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6	IN THE UNITED STATES DISTRICT COURT
7	FOR THE DISTRICT OF ARIZONA
8	Fred Graves and Isaac Popoca, on their ) No. CV-77-0479-PHX-NVW
9	own behalf and on behalf of all pretrial ) detainees in the Maricopa County Jails, ) <b>FINDINGS OF FACT AND</b>
10	Plaintiffs, ) and
11	vs.
12	
13	Joseph Arpaio, Sheriff of Maricopa ) County; Fulton Brock, Don Stapley, )
14	Andrew Kunasek, Max W. Wilson, and ) Mary Rose Wilcox, Maricopa County )
15	Supervisors,
16	Defendants.
17	ý
18	Pending before the Court is Defendants' Renewed Motion to Terminate the
19	Amended Judgment (doc. #906). Evidence was received and argument heard on August
20	12-15, 19-22, 28-29, 2008, and September 3-5, 2008. The Court also has considered the
21	parties' pre-hearing and post-hearing briefs. The Court's findings of fact and conclusions
22	of law follow.
23	I. Procedural Background
24	In 1977 this class action was brought against the Maricopa County Sheriff and the
25	Maricopa County Board of Supervisors alleging that the civil rights of pretrial detainees
26	held in the Maricopa County, Arizona, jail system had been violated. (Doc. #1.) On
27	April 14, 1979, the case was assigned to Magistrate Judge Morton Sitver for pretrial
28	conference, determination of all pretrial matters, and findings of fact and

recommendations for final disposition. (Doc. #63.) On September 12, 1980, the case was
 transferred from Judge William P. Copple to Judge Earl H. Carroll. Before the scheduled
 trial date of December 10, 1980, the parties reached a settlement of the class action.
 (Doc. ##95-98.)

On March 27, 1981, the parties entered into a consent decree that addressed and
regulated aspects of County jail operations as they applied to pretrial detainees. (Doc.
#166.) On January 10, 1995, the 1981 consent decree was superseded by an Amended
Judgment entered by stipulation of the parties. (Doc. #705.) The Amended Judgment
expressly does not represent a judicial determination of any constitutionally mandated
standards applicable to the jails. (*Id.* at 2, ¶ 2.)

11 On April 8, 1998, Defendants filed a motion to terminate the Amended Judgment pursuant to the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626 and 42 U.S.C. 12 13 § 1997e, arguing that the PLRA mandated immediate termination of the consent decree as 14 a matter of law because it was not based on written judicial findings specified in 15 § 3626(b)(3). (Doc. #755.) On September 10, 1998, Judge Carroll denied the motion to terminate, relying on Taylor v. United States, 143 F.3d 1178 (9th Cir. 1998), which held 16 17 the decree termination provisions of the PLRA to be unconstitutional. (Doc. #774.) On 18 October 8, 1998, Defendants appealed from the denial of their motion for termination. 19 (Doc. #777.) On November 3, 1998, the Taylor panel opinion was withdrawn. 158 F.3d 1059 (9th Cir. 1998). On December 21, 1999, the Court of Appeals for the Ninth Circuit 20 21 deferred submission of this case pending decisions in two other cases.

On January 25, 2001, the Ninth Circuit issued a memorandum decision reviewing
the denial of Defendants' motion to terminate the Amended Judgment. (Doc. #799.)
Acknowledging that *Gilmore v. California*, 220 F.3d 987 (9<sup>th</sup> Cir.2000), held the PLRA
decree termination provision constitutional and controlled the appeal, it reversed and
remanded for proceedings consistent with *Gilmore*. (Doc. #799.)

On September 25, 2001, Defendants renewed their motion to terminate. (Doc.
#821). On September 12, 2002, Judge Carroll denied Defendants' renewed motion to

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terminate without prejudice subject to findings to be entered following an evidentiary
 hearing. (Doc. #840.) On November 14, 2003, Defendants filed a pre-hearing
 memorandum in support of a renewed motion to terminate, which operates as Defendants'
 pending motion to terminate the Amended Judgment. (Doc. #906.)

On November 25, 2003, and January 22, 2004, Judge Carroll began hearing
evidence on Defendants' motion. (Doc. ##918, 939.) The parties engaged in discovery.
On April 3, 2008, Judge Carroll caused the case to be reassigned, and it subsequently was
assigned to the undersigned judge. (Doc. ##1222, 1234.) On April 25, 2008, this Court
set Defendants' motion to terminate the Amended Judgment for evidentiary hearing
commencing August 12, 2008. (Doc. #1241.)

11 **II.** 

**Legal Standards** 

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#### A. Termination of Prospective Relief Under the PLRA

13 Congress enacted the PLRA to prevent federal courts from micromanaging prisons 14 by mere consent decrees and to return control of the prison system from courts to "the elected officials accountable to the taxpayer." Gilmore v. California, 220 F.3d 987, 996 15 (9<sup>th</sup> Cir. 2000). "[N]o longer may courts grant or approve relief that binds prison 16 17 administrators to do more than the constitutional minimum." Id. at 999. The PLRA 18 requires that prospective relief regarding prison conditions "extend no further than 19 necessary to correct the violation of the Federal right of a particular plaintiff or 20 plaintiffs." 18 U.S.C. §3626(a)(1). Relief must be narrowly drawn, extend no further 21 than necessary to correct the violation, and be the least intrusive means necessary to 22 correct the violation. Id. Further, courts must "give substantial weight to any adverse 23 impact on public safety or the operation of a criminal justice system caused by the relief." 24 Id.

The PLRA also provides that any order for prospective relief regarding prison
conditions is terminable upon the motion of any party or intervener two years after a
district court has granted or approved the prospective relief, one year after the district
court has entered an order denying termination of prospective relief under the PLRA, or

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1 two years after the enactment of the PLRA for orders issued before the PLRA's 2 enactment. 18 U.S.C. § 3626(b)(1). The party seeking to terminate the prospective relief 3 bears the burden of proof. *Gilmore*, 220 F.3d at 1007. Under the statute, the defendant 4 or intervener shall be entitled to "the immediate termination of any prospective relief if 5 the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal 6 7 right, and is the least intrusive means necessary to correct the violation of the Federal 8 right." 18 U.S.C. § 3626(b)(2). Such findings need not be explicit, however, "so long as 9 the record, the court's decision ordering prospective relief, and the relevant caselaw fairly 10 disclose that the relief actually meets the § 3626(b)(2) narrow tailoring standard." 11 Gilmore, 220 F.3d at 1007 n.25. "If existing relief was so crafted according to the record 12 and relevant caselaw, the findings required by the statute are implicit in the court's 13 judgment." Id.

14 "[A]lthough § 3626(b)(2) speaks of 'immediate termination,' and although 15 § 3626(e)(1) requires a 'prompt ruling,' a district court cannot terminate prospective relief 16 without determining whether the existing relief (in whole or in part) exceeds the 17 constitutional minimum." Id. at 1007. Further, under § 3626(b)(3), a "district court 18 cannot terminate or refuse to grant prospective relief necessary to correct a current and 19 ongoing violation, so long as the relief is tailored to the constitutional minimum." Id. at 20 1007-08. Before ruling on a motion to terminate, the district court must inquire into 21 current prison conditions unless plaintiffs do not contest defendants' showing that there is 22 no current and ongoing violation. Id. at 1008.

Even if the existing relief qualifies for termination under § 3626(b)(2)—*i.e.*, it is not narrowly drawn, extends further than necessary to correct the violation of a federal right, or is not the least intrusive means necessary to correct the violation—if there is a current and ongoing violation, the district court must modify the relief to meet the PLRA standards. *Id.* Therefore, "[p]rospective relief shall not terminate if the court makes written findings based upon the record that prospective relief remains necessary to correct

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1 a current and ongoing violation of the Federal right, extends no further than necessary to 2 correct the violation of the Federal right, and that the prospective relief is narrowly drawn 3 and the least intrusive means to correct the violation." 18 U.S.C. § 3626(b)(3). If prospective relief remains necessary to correct a current and ongoing violation, the 4 5 district court's authority to modify the existing prospective relief includes authority to 6 expand or diminish the existing relief. See Pierce v. Orange County, 526 F.3d 1190, 1204 n.13 (9th Cir. 2008). Determining whether such relief meets § 3626(b)(3)'s need-7 8 narrowness-intrusiveness criteria "will obviously rest upon case-specific 9 factors-namely, the extent of the current and ongoing constitutional violations." Id. at 10 1206.

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#### B. Relevant Period for a "Current and Ongoing" Violation

12 To make the findings required to terminate prospective relief, the Court must take 13 evidence on current jail conditions, at least with respect to those remedies Plaintiffs do 14 not concede Defendants comply with constitutional requirements. See Gilmore, 220 F.3d 15 at 1010. Evidence of "current and ongoing" violations must reflect conditions "as of the time termination is sought." Id.; accord Pierce, 526 F.3d at 1205. Congress clearly 16 17 anticipated that a district court would make evidentiary findings and a ruling shortly after 18 the filing of a termination motion. Congress expressly required courts to "promptly" rule 19 on termination motions and invited mandamus proceedings against a judge who failed to 20 rule promptly. 28 U.S.C. § 3626(e)(1). Congress further required an automatic stay of 21 the consent injunction until the motion to terminate is ruled on, if the motion to terminate 22 is not ruled on within 30 days. The commencement of that automatic stay can be delayed 23 "for not more than 60 days for good cause." 28 U.S.C. § 3626(e). In this case, however, 24 Defendants first sought termination in 1998 and filed their pending motion to terminate in 25 November 2003—nearly five years ago. (Doc. #906.) Congress's intended equivalence 26 between "the time termination is sought" and the time of ruling has broken down.

In these circumstances, Congress's intent could only be that proof of "current andongoing conditions" mean actual conditions now, not historic conditions when this

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1 motion was filed five years ago. Therefore, upon transfer of this case to the undersigned 2 judge, the Court ordered the parties to jointly plan for discovery and trial regarding jail 3 conditions during the period of July 1, 2007, through June 30, 2008. (Doc. #1241.) The 4 one-year period would permit the parties to use existing quarterly reports, distinguish 5 "ongoing" conditions from temporary aberrations, and address current conditions rather 6 than those of the past. Subsequently, upon request of the parties, the relevant evidentiary 7 period was reduced to July 1, 2007, through May 31, 2008, to facilitate providing 8 information to the expert witnesses before their tours and inspections of jail facilities. 9 (Doc. #1257.)

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# C. Standard for Finding a Current and Ongoing Violation of the Federal Right

The Fourteenth Amendment Due Process Clause protects a pretrial detainee from 12 punishment prior to an adjudication of guilt in accordance with due process of law. Bell 13 v. Wolfish, 441 U.S. 520, 534-35 (1979). "This standard differs significantly from the 14 standard relevant to convicted prisoners, who may be subject to punishment so long as it 15 does not violate the Eighth Amendment's bar against cruel and unusual punishment." 16 Pierce v. County of Orange, 526 F.3d 1190, 1205 (9th Cir. 2008). A pretrial detainee's 17 due process rights are at least as great as a convicted prisoner's Eighth Amendment 18 rights. City of Revere v. Massachusetts Gen. Hosp., 463 U.S. 239, 244 (1983); Oregon 19 Advocacy Ctr. v. Mink, 322 F.3d 1101, 1120 (9th Cir. 2003) ("[E]ven though the pretrial 20 detainees' rights arise under the Due Process Clause, the guarantees of the Eighth 21 Amendment provide a *minimum standard of care* for determining their rights...."). The 22 "more protective" Fourteenth Amendment standard applies to conditions of confinement 23 for pretrial detainees and requires the government to do more than provide minimal 24 necessities. Jones v. Blanas, 393 F.3d 918, 931 (9th Cir. 2004). "[T]he Eighth 25 Amendment provides too little protection for those whom the state cannot punish." 26 Hydrick v. Hunter, 500 F.3d 978, 994 (9th Cir. 2007). 27

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1 To prevail on a Fourteenth Amendment claim regarding conditions of 2 confinement, a pretrial detainee generally need not satisfy the Eighth Amendment's 3 "deliberate indifference" standard of culpability. Jones, 393 F.3d at 933-34 (involving civil detainees). In some circumstances, however, courts have applied the "deliberate 4 indifference" standard to pretrial detainees' claims under the Fourteenth Amendment. 5 See Redman v. County of San Diego, 942 F.2d 1435, 1442-43 (9<sup>th</sup> Cir. 1991) (en banc) 6 7 (the "deliberate indifference" standard applied where an eighteen-year-old, 130-pound 8 pretrial detainee with no prior convictions was placed in an enclosed cell with a twenty-9 seven-year-old, 165-pound inmate incarcerated for violating parole upon conviction for a 10 sex offense and identified as an "aggressive homosexual," and the pretrial detainee was raped); Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998) (relying on Redman, the court 11 12 reasoned that "pretrial detainees' rights under the Fourteenth Amendment are comparable 13 to prisoners' rights under the Eighth Amendment" and applied Eighth Amendment 14 standards); Anderson v. County of Kern, 45 F.3d 1310, 1313 n.1 (9th Cir. 1995) (finding it 15 unnecessary to decide "whether under some circumstances, the 'deliberate indifference' standards under the Eighth and Fourteenth Amendments diverge" for § 1983 action 16 17 brought by pretrial detainees and convicted prisoners). Nevertheless, subsequent opinions have applied the Fourteenth Amendment "punishment" standard rather than the Eighth 18 Amendment "deliberate indifference" standard to pretrial detainees' claims. See, e.g., 19 20 Pierce. 526 F.3d at 1205.

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A detainee's desire to be free from discomfort does not rise to the level of a fundamental liberty interest under the Fourteenth Amendment:

Not every disability imposed during pretrial detention amounts to "punishment" in the constitutional sense, however. Once the Government has exercised its conceded authority to detain a person pending trial, it obviously is entitled to employ devices that are calculated to effectuate this detention. Traditionally, this has meant confinement in a facility which, no matter how modern or how antiquated, results in restricting the movement of a detainee in a manner in which he would not be restricted if he simply were free to walk the streets pending trial. Whether it be called a jail, a prison, or a custodial center, the purpose of the facility is to detain. Loss of freedom of choice and privacy are inherent incidents of confinement in such a facility. And the fact that such detention interferes with the detainee's

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1 2	understandable desire to live as comfortably as possible and with as little restraint as possible during confinement does not convert the conditions or restrictions of detention into "punishment."
3	Bell, 441 U.S. at 537. As a minimum standard, however, the Eighth Amendment requires
4	that prison officials ensure that inmates receive adequate food, clothing, shelter,
5	sanitation, and medical care and take reasonable measures to guarantee the safety of the
6	inmates. Farmer v. Brennan, 511 U.S. 825, 832 (1994); Hoptowit v. Ray (Hoptowit I),
7	682 F.2d 1237, 1246 (9th Cir. 1982). The Eighth Amendment protects against conditions
8	of confinement likely to cause serious illness and needless suffering in the future: "a
9	remedy for unsafe conditions need not await a tragic event." Helling v. McKinney, 509
10	U.S. 25, 33 (1993). But even under the Eighth Amendment, standards for determining
11	constitutional conditions are not fixed:
12	Underlying the eighth amendment is a fundamental premise that prisoners are not to be treated as less than human beings. The amendment
13	is phrased in general terms rather than specific ones so that while the underlying principle remains constant in its essentials, the precise standards
14	by which we measure compliance with it do not. It follows that when confronting the question whether penal confinement in all its dimensions is
15 16	consistent with the constitutional rule, the court's judgment must be informed by current and enlightened scientific opinion as to the conditions necessary to insure good physical and mental health for prisoners.
17	Spain v. Procunier, 600 F.2d 189, 200 (9th Cir. 1979) (citations omitted); see Trop v.
18	Dulles, 356 U.S. 86, 100 (1958) ("The [Eighth] Amendment must draw its meaning from
19	the evolving standards of decency that mark the progress of a maturing society.").
20	Further, courts must consider the effect of each condition of confinement in its context,
21	"especially when the ill-effects of particular conditions are exacerbated by other related
22	conditions." Wright v. Rushen, 642 F.2d 1129, 1133 (9th Cir. 1981).
23	To evaluate the constitutionality of pretrial detention conditions that are not
24	alleged to violate any express constitutional guarantee, a district court must determine
25	whether those conditions amount to punishment of the detainee. Bell, 441 U.S. at 535;
26	<i>Pierce</i> , 526 F.3d at 1205; <i>Demery v. Arpaio</i> , 378 F.3d 1020, 1029 (9 <sup>th</sup> Cir. 2004). "For a
27	particular governmental action to constitute punishment, (1) that action must cause the
28	detainee to suffer some harm or 'disability,' and (2) the purpose of the governmental
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action must be to punish the detainee." Pierce, 526 F.3d at 1205 (quoting Bell, 441 U.S. 1 2 at 538). To constitute punishment, the governmental action must cause harm or disability 3 that either significantly exceeds or is independent of the inherent discomforts of 4 confinement, but it does not need to cause a harm independently cognizable as a separate 5 constitutional violation, e.g., deprivation of First Amendment rights. Demery, 378 F.3d at 6 1030. To determine whether an action's purpose is punitive, in the absence of evidence 7 of express intent, a court may infer that the purpose of a particular restriction or condition 8 is punishment if the restriction or condition is not reasonably related to a legitimate 9 governmental objective or excessive in relation to the legitimate governmental objective. 10 *Pierce*, 526 F.3d at 1205 (citing *Bell*, 441 U.S. at 539); *Demery*, 378 F.3d at 1028 (citing 11 Bell, 441 at 538).

12 Legitimate governmental objectives that may justify adverse detention conditions 13 include maintaining security and order and operating the detention facility in a 14 manageable fashion. Pierce, 526 F.3d at 1205. "[M]aintaining institutional security and 15 preserving internal order and discipline are essential goals that may require limitation or 16 retraction of the retained constitutional rights of both convicted prisoners and pretrial 17 detainees." Bell, 441 U.S. at 546. Retribution and deterrence are not legitimate 18 governmental objectives. Demery, 378 F.3d at 1030-31. The cost or inconvenience of 19 providing adequate conditions is not a defense to the imposition of punishment. See Spain v. Procunier, 600 F.2d 189, 199-200 (9th Cir. 1979). 20

21 To determine whether detention restrictions or conditions are reasonably related to 22 maintaining security and order and operating the institution in a manageable fashion, 23 courts ordinarily should defer to the expert judgment of correction officials in the absence 24 of substantial evidence that indicates officials have exaggerated their response to these 25 considerations. Bell, 441 U.S. 540 n.23. A reasonable relationship between the 26 governmental objective and the challenged condition does not require an "exact fit," a 27 showing that it is the "least restrictive alternative," or proof that the policy does in fact 28 advance the legitimate governmental objective. Valdez v. Rosenbaum, 302 F.3d 1039,

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- 1045 (9th Cir. 2002). But it does require evidence that the correction officials' judgment 1 2 was rational, *i.e.*, they might have reasonably thought that the policy would advance a 3 legitimate governmental objective. Id. Thus, to find that a condition of confinement for pretrial detainees constitutes a 4 5 current and ongoing violation of the constitutional minimum under the Fourteenth Amendment, the Court must determine that the condition: 6 7 (1) imposes some harm to the pretrial detainees that significantly exceeds or is 8 independent of the inherent discomforts of confinement and 9 (2)(a) is not reasonably related to a legitimate governmental objective or 10 (b) is excessive in relation to the legitimate governmental objective.<sup>1</sup> 11 Although pretrial detainees' claims arise under the Fourteenth Amendment Due Process 12 Clause, the Eighth Amendment guarantees provide a minimum standard of care for determining a pretrial detainee's rights. Jones v. Johnson, 781 F.2d 769, 771 (9th Cir. 13 14 1986). 1. 15 **Population/Housing Limitations (Overcrowding)** 16 "Prison officials have a duty to take reasonable steps to protect inmates from 17 physical abuse." Hoptowit I, 682 F.2d at 1250 (district court's finding of "an atmosphere 18 of fear of excessive violence" supported finding the government had been deliberately 19 indifferent to the safety needs of inmates). Overcrowding can violate the Eighth 20 Amendment if it results in specific effects that form the basis for an Eighth Amendment 21 22 The Court applies the *Bell* punishment test here instead of the four-part "reasonable relation" test of Turner v. Safley, 482 U.S. 78 (1987), urged by Defendant 23 Arpaio because the Ninth Circuit Court of Appeals rejected use of the Turner test in 24 similar circumstances in Demery v. Arpaio, 378 F.3d 1020, 1028 (9th Cir. 2004). In Demery, the Court of Appeals explained that it has continued to apply Bell even after the 25 Supreme Court's decision in *Turner*, and it is powerless to overrule the decision of a prior 26 Ninth Circuit panel. Id. The Court of Appeals further explained that Turner is inapposite because it dealt with convicted prisoners, not pretrial detainees, and it involved an Eighth 27 Amendment cruel and unusual punishment challenge, not a claim brought under the
- 28 Fourteenth Amendment. *Id.* at 1028-29.

1 violation, such as by causing increased violence, diluting constitutionally required 2 services to the extent that they fall below the minimum Eighth Amendment standards, or 3 by reaching a level "unfit for human habitation." Hoptowit I, 682 F.2d at 1249; see Toussaint v. Yockey, 722 F.2d 1490, 1492 (9th Cir. 1984) (affirming preliminary 4 5 injunction prohibiting double-celling of administrative segregation prisoners where 6 district court found "double-celling engenders violence, tension and psychiatric 7 problems"). But overcrowding cannot be found to be unconstitutional under the Eighth 8 Amendment without evidence that it has, in fact, increased violence, deprived pretrial 9 detainees of constitutionally required services, or violated contemporary standards of 10 decency. Rhodes v. Chapman, 452 U.S. 337, 347-49 (1981).

Exclusive reliance on per capita square footage recommendations or a jail's rated capacity is insufficient to find that population is unconstitutional. *Hoptowit I*, 682 F.2d at 1249. Consideration must also be given to how much time inmates must spend in their cells each day, whether any increased violence was disproportional to the increase in population itself, and whether overcrowding has caused any other constitutional deprivations. *Id*.

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#### 2. Dayroom Access

18 Denial of access to a dayroom with other inmates did not violate prisoners' Eighth 19 Amendment rights where the prisoners were placed in administrative segregation as a last 20 resort for their own safety or the safety of others and provided exercise, family visits, and telephone access. Anderson v. County of Kern, 45 F.3d 1310, 1315-16 (9th Cir. 1995). 21 However, "[g]iven the conditions and average duration of confinement in administrative 22 23 segregation and similarly restrictive classifications, failure to provide detainees with the 24 opportunity for some daily out-of-cell movement raises serious constitutional questions." 25 *Pierce*, 526 F.3d at 1213.

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1	3. Temperature
2	"The Eighth Amendment guarantees adequate heating." Keenan v. Hall, 83 F.3d
3	1083, 1091 (9th Cir. 1996) (citing Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980)).
4	The Eighth Amendment does not guarantee a comfortable temperature. Id.
5	4. Sanitation, Safety, Hygiene, and Toilet Facilities
6	"Prisoners have the right not to be subjected to the unreasonable threat of injury or
7	death by fire and need not wait until actual casualties occur in order to obtain relief from
8	such conditions." Hoptowit v. Spellman (Hoptowit II), 753 F.2d 779, 783-84 (9th Cir.
9	1985).
10	Vermin infestation throughout a prison is inconsistent with the adequate sanitation
11	required by the Eighth Amendment. Id. at 783.
12	If a prison's plumbing is in such disrepair that it deprives inmates of basic
13	elements of hygiene and seriously threatens their physical and mental well-being, it
14	constitutes cruel and unusual punishment under the Eighth Amendment. Id.
15	"Failure to provide adequate cell cleaning supplies [] deprives inmates of tools
16	necessary to maintain minimally sanitary cells, seriously threatens their health, and
17	amounts to a violation of the Eighth Amendment." Id. at 784.
18	5. Medical, Dental, and Psychiatric Care
19	Jails and prisons must provide adequate care for inmates' serious medical, dental,
20	and mental health needs:
21	The Eighth Amendment requires that prison officials provide a system of ready access to adequate medical care. Prison officials show
22	deliberate indifference to serious medical needs if prisoners are unable to
23	make their medical problems known to the medical staff. Access to the medical staff has no meaning if the medical staff is not competent to deal with the prisoners' problems. The medical staff must be competent to
24	with the prisoners' problems. The medical staff must be competent to examine prisoners and diagnose illnesses. It must be able to treat medical problems or rafer prisoners to others who can Such raferrals may be to
25	problems or refer prisoners to others who can. Such referrals may be to other physicians or facilities within the prison, or to physicians or facilities outside the prison if there is reasonably speedy access to these other
26	outside the prison if there is reasonably speedy access to these other physicians or facilities. In keeping with these requirements, the prison must provide on adequate system for responding to emergencies. If outside
27	provide an adequate system for responding to emergencies. If outside facilities are too remote or too inaccessible to handle emergencies promptly and adequately, then the prison must provide adequate facilities and staff to
28	and adequatery, then the prison must provide adequate facilities and start to

1 2	handle emergencies within the prison. These requirements apply to physical, dental and mental health.					
3	<i>Hoptowit I</i> , 682 F.2d at 1253.					
4	Deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth					
	Amendment. This is true whether the indifference is manifested by prison					
5 6	doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed. Regardless of how					
7	evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983.					
8	Estelle v. Gamble, 429 U.S. 97, 104-05 (1976) (internal quotations, citations, and					
9	footnotes omitted). However,					
10	[A] prison official cannot be found liable under the Eighth					
11	Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate					
12	health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and					
13	he must also draw the inference.					
14	Farmer, 511 U.S. at 837. Whether a prison official had the requisite knowledge of a					
15	substantial risk may be inferred from circumstantial evidence, and a court "may conclude					
15	that a prison official knew of a substantial risk from the very fact that the risk was					
10	obvious." Id. at 842.					
17	"A 'serious' medical need exists if the failure to treat a prisoner's condition could					
10	result in further significant injury or the 'unnecessary and wanton infliction of pain."					
20	McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds by					
	WMX Technologies, Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997); see Ramos v. Lamm,					
21	639 F.2d 559, 575 (10th Cir. 1980) ("A medical need is serious if it is 'one that has been					
22	diagnosed by a physician as mandating treatment or one that is so obvious that even a lay					
23	person would easily recognize the necessity for a doctor's attention."). The Eighth					
24	Amendment prohibits deliberate indifference not only to an inmate's current health					
25	problems, but also to conditions of confinement that are very likely to cause future					
26	serious illness and needless suffering. <i>Helling v. McKinney</i> , 509 U.S. 25, 33 (1993). But					
27	a "mere difference of opinion between the prison's medical staff and the inmate as to the					
28	a more unrerence of opinion between the prison's medical start and the nimate as to the					

1	diagnosis or treatment which the inmate receives does not support a claim of cruel and
2	unusual punishment." Ramos, 639 F.2d at 575.
3	Mere delay in medical care, without more, is insufficient to state a claim against
4	prison officials for deliberate indifference. Shapley v. Nevada Bd. of State Prison
5	Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985). Extreme discomfort and pain resulting from
6	delay, however, is cognizable under § 1983. Jones v. Johnson, 781 F.2d 769, 771 (9th Cir.
7	1986). Budgetary constraints do not justify delay in treatment for a serious medical need.
8	Id.
9	Further, a district court may infer a policy of deliberate indifference from evidence
10	of medical understaffing. Cabrales v. County of Los Angeles, 864 F.2d 1454, 1461 (9th
11	1988), vacated and remanded, 490 U.S. 1087 (1989), reinstated, 886 F.2d 235 (9th Cir.
12	1989) (limited number of psychiatric staff permitting only minutes per month per
13	disturbed inmate implied any psychological illness inmate had would go undiagnosed and
14	untreated).
15	The Eighth Amendment requires that prisoners be provided with "a system of
16	ready access to adequate dental care." Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th Cir.
17	1989). Although dental care is one of the most important medical needs of inmates, delay
18	in providing a prisoner with dental treatment does not by itself constitute an Eighth
19	Amendment violation. Id.
20	Inadequate medical records may create a risk of unnecessary pain and suffering in
21	violation of the Eighth Amendment:
22	Defendants have a constitutional obligation to provide inmates with
23	adequate medical care. A necessary component of minimally adequate medical care is maintenance of complete and accurate medical records.
24	Defendants have a constitutional obligation to take reasonable steps to obtain information necessary to the provision of adequate medical care
25	The harm that flows to class members from inadequate or absent medical records is manifest. Fighth Amondmont liability in this record is
26	medical records is manifest. Eighth Amendment liability in this regard is not predicated on the failure of counties to deliver medical records. It is predicated on the failure of defendents to take reasonable store to
27	predicated on the failure of defendants to take reasonable steps to implement policies that will aid in obtaining necessary medical information about class members when they are transferred from county jails to the
28	CDC.

Coleman v. Wilson, 912 F. Supp. 1282, 1314 (E.D. Cal. 1995) (record citations omitted).

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### 6. Intake Areas

"[I]n considering whether a prisoner has been deprived of his rights, courts may
consider the length of time that the prisoner must go without these benefits. The longer
the prisoner is without such benefits, the closer it becomes to being an unwarranted
infliction of pain." *Hoptowit I*, 682 F.2d at 1258 (citation omitted). Depriving a pretrial
detainee of a bed or mattress for two nights in jail without legitimate governmental
purpose violates the Fourteenth Amendment. *Thompson v. City of Los Angeles*, 885 F.2d
1439, 1448 (9<sup>th</sup> Cir. 1989).

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#### 7. Recreation Time Outside

"There is substantial agreement among the cases in this area that some form of
regular outdoor exercise is extremely important to the psychological and physical well
being of the inmates." *Spain v. Procunier*, 600 F.2d 189, 199 (9<sup>th</sup> Cir. 1979). "The cost
or inconvenience of providing adequate facilities is not a defense to the imposition of a
cruel punishment." *Id*.

16 "Exercise is one of the basic human necessities protected by the Eighth 17 Amendment. Moreover, the Fourteenth Amendment requires that pre-trial detainees not 18 be denied adequate opportunities for exercise without legitimate governmental objective. 19 Determining what constitutes adequate exercise requires consideration of the physical 20 characteristics of the cell and jail and the average length of stay of the inmates." *Pierce*, 21 526 F.3d at 1211-12 (internal quotations and citations omitted). Pretrial detainees who 22 are held for more than a short time and spend much of their time inside their cells are 23 ordinarily entitled to five to seven hours of exercise per week outside of their cells. Id. at 24 1212. Detainees' access to dayrooms may affect determination of what constitutes 25 adequate exercise if the dayrooms provide space and equipment for detainees to actually exercise. Id. at 1212 n.22; see Toussaint v. Yockey, 722 F.2d 1490 (9th Cir. 1984) (denial 26 27 of outside exercise to administrative segregation inmates confined to their cells for as 28 much as 23<sup>1</sup>/<sub>2</sub> hours a day raised substantial constitutional question).

- 15 -

## 8. Food

1

2	"The Eighth Amendment requires only that prisoners receive food that is adequate
3	to maintain health; it need not be tasty or aesthetically pleasing. The fact that food
4	occasionally contains foreign objects or sometimes is served cold, while unpleasant, does
5	not amount to a constitutional deprivation." LeMaire v. Maass, 12 F.3d 1444, 1456 (9th
6	Cir. 1993); see also Toussaint v. Yockey, 722 F.2d 1490, 1493 (9th Cir. 1984) (preliminary
7	injunction vacated as to requirement that administrative segregation prisoners be served
8	the same types and quantities of food as the general population inmates because the
9	district court's findings did not include any factual support for that portion of the
10	injunction). Food provided to inmates must not only be "nutritionally adequate," but also
11	"prepared and served under conditions which do not present an immediate danger to the
12	health and well being of the inmates who consume it." Ramos v. Lamm, 639 F.2d 559,
13	570-71 (10 <sup>th</sup> Cir. 1980).
14	9. Staff Members, Training, and Screening
15	The Eighth Amendment provides inmates with a right to safe conditions of
16	confinement, including an adequate level of personal security. Hoptowit II, 753 F.2d at
17	784. Housing inmates in cells with solid doors and no means of communicating with
18	guards violates the Eighth Amendment because inmates are unable to make their medical
19	problems known to medical staff, and even previously healthy inmates may have a
20	medical emergency or be injured in a fall or accident. LeMaire v. Maass, 12 F.3d 1444,
21	1458-59 (9 <sup>th</sup> Cir. 1993).
22	III. Findings of Fact and Conclusions of Law
23	A. The Parties
24	1. Plaintiffs are the class of all pretrial detainees who are housed in the
25	Maricopa County Jails.
26	2. Defendant Joseph Arpaio ("Defendant Arpaio") is the Maricopa County

27 Sheriff and is responsible for managing the Maricopa County Jails.

28

1		3.	Defendants Fulton Brock, Don Stapley, Andrew Kunasek, Max Wilson,
2	and Mar	y Ro	ose Wilcox ("the Board Defendants") are the members of the Maricopa
3	County 1	Boar	d of Supervisors.
4		4.	Health services within Maricopa County Jails are organized under a
5	separate	ly fu	nded department of Maricopa County designated Correctional Health
6	Services	•	
7		5.	Although not a named party to this litigation, the interests of Correctional
8	Health S	ervi	ces are represented by the attorneys representing the individual Board
9	Defenda	nts.	
10	В.	Am	nended Judgment Paragraphs to Be Terminated Upon Stipulation
11		6.	Plaintiffs do not contest Defendants' motion to terminate the following
12	paragrap	ohs ir	n the Amended Judgment: 1-8, 16-17, 20-22, 24-42, 44, 48-55, 63, 65-66,
13	68, 73-8	3, 86	5-94, 96-97, 99-101, 105-113, and 115-116.
14		7.	Plaintiffs also do not contest Defendants' motion to terminate with respect
15	to the rea	feren	nces in $\P$ 9 to First Avenue, Madison, Avondale, and Mesa jails, which have
16	been clo	sed,	and the reference in $\P$ 84 to First Avenue jail, which has been closed.
17	C.	Poj	pulation/Housing Limitations (Overcrowding) $(AJ \P\P 9-15)^2$
18		8.	The Amended Judgment states in paragraphs 9 through 15:
19 20		pos	9. Through the operation, management and funding of the jails, endants shall endeavor to achieve, in good faith and as expeditiously as sible, and to maintain the following population limitation and inmate
21		ĥou	using goals:
22			A. For any cell at the First Avenue Jail facility (previously referred to as "Central Jail") used to house a pretrial detainee, there shall
23			be no more than three inmates in any eight-person cell; no more than two inmates in any four-person cell; and no more than one
24			inmate in any one or two person cell. For the purpose of determining the capacity of an individual cell, the parties agree to abide by the cell size designations reflected in the floor plans for
25			the First Avenue Jail facility attached as Exhibit "A".
26			
27			
28	2		"AJ $\P$ " refers to a paragraph of the Amended Judgment.
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I

1 2	B. No pretrial detainee housed in the Towers, Madison, Durango, Avondale (Southwest), Estrella, and Mesa (Southeast) jail facilities shall be housed in a cell containing more than one other
3	inmate.
4	C. The total number of inmates housed in any dormitory in the Estrella jail used to house pretrial detainees shall not exceed 100.
5	D. Pretrial detainees shall be incarcerated in jail cells or dormitories and shall not be housed in a dayroom or any other temporary
6	housing facility of any kind.
7 8	E. Pro per inmates representing themselves on criminal charges, who have demonstrated a legitimate need to collect and maintain voluminous legal documents, will be housed alone, provided
9	sufficient cell space is available.
10	F. Double bunking of pretrial detainees may only occur in cells (i) with two permanent bunks and (ii) with access to a dayroom in which no inmate beds are located.
11	
12	G. The defendants agree that the maximum population goal, not including any tent or other temporary housing facility, within any facility being used to house pretrial detainees shall be as follows:
13	FACILITY MAXIMUM POPULATION GOAL
14	First Avenue 417
15	Madison 1905
16	Durango872Avondale56
17	Towers720Estrella880
18	Southeast 60
19	The parties recognize that developing alternatives to incarceration of
20	pretrial detainees is an element of reducing jail population, and that the reduction of the population of pretrial detainees in the jail system, where
21	there is no threat to public safety, is a goal of this Amended Judgment.
21	10. The defendants agree to make good faith efforts, within their respective powers to achieve the pretried detained housing goals set forth
	respective powers to achieve the pretrial detainee housing goals set forth above. When a pretrial detainee is presented to the Sheriff by a competent
23	authority for confinement in the jails and the jail population levels, the requirements of the classification system, and/or the maintenance of
24	internal order or security within the jail system prohibit the Sheriff from housing that pretrial detainee in accordance with the population goals in
25	this Amended Judgment, the Sheriff shall promptly notify in writing the Maricopa County Board of Supervisors or its designee (which shall be the
26	Justice and Law [E]nforcement Agency of the Maricopa County Manager's Office pending further written notice) and the authorized representative of
27	the plaintiff-class, if any, of that population/housing situation. The Sheriff
28	will also report to the Board or its designee whenever the total system wide inmate population, not including tents or other temporary housing

1 facilities, exceeds 95% of the system wide jail capacity. The Board or its designee shall meet on an emergency basis to evaluate the situation and 2 recommend corrective action. 3 11. Even when in compliance with the population limitation and inmate housing goals set forth in this Amended Judgment, defendants shall endeavor to house, in any cell, the lowest number of pretrial detainees 4 possible in light of all relevant circumstances, including the requirements 5 of the inmate classification systems and the internal order and security of the jail system. 6 12. As of the date of this Amended Judgment, the Maricopa County 7 Board of Supervisors has implemented a multi-element inmate population reduction program (the "Board's program"). The primary purpose of this program is to meet the population goals set out in this Amended Judgment. 8 A summary of the Board's program and a description of its objectives, 9 which may be amended and supplemented from time to time, is attached to this Amended Judgment as Exhibit "B." Within their statutory 10 responsibilities, each of the defendants shall participate in and commit themselves to the success of this program. 11 13. In conjunction with the adoption and implementation of the 12 Board's program, the Board has established, under the auspices of the Justice and Law Enforcement Agency of the County Manager's Office, a jail population management group ("JPMG") to monitor the progress of the 13 Board's program in achieving its goals and to otherwise identify and address issues relating to the size of the inmate population incarcerated in 14 the jails. 15 14. Counsel for plaintiffs (or his designee or successor, or the 16 designee of his successor) shall have permanent observer status on the JPMG, and shall be entitled to receive notices of all meetings; to receive 17 reasonable advance notice of any proposed material change in the Board's program; and to personally attend and participate at all meetings of the JPMG. 18 19 15. For so long as the JPMG or any equivalent organization is in existence, the Justice and Law Enforcement Agency of the Maricopa County Manager's Office shall prepare, on not less than an annual basis, a 20 detailed report to the JPMG (the "Annual Report"), including, among other 21 matters: 22 county jail population data for the preceding twelve (12) months; A. 23 a comparison of population statistics for the preceding twelve B. (12) months with data for each of the previous three (3) years; 24 C. a summary of all implemented, abandoned, completed and 25 planned Board program elements; and 26 D. a documented summary (including empirical analysis when practicable and meaningful) of the success or lack of success of each Board 27 program element during the preceding twelve (12) months. 28

1	E. a detailed inventory of the then current capacity of each of the housing units of the jails.
2	9. The Eighth Amendment requires that prisoners be confined in conditions
3	that protect their mental and physical health and draws its meaning from evolving
4	standards of decency that mark the progress of a maturing society.
5	10. Overcrowding can violate the Eighth Amendment if it causes increased
6 7	violence, dilutes constitutionally required services, or violates contemporary standards of
7	decency.
8 9	11. The Fourteenth Amendment requires that conditions of confinement for
	pretrial detainees not constitute punishment, <i>i.e.</i> , not impose some harm that significantly
10	exceeds the inherent discomforts of confinement and is excessive in relation to the
11	legitimate governmental objective.
12	12. Plaintiffs contend that overcrowding at the 4 <sup>th</sup> Avenue Intake, the Towers
13 14	jail, the Estrella jail, the Durango Housing Units D8 and D9, and the court holding cells at
14	Madison violates pretrial detainees' constitutional rights by increasing threats to their
15 16	personal safety from increased violence among inmates, increasing risks to their health
10	from communicable diseases and unsanitary conditions, and imposing inhumane
17	conditions.
10	13. Defendant Arpaio contends that none of the Maricopa County Jails is
20	overcrowded because from June 2007 through April 2008 the daily inmate population
20 21	never exceeded the maximum inmate capacity for each facility.
21	14. Defendant Arpaio further contends that paragraphs 9-15 of the Amended
23	Judgment exceed the minimum required under the Eighth Amendment.
23 24	15. The specific requirements of paragraphs 9-15 of the Amended Judgment,
25	which require goals and good faith efforts, exceed the minimum required under either the
26	Eighth Amendment or the Fourteenth Amendment and, therefore, must be modified.
27	
28	

1	16. The facilities that house Maricopa County Jail pretrial detainees are the 4 <sup>th</sup>
2	Avenue jail, the Lower Buckeye jail, the Towers jail, the Estrella jail, and the Durango
3	jail.
4	17. Maricopa County Sheriff's Office Policy DI-1 establishes housing
5	categories for all classifications of inmates based on age, sex, and security level. The
6	following housing categories apply to pretrial detainees:
7	1. <u>General Population</u> : inmates who have no special housing requirements.
8 9	2. <u>Closed Custody</u> : inmates who pose a serious threat to life,
9 10	property, staff, other inmates, or to the orderly operation of the jail and may be locked in their cells for up to twenty-three hours daily.
11	3. <u>Administrative Segregation</u> : inmates whose safety is, or may be,
12	threatened from within the jail, who may be segregated from general population inmates, and who are allowed out of their calls for one hour doily plus offered recreation as time and
13	cells for one hour daily plus offered recreation as time and staffing permit.
14	4. <u>Medical</u> : inmates who need a higher level of medical care than
15 16	can be provided in general population housing or segregation units or need to be isolated due to communicable disease and usually are housed in a jail infirmary or at the Maricopa County Medical Center.
17 18	5. <u>Psychiatric</u> : inmates who need a higher level of psychiatric care than can be provided in general population housing or
	segregation units.
19 20	6. <u>Disciplinary</u> : inmates who violate jail rules and regulations, as determined by hearing sergeants, and may be housed separately from the general population, including lockdown for up to
21	twenty-three hours daily.
22	7. <u>Security Segregation</u> : inmates who pose a threat to the orderly operation of the jail and need immediate temporary segregation
23	pending reclassification, reassignment, or placement into another housing category.
24	Towers Jail
25	18. The Towers jail consists of six housing units, each of which contain four
26	pods. Each pod consists of fifteen cells. All of the cells contain three-bed bunks, and
27	inmates are triple-celled in most cells. Each cell is approximately 10.5 feet by 4.3 feet.
28	
	- 21 -

1 19. The Towers jail houses administrative segregation, disciplinary 2 segregation, security segregation, and medium custody general population pretrial 3 detainees. The segregation inmates at the Towers jail are confined to their cells for up to 4 twenty-three hours per day. 5 20. Two of the pods at the Towers jail have cells with virtually solid cell front 6 doors in which the only opening is a small slot through which mail and meals are passed. 7 These pods typically house some type of segregation inmate. 8 21. One of the pods at the Towers jail has eight cells with metal cell door 9 fronts that contain four vertical slots that are covered by heavy wire mesh. 10 22. Segregation pretrial detainees are assigned to triple-bunked cells at the 11 Towers jail. 12 23. Confining three segregation pