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

DENNIS RUTHERFORD, *et al.*,

 Plaintiffs,

 vs.

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

 Defendants.

Case No. CV 75-04111 DDP

[REVISED PROPOSED]

ORDER AND JUDGMENT OF SANCTIONS FOR CONTEMPT OF COURT

Having considered all filings, arguments, and testimony, on _____, 2023, the Court issued by separate Order its decision and reasoning finding Defendants in contempt of court. Doc. _____. The Court now sets forth its judgment of sanctions for Defendants’ contempt of court.

When considering a contempt sanction, the court should consider “the character and magnitude of harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.” *United States v. United Mine Workers of Am.*, 330 U.S. 258, 304 (1947). Courts have broad equitable power to order appropriate prospective relief for civil contempt. *S.E.C. v. Hickey*, 322 F.3d 1123, 1128, *amended*, 335 F.3d 834 (9th Cir.

1 2003). A court is not limited solely to monetary sanctions – it can also modify
2 previous orders, or issue new injunctive relief as a compensatory contempt sanction.
3 *Kelly v. Wengler*, 822 F.3d 1085, 1097 (9th Cir. 2016). Civil contempt sanctions can
4 either be compensatory or coercive, or both. *Parsons v. Ryan*, 949 F.3d 443, 455-56
5 (9th Cir. 2020).

6 The Court concludes that both compensatory injunctive sanctions and
7 coercive prospective financial sanctions are warranted.

8 **BACKGROUND**

9 On September 27, 2022, this Court granted the stipulated Preliminary
10 Injunction (“PI”), Doc. 351, and extended the PI on December 20, 2022, Doc. 371,
11 and March 14, 2023. Doc. 381. The PI addressed overcrowding in the Los Angeles
12 County Jail system’s Inmate Reception Center (IRC), delays in processing and
13 moving incarcerated people to permanent housing, the provision of adequate
14 medical and mental health care to people in the IRC awaiting permanent housing,
15 and general living conditions within the IRC; it also directed Defendants to log and
16 provide reports on people detained beyond the timeframes set forth in the PI. *See*
17 *generally* Doc. 351. This PI was rooted in and joined numerous other Court
18 judgments and stipulations issued over the past 45 years setting forth basic standards
19 for the IRC. *See Rutherford v. Pitchess*, 457 F. Supp. 104, 109-10, 113-14 (C.D. Cal.
20 1978), *rev’d in part on other grounds sub nom. Block v. Rutherford*, 468 U.S. 576
21 (1984); Feb. 16, 1979 Judgment [Doc. 318-2 at 126-131]; Aug. 27, 1992 Stipulation
22 and Order [Doc. 318-2 at 133-144]; Nov. 18, 2005 Stipulation and Order [Doc. 64];
23 *Rutherford v. Baca*, 2006 WL 3065781, at *3-4 (C.D. Cal. Oct. 27, 2006) (Order to
24 Show Cause) [Docs. 102, 121].

25 On February 27, 2023, Plaintiffs filed their Notice of Motion and Motion for
26 an Order to Show Cause, supported by numerous class members’ sworn
27 declarations, a declaration from a psychiatric expert, Dr. Terry Kupers, documents
28 and logs created by Defendants, and evidence of public statements made by multiple

1 County officials about the conditions in the IRC and the jail, and what appear to be
2 efforts by jail staff to avoid the Court-ordered time limits set forth in the PI. The
3 parties have fully briefed the matter, and have argued and presented the matter in
4 court hearings. *See generally* Docs. 382, 379, 382, ____, ____, ____, ____. The parties
5 also fully briefed the Court’s Order to Show Cause related to the PI (Doc. 368). *See*
6 Docs. 378, 383. The Court found Defendants in contempt of court on
7 _____, 2023. Doc. ____.

8 **CONTEMPT SANCTIONS**

9 The Court concludes that injunctive relief is warranted to compensate the
10 Plaintiff class for Defendants’ noncompliance with the PI as well as with previous
11 court orders related to conditions in the IRC. These remedial sanctions are designed
12 to address the root causes of the conditions in the IRC.

13 **A. Conditions in the IRC**

14 **IT IS ORDERED THAT** Defendants, their officers, agents, employees,
15 attorneys, assignees, and all those in active concert with them are hereby restrained
16 and enjoined from:

17 1. Holding an incarcerated person in the IRC for more than 24 hours. The
18 IRC consists of a reception and booking area; a classification area; a bath area; the
19 IRC Clinic (which includes the IRC Clinic Front Bench); a series of holding cells,
20 and Module 231, an overflow module in Twin Towers Correctional Facility. This
21 order shall not apply to Module 231. In the event that a person remains continuously
22 in the IRC for more than 24 hours, Defendants shall document the following:

- 23 (a) the name and booking number of the person and the date and time
24 the person first entered the IRC;
25 (b) the reasons why the person remained in the IRC longer than 24
26 hours;
27 (c) the date and time the person was removed from the IRC; and
28 (d) the location of the person after removal from the IRC.

1 Plaintiffs shall be provided with this documentation upon request.

2 In the event that a person leaves the IRC to go to court, the 24-hour period shall
3 begin anew if the person returns to the IRC. If a person leaves the IRC for medical
4 treatment at another facility within or without the Los Angeles County Jail System,
5 the 24-hour period shall be paused and shall resume when the person returns to the
6 IRC, unless the person is permanently housed at IRC 231 directly upon return from
7 medical care. In the event that a person leaves the IRC for medical treatment at
8 another facility within or without the Los Angeles County Jail System, the 24-hour
9 period shall begin anew if the person returns to the IRC after an absence lasting
10 twelve hours or more, if the person has been provided a bed off-site.

11 2. Holding an incarcerated person on the IRC Clinic Front Bench,
12 handcuffed, chained, or tethered to a chair or any other object, for more than four
13 hours. In the event a person remains on the Front Bench for more than four hours,
14 Defendants shall document the following:

- 15 (a) the name and booking number of the person and the date and
16 time the person was first placed on the Front Bench;
- 17 (b) the reason(s) why the person is on the Front Bench;
- 18 (c) the date and time of initial mental health screening;
- 19 (d) the date and time of any subsequent mental health or medical
20 evaluation;
- 21 (e) the date and time each person was removed from the Front
22 Bench temporarily, how long the person remained untethered,
23 and the reason why (e.g., escort to bathroom, mental health
24 screening);
- 25 (f) the date and time each person was permanently removed from
26 the Front Bench; and
- 27 (g) the location of the person after removal from Front Bench.

28 Plaintiffs shall be provided with this documentation upon request pursuant to

1 the terms of the parties' HIPAA-compliant protective order (Doc. 362).

2 3. Holding more people in a holding cell in the IRC than established by the
3 Board of State and Community Corrections (BSCC) holding capacity without first
4 exhausting every other means to avoid placing more people in a holding cell than
5 the holding capacity permits. *See* Doc. 347-2. Two areas, however, will not be
6 governed by the BSCC limits: (1) IRC Clinic Cage and (2) Cell 113. For purposes
7 of this Order, the IRC Clinic cage, when locked, shall have a capacity of 50 people.
8 Cell 113 shall be used as a holding cell with a 16-person capacity. Additionally, the
9 "Release" cell is not subject to the provisions of the Preliminary Injunction provided
10 that it continues to be used as a staging cell for brief release purposes. In the event
11 more people are in a holding cell than holding capacity permits, this event shall be
12 documented as follows:

- 13 (a) the names and booking numbers of the persons and the date and
14 time of placement;
- 15 (b) the type of placement;
- 16 (c) the date and time of release;
- 17 (d) the number of persons in the cell at time of placement; and
- 18 (e) the identification of the particular holding cell or cage.

19 Plaintiffs shall be provided with this documentation upon request.

20 4. Holding an incarcerated person in an IRC holding cell for more than 12
21 hours total. Moving a person from one holding cell in the IRC to another holding
22 cell in the IRC does not re-start the 12-hour clock. In the event that a person is
23 detained in a holding cell for longer than 12 hours, Defendants shall document the
24 following:

- 25 (a) the name and booking number of the person and the date and
26 time of placement;
- 27 (b) the reason(s) why the person was in holding cell or cells for
28 more than 12 hours;

- 1 (c) the type of placement;
- 2 (d) the date and time of release;
- 3 (e) the number of persons in the cell at time of placement; and
- 4 (f) the identification of the particular holding cell.

5 Plaintiffs shall be provided with this documentation upon request. In the event
6 that a person leaves the IRC holding cell to go to court, the 12-hour period shall
7 begin anew if the person returns to the IRC.

8 5. Holding an incarcerated person locked in the IRC cage, when locked,
9 for more than eight hours total. In the event that an incarcerated person is held in
10 the IRC Clinic cage, when locked, for more than eight hours, Defendants shall
11 document the following:

- 12 (a) the name and booking number of the person and the date and
13 time of placement;
- 14 (b) the reasons why an individual was in the IRC Clinic cage for
15 more than eight hours;
- 16 (c) the type of placement;
- 17 (d) the date and time of release; and
- 18 (e) the number of persons in the cage at time of placement.

19 6. Holding an incarcerated person in the IRC clinic area, cage, or any cell
20 in the IRC when that location is not in a clean and sanitary condition, with access to
21 functioning toilets, potable drinking water, clean water to wash, and sufficient
22 garbage receptacles.

23 7. Holding an incarcerated person in the IRC clinic area, cage, or any cell
24 in the IRC without providing ongoing access to adequate medical and mental health
25 care, including but not limited to regular pill call.

26 **B. Implementation of Remedial Plans**

27 Additionally, Defendants have provided the Court with detailed corrective
28 action plans that they have represented will address the root causes why class

1 members spend more than 24 hours in the IRC before receiving permanent housing,
2 spend more than four hours at the Front Bench, spend more than 12 hours in the
3 holding cells, and why conditions in the IRC deteriorate to unsanitary conditions or
4 to such an extent that class members do not receive adequate health care or
5 medications. *See* Doc. 378 at 3-10, 378-1, 384.¹

6 **IT IS FURTHER ORDERED** that Defendants shall implement the remedial
7 plans presented to the Court in accordance with the timeframes that Defendants set
8 forth in their past submissions. Defendants shall implement all programmatic and
9 policy changes set forth, according to the timeframes in Defendants’ plans. *See*
10 *Peralta v. Dillard*, 744 F.3d 1076, 1083 (9th Cir. 2014) (en banc) (holding that a
11 “[l]ack of resources is not a defense to a claim for prospective relief because prison
12 officials may be compelled to expand the pool of existing resources in order to
13 remedy continuing Eighth Amendment violations.”) (citations omitted).²

14 Specifically, Defendants are **ORDERED** as follows:

15 8. Defendants shall continue to train all personnel who work in the IRC
16 on the requirements set forth above at Paragraphs 1-7. *See* Doc. 384 at 7-8.

17 9. Defendants shall continue to implement the new data tracking “Inmate
18 Tracking System” and Defendants shall ensure that all funding necessary to keep the
19 tracking system functional and operational is in place immediately and in the future.
20 *See* Doc. 384 at 8-10.

21 10. Defendants shall maintain IRC health care staffing levels at no less than
22 the levels set forth in their April 14, 2023 filing (Doc. 384 at 11-13), and continue

23 _____
24 ¹ Citations to the docket are to the page numbers assigned by the Court’s
Electronic Case Filing system.

25 ² If Defendants encounter unforeseen circumstances that make the timely and
26 complete implementation of their remedial plans impossible, they shall immediately
27 notify counsel for Plaintiffs, and if necessary, notify the Court. Any request for
28 modification or termination of this Order shall be presented to the Court through a
properly-noticed motion to modify pursuant to Rule 60(b)(5) of the Federal Rules of
Civil Procedure, if the parties are unable to stipulate to such modification or
termination.

1 to maintain the 20 percent pay increase differential for all health care staff in the
2 LACJ. *Id.* at 12-13. Nothing in this Order shall prevent Defendants from increasing
3 the staffing levels above those in their filing, or setting the pay differential at greater
4 than 20 percent.

5 11. Defendants shall immediately implement and maintain a bridge
6 medication policy and practice whereby a clinician in IRC will attempt to ascertain
7 during screening whether a person has a valid prescription(s) for medication by
8 contacting any pharmacy, doctor's office, medical clinic or other medical or mental
9 health provider, or family member(s) who may be able to verify the prescription(s)
10 was prescribed and that it is valid. If the clinician verifies a person's prescription,
11 that person will be provided bridge medication. If the prescription cannot be verified,
12 the person will receive a psychiatric evaluation while still in the IRC to determine
13 whether they should be prescribed medication if: a person states they are taking
14 medication, states that they want or need to take medication, has documented
15 medication, has a history of mental illness, asks for a psychiatric evaluation, or
16 exhibits symptoms indicating a need for a psychiatric evaluation. *See* Doc. 384 at
17 13.

18 12. Defendants shall implement and maintain a staffing plan whereby there
19 is psychiatric staff in IRC a minimum of 14 hours a day, whose responsibilities
20 include doing psychiatric assessments of people who do not qualify for psychiatric
21 medication under the bridge medication policy set forth in paragraph 11 above.
22 Defendants shall make all reasonable efforts to expand psychiatric staff so that
23 psychiatric staff are present in IRC 24 hours a day, 7 days a week. *See* Doc. 384 at
24 12.

25 13. Defendants shall implement and maintain their more robust cleaning
26 schedule in the IRC, and have contract janitorial staff in place within 60 days of this
27 Order. Doc. 384 at 14.

28 14. No later than 60 days from the issuance of this Order, Defendant Board

1 of Supervisors shall allocate the funding so that Defendant County will “bring an
2 additional 1,211 new interim housing or permanent supportive housing beds on-line
3 by the end of fiscal year 2024-25 (June 30, 2025).” Doc. 384 at 17. Nothing in this
4 Order shall prevent Defendants from increasing the number of permanent supportive
5 housing beds above 1,211, or from having them in place by an earlier deadline.

6 15. No later than 60 days from the issuance of this Order, Defendants shall
7 finalize their contract with the California Department of State Hospitals (DSH) to
8 “expand its current inventory of 794 beds to a total of 1,344 beds that will be used
9 to divert FIST from the LACJ over the next five years, including over one hundred
10 beds that will provide acute and subacute care for such individuals.” Doc. 384 at 17,
11 20. Nothing in this Order shall prevent Defendants from increasing the number of
12 contracted beds to be above 1,344, or from having the beds in place by an earlier
13 deadline.

14 16. No later than 60 days from the issuance of this Order, Defendants shall
15 finalize an agreement from the California Department of Corrections and
16 Rehabilitation (“CDCR”) to expedite the transfer of persons in the jails sentenced to
17 state prison terms, including but not limited to an agreement from CDCR to increase
18 the number of specialty transfers it will accept each week, including people with
19 disabilities or mental health concerns. Doc. 384 at 19-20.

20 17. No later than 60 days from the issuance of this Order, Defendant Board
21 of Supervisors shall allocate funding to immediately start the implementation of the
22 recommendations of the County Justice, Care, and Opportunities Department
23 (“JCOD”) set forth in JCOD’s March 8, 2023 Report Back, filed with the Court at
24 Doc. 378-1 at 2-21. This includes, but is not limited to, the recommendations that
25 the County “increase its network of other (non-State Hospital) subacute psychiatric
26 beds ... either via contract or direct operation ...” *id.* at 8, “starting with a pilot to
27 develop 500 secured subacute mental health care beds...” *id.* at 11; *see also* Doc.
28 378 at 6-7; Doc. 384 at 17-10.

1 18. No later than 60 days from the issuance of this Order, Defendant Board
2 of Supervisors shall allocate the funding to immediately start the implementation of
3 the Phased Implementation Plan to increase community placements for divertible
4 populations, as set forth in the March 8, 2023 Report Back from the Department of
5 Health Services and Department of Mental Health, “Addressing the Mental Health
6 Crisis in Los Angeles County: Developing Mental Health Care Facilities to Help
7 Depopulate the Jail,” filed with the Court at Doc. 378-1 at 22-38; *see also* Doc. 378
8 at 6-7 (chart with timeframe for adding P3/P4 beds on Years 1-5).

9 19. No later than 60 days from the issuance of this Order, Defendant Board
10 of Supervisors shall allocate the funding to immediately start the implementation to
11 “continue to divert P2 inmates from custody when (a) they qualify for diversion
12 based on a FIST designation; or (b) a P3 or P4 inmate is not suitable for an available
13 ODR bed that can be filled with a P2 inmate.” Doc. 378 at 9-10.

14 Defendants shall provide the Court with bimonthly updates on the status of
15 implementing these remedial efforts every 60 days, starting with 60 days from the
16 date of this Order.

17 **PROSPECTIVE FINANCIAL SANCTIONS**

18 The Court sets forth the following prospective financial sanctions to coerce
19 future compliance with Paragraphs 1-7 of the Order, beginning six months from the
20 date of this Order. Prospective per diem penalties are an appropriate civil contempt
21 sanction. *Parsons*, 949 F.3d at 452, 456, 459; *Trueblood v. Wash. State Dep’t of Soc.*
22 *& Health Servs.*, No. C14-1178-MJP, 2017 WL 4700326, at *1-2 (W.D. Wash. Oct.
23 19, 2017). “[C]oercive civil sanctions, intended to deter, generally take the form of
24 conditional fines” because any future accrual of the threatened fines can be avoided
25 by a party by simply complying with the past orders. *Shell Offshore Inc. v.*
26 *Greenpeace, Inc.*, 815 F.3d 623, 629, 630 (9th Cir. 2016); *see also Kelly v. Wengler*,
27 979 F. Supp. 2d 1104, 1117 & n.27 (D. Idaho 2013) (holding that a prospective fine
28 schedule against prison officials of \$100 per hour for each vacant mandatory staff

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

6
 7 **Violations of the 24-hour IRC requirement (Paragraph 1)**

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- \$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

11
 12 **Violations of the 4-hour Front Bench requirement (Paragraph 2)**

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- \$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

17
 18 **Violation of the holding cell 12-hour limit (Paragraph 4)**

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- \$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
 - \$1,000 per person for the first 36 hours beyond the 12-hour limit, and \$1,000 for every 24 hours thereafter

21
 22 **Violations of the medication/health care requirements (Paragraph 7)**

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- \$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.

28 The fines will be cumulative. For example, a person chained to the Front

1 Bench between 7 and 8 hours (in other words, between three and four hours beyond
2 the four-hour limit) would result in a sanction of \$1,750 (\$250 for the first hour
3 beyond the limit, an additional \$500 for the second hour, and an additional \$1,000
4 for exceeding the limit by three hours). Every 90 days after the first time there is a
5 violation of a provision, the fine amounts listed in the chart shall double. *See*
6 *Trueblood*, 2017 WL 4700326, at *7.

7 Defendants shall deposit contempt sanctions with the Registry of the Court no
8 later than the 15th of each month for the violations in the previous month.
9 Defendants shall also file on the docket on the 15th of each month a report detailing
10 for every provision, the booking number of the class member, and how long the class
11 member was held beyond the timeframes. If there are violations that trigger financial
12 sanctions, the Court will issue a further order directing the parties to offer their
13 proposals on how the funds should be allocated and distributed by the Court.

14 **CONCLUSION**

15 Based upon the entire record, the Court finds that the relief granted by this
16 order satisfies the requirements of 18 U.S.C. § 3626(a)(1)(A) in that it is narrowly
17 drawn, extends no further than necessary to correct the violations of Plaintiffs'
18 federal rights, and is the least intrusive means necessary to correct the violation of
19 Plaintiffs' federal rights. The Court retains jurisdiction to enforce this and any
20 subsequent remedial orders.

21 **IT IS SO ORDERED.**

22 Dated: _____, 2023

23 _____
24 HONORABLE DEAN D. PREGERSON
25 United States District Court Judge