reception Center (IRC) for more than 24 hours.” *Id.* ¶ 1.
 - “on the IRC Clinic Front Bench, handcuffed, chained, or tethered to a chair or any other object, for more than four hours.” *Id.*, ¶ 2.
 - “in a[n] IRC holding cell for more than 12 hours total.” *Id.*, ¶ 4.
 - “in the IRC clinic area, cage, or any cell in the IRC when that location is not in a clean and sanitary condition, with access to functioning toilets, potable drinking water, clean water to wash, and sufficient garbage receptacles.” *Id.*, ¶ 6.
 - “in the IRC clinic area, cage, or any cell in the IRC without providing ongoing access to adequate medical and mental health care, including but not limited to regular pill call.” *Id.*, ¶ 7.
- Stipulation and Order, Nov. 18, 2005:
 - “Every inmate kept overnight in the jail will be accorded a mattress and

¹ In accordance with the Court’s standing orders, Plaintiffs noticed the Motion for Monday, March 20, 2023. However, the Court has set status hearings in *Rosas v. Luna*, No. CV 12-00428-DDP, for Tuesday, March 21, 2023, and for the convenience of all parties, Plaintiffs have no objection to the Court calendaring this Motion on March 21, 2023.

1 a bunk upon which to sleep. . . . All bunks shall be supplied with full
2 bedding.” Doc. 64, ¶¶ 1, 3.

- 3 • Judgment, Feb. 16, 1979:
 - 4 ○ “Every prisoner kept overnight in the jail will be accorded a mattress
 - 5 and a bed or bunk upon which to sleep.” Doc. 318-2 at 127, ¶ 1.²

6 This motion is made after the conference of counsel on February 17, 2023, as
7 required by Local Rule 7-3. *See* Declaration of Peter J. Eliasberg ¶ 15. The motion
8 is based on this notice of motion, the supporting memorandum of points and
9 authorities contained herein, all evidence and declarations filed in support of the
10 motion, the records and files in this action, and upon such argument as may be
11 presented at the hearing on the motion.

12 Respectfully submitted,

13 DATED: Feb. 27, 2023

By: /s/ Corene T. Kendrick

14 Peter J. Eliasberg
15 Melissa Camacho
ACLU FOUNDATION OF SOUTHERN CALIFORNIA

16 David C. Fathi
17 Corene T. Kendrick
18 Marisol Dominguez-Ruiz
ACLU NATIONAL PRISON PROJECT

19 Attorneys for Plaintiffs Dennis Rutherford,
20 *et al.*

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27 ² Docket citations are to the page numbers assigned by the Court’s Electronic
28 Case Filing system.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Plaintiffs respectfully request that the Court issue an Order to Show Cause
4 (“OSC”) why Defendants should not be adjudged in contempt and prospectively
5 sanctioned for ongoing failures to comply with the Court’s orders related to the Los
6 Angeles County Jail system’s Inmate Reception Center (“IRC”). Specifically, the
7 Court should issue an order (1) finding Defendants in civil contempt for
8 noncompliance with the Court’s past orders, and (2) imposing prospective sanctions
9 for each future instance of noncompliance.

10 As this Court is aware from its oversight of three different systemic reform
11 cases about the conditions in the jails, and as Defendants do not and cannot dispute,
12 the jails are in crisis. After the Court granted the PI in late September 2022, the
13 number of people held in the IRC outside of the PI’s timeframes briefly dipped from
14 the highs seen during the summer. Yet the evidence indisputably shows the IRC yet
15 again has long delays in processing and intake of detainees, and people continue to
16 suffer serious deprivations while in appalling conditions. Defendants’ own records
17 (which, as described at Part B.1, understate the extent of violations of the PI) show
18 systemic failures to comply with the PI. Plaintiffs also submit 23 class members’
19 declarations about noncompliance; declarations from Plaintiffs’ counsel of their
20 observations on visits to the jails; and a declaration from a defense attorney detailing
21 her clients’ mental decompensation due to failures in the IRC intake process.

22 The situation is all the more urgent because less than two weeks ago — days
23 after February 13 hearings in *Rosas v. Luna* and *United States v. Cnty. of L.A.* —
24 Plaintiffs’ counsel learned from jail visits and from public statements of various
25 County officials that (1) there are new “IRC overflow” units sprinkled throughout
26 the Men’s Central Jail (MCJ), where conditions are nearly as dismal as in the IRC,
27 but people languishing there do not show up in data reports required by the PI; and

1 (2) rather than chaining people with mental illness to the IRC Clinic’s Front Bench
 2 (which is strictly limited by the PI to fewer than four hours), jail staff “for months”
 3 have been restraining people with serious mental illness awaiting mental health care
 4 and screenings to gurneys in a MCJ hallway. As detailed at pages 12-14, on February
 5 16, 2023, Inspector General Max Huntsman told the Los Angeles Civilian Oversight
 6 Commission (COC) that “*The problem that used to exist in IRC in view of the court*
 7 *has now been moved into the shadows.*” Eliasberg Dec. ¶ 3, Ex. A (2/16/23 Tran.)
 8 at 3 (emphasis added) ([9:15-9:22] video at [https://www.facebook.com/watch/live/
 9 ?ref=watch_permalink&v=2167591540094823](https://www.facebook.com/watch/live/?ref=watch_permalink&v=2167591540094823)).

10 The bottom line is that Defendants are massively out of compliance with the
 11 PI and previous orders. Plaintiffs acknowledge that Defendants and their counsel —
 12 no doubt due to the pressure of the three cases, and recent attention from four U.S.
 13 Senators — are trying to address profound, longstanding problems within the jails.³
 14 But the law is clear that “trying” is not enough, nor is it a license to ignore valid
 15 court orders. After almost five decades of an endless cycle of promises followed by
 16 excuses and failures, and generations of class members enduring abysmal
 17 conditions, the time for talk is over. The Court must exercise its inherent authority
 18 to enforce compliance with its orders through the imposition of sanctions. *See Frew*
 19 *ex rel. Frew v. Hawkins*, 540 U.S. 431, 440 (2004) (“Federal courts are not reduced
 20 to approving consent decrees and hoping for compliance.”); *Maness v. Meyers*, 419
 21 U.S. 449, 458 (1975) (“We begin with the basic proposition that all orders and
 22 judgments of courts must be complied with promptly.”). That class members are in

23
 24 ³ See Eliasberg Dec. Ex. G (Oct. 25, 2022 Letter to U.S. Atty. Gen. Garland from
 25 Senators Booker, Feinstein, Gillibrand, and Padilla, describing a “failure to correct
 26 or prevent the constitutional and human rights violations in facilities that are under
 27 [DOJ] consent decrees,” including the Los Angeles County Jail, as “undermin[ing]
 28 the Department’s broader efforts, as well as the public’s faith and confidence in our
 legal system”) at <https://tinyurl.com/j9b78n3h>; Keri Blakinger, *Senators fault
 Department of Justice for ‘appalling’ conditions in Los Angeles jails*, L.A. TIMES
 (Feb. 13, 2023), [https://www.latimes.com/california/story/2023-02-13/senators-
 fault-doj-for-appalling-conditions-in-los-angeles-jails](https://www.latimes.com/california/story/2023-02-13/senators-fault-doj-for-appalling-conditions-in-los-angeles-jails)

1 jail does not negate their human dignity or rights. *Brown v. Plata*, 563 U.S. 493, 511
2 (2011) (“Courts . . . must not shrink from their obligation to enforce the
3 constitutional rights of all persons, including prisoners.” (internal quotation marks
4 and citation omitted); *see also Plata v. Schwarzenegger*, No. C01-1351 TEH, 2005
5 WL 2932253, *18-19, *26-32 (N.D. Cal. Oct. 3, 2005) (appointing a receiver to run
6 the California prison health care system due to state officials’ “trained incapacity,”
7 failure to comply with past orders, “serious and chronic abnegation” of
8 responsibility, a lack of political will “to protect a disenfranchised, stigmatized, and
9 unpopular subgroup of the population” and the court describing itself as “simply at
10 the end of the road with nowhere else to turn.”).

