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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10

11 JOHN DOE #1, an individual;
12 JOHN DOE #2, an individual;
13 JOHN DOE #3, an individual; and
14 JOHN DOE #4, an individual

15 Plaintiffs,

16 vs.

17 ANDREW HALL, in his official
18 capacity as Chief of the Fresno Police
Department; and MARGARET MIMS,
in her official capacity as Fresno County
Sheriff,

19 Defendants.
20
21

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

22 **INTRODUCTION**

23 1. This action challenges the discretionary, unauthorized, and injurious policies
24 of the Fresno Police Department (“FPD”) and the Fresno County Sheriff’s Office
25 (“FCSO”) that require persons required to register as a sex offender (“Registrants”) who
26 are vulnerable to the COVID-19 virus to leave their homes and to appear in person at
27 FPD and FCSO stations for their 30-day, 90-day, or annual registration updates
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1 (hereinafter, “periodic updates”). The Sex Offender Registration Act, California Penal
2 Code section 290.012, does not require in-person registration for periodic updates, and
3 therefore does not authorize Defendants to subject vulnerable persons to a risk of
4 significant physical harm, perhaps death, that is universally recognized by national, state,
5 and local government – in violation of orders issued by those governments. In addition,
6 the FPD and FCSO policies that require in-person registration during periodic updates
7 infringe the life and liberty of Registrants in violation of the Fourteenth Amendment to
8 the United States Constitution, the Eighth Amendment to the United States Constitution,
9 as well as the California Sex Offender Registration Act, as more thoroughly pled herein.

10 2. This issue warrants the Court’s attention at this time because the
11 extraordinary measures now being taken to slow the spread of the COVID-19 pandemic
12 are undermined by Defendants’ requirement that Registrants continue to appear in person
13 for periodic updates. Specifically, as of March 19, 2020, the Governor of California has
14 ordered as follows: “*Everyone* is required to stay home except to get food, care for a
15 relative or friend, get necessary health care, or go to an essential job.”¹ The Order
16 contains no exception for Registrants or for registration updates.

17 3. Nor is such an exception mandated by law. Specifically, Sex offender
18 registration is governed by the California Sex Offender Registration Act, codified at
19 Penal Code section 290, *et seq.* (hereinafter, “Section 290” or “Act”). The text of the Act
20 *does not* require Registrants to appear in person for any type of periodic update. See Cal.
21 Penal Code § 290.012(a)-(c). Instead, the Act merely requires that Registrants be
22 “Registered.” *Ibid.* In addition, there is no practical reason why Registrants must appear
23 in person for a periodic update because the purpose of a periodic update is to *confirm*
24 *information that registering agencies already possess*, or to provide information that can
25 be transmitted through alternative means which pose little or no risk of exposure of
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27 ¹ <https://covid19.ca.gov/>, last visited March 23, 2020.
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1 COVID-19, such as the telephone or video conferencing apps and programs. Use of this
2 widely available technology provides law enforcement with effective methods to obtain
3 the information necessary to complete periodic updates without subjecting the public, law
4 enforcement personnel, and Registrants to potentially harmful in-person visits to
5 locations where they could either contract or spread COVID-19.

6 4. On information and belief, many registering agencies throughout California,
7 including the Los Angeles Police Department (“LAPD”), the agency with the largest
8 population of Registrants in the state, are processing periodic updates over the telephone.
9 The LAPD does not require Registrants to appear in person while the COVID-19
10 emergency measures are in place. Instead, the LAPD has placed signs, including those
11 attached hereto as Exhibit A, on the exterior of its police stations confirming that the
12 LAPD’s registration policy is currently “modified” to accommodate the COVID-19
13 emergency measures. (Exh. A.) Pursuant to the LAPD’s modified policy, Registrants
14 “are not [] allowed in the station,” and “[the LAPD] will register [them] over the phone.”
15 (Exh. A.)

16 5. Plaintiffs are for individual Registrants, Plaintiffs John Doe #1, John Doe
17 #2, John Doe #3, and John Doe #4, who are deemed vulnerable to infection by COVID-
18 19 due to their age and/or chronic medical conditions. As pled more fully below,
19 Defendants have directed all Registrants, including Plaintiffs John Doe #2, John Doe #3,
20 and John Doe #4 to appear in person for their periodic updates, and/or have refused to
21 process the registration of Registrants, such as Plaintiff John Doe #1, who do not appear
22 in person.

23 6. Defendants’ mandate that all Registrants, including those with high risk
24 factors for COVID-19, appear in person forces Plaintiffs and all Registrants into a Catch-
25 22. That is, they must either subject themselves to possible COVID-19 infection in
26 violation of a state order, or violate Section 290 by failing to appear in person, thereby
27 inviting arrest and custody in jail or prison – where the risk of COVID-19 infection is
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1 much greater. Either option constitutes irreparable injury warranting injunctive relief.
2 Harris v. Bd. of Supervisors, 366 F.3d 754, 759, 766 (9th Cir. 2004). See also City of
3 Costa Mesa v. United States, 2020 U.S. Dist. LEXIS 33650 (C.D. Cal. Feb. 21, 2020)
4 (granting TRO against placement of COVID-19 patients within city because possible
5 exposure “threat[ens] immediate and irreparable injury”). Section 290 does not require
6 Plaintiffs and all Registrants to play Russian Roulette with their lives in order to confirm
7 information already in the possession of law enforcement.

8 7. Accordingly, Plaintiffs seek a temporary restraining order, preliminary
9 injunction, and permanent injunction directing Defendants to process 30-day, 90-day, and
10 annual updates without the additional, non-statutory requirement to appear in person until
11 the threat from COVID-19 ends. Plaintiffs further seek injunctive relief as well as a
12 declaratory judgment that Registrants are not required to appear in person for periodic
13 updates.

14 JURISDICTION AND VENUE

15 8. This court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331
16 [federal question], 1343(a) [federal question], and 2201 [declaratory judgment], as well
17 as 42 U.S.C. § 1983 [civil rights]. Specifically, jurisdiction under 28 U.S.C. §§ 1331 and
18 1343(a) exists because Defendants’ policies requiring in-person registration during the
19 COVID-19 pandemic constitute a deprivation of life and liberty within the meaning of
20 the Fourteenth Amendment in that: (i) in-person registration constitutes constructive
21 custody in which Registrants are exposed to a risk of bodily harm and death, in violation
22 of the Fourteenth Amendment; (ii) Exposing Registrants to risk of bodily harm and death
23 through in-person registration constitutes a state-created danger in violation of the
24 Fourteenth Amendment; and (iii) Exposing Registrants to risk of bodily harm and death
25 through in-person registration constitutes cruel and unusual punishment in violation of
26 the Eighth Amendment, as follows:

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1 **Fourteenth Amendment: Deprivation of Life and Liberty**

2 a. In-person registration at police and sheriff's stations constitutes
3 constructive custody, thereby triggering a duty by Defendants to avoid deprivations of
4 liberty within the meaning of the Fourteenth Amendment. That is, registration during
5 periodic updates requires Registrants to be physically present in police and sheriff's
6 stations for up to two hours, during which time Registrants are interviewed by law
7 enforcement, are subject to interrogation concerning their offenses and present
8 compliance with the law, are often photographed and finger printed, and must complete
9 five or more pages of paperwork in the presence of law enforcement.

10 b. Under Defendants' policies, Registrants are not free to leave during
11 in-person registration because doing so would result in criminal liability pursuant to the
12 California Sex Offender Registration Act, Penal Code section 290, *et seq.*, as well as the
13 federal Sex Offender Registration and Notification Act, 34 U.S.C. § 20901, *et seq.*

14 c. Therefore, Defendant's policies requiring in-person registration
15 during the COVID-19 pandemic constitute a deprivation of life and liberty within the
16 meaning of the Fourteenth Amendment by subjecting Registrants, law enforcement, as
17 well as the general public, to a risk of infection by the highly contagious novel
18 coronavirus that causes the life-threatening disease COVID-19.

19 **Fourteenth Amendment: State-created Danger**

20 d. In the context of the COVID-19 pandemic, requiring Registrants to
21 appear in-person for periodic updates is an affirmative act which places Registrants in
22 danger of possibly lethal infection by COVID-19.

23 e. In the context of the COVID-19 pandemic, the danger in which
24 Defendants place Registrants is not a danger to which Registrants would otherwise be
25 subject, and therefore constitutes a state-created danger.

26 f. In the context of the COVID-19 pandemic, the danger in which
27 Defendants place Registrants is known and obvious at all levels of state and local
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1 government, and is a danger to which Defendants are deliberately indifferent. Wood v.
2 Ostrander, 879 F.2d 583 (9th Cir. 1989); Pauluk v. Savage, 836 F.3d 1117 (9th Cir.
3 2016).

4 **Eighth Amendment: Cruel and Unusual Punishment**

5 g. In-person registration at local police and sheriff's stations constitutes
6 constructive custody, thereby triggering a duty by Defendants to avoid cruel and unusual
7 punishment within the meaning of the Eighth Amendment. That is, registration during
8 periodic updates requires Registrants to be physically present in police and sheriff's
9 stations for up to two hours, during which time Registrants are interviewed by law
10 enforcement, are subject to interrogation concerning their offenses and present
11 compliance with the law, are often photographed and finger printed, and must complete
12 five or more pages of paperwork in the presence of law enforcement.

13 h. Under Defendants' policies, Registrants are not free to leave during
14 in-person registration because doing so would result in criminal liability pursuant to the
15 California Sex Offender Registration Act, Penal Code section 290, *et seq.*, as well as the
16 federal Sex Offender Registration and Notification Act, 34 U.S.C. § 20901, *et seq.*

17 i. Requiring Registrants to appear in-person for periodic updates at
18 police and sheriff's stations, and thereby exposing them to lethal infection by COVID-19,
19 constitutes cruel and unusual punishment in violation of the Eighth Amendment.

20 9. Under 28 U.S.C. § 1391(b), venue is proper in this Federal district because
21 the events giving rise to the claims have occurred and continue to occur in this district.
22

23 **PARTIES**

24 10. Plaintiff John Doe #1, aged 71, is a Registrant who resides within the
25 jurisdiction of the FCSO. Plaintiff John Doe #1 is required to update his registration with
26 the FCSO within five working days of his birthday pursuant to California Penal Code
27 section 290.012. Plaintiff John Doe #1 is vulnerable to infection by COVID-19 due to
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1 his advanced age, as determined by state and national health care agencies. In April
2 2020, agents, officers, and officials of the FCSO told Plaintiff John Doe #1 and his
3 counsel that his periodic update will not be processed, completed, or sent to the
4 California Department of Justice unless he appears in person at his local FCSO station.

5 11. Plaintiff John Doe #2, aged 68, is a Registrant who resides within the
6 jurisdiction of the FCSO. Plaintiff John Doe #2 is required to update his registration with
7 the FCSO within five working days of his birthday pursuant to California Penal Code
8 section 290.012. Plaintiff John Doe #2 is vulnerable to infection by COVID-19 due to
9 his advanced age, as well as his chronic medical conditions that include hypertension, as
10 determined by state and national health care agencies.

11 12. Plaintiff John Doe #3 is a Registrant who resides in the City of Fresno,
12 within the jurisdiction of the FPD. Plaintiff John Doe #3 is required to update his
13 registration with the FCSO within five working days of his birthday pursuant to
14 California Penal Code section 290.012. Plaintiff John Doe #3 is vulnerable to infection
15 by COVID-19 due to chronic medical conditions that include asthma, a respiratory
16 disease, as determined by state and national health care agencies.

17 13. Plaintiff John Doe #4, age 72, is a Registrant who resides within the
18 jurisdiction of the FCSO. Plaintiff John Doe #4 is required to update his registration with
19 the FCSO within five working days of his birthday on May 22, 2020 pursuant to
20 California Penal Code section 290.012. Plaintiff John Doe #4 is vulnerable to infection
21 by COVID-19 due to his advanced age, as well as his chronic medical conditions that
22 include diabetes, as determined by state and national health care agencies. In addition,
23 Plaintiff John Doe #4 fears exposing his wife, with whom he resides, to COVID-19,
24 because she is the recent recipient of a kidney transplant, and is therefore vulnerable to
25 life-threatening infection and possible organ rejection.

26 14. Plaintiffs John Doe #1, John Doe #2, John Doe #3, and John Doe #4, are
27 collectively referred to herein as “Plaintiffs.”
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1 15. Defendant Andrew Hall (“Hall”) is Chief of the Fresno Police Department,
2 the registering agency responsible for implementing the Sex Offender Registration Act
3 within the City of Fresno. In his official capacity as Chief of the FPD, Defendant Hall is
4 responsible for decisions and policies challenged in this action. Defendant Hall is sued in
5 his official capacity.

6 16. Defendant Margaret Mims (“Mims”) is Sheriff of Fresno County, and the
7 chief executive of the FCSO, the registering agency responsible for implementing the Sex
8 Offender Registration Act within Fresno County. In her official capacity as Sheriff,
9 Defendant Mims is responsible for decisions and policies challenged in this action.
10 Defendant Mims is sued in her official capacity.

11 17. Defendants Price and Mims are collectively referred to herein as
12 “Defendants.”

13 **FACTS**

14 18. Plaintiffs reallege and incorporate herein, as though fully set forth, each and
15 every, all and inclusively, paragraphs 1 through 17.

16 **The California Sex Offender Registration Act Does Not Require In-person Periodic**
17 **Updates**

18 19. In the words of Fresno Mayor Lee Brand, “conditions of extreme peril to the
19 safety of persons and property have arisen with respect to the international COVID-19
20 pandemic.”² Extraordinary measures have been implemented by governments at every
21 level to address this pandemic.³ On March 16, 2020, the Fresno City Council declared a
22 Local Emergency throughout the City of Fresno due to the COVID-19 pandemic.⁴

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24
25 ² <https://www.fresno.gov/cityclerk/wp-content/uploads/sites/9/2020/03/Proclamation.pdf>

26 ³ <https://www.fresno.gov/news/mayor-announces-state-of-emergency-for-coronavirus/>

27 ⁴ <https://www.fresno.gov/coronavirus/>

1 Subsequently, the Fresno County Board of Supervisors declared a similar Local
2 Emergency the next day.⁵

3 20. Most notably, on March 19, 2020, the Governor of California issued an
4 order calling upon all 40 million residents of the state to remain in their homes, with
5 limited exceptions for essential travel (hereinafter, the “Order”).⁶ Specifically, the
6 Governor’s Order directs “all individuals living in the State of California to stay home or
7 at their place of residence except as needed to maintain continuity of operations of the
8 federal critical infrastructure sectors, as outlined at [https://www.cisa.gov/identifying-
9 critical-infrastructure-during-covid-19](https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19).”⁷ Sex offender registration is not listed among
10 the exceptions to the Order, and violation of the Order can result in penalties and
11 punishment.

12 21. The Order emphasizes that persons within specific vulnerable populations
13 must self-isolate and remain in their homes. As reflected in the Order, the Center for
14 Disease Control and the California Department of Health Care Services declare the
15 following persons are at “higher risk” for contracting COVID-19:^{8,9}

- 16 a. Persons aged 65 and older;
 - 17 b. Persons with HIV/AIDS or compromised immune systems; and
 - 18 c. Persons with chronic serious medical conditions, including diabetes,
19 asthma, and hypertension.
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22 ⁵ <https://www.co.fresno.ca.us/Home/Components/News/News/545/1556?backlist=%2F>

23 ⁶ <https://covid19.ca.gov/stay-home-except-for-essential-needs/>

24 ⁷ <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>

25 ⁸ [https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-
26 complications.html](https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html)

27 ⁹ <https://covid19.ca.gov/what-you-can-do/#symptoms-risks>

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1 22. The California Sex Offender Registration Act does not require initial
2 registration, annual updates, 90-day updates, or 30-day updates (i.e., “periodic updates”)
3 to be in person. Instead, the Act only requires that periodic updates occur, without
4 specifying how a Registrant is to provide the required information to the registering
5 agency. E.g., Cal. Penal Code § 290.012(a) (“Beginning on his or her first birthday
6 following registration or change of address, the person shall be required to register
7 annually, within five working days of his or her birthday, to update his or her registration
8 with the entities described in subdivision (b) of Section 290. At the annual update, the
9 person shall provide current information as required on the Department of Justice annual
10 update form, including the information described in paragraphs (1) to (4), inclusive, of
11 subdivision (a) of Section 290.015. The registering agency shall give the registrant a copy
12 of the registration requirements from the Department of Justice form.”)

13 23. Notably, the Act specifies only three occasions on which in-person
14 registration or in-person updates are required. Specifically, in-person registration and
15 updates are required only for:

16 a. **Transient Registrants “who move[] of out state.”** Cal. Penal Code
17 § 290.011(f) (“A transient who moves out of state shall inform, in person,
18 the chief of police in the city in which he or she is physically present, or the
19 sheriff of the county if he or she is physically present in an unincorporated
20 area or city that has no police department, within five working days, of his
21 or her move out of state.”)

22 b. **Registrants who change their residence address, whether within**
23 **the jurisdiction in which they are currently registered or to a new**
24 **jurisdiction outside California.** Cal. Penal Code § 290.013 (a) (“A person
25 who was last registered at a residence address pursuant to the Act who
26 changes his or her residence address, whether within the jurisdiction in
27 which he or she is currently registered or to a new jurisdiction inside or
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1 outside the state, shall, in person, within five working days of the move,
2 inform the law enforcement agency or agencies with which he or she last
3 registered of the move, the new address or transient location, if known, and
4 any plans he or she has to return to California.”)

5 c. **Registrants who legally change their names.** Cal. Penal Code §
6 290.014 (a) (“If any person who is required to register pursuant to the Act
7 changes his or her name, the person shall inform, in person, the law
8 enforcement agency or agencies with which he or she is currently registered
9 within five working days.”)

10 24. The Legislature’s decision to expressly require in-person updates in certain
11 limited situations but no other situations confirms that the Legislature did not intend to
12 require personal appearance at initial registration, annual updates, 90-day updates, or 30-
13 day updates. See, e.g., Wilson v. City of Laguna Beach, 6 Cal. App. 4th 543, 554 (1992).
14 On information and belief, the California Department of Justice and various local
15 registering agencies are able to, and do in fact, process registrations when a Registrant
16 does not appear in person, such as when a Registrant is hospitalized or otherwise
17 incapacitated. Accordingly, Defendants have, but unlawfully refuse to exercise,
18 discretion to process periodic updates without requiring Registrants to appear in person.
19 Defendants’ refusal places Registrants in danger of exposure to COVID-19.

20 **Defendants’ Discretionary In-person Registration Requirement Threatens**
21 **Vulnerable Registrants and Forces Them to Violate State and Local COVID-19-**
22 **Related Orders**

23 25. Plaintiffs are vulnerable to COVID-19 infection because of their age, and/or
24 certain chronic medical conditions and co-morbidities that are known to be associated
25 with fatalities in COVID-19 patients such as asthma and hypertension. In addition,
26 Plaintiffs are currently subject to the Governor of California’s Order, which requires
27 them to remain at home except for “essential” travel pursuant to the terms of that Order.
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1 26. On information and belief, the locations at which Registrants are required to
2 register in person within the jurisdiction of the FPD and the FCSO are often unsanitary,
3 crowded, and do not allow for “social distancing” and other preventative measures
4 mandated by state and local government. In addition, Registrants are forced to enter, sit
5 in, touch, and otherwise interact with unsanitary, and often narrow and cramped, physical
6 environments while registering. Those environments, as well as, the registration
7 procedures employed by Defendants require repeated and prolonged contact with
8 potentially virus-ridden surfaces and objects such as countertops, clip boards, various
9 papers, pens, pen chains, ink pads, chairs, door handles, water fountains, and Livescan
10 and other fingerprinting machine. These unsanitary surfaces are touched by many other
11 Registrants, as well as other visitors to the station and employees of the registering
12 agencies.

13 27. Plaintiffs are gravely afraid of contracting COVID-19 should they be forced
14 to register in person at FPD and FCSO stations. As one District Court recognized,

15 COVID-19 is a type of highly contagious novel coronavirus that is thought
16 to be “spreading easily and sustainably in the community.” Experts believe
17 that it can live on some surfaces for up to 72 hours after contact with an
18 infected person. A simple sneeze or brush of the face without washing your
19 hands is now known to easily spread the virus, which generally causes fever,
20 cough, and shortness of breath. How Coronavirus Spreads, Centers for
21 Disease Control[,] at 15.

22 *Thakker v. Doll*, 2020 U.S. Dist. LEXIS 59459, at *10-*12 (M.D.Pa. Mar. 31,
23 2020). The County of Fresno has likewise warned that COVID-19 “is a contagious
24 disease that takes advantage of close contact and poor hygiene, so please do your
25 part in maintaining at least six feet of distance with your peers This health
26 crisis will require everyone to play a role during this challenging time.”¹⁰

27 ¹⁰ <https://www.co.fresno.ca.us/departments/public-health/covid-19>
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1 28. Many courts have recognized that placing persons in close proximity to
2 potentially infected persons and surfaces constitutes a risk of harm that warrants
3 injunctive relief. E.g., Castillo v. Barr, No. 20CV00605-TJH, 2020 U.S. Dist. LEXIS
4 54425, at *4 (C.D. Cal. Mar. 27, 2020) (“Coronavirus is spread between people who are
5 in close contact . . . through respiratory droplets produced when an infected person
6 coughs or sneezes. . . . Moreover, studies have established that the coronavirus can
7 survive up to three days on various surfaces.”). For this reason, the Ninth Circuit *sua*
8 *sponte* ordered the immediate release of an immigration detainee with a pending petition
9 for review of her removal order “[i]n light of the rapidly escalating public health crisis,
10 which public health authorities predict will especially impact immigration detention
11 centers.” Xochihua-Jaimes v. Barr, No. 18-cv-71460, 2020 U.S. App. LEXIS 9069, (9th
12 Cir. Mar. 24, 2020). See also Castillo, 2020 U.S. Dist. LEXIS 54425 (ordering release of
13 certain immigration detainees due to the COVID-19 pandemic). Although in-person
14 registration involves shorter durations of time than other custodial settings, that
15 difference is not significant within the context of the COVID-19 pandemic because
16 COVID-19 infection occurs quickly, and transmission can easily take place within the
17 time period that Registrants are present in person at police and sheriff’s stations. E.g.,
18 Ortuño v. Jennings, No. 3:20-cv-02064, 2020 U.S. Dist. LEXIS 62030, at *6 (N.D. Cal.
19 Apr. 8, 2020) (rejecting argument that threat of infection by COVID-19 is speculative
20 because such infections “are rapidly increasing in the United States, including California,
21 and, when introduced into a confined space, such as a nursing home, a cruise ship, and,
22 recently, a naval aircraft carrier, it can rapidly spread. Indeed, it has quickly spread in a
23 number of jails and prisons”); Perez v. Wolf, 2020 U.S. Dist. LEXIS 65450, *35 (N.D.
24 Cal. Apr. 14, 2020) (“The mere fact that no cases have been reported in the Aurora
25 Facility is irrelevant – it is not a matter of if COVID-19 will enter the facility, but when it
26 will be detected there.”) See also Helling v. McKinney, 509 U.S. 25, 33 (1994) (“It
27 would be odd to deny an injunction to inmates who plainly proved an unsafe, life-
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1 threatening condition in their prison on the ground that nothing yet had happened to
2 them.”)

3 29. On or about April 6, 2020, Plaintiff John Doe #3, through counsel,
4 telephoned the FPD to inquire whether Plaintiffs and other Registrants are required to
5 appear in person for periodic updates despite the Governor’s Order as well as the
6 common-sense directives of health care authorities. An FPD registration official
7 confirmed that all Registrants are required to appear in person for periodic updates,
8 regardless of their vulnerability due to one or more high-risk COVID-19 factors.

9 30. On or about April 15, 2020, Plaintiffs John Doe #1 and John Doe #2,
10 through counsel, telephoned the FCSO to inquire whether Plaintiffs and other Registrants
11 are required to appear in person for periodic updates despite the Governor’s Order as well
12 as the common-sense directives of health care authorities. An FCSO registration official
13 confirmed that all Registrants are required to appear in person for periodic updates,
14 regardless of their vulnerability due to one or more high risk COVID-19 factors.

15 31. In addition to being discretionary and neither required nor authorized by
16 Penal Code Section 290, Defendants’ ongoing decision to require in-person registration
17 for periodic updates forces Plaintiffs and all Registrants to contravene the public safety
18 measures imposed by state and local government upon all residents of California,
19 including the current Order by the Governor of California. Defendants’ decision
20 requiring in-person registration therefore threatens both vulnerable Registrants as well as
21 the larger population with which those Registrants interact, including the public, law
22 enforcement personnel, and their families.

23 32. On information and belief, there are registering agencies throughout
24 California, including the Los Angeles Police Department (LAPD), the agency with the
25 largest population of Registrants in the state, that are currently processing periodic
26 updates over the telephone. That is, the LAPD has completely stopped requiring
27 Registrants to register in person while the COVID-19 emergency measures are in place.
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1 Instead, the LAPD has placed signs, including those attached hereto as Exhibit A, on the
2 exterior of its police stations confirming that the LAPD’s registration policy is currently
3 “modified” to accommodate the COVID-19 emergency measures. (Exh. A.) Pursuant to
4 the LAPD’s modified policy, Registrants “are not [] allowed in the station,” and “[the
5 LAPD] will register [them] over the phone.” (Exh. A.)
6

7 **FIRST CLAIM**

8 **(42 U.S.C. § 1983 – Fourteenth Amendment – Due Process)**

9 33. Plaintiffs re-allege paragraphs 1 through 32 of this Complaint as though
10 fully set forth herein.

11 34. Neither the California Sex Offender Registration Act, the federal Sex
12 Offender Registration and Notification Act, nor any other provision of law requires
13 Registrants to appear in person for periodic updates pursuant to California Penal Code
14 section 290.012.

15 35. Plaintiffs are required by Defendants to appear in person for periodic
16 updates pursuant to the policies challenged in this action. The requirement of in-person
17 registration place Registrants in constructive custody, thereby triggering Defendant’s
18 duty to prevent restraints upon or injury to Plaintiffs’ life and liberty pursuant to the
19 Fourteenth Amendment. That is, registration during periodic updates requires the
20 Registrant to be physically present in police and sheriff’s stations for up to two hours,
21 during which time Registrants are interviewed by law enforcement, interrogated
22 regarding their offense and their present compliance with the law, frequently
23 photographed and finger printed, and must complete five or more pages of paperwork in
24 the presence of law enforcement. Under the policies of Defendants challenged herein,
25 Registrants are not free to leave during in-person registration because doing so would
26 result in criminal liability pursuant to the California Sex Offender Registration Act, Penal
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1 Code section 290, *et seq.*, as well as the federal Sex Offender Registration and
2 Notification Act, 34 U.S.C. § 20901, *et seq.*

3 36. The state violates the rights of individuals when it subjects them to risk of
4 physical harm and disease during required interactions with law enforcement. E.g.,
5 Helling v. McKinney, 509 U.S. 25, 33 (1994) (“It would be odd to deny an injunction to
6 inmates who plainly proved an unsafe, life-threatening condition in their prison on the
7 ground that nothing yet had happened to them.”). By virtue of their age and/or chronic
8 medical conditions including asthma and hypertension, Plaintiffs face an elevated risk of
9 death due to infection by COVID-19. Defendants’ policies requiring in-person
10 registration during the COVID-19 pandemic constitute a deprivation of life and liberty
11 within the meaning of the Fourteenth Amendment by subjecting Plaintiffs and
12 Registrants, as well law enforcement and the general public, to a risk of infection by a
13 highly contagious and potentially deadly disease.

14 37. Furthermore, in the context of the COVID-19 pandemic, requiring
15 Registrants to appear in-person for periodic updates is an affirmative act which places
16 Plaintiffs and all Registrants in danger of possibly lethal infection by COVID-19, a
17 danger to which they would not otherwise be subject, a danger which is known and
18 obvious at all levels of state and local government, and to which Defendants are
19 deliberately indifferent. Wood v. Ostrander, 879 F.2d 583 (9th Cir. 1989); Pauluk v.
20 Savage, 836 F.3d 1117 (9th Cir. 2016). The risk of infection from COVID-19 in
21 custodial settings has been noted by District Courts, including one which noted that law
22 enforcement “[f]acilities are plainly not equipped to protect Petitioners from a potentially
23 fatal exposure to COVID-19. While this deficiency is neither intentional nor malicious,
24 should we fail to afford relief to Petitioners we will be a party to an unconscionable and
25 possibly barbaric result.” Thakker v. Doll, 2020 U.S. Dist. LEXIS 59459, at *27-*28
26 (M.D. Pa. Mar. 31, 2020)

1 38. Defendants commit these unconstitutional acts under color of authority of
2 law. Plaintiffs face the immediate threat of irreparable injury, for which no legal remedy
3 will suffice, by being deprived of their Fourteenth Amendment rights. Costa Mesa v.
4 United States, 2020 U.S. Dist. LEXIS 33650 (C.D. Cal. Feb. 21, 2020) (granting TRO
5 against placement of COVID-19 patients within city because possible exposure
6 “threat[ens] immediate and irreparable injury”). Thakker, 2020 U.S. Dist. LEXIS 59459,
7 at *21 (“Indeed, courts have even specifically held that COVID-19 constitutes an
8 irreparable harm that supports the grant of a TRO.”)

9 **SECOND CLAIM**

10 **(42 U.S.C. § 1983 – Eighth Amendment – Cruel and Unusual Punishment)**

11 39. Plaintiff re-alleges paragraphs 1 through 38 of this Complaint as though
12 fully set forth herein.

13 40. Plaintiffs are required by Defendants to appear in person for periodic
14 updates pursuant to the policies challenged in this action. The requirement of in-person
15 registration places Plaintiffs and all Registrants in constructive custody, thereby
16 triggering Defendant’s duty to prevent cruel and unusual punishment pursuant to the
17 Eighth Amendment. That is, registration during a periodic update requires the Registrant
18 to be physically present in police and sheriff’s stations for up to two hours, during which
19 time Registrants are interviewed by law enforcement, interrogated regarding their offense
20 and their present compliance with the law, frequently photographed and finger printed,
21 and must complete five or more pages of paperwork in the presence of law enforcement.
22 Under the policies of Defendants challenged herein, Registrants are not free to leave
23 during in-person registration because doing so would result in criminal liability pursuant
24 to the California Sex Offender Registration Act, Penal Code section 290, *et seq.*, as well
25 as the federal Sex Offender Registration and Notification Act, 34 U.S.C. § 20901, *et seq.*

26 41. COVID-19 is a highly infectious and potentially lethal disease that is easily
27 transmitted in the community through contact with infected persons, or through contact
28

1 with surfaces on which the virus can live for days or weeks. Persons infected with
2 COVID-19 can transmit the coronavirus to their family members and to the general
3 public without knowing they are infected. Infection by COVID-19 can produce severe
4 and long-lasting respiratory symptoms that require hospitalization. Requiring Registrants
5 to appear in person for periodic updates, and thereby subjecting them to possibly lethal
6 infection by COVID-19, and rendering them carriers of the disease that may potentially
7 infect their family members and anyone in the general public, constitutes cruel and
8 unusual punishment in violation of the Eighth Amendment.

9 **THIRD CLAIM**

10 **(28 U.S.C. §2201 – Declaratory Relief)**

11 42. Plaintiffs re-allege paragraphs 1 through 41 of this Complaint as though
12 fully set forth herein.

13 43. An actual controversy exists between Plaintiffs and Defendants regarding
14 the constitutionality of the policies of Defendants challenged in this action, as well as the
15 interpretation of California Penal Code section 290.012. Specifically, the California Sex
16 Offender Registration Act neither requires nor authorizes 30-day, 90-day, or annual
17 registration updates to be completed in person. Therefore, Defendants lack authority to
18 require Registrants to appear in person for periodic updates pursuant to California Penal
19 Code section 290.012.

20 44. Plaintiffs are informed and believe and thereon allege that Defendants, as
21 well as their deputies, officials, officers, agents, and employees, have failed to comply
22 and continue to fail to comply with the law, and have abused and are continuing to abuse
23 their discretion under the law, by requiring Registrants in vulnerable populations as
24 defined by national and state health care authorities to appear in person for their periodic
25 registration updates amidst the COVID-19 pandemic, as pled herein

26 45. Plaintiffs therefore seek a declaration of their rights under California and
27 federal law, as well as a declaration of Defendants' duties under the Sex Offender
28

1 Registration Act, California Penal Code section 290, *et seq.*, and of the scope of
2 Defendants' discretion under that Act.

3 **PRAYER FOR RELIEF**

4 Based on the foregoing claims, Plaintiffs seek judgment against Defendants as
5 follows:

6 a. That Defendants be presently and permanently enjoined from requiring
7 persons required to register as a sex offender from appearing in person for 30-day, 90-
8 day, and annual updates ("periodic updates") pursuant to California Penal Code sections
9 290.011 and 290.012 until the threat of COVID-19 has ended;

10 b. For a judgment declaring that California Penal Code sections 290.011 and
11 290.012 and other applicable law do not require persons required to register as a sex
12 offender to appear in person to complete periodic updates;

13 c. That Plaintiffs recover from the Defendants, under 42 U.S.C. § 1988, all of
14 Plaintiffs' reasonable attorneys' fees, costs and expenses of this litigation; and

15 d. That Plaintiffs recover such relief as the Court deems just and proper.

16
17
18 Dated: May 4, 2020

LAW OFFICE OF JANICE M. BELLUCCI

19
20 By: _____/s/ *Janice M. Bellucci*
21 Janice M. Bellucci
22 Attorney for Plaintiffs
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EXHIBIT A