11 **PROCEDURAL AND FACTUAL BACKGROUND**

12 **A. Procedural History**

13 Plaintiffs’ September 8, 2022, Memorandum details the relevant procedural
14 history of this case, and Plaintiffs incorporate it here. Doc. 318-1 at 15-18. In sum,
15 there are many orders spanning 45 years that set forth basic standards in the IRC.
16 *See id.*; *Rutherford v. Pitchess*, 457 F. Supp. 104, 109-10, 113-14 (C.D. Cal. 1978),
17 *rev’d in part on other grounds sub nom. Block v. Rutherford*, 468 U.S. 576 (1984);
18 Feb. 16, 1979 Judgment [Doc. 318-2 at 126-131]; Aug. 27, 1992 Stipulation and
19 Order [Doc. 318-2 at 133-144]; Nov. 18, 2005 Stipulation and Order [Doc. 64];
20 *Rutherford v. Baca*, 2006 WL 3065781, at *3-4 (C.D. Cal. Oct. 27, 2006) (Order to
21 Show Cause) [Docs. 102, 121]; Sept. 27, 2022 PI [Doc. 351].

22 Most recently, on September 27, 2022, the Court issued a PI, to which the
23 parties stipulated, that addressed overcrowding, delays in processing and moving
24 people to permanent housing, the provision of adequate medical and mental health
25 care to people in the IRC awaiting permanent housing, and general living conditions
26 within the IRC; it also directed Defendants to log and provide reports on people
27 detained beyond timeframes in the PI. *See generally* Doc. 351. The Court extended
28

1 the PI another 90 days on December 20, 2022. *See* Doc. 371; *Mayweathers v.*
 2 *Newland*, 258 F.3d 930, 936 (9th Cir. 2001) (“Nothing in the [Prison Litigation
 3 Reform Act] limits the number of times a court may enter preliminary relief. If
 4 anything, the provision simply imposes a burden on plaintiffs to continue to prove
 5 that preliminary relief is warranted.”).⁴

6 **B. Evidence of Defendants’ Current Non-Compliance With the PI and**
 7 **Past Orders**

8 Despite repeated efforts of the Court and Plaintiffs to hold the County
 9 accountable, current conditions in the IRC “present poor examples of the civilized
 10 standards and concepts of dignity, humanity and decency” and are “a repelling
 11 experience in any society that takes pride in its high concepts of human dignity,” as
 12 Judge Gray described it in 1978. *Rutherford v. Pitchess*, 457 F. Supp. at 109, 114;
 13 *see also* Doc. 102 at 6 (this Court holding in 2006 that “pre-trial detainees who are
 14 imbued with a presumption of innocence, deserve better than to be housed in a
 15 system which has defaulted to the lowest permissible standard of care.”).

16 **1. Defendants are noncompliant with the PI’s time limits for the**
 17 **IRC and holding cells, and basic hygiene requirements.**

18 **Paragraph 1** of the PI enjoins Defendants from holding people in the IRC for
 19 more than 24 hours. Doc. 351 ¶ 1.⁵ The IRC is defined as “a reception and booking
 20 area; a classification area; a bath area; the IRC Clinic (which includes the IRC Clinic
 21 Front Bench); a series of holding cells, and Module 231, an overflow module in

22 ⁴ This extension will expire on March 20, 2023 unless the Court makes findings
 23 required under 18 U.S.C. § 3626(a)(1) for the entry of prospective relief, and makes
 24 the order final. *See* 18 U.S.C. § 3626(a)(2); *see also Edmo v. Corizon, Inc.*, 935 F.3d
 25 757, 783 (9th Cir. 2019) (holding injunction was final when court granted
 26 preliminary injunction and also held that plaintiff was entitled to a permanent
 27 injunction), *cert. denied sub nom. Idaho Dep’t of Corrs. v. Edmo*, 141 S. Ct. 610
 28 (2020). Defendants have stipulated to another 90-day extension of the PI, and the
 parties will submit a proposed stipulation prior to March 20, 2023.

⁵ *See also* Nov. 18, 2005 Stipulation and Order (Doc. 64) at ¶ 1, 3 (“Every inmate
 kept overnight in the jail will be accorded a mattress and a bunk upon which to sleep.
 . . . All bunks shall be supplied with full bedding.”); Judgment, Feb. 16, 1979 (Doc.
 318-2 at 127, ¶ 1 (“Every prisoner kept overnight in the jail will be accorded a
 mattress and a bed or bunk upon which to sleep.”)).

1 Twin Towers Correctional Facility. This order shall not apply to Module 231.” *Id.*
2 The PI requires the clock to run continuously from time of entry into the IRC until
3 the person leaves IRC, and the clock cannot stop unless a person is out of the IRC
4 for longer than 12 hours for medical care, with access to a bed. *Id.* The clock cannot
5 stop when a person moves from one part of the IRC to another. *Id.*

6 The chart attached as Exhibit C to the declaration of Peter Eliasberg
7 summarizes Defendants’ 24-Hour Clock Report covering the 92-day time period
8 from November 17, 2022 through February 23, 2023, of all persons held in the IRC
9 for more than 24 hours.⁶ On 73 of those days (or 79% of the time period), Defendants
10 reported that one or more persons was in the IRC for more than 24 hours. Eliasberg
11 Dec. ¶ 11 & Ex. C. On 31 days, ten or more people were in IRC for more than 24
12 hours. *Id.*⁷ On ten different days, five or more people were in IRC for more than 36
13 hours. *Id.* The worst day of reported 24-hour violations was February 2, when
14 Defendants’ reports showed 85 people had been in IRC over 24 hours; the day with
15 the most people in IRC for more than 36 hours was February 9, 2023, with 29 people
16 whose time exceeded 36 hours. *Id.* Over the three-month period, Defendants’ records
17 showed 45 different people spending 48 hours or more in the IRC. *Id.* Ex. C.

18 One example of the delays is John Mayes, who recently (Feb. 15-17, 2023)
19 spent two nights at the IRC clinic, where he slept on the floor or in broken chairs,
20 without a blanket, when it was very cold. Ex. 16 (Mayes) ¶¶ 3-7. He reports that he
21 and others were fed a lunch of peanut butter and jelly sandwiches at 3:20 p.m. on
22 February 16 only after detainees shouted out for food. *Id.* at ¶ 8; *see also* Dominguez-

23
24 ⁶ Plaintiffs offer this chart and others attached to Mr. Eliasberg’s declaration
25 pursuant to Rule 1006 of the Federal Rules of Evidence, in lieu of submitting the
26 voluminous thousands of pages of paper records. *See* Fed. R. Evid. 1006. His
27 declaration details how paralegals and students working under Plaintiffs’ counsel’s
28 supervision (and spot-checking) compiled the information.

⁷ On February 8, 2023, Jhean Banos was one of 17 people on the IRC 24-Hour Report
because he had been in the IRC for 24.9 hours. Camacho Dec. ¶ 13, Ex. C. Mr. Banos
appeared in the September motion for a temporary restraining order because he had
spent over 99 hours on the front bench. Doc. 318-1 at 18.

1 Ruiz Dec. ¶¶ 19-21 (ACLU attorneys asked deputies of the status of lunch on that
2 day). Numerous declarants also reported spending multiple days in the IRC, sleeping
3 on the concrete floor or in chairs, without access to a mattress or a blanket, with
4 limited food, and deplorable hygiene. *See also* Ex. 2 (Beck) ¶¶ 2-4, 6, 7, 12, 14, 18,
5 19, 25 (spent two days in the IRC after four days in the Encino jail, slept on the floor
6 under a bench in the cage area of the IRC, then moved to a temporary holding area
7 where he slept on a foam mattress with only a blanket and no cover, pillow, or sheet);
8 Ex. 14 (Irvin) ¶¶ 8-11, 17 (man with arthritis spent nights of Feb. 15 and 16, 2023 in
9 IRC unable to sleep “scrunched up on chairs and benches” with no blanket, only
10 peanut butter and jelly sandwiches to eat, and detainees getting in fights that required
11 tasers to break them up); Ex. 7 (Escobar) ¶¶ 4-5 (sleeping on chairs for two days
12 Feb. 15-17, 2023 and “there are a couple of people on the floor covering themselves
13 in plastic bags for warmth” and “I asked for blankets but I was told I couldn’t have
14 one because there are not enough”); Ex. 12 (Gonzalez) ¶¶ 6, 8, 10, 11 (spent 42 hours
15 in mid-February, could not sleep, was not given a blanket when there was a freeze
16 warning and the IRC was very cold); Ex. 1 (Aguilera) ¶¶ 3, 6, 8, 10 (two days in the
17 IRC and “[t]hey have not provided me with anything to sleep such as a pillow or a
18 blanket. ... I just want a place to sleep. I have not been told when they will provide
19 me with a bed.”); Ex. 11 (H. Garcia) ¶¶ 4-12 (in IRC for two days as of 2/17/23, has
20 not been provided a blanket, access to showers, or a toothbrush); Ex. 13 (Huerta) ¶¶
21 6-8, 16 (in the IRC for over 48 hours, not given access to showers, fed only peanut
22 butter and jelly sandwich, and took turns with others in sleeping on the floor).

23 While the 24-Hour Clock Reports show an unrelenting pattern of violations
24 of the PI, they significantly undercount the number of violations and total length of
25 stay in the IRC. The PI requires Defendants to provide a list of people who have
26 been kept the IRC for more than 24 hours that includes the date and time they entered
27 the IRC, and the date and time they leave the IRC. Doc. 351 ¶ 1. Defendants,
28

1 however, maintain they cannot provide such a report. Instead, they provide a list of
2 people in the IRC for more than 24 hours, at three “snapshot” points in time during
3 a day: during the Early Morning (EM), Morning (AM), and Afternoon (PM).

4 Three snapshots a day is an improvement over the single snapshot Defendants
5 provided before October 2022. These snapshots, however, do not report the total
6 length of time a person spends in the IRC; and, most concerning, Defendants
7 routinely— and impermissibly— stop and restart the 24-hour clock precisely when
8 the IRC is most overwhelmed. According to the PI, the 24-hour clock can stop only
9 if a person leaves the IRC for medical treatment and stays in that location for more
10 than 12 hours with access to a bed. Doc. 351 ¶ 1. In practice, however, Defendants
11 stop the IRC clock whenever someone is sent to IRC overflow areas in MCJ, or
12 spends very short amounts of time in IRC 231. Camacho Dec. ¶ 8.

13 For example, the 24-hour clock for February 16 at 8:51 pm showed Mr. Webb
14 had been in the IRC for 33.6 hours. Camacho Dec. ¶ 13, Ex. D. He is not on the next
15 24-clock report on February 17 at 3:33 am, making it appear he had left the IRC. *Id.*,
16 Ex. E. But he was still in the IRC: Defendants had moved him into temporary IRC
17 overflow and then for a short stay in IRC 231. *Id.*, Ex. I. As of 11:00 am on February
18 17, Mr. Webb had been in the IRC for 50 hours. *Id.*

19 This is not an anomaly. At 12:54 pm on February 24, Defendants reported 26
20 people in the IRC for more than 24 hours, and 59 more people in IRC overflow in
21 MCJ. Camacho Dec. ¶ 13, Ex. F. For those 59 people, the clock stopped even though
22 they all likely exceed the 24-hour limit. At 3:45 am on February 25, the snapshot
23 showed 10 people in the IRC more than 24 hours, including one person for over 50
24 hours. *Id.* ¶ 13, Ex. G. But the same report shows 77 more people in IRC overflow.
25 *Id.* Thus, instead of reporting 87 people in the IRC more than 24 hours, with the total
26 length of stay for each person, Defendants reported only 10.⁸

27 ⁸ When someone has not reached the 24-hour mark at the time a snapshot is taken,
28 (cont’d)

1 **Paragraph 4** of the PI enjoins Defendants from locking people in an IRC
2 holding cell for more than 12 hours total. Doc. 351, ¶ 4. Defendants’ data show that
3 this continues to be a pervasive problem every month since September. Dominguez-
4 Ruiz Dec. ¶ 40, Exs. A-K. Moreover, the full extent of the violation is unknown due
5 to deficiencies in record-keeping. Reporting has been incomplete and sporadic, with
6 Defendants often providing logs showing the time individuals entered a holding cell
7 but not indicating when they left. *Id.*, Exs. A, C, J, K. Some written logs do not match
8 the computer entries, with discrepancies of up to 10 hours – the written log revealing
9 a longer holding period. *Id.* Exs. H, I.

10 Even this incomplete reporting, however, shows widespread violations of
11 Paragraph 4. For example, sample logs from September 2022 show at least 29 people
12 kept in holding cells more than 12 hours. Dominguez-Ruiz Dec. ¶ 40, Exs. A, B.
13 Records show multiple violations in October and missing data. *Id.* Ex. C. Samples
14 from November and December 2022 show consistent violations, including at least
15 one time where a person was in a holding cell for more than 27 hours. *Id.* Exs. D-F.
16 January and February 2023 records show a continued pattern of violations, and
17 samples reveal at least 20 violations in the last seven weeks. *Id.* Exs. G-K. Even
18 accepting these deficient records at face value, they reveal numerous times over the
19 past six months when class members were in holding cells for more than 12 hours.

20 Class members report being kept in IRC holding cells for long periods of time
21 without access to showers, hygiene products, blankets, mattresses, or phones. *See*,
22 *e.g.*, Ex. 23 (Webb) ¶¶ 2-8, 12-13, 17-19 (detained in the same holding cell for more
23 than 24 hours, with no blanket in a very cold cell, no mattresses, and no functioning

24 _____
25 and the clock stops when they are moved to an overflow area, they escape reporting
26 entirely. Lester Evans was in the IRC from October 17, 2022 at 3:39 pm to at least
27 1:00 pm on October 19, when Plaintiffs’ counsel interviewed him in a holding cell.
28 Camacho Dec. ¶¶ 16-23, Ex. I. Mr. Evans, however, never appeared on the relevant
24-Hour Reports for October 18-19, 2022 because of a short 12-hour stay in IRC
231. *Id.* ¶ 21, Ex. I; Ex. 8 (Evans) ¶ 11. He also spent 24 hours in a holding cell, but
Defendants failed to produce any holding cell logs for October 17-19, 2022.
Camacho Dec. ¶¶ 21-23, Ex. I.

1 intercom to call officers in cases of emergencies); Ex. 22 (Vasquez) ¶¶ 2-5, 10 (in
2 holding cells at the IRC clinic for two days at the time of his declaration, with nine
3 other men who had to sleep on the floor or on a bench because of no mattresses);
4 Ex. 9 (Fernandez) ¶¶ 10-15 (kept in one holding cell for a day and a half, and a
5 second holding cell for more than 12 hours, where the toilet did not work); Ex. 1
6 (Aguilera) ¶ 3 (in IRC holding cell in mid-October for more than 12 hours – and for
7 two days at the time of his October 19 declaration); Ex. 8 (Evans) ¶ 8 (placed in
8 holding cell with about 18 people, “packed in and sleeping on the benches, under the
9 benches, and laying next to each other on the ground”); Ex. 11 (H. Garcia) ¶¶ 2-3,
10 14 (unable to sleep in holding cell due to conditions, noise, and cold); Ex. 19 (Scott)
11 ¶¶ 9-11 (in an IRC holding cell alone for about two days in late January, without a
12 mattress or blanket); Dominguez-Ruiz Dec. ¶¶ 4, 25-29 (man in holding cell 120 on
13 February 16 pounding on cell door and asking to be let out).

14 **Paragraph 6** of the PI enjoins Defendants from holding a person “in the IRC
15 clinic area, cage, or any cell in the IRC when that location is not in a clean and
16 sanitary condition, with access to functioning toilets, potable drinking water, clean
17 water to wash, and sufficient garbage receptacles.” Doc. 351, ¶ 6. Class members
18 report unhygienic conditions and a failure to provide basic hygiene items such as
19 toilet paper, soap, or toothbrushes in the IRC and overflow units. Ex. 7 (Escobar)
20 ¶¶ 5, 7, 10 (not enough toilet paper in the IRC on 2/16/23, clogged toilets, and “[a]t
21 one point I had a plastic bag so I could sit on it while I sat on the floor because the
22 floor is dirty. They took the plastic bag away.”); Ex. 1 (Aguilera) ¶ 7 (“They did not
23 provide toilet paper until the ACLU representatives said something about it.”); Ex. 2
24 (Beck) ¶¶ 4, 11, 21, 23 (no soap at the IRC, no toothbrush or towel available in IRC
25 or temporary overflow unit, “on the floor around the toilet in the IRC there was pee
26 and feces and trash and toilet paper”); Ex. 12 (Gonzalez) ¶¶ 16-17, 20 (no shower
27 for multiple days, had to get boxer shorts from another detainee, floor was dirty);

28

1 Ex. 14 (Irvin) ¶ 7 (no soap available); Ex. 11 (H. Garcia) ¶¶ 7-8 (no shower access
2 since arrival to IRC two days earlier, no toothbrush or hygiene materials given
3 despite requests); Ex. 8 (Evans) ¶¶ 6, 12-14 (holding cell was dirty and detainees
4 asking for cleaning and trash disposal, urine in the cell, and no toilet paper available:
5 “I did a 37 year prison sentence. This is worse. It’s filthy. People shouldn’t live like
6 this. Animals live like this.”).

7 Plaintiffs’ counsel observed overcrowded and filthy conditions during recent
8 visits. Donovan Dec. ¶¶ 4, 6, 9 (trash covering the ground, broken chairs, not enough
9 chairs for 40-50 people to sit, frigid temperatures); Camacho Dec. ¶¶ 24-33 (Feb.
10 16, 2023 visit found thin foam mattresses in IRC overflow unit with no cover and
11 no bedding, unusable TVs, no visible supervision, makeshift vent covers of plastic
12 and spoons; people sleeping on the ground in the IRC using trash bags as a blanket;
13 holding cells piled with trash, and no toilet paper available); *id.* ¶¶ 16-18 (people in
14 holding cell on Oct. 19, 2022 banging on windows, asking her for toilet paper); *id.*
15 ¶¶ 32, 37-40 (Feb. 17, 2023 visit to holding cell 210 piled with trash, and no mops
16 available to clean the floor); Dominguez-Ruiz Dec. ¶¶ 4, 10-22 (Feb. 16, 2023
17 “overwhelming and shocking” visit to IRC, which “smelled strongly of body odor
18 and feces,” had dirty toilets, no blankets, class members reporting they were hungry
19 and chanting “WE WANT FOOD” at 2:45 pm because no lunch had been delivered).

20 **2. Defendants are defying the four-hour limit on chaining people**
21 **with mental illness to fixed objects at the Front Bench while they**
22 **await mental health intake screenings or permanent beds.**

23 **Paragraph 2** of the PI limits the practice of chaining or restraining people to
24 fixed objects and chairs at the IRC Clinic’s so-called Front Bench, while they await
25 mental health intake screenings or movement out of IRC into Module 231 or
26 permanent housing. Doc. 351 ¶ 2. This limit was imposed due to uncontroverted
27 evidence, including County reports dating back to 2019, detailing a dangerous
28 practice of chaining people with serious mental illness for hours and days at a time.

1 See Doc. 318-1 at 29-31 (citing OIG 2019 Review, 2022 Clinic Reports, and
2 declarations of counsel, class members, and psychiatric expert Dr. Terry Kupers).

3 Given shortcomings of 2022 data related to the Front Bench, Plaintiffs’
4 analysis focuses on the time period of January 1 - February 20, 2023 (the last day
5 for which Plaintiffs had data). Eliasberg Dec. ¶¶ 12-13 & Ex. E. Defendants’ logs
6 show that *in this seven-week period alone, 367 different people* were chained to the
7 Front Bench for more than four hours. *Id.* The reasons for which a person can be
8 chained to the Front Bench are “suicidal,” “odd concerning behavior,” and/or “self-
9 injurious behavior,” yet logs showed 11 people during this time who spent over four
10 hours chained to the Front Bench, for whom there is no reason given for chaining
11 them. *Id.* The longest documented time a person was chained to the Front Bench was
12 **21 hours and 29 minutes** on January 9-10, 2023 for “odd concerning behavior;”
13 there is no record in the logs that he was ever provided food or water, and the log
14 shows he was escorted to use the toilet only once in those 21 hours. *Id.* The logs
15 show 17 people who spent more than ten hours chained to the Front Bench from
16 January 1 to February 20, 2023, as shown below.

Booking #	Hours on Front Bench	Start Date	Start Time (24 hr clock)	End Date	End Time (24 Hr Clock)	Reason
6531055	21:29	1/9/2023	12:13	1/10/2023	9:42	Odd Concerning Behavior
6540619	19:05	2/14/2023	14:00	2/15/2023	9:05	Suicidal
6528822	16:37	1/14/2023	19:28	1/15/2023	12:05	Odd Concerning Behavior
6540573	15:55	2/12/2023	7:25	2/12/2023	23:20	Suicidal
6550740	15:34	2/12/2023	7:24	2/12/2023	22:58	Odd Concerning Behavior
6550695	13:30	2/14/2023	14:30	2/15/2023	4:00	Suicidal
6542237	13:06	2/4/2023	0:09	2/4/2023	13:15	Self-Injurious Behavior
6528531	12:12	1/4/2023	19:53	1/5/2023	8:05	Suicidal
6528457	11:49	1/4/2023	20:12	1/5/2023	8:01	Suicidal

Booking #	Hours on Front Bench	Start Date	Start Time (24 hr clock)	End Date	End Time (24 Hr Clock)	Reason
6529295	11:35	1/4/2023	21:44	1/5/2023	9:19	Suicidal
6551572	11:32	2/14/2023	14:39	2/15/2023	2:11	Odd Concerning Behavior
6551133	11:15	2/14/2023	21:41	2/15/2023	8:56	Odd Concerning Behavior
6552866	11:12	2/16/2023	12:30	2/16/2023	23:42	Suicidal
6528142	10:30	1/4/2023	22:49	1/5/2023	9:19	Odd Concerning Behavior
6530381	10:20	1/7/2023	1:00	1/7/2023	11:20	Suicidal
6532328	10:13	1/10/2023	14:52	1/11/2023	1:05	Suicidal
6535845	10:10	2/7/2023	22:40	2/8/2023	8:50	Odd Concerning Behavior

Id. In addition to these 17 people, logs show another **92 people** spent between six and 10 hours chained to the Front Bench from January 1 to February 20, 2023. *Id.*

Having 367 human beings chained to the Front Bench in excess of four hours in less than two months is shocking.⁹ But less than two weeks ago, Plaintiffs' counsel learned that for months, jail staff have been "tethering" people with mental illness with restraints to gurneys in MCJ hallways, so that they would not fall under the PI's time limits, nor count as people chained to the Front Bench. Specifically, on February 16, 2023, Inspector General Huntsman spoke at the public COC meeting (which Defendant Luna attended) and stated that,

When the court ordered that we stop chaining people to benches...when that was ordered by the court, I pointed out that it would be impossible to simply move shelves around and solve this problem. The county set up a procedure whereby we increased mental health housing in other places.

We didn't get more staff, we didn't have more real ability to care for

⁹ See Declaration of Dr. Terry Kupers (Doc. 318-2, Ex. 16) at 158 ¶ 30. ("Severe restraints such as tethering to the front bench or a chair at IRC has very harmful effects on all inmates, but especially on inmates with mental illness."). Dr. Kupers is a noted forensic psychiatrist who first testified in this case in 1978 and continues to advise Plaintiffs on the provision of health care in the jails.

1 people. *All we did was hide the problem, moved it out of IRC* [. . .] or
2 so I suspected, but we learned this week that that was true. *We learned*
3 *that for months, the sheriff’s department has been tethering people to*
4 *gurneys with a fixed restraint in violation of its own policy, it appears.*
5 In some specific instances that we asked about this week when we
6 learned about it, *we were told there was indeed, no such log as is*
7 *required by Sheriff’s Department policy.*

8 In one case, my office reviewed video and confirmed what a deputy
9 told us which had been, a particular person who’d been tethered for 24
10 hours. *The problem that used to exist in IRC in view of the court has*
11 *now been moved into the shadows.* The good news is that management
12 is present, learned about it earlier in the week, gave some orders to stop
13 it, and also initially that appeared to be ineffective. There was a [. . .]
14 order to stop it and [it] continued. We observed it afterwards. As of
15 yesterday, as far as we can tell, the word may have gotten out and it
16 may have stopped . . .

17 The reason I bring it up isn’t just because of what happened. . . . [I]t is a
18 symptom that will continue. As long as we have our jails overcrowded,
19 we will see IRC continue to be shut down repeatedly. We will continue
20 to see people’s constitutional rights violated, either in the IRC or
21 elsewhere, simply because we lack the capacity to care for the number
22 of people we have in our jails now, particularly the mentally ill.

23 [. . .] What’s happening is we’ve got a system bursting at the seams
24 because of what we’ve tried to make it do. The people on the ground
25 are doing their best. They didn’t necessarily read the tethering policy
26 five minutes before they did this thing. They were trying to manage, as
27 best they could, in what, to them, is an emergency. To us, we’re calmly
28 sitting here talking. There is no feces smeared on us, but down in the
jails, it’s not a calm situation.

Eliasberg Dec. Ex. A at 3-4, 7 [video at 8:08-10:20, 23:18-24:08] (emphasis added).

Defendant Luna was at the COC meeting and spoke about this practice;
neither he nor his staff contradicted Mr. Huntsman’s statement that it had been going
on “for months.” *Id.* at 6-7. Mr. Huntsman and COC members referred to “tethering”
people to gurneys instead of chaining them to the Front Bench as a “workaround” to
this Court’s order. *Id.* One COC commissioner said “we are in a tension between

1 workarounds and acceptable rules and what remedies might get enforced.” *Id.* at 7.

2 Assistant Sheriff Sergio Aloma, who supervises custody operations, described
3 “the tethering issue” as “a bigger issue that we are dealing with as a county and not
4 just as a department.” *Id.* at 8. He stated,

5 Specifically, to the tethering issue, I don’t disagree with a single thing
6 that Mr. Huntsman said. He is spot on in his assessment and
7 characterization of what they saw at Men’s Central Jail, within the last
8 couple of days. In fact, I was at all the facilities this past Saturday and
9 saw it for myself. I immediately addressed it with our line staff, our
10 supervisors. I let them know that it was unacceptable. Even though I
11 understood that this is a problem that was created, not just at Central
12 jail but the IRC that we’ve spoken about, *the domino effect that it*
13 *causes the TRO that is in place at IRC, that causes staff, both with*
14 *correctional health services and the Sheriff’s department, to move*
15 *individuals out of the IRC within 24 hours. Four hours, they’re not*
16 *allowed on the front bench, what’s referred to as the front bench, for*
17 *more than four hours and move them to appropriate housing.*

18 *Id.* at 9 (emphasis added) [video at 26:50-32:00].

19 In sum, not only do the Front Bench logs show appalling and widespread
20 violations of the four-hour limit; these damning admissions by County employees
21 indicate that the logs underestimate profoundly the extent of violations, given that
22 Defendants “hid[] the problem” and as a “workaround” “moved into the shadows”
23 the “problem that used to exist in the IRC in view of the court.”¹⁰ *Id.* at 3-4, 9.

24 **3. Defendants are not providing access to medical and mental**
25 **health care, including medications, in the IRC.**

26 **Paragraph 7** of the PI enjoins Defendants from holding a person “in the IRC
27
28

¹⁰ Such attempts to evade oversight from the Court are not well-taken. *See, e.g., Kelly v. Wengler*, 979 F. Supp. 2d 1104, 1105, 1110-1113 (D. Idaho 2013) (finding defendant prison officials in contempt after inaccurate and falsified staffing reports provided to the court), *aff’d* 822 F.3d 1085 (9th Cir. 2016); *Jensen v. Pratt*, No. CV-12-00601-PHX-ROS, 2021 WL 3828502, *7-11, *12-14 (D. Ariz. July 16, 2021) (vacating parties’ settlement agreement and setting case for trial after sustained noncompliance by prison officials, including documented misrepresentations in data reports provided to the court and Plaintiffs’ counsel and a history of unreliable reporting).

1 clinic area, cage, or any cell in the IRC without providing ongoing access to adequate
2 medical and mental health care, including but not limited to regular pill call.”
3 Doc. 351 ¶ 7. Defendants repeatedly fail to provide people in the IRC the psychiatric
4 medication they were prescribed prior to entering the jail. Numerous declarations by
5 people who have been in the IRC since the entry of the PI show that people
6 diagnosed with mental illness, who were prescribed psychiatric medications before
7 they were arrested, and asked for medication at their IRC screening, did not receive
8 their medications in the IRC — and often for months thereafter.

9 The experience of Raymond Crowley illustrates the County’s failure to
10 provide people in the IRC with psychiatric medications they were prescribed in the
11 community before their arrest, and the harm that results from the jail’s failure. He is
12 diagnosed with both schizophrenia and tardive dyskinesia (involuntary movements
13 as a side effect of certain medications). Ex. 6 (Crowley) ¶¶ 2-3. He took Artane,
14 Seroquel, and Wellbutrin before his arrest on November 10, 2022. *Id.* ¶¶ 5, 8.
15 Plaintiffs’ counsel reviewed his pre-incarceration medical records; they confirmed
16 his reported diagnoses and that he saw a doctor in September 2022 who prescribed
17 Artane and generic equivalents of Seroquel and Wellbutrin. Eliasberg Dec. ¶ 5.

18 When Mr. Crowley was in the IRC, he told medical and mental health staff
19 about the medications he was on, but did not receive them. Ex. 6 (Crowley) ¶ 10. He
20 suffered as a result, including “hearing voices, and seeing faces in my food and in
21 the wall” and he began to shake and have numbness in his leg. *Id.* ¶13. He continued
22 to not receive medication and experience symptoms even after he was transferred to
23 MCJ and then to Twin Towers. It was not until *after Christmas* that he saw a
24 psychiatrist, was able to tell her about his diagnoses, symptoms, and medication
25 history, and thereafter received his medication. *Id.* ¶¶ 18-19. A week or two later, he
26 stopped hearing voices and his leg twitching became manageable. *Id.* ¶¶ 20-21.

27 Defendants failed to provide Richard Cisneros the psychotropic medication
28

1 he was prescribed in the community. He is diagnosed with schizophrenia,
 2 depression, and anxiety. Ex. 5 (Cisneros) ¶ 6. He was prescribed a medication for
 3 sleep and, he believes, Abilify, when he was arrested on January 30, 2023 and taken
 4 to the IRC.¹¹ *Id.* ¶¶ 6, 9, 12. While at the IRC he received a screening from a mental
 5 health professional and told them that he was “taking medication for [his] mental
 6 health diagnoses.” *Id.* ¶ 5. Nonetheless, he had not received his psychiatric
 7 medication as of February 3, 2023. *Id.* ¶7.

8 What Mr. Crowley and Mr. Cisneros endured is common. *See, e.g.*, Ex. 15
 9 (Jones) ¶¶ 5-7 (diagnosis of schizophrenia and bipolar disorder, told staff at
 10 screening he took Haldol and sleep medication, but did not receive them in the IRC);
 11 Ex. 10 (Garcia Alfaro) ¶¶ 3-4, 8-13, 16 (diagnosis of schizophrenia, depression,
 12 bipolar disorder, and anxiety; told staff he was prescribed Buspar or other
 13 medications but had not received them in the IRC or at TTCF as of Feb. 3, eleven
 14 days after arrival; had suicidal thoughts and anxiety); Ex. 19 (Scott) ¶¶ 4-6, 8, 13,
 15 21, 23 (diagnosis of depression, anxiety, and agoraphobia; told mental health staff
 16 he was prescribed Prozac, Buspar, and Vistaril, but did not receive them in the IRC
 17 or IRC 231; hearing voices and “anxiety is going through the roof.”); Ex. 9
 18 (Fernandez) ¶¶ 4-6, 9, 20, 25, 27 (had not received Zoloft or Suboxone in IRC or
 19 MCJ as of January 12, 22 days after arrival to IRC, despite telling screener about his
 20 prescribed medications; cannot sleep, feels agitated and restless); Ex. 18 (Scoby)
 21 ¶¶ 3-7, 10-11 (pre-arrest he took Benadryl for insomnia, Buspirone for anxiety, and
 22 Seroquel for psychosis, but did not receive medications in the IRC or for a month
 23 after transfer to MCJ despite notifying staff; had visions and heard voices until he
 24 received medication); Ex. 3 (Brown) ¶¶ 2-3 (diagnosis of bipolar disorder and
 25 schizophrenia, did not receive Abilify or Trazodone for 10 days).

26 These declarants’ experiences are consistent with the observations of Deputy

27 ¹¹ Abilify is prescribed for mental health disorders including schizophrenia. *See*
 28 <https://www.webmd.com/drugs/2/drug-64439/abilify-oral/details>

1 Public Defender Meredith Gallen, whose declaration is submitted with this motion.
2 A significant number of her clients have mental illness, were unhoused before arrest,
3 are in LA County jail, and are processed in the IRC. Her clients with mental illness
4 “are experiencing significant delays in receiving mental health medications” and
5 “[s]ome of them experience lapses in medication use even when they were regularly
6 taking prescribed medications when living in the community.” Gallen Dec. ¶¶ 6-7.
7 She regularly seeks orders from the superior court directing the County to have her
8 clients be evaluated by a psychiatric professional and given medication if
9 appropriate. Yet she has repeatedly found her clients were not evaluated even when
10 the court transmitted a signed medical order to the jail. *Id.* ¶¶ 8-9.

11 Cutting people off psychiatric medications when they enter jail is dangerous.
12 As Dr. Kupers stated in his September 2022 declaration filed with the Court, the
13 risks of abrupt discontinuation of psychiatric medications include “a rebound effect
14 where the symptoms and the illness for which the medications have been prescribed
15 is exacerbated.” Doc. 318-2 at 151 (Ex. 16) ¶ 13. Cutting off anti-anxiety medication
16 can result in “a resurgence of anxiety . . . a seizure or a hypertensive crisis,” and
17 cutting off an anti-depressant can result in “very uncomfortable and sometimes
18 dangerous physiological changes.” *Id.* ¶ 14. Cutting off psychotropic medications
19 can cause “death – by suicide, seizures, or by physiological reactions to the abrupt
20 biochemical change.” *Id.* Dr. Kupers stated:

21 Because of the well-known psychiatric sequelae of abrupt
22 discontinuation of psychiatric medications as well as the physiological
23 difficulties and risk of suicide, all standards in correctional mental
24 health as well as instruction on institutional care require immediate
25 attention to inmates’ psychiatric medication when they are arrested and
admitted to jail.

26 Doc. 318-2 at 152 (Ex. 16) ¶ 16. Defendants’ failure to ensure that people who took
27 psychiatric medication before their arrest continue to get medications in the IRC is

1 a clear denial of adequate mental health care, in violation of the PI.

2 **C. Defendants’ Failure to Take Serious Action Has Resulted in**
3 **Widespread and Flagrant Violations of the PI**

4 It didn’t have to be this way. County officials have repeatedly confirmed that
5 overcrowding in the jails, the high percentage of the jail population that has severe
6 mental illness, and the lack of specialized housing in the jails are major drivers in
7 the overcrowding and resulting deprivation of constitutional rights of people in IRC.
8 *See, e.g.,* Eliasberg Dec. Ex. A at 3 (Inspector General Huntsman stating that “[a]s
9 long as we have our jails overcrowded, we will see IRC continue to be shut down
10 repeatedly. We will continue to see people’s constitutional rights violated, either in
11 the IRC or elsewhere, simply because we lack the capacity to care for the number of
12 people we have in our jails now, particularly the mentally ill.”). *See also* L.A. Cnty.
13 *OIG, Review of the Inmate Reception Center Intake Evaluation Process* (Nov. 2019)
14 at 9 (OIG 2019 Review);¹² Fesia A. Davenport, CEO, Cnty. of L.A., *Jails Last:*
15 *Addressing the Overcrowding Concerns in the Inmate Reception Center*, Attach. at
16 1 (Aug. 3, 2022) (shortage of HOH and MOH beds causes IRC overcrowding).¹³

17 As Plaintiffs explained in detail in their September 2022 request for a TRO
18 and PI, one obvious way to reduce the jail population and overcrowding at the IRC
19 is to divert people with mental illness out of the jails and into community treatment
20 programs with appropriate housing, mental health care, and other services. Doc. 318-
21 1 at 19-24. Defendant County Board of Supervisors has funded some of these
22 programs – most notably those run by the Office of Diversion and Reentry (ODR) –
23 which have been very successful as measured by housing retention and recidivism
24 rates. *Id.* But despite the programs’ success, and repeated and well-publicized crises

25 _____
26 ¹² Available at [https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-
b43e949b70a2/c2463bac-4aab-43b6-9824-
7e8c9c10fdb8/Review%20of%20IRC%20Intake%20Evaluation%20Process.pdf](https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/c2463bac-4aab-43b6-9824-7e8c9c10fdb8/Review%20of%20IRC%20Intake%20Evaluation%20Process.pdf).

27 ¹³ Available at <http://file.lacounty.gov/SDSInter/bos/supdocs/170774.pdf>.

28 (cont’d)

1 at that IRC that the Board is clearly aware of, the Board has failed to fund them
 2 adequately.¹⁴ On one occasion, the Board asked the CEO for funding options to
 3 sustain and expand ODR, and the CEO responded by refusing to make a
 4 “recommendation for service expansion.”¹⁵ So the Board did nothing, despite the
 5 pattern of repeated crises in the IRC. In the summer of 2022, the Board considered—
 6 but failed to implement—a plan to substantially expand ODR Housing proposed by
 7 Supervisor Mitchell.¹⁶ Finally, two days before Plaintiffs filed their request for a
 8 TRO and PI, the Board approved \$29.8 million for ODR Housing.¹⁷

9 While providing these funds is a step in the right direction, less than \$30
 10 million in one-time funding for two years will not allow ODR to expand to the point
 11 that its reach will meaningfully reduce the current IRC wait times. The experience
 12 of Public Defender Meredith Gallen and her clients with mental illness illustrates the
 13 results of the County’s failure to adequately fund diversion efforts, including
 14 significantly expanding ODR. In 2022, there was a “months-long waiting list for
 15 clients to have an initial screening with ODR because there were not enough ODR
 16 beds available to meet the overwhelming need for them.” Gallen Dec. ¶ 13. Now
 17 ODR has shifted to something akin to a lottery system, but the results are basically
 18 the same: defense lawyers desperately try to access to the online application for the
 19 screening for placement with ODR with almost no chance of success. *Id.* ¶¶ 13-15.

20 ¹⁴ Spectrum News 1, *The Future of Men’s Central Jail* (Aug. 29, 2022) (Supervisor
 21 Holly Mitchell explains that OIG has informed the Board “how many people in the
 22 Inmate waiting center are waiting too long or not being housed or held in humane
 23 conditions. . . . Those are all deplorable conditions, and we all agree to that.”), at
 24 9:36-10:00, at [https://spectrumnews1.com/ca/la-west/inside-the-
 25 issues/2022/08/30/the-future-of-men-s-central-jail](https://spectrumnews1.com/ca/la-west/inside-the-issues/2022/08/30/the-future-of-men-s-central-jail).

26 ¹⁵ See Memo from CEO to L.A. Board of Supervisors (11/17/2020), Doc. 318-2 at
 27 115, Ex. 13-F.

28 ¹⁶ Taylor Walker, *L.A. County Motion Aimed At Expanding Diversion Is Guttled,
 Then Put On Hold*, Witness LA (June 17, 2022) at [https://witnessla.com/la-county-
 motion-aimed-at-expanding-diversion](https://witnessla.com/la-county-motion-aimed-at-expanding-diversion).

¹⁷ L.A. County Chief Executive Office, *Detailed CEO Recommended Care First
 Community Investment Year 2 Spending Plan*, at <https://tinyurl.com/yc3ahkas>.

(cont’d)

1 And while the Board’s inaction means there is a dire shortage of community
 2 beds and treatment for people with serious mental illness, there continues to be no
 3 shortage of these same people suffering inhumane conditions in IRC day after day.¹⁸

4 ARGUMENT

5 **I. THE COURT HAS THE AUTHORITY AND INHERENT POWER TO** 6 **HOLD DEFENDANTS IN CONTEMPT**

7 “[C]ourts have inherent power to enforce compliance with their lawful orders
 8 through civil contempt.” *Spallone v. United States*, 493 U.S. 265, 276 (1990)
 9 (quotation marks omitted); *Parsons v. Ryan*, 949 F.3d 443, 455 (9th Cir. 2020)
 10 (“*Parsons III*”) (affirming contempt order against state prison system); *Stone v. City*
 11 *& Cnty. of S.F.*, 968 F.2d 850, 856 (9th Cir. 1992) (affirming contempt order for
 12 noncompliance with jail conditions decree).¹⁹ In the Ninth Circuit,

13 The moving party has the burden of showing by clear and convincing
 14 evidence that the contemnors violated a specific and definite order of
 15 the court. The burden then shifts to the contemnors to demonstrate why
 16 they were unable to comply. They must show how they took every
 reasonable step to comply.

17 *Stone*, 968 F.2d at 856 n.9.

18 A party defending against contempt by arguing inability to comply must show
 19 “categorically and in detail” why it could not comply. *N.L.R.B. v. Trans Ocean Exp.*

20 ¹⁸ As one class member stated, “I feel like I’m losing it. I’m afraid of losing my jobs
 21 if I don’t get out soon . . . I also feel sorry for the circumstances I am in and wish I
 could have met you, judge, in a different platform.” Ex. 2 (Beck) ¶¶ 23, 25.

22 ¹⁹ “When persons already are subject to the jurisdiction of the court, no new process
 23 is required to subject them to contempt charges; thus parties of record to a decree,
 upon appropriate notice of the contempt proceeding, may be held in contempt for
 24 noncompliance with the decree . . . since the civil-contempt charges are a
 continuation of the original proceedings.” 11A FED. PRAC. & PROC. CIV. § 2960
 (3d ed.). In an ongoing case governed by the PLRA, the moving party is not required
 25 to show that the noncompliance with an order, the parties’ stipulations, or judgments,
 creates a new constitutional violation. *See Parsons v. Ryan*, 912 F.3d 486, 501 (9th
 26 Cir. 2018) (“*Parsons II*”) (holding that “the district court was not required to make
 new findings of a constitutional violation before enforcing the Stipulation” in a
 27 prison conditions case); *see also Armstrong v. Brown*, 939 F. Supp. 2d 1012, 1022
 (N.D. Cal. 2013) (“[T]he Court need not wait until a death to require compliance
 28 with its orders”).

1 *Packing, Inc.*, 473 F.2d 612, 616 (9th Cir. 1973); *see also Kelly v. Wengler*, 822 F.3d
2 1085, 1096 (9th Cir. 2016) (prison officials must show that they took “*all* reasonable
3 steps to comply with the order”) (emphasis in original). Moreover, “[i]ntent is
4 irrelevant to a finding of civil contempt and, therefore, good faith is not a defense.”
5 *Stone*, 968 F.2d. at 856. And impossibility is not a valid defense if a party is
6 “responsible for the inability to comply.” *United States v. Asay*, 614 F.2d 655, 660
7 (9th Cir. 1980). Finally, the fact that compliance will cost money is no reason to
8 disobey an order. *See Stone*, 968 F.2d at 858; *cf. Peralta v. Dillard*, 744 F.3d 1076,
9 1083 (9th Cir. 2014) (en banc) (“Lack of resources is not a defense to a claim for
10 prospective relief because prison officials may be compelled to expand the pool of
11 existing resources in order to remedy continuing Eighth Amendment violations”).

12 Moreover, a court’s power to issue further orders is heightened when, as here,
13 it has overseen complex litigation against a recalcitrant public institution for a long
14 time. *Stone*, 968 F.2d at 856-57 (jail officials’ history of noncompliance is “highly
15 relevant” in finding them in contempt); *Armstrong v. Brown*, 768 F.3d 975, 986 (9th
16 Cir. 2014) (“The ongoing, intractable nature of this [prison] litigation affords the
17 district court considerable discretion in fashioning relief.”); *see also Plata*, 563 U.S.
18 at 542 (“A court that invokes equity’s power to remedy a constitutional violation by
19 an injunction mandating systemic changes to an institution has the continuing duty
20 and responsibility to assess the efficacy and consequences of its order.”).

21 **II. THE COURT SHOULD FIND DEFENDANTS IN CIVIL CONTEMPT** 22 **AND SANCTION THEIR FUTURE NONCOMPLIANCE**

23 Here, the factual record amply supports an Order finding Defendants in civil
24 contempt and issuing a prospective sanction for continued noncompliance with the
25 PI and the Court’s past orders. As described above and in their supportive filings,
26 Plaintiffs have collected clear and undisputed evidence – including Defendants’ own
27 reports – of Defendants’ failure to comply with several key provisions of the PI and
28 previous court orders. The PI (and previous court orders upon which it relied) are

1 clear, definite, and specific. There is no ambiguity to them, and in fact, Defendants
2 stipulated to many of these orders. *See, e.g.*, Doc. 343-1 (Joint Proposed TRO); Doc.
3 347-1 (Joint Proposed PI). Defendants have ample knowledge of the PI and timely
4 notice of Plaintiffs’ intent to seek a finding of civil contempt, and they will have an
5 opportunity to be heard about their noncompliance and respond to this motion and
6 make their evidentiary presentation.

7 **A. A Finding of Contempt and an Order Setting Forth Prospective**
8 **Sanctions for Future Noncompliance Are Warranted**

9 Once a court finds a party in civil contempt, it has broad equitable power to
10 order appropriate prospective relief. *See S.E.C. v. Hickey*, 322 F.3d 1123, 1128 (9th
11 Cir. 2003). When considering a sanction to bring about compliance with a court
12 order, the court should consider “the character and magnitude of the harm threatened
13 by continued contumacy, and the probable effectiveness of any suggested sanction
14 in bringing about the result desired.” *United States v. United Mine Workers of Am.*,
15 330 U.S. 258, 304 (1947).

16 A sanction of monetary fines is deemed civil if its purpose is to “coerce[]
17 compliance with a court order or is a remedial sanction meant to compensate the
18 complainant for actual losses” while a criminal sanction, in contrast, “generally
19 seeks to punish a completed act of disobedience.” *Parsons III*, 949 F.3d at 455
20 (citations and quotation marks omitted); *id.* at 456-57 (holding that “[p]rospective,
21 conditional fine schedules do not bear any of the hallmarks of punitive contempt,
22 such as retroactivity and determinacy”). “[C]oercive civil sanctions, intended to
23 deter, generally take the form of conditional fines” because any future accrual of the
24 threatened fines can be avoided by a party by simply complying with the past orders.
25 *Shell Offshore Inc. v. Greenpeace, Inc.*, 815 F.3d 623, 629, 630 (9th Cir. 2016); *see*
26 *also Kelly v. Wengler*, 979 F. Supp. 2d 1104, 1117 & n.27 (D. Idaho 2013) (holding
27 that a prospective fine schedule against prison officials of a \$100 per hour fine for

1 each vacant mandatory staff post is not punitive because “the amount of fine, if it
 2 succeeds in making them comply, should prevent the fine from reaching millions
 3 because Defendants will fix their behavior and begin living up to their promise in
 4 the Settlement Agreement. If a *prospective* fine leads to \$2.4 million in penalties,
 5 [the party] has no one to blame but itself.”) (emphasis in original), *aff’d*, 822 F.3d
 6 1085 (9th Cir. 2016).

7 **B. Proposed Civil Contempt Sanctions, And Plaintiffs’ Proposed Use**
 8 **of Financial Sanctions.**

9 Prospective per diem penalties are an appropriate civil contempt sanction. In
 10 *Trueblood v. Wash. State Dep’t of Soc. & Health Servs.*, the court revised a contempt
 11 order first issued in April 2015 requiring the state to provide competency evaluation
 12 and restoration services to people with mental illness who were incarcerated within
 13 seven days of a state court order to do so, or face a fine for each day a person did not
 14 receive services. No. C14-1178-MJP, 2017 WL 4700326, at *1-2 (W.D. Wash. Oct.
 15 19, 2017).²⁰ In its 2017 order, the court increased the daily monetary contempt fine
 16 payable to the court treasury to \$750 per person for each of the first six days of delay,
 17 and \$1500 starting the seventh day a person languished in the jail. *Id.* at *7.²¹ These
 18 contempt fines were used to fund programs for the benefit of the class. *Id.* See also
 19 *Parsons III*, 949 F.3d at 452, 456, 459 (affirming district court’s civil contempt fine
 20 of more than \$1.4 million for state prison system’s continuing failure to comply with

21 ²⁰ Similar to this case, the *Trueblood* court’s 2015 sanction order held that “[o]ur
 22 jails are not suitable places for the mentally ill to be warehoused while they wait for
 23 services. Jails are not hospitals, they are not designed as therapeutic environments,
 24 and they are not equipped to manage mental illness or keep those with mental illness
 25 from being victimized by the general population of inmates. Punitive settings and
 26 isolation for twenty-three hours each day exacerbate mental illness and increase the
 27 likelihood that the individual will never recover.” *Trueblood*, 2017 WL 4700326, at
 28 *1 (quoting Dkt. No. 131 at 2).

²¹ The *Trueblood* court held, “[o]ur most vulnerable population, those with mental
 health needs, deserve the protection of the Constitution and the provision of services
 to which they are entitled, not the ongoing foot-dragging and rationalizing which
 Defendants have exhibited to date. The question of why [the State] prefers to pay
 millions of dollars to the court treasury rather than honor the constitutional rights of
 the mentally ill population it is mandated to serve remains unanswered.” *Id.* at *2.

1 the parties’ consent decree and remedial district court orders; the fine was designated
 2 for class-wide benefit); *Parsons v. Shinn*, No. CV-12-0601-PHX-ROS, 2021 WL
 3 718102, *2-3 (D. Ariz. Feb. 24, 2021) (contempt sanctions of \$1.1 million).

4 Here, Plaintiffs do not seek retroactive sanctions for Defendants’ recent
 5 noncompliance, but rather seek civil contempt via a prospective fine schedule similar
 6 to those imposed in *Parsons*, *Kelly*, and *Trueblood*. This is paradigmatic civil
 7 contempt: Defendants will have the opportunity to purge any contempt findings and
 8 avoid any financial sanctions by finally complying with the Court’s orders, simply
 9 by providing minimally adequate conditions of confinement to people in the IRC
 10 and by abiding by the Court’s time limits. Accordingly, any future sanctions will be
 11 self-inflicted due to their failure to comply.

12 Plaintiffs’ proposed order filed with this Notice and Motion details the civil
 13 contempt sanction schedule that the Court should order to go into effect against the
 14 Defendants for all instances of noncompliance that occur 60 days or more after the
 15 issuance of the order. Plaintiffs’ proposed schedule of fines is as follows:

<p>Violations of the 24-hour IRC requirement (Paragraph 1)</p>
<ul style="list-style-type: none"> • \$250 per person who exceeds 24 hours in IRC (housed 24-48 hours) • \$500 per person who exceeds 48 hours (housed 48-72 hours) • \$1,000 per person who exceeds 72 hours, and \$1,000 for each 24 hours thereafter
<p>Violations of the 4-hour Front Bench requirement (Paragraph 2)</p>
<ul style="list-style-type: none"> • \$250 per person for the first hour beyond the 4-hour limit • \$500 per person for first two hours beyond the 4-hour limit • \$1,000 per person for the first three hours beyond the 4-hour limit • \$2,500 per person for the first four hours beyond the 4-hour limit • \$5,000 per person for the first eight hours beyond the 4-hour limit • \$7,500 per person for the first 12 hours beyond the 4-hour limit • \$10,000 per person for the first 24 hours beyond the 4-hour limit, \$10,000 for every portion of 24 hours thereafter
<p>Violation of the holding cell 12-hour limit (Paragraph 4)</p>
<ul style="list-style-type: none"> • \$250 per person for the first 12 hours beyond the 12-hour limit • \$500 per person for the first 24 hours beyond the 12-hour limit

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- \$1,000 per person for the first 36 hours beyond the 12-hour limit, and \$1,000 for every 24 hours thereafter
- Violations of the medication/health care requirements (Paragraph 7)**
- \$250 per person for each first missed dose of each medication that the person had been taking prior to incarceration that was not prescribed as a bridge medication;
 - \$500 per person for each second missed dose of each medication that the person had been taking prior to incarceration that was not prescribed as a bridge medication;
 - \$1,000 per person for each third missed dose of each medication that the person had been taking prior to incarceration that was not prescribed as a bridge medication, and for each missed dose of each medication after the third missed dose.

See Proposed Order.²² The Court should require the funds be deposited with the Registry of the Court on a monthly basis, as was done in *Trueblood*, 2017 WL 4700326, at *7. The Court should allocate the funds to pay for increased beds in evidence-based alternatives to incarceration such as the ODR program, and/or as the Court sees fit to best benefit class members.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully move this Court to issue an OSC why Defendants should not be adjudged in civil contempt and prospectively sanctioned for any continued failure to comply with the Court’s orders. A proposed order is attached.

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²² The fines would be cumulative. For example, a person chained to the Front Bench between 7 and 8 hours (in other words between three and four hours beyond the four hour limit) would result in a sanction of \$1,750 (\$250 for the first hour beyond the limit, an additional \$500 for the second hour, and an additional \$1,000 for exceeding the limit by three hours). Plaintiffs also propose that every 60 days after the final order, that the amount of each per diem sanction be doubled.

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Respectfully submitted,

DATED: Feb. 27, 2023

By: /s/ Corene T. Kendrick

Peter J. Eliasberg
Melissa Camacho
ACLU FOUNDATION OF SOUTHERN CALIFORNIA

David C. Fathi
Corene T. Kendrick
Marisol Dominguez-Ruiz
ACLU NATIONAL PRISON PROJECT

Attorneys for Plaintiffs Dennis Rutherford,
et al.

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CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2023, I electronically transmitted the above document to the Clerk’s Office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to Counsel for Defendants who are registered CM/ECF users.

DATED: February 27, 2023

/s/ Corene T. Kendrick
Corene T. Kendrick
ACLU National Prison Project

Attorneys for Plaintiffs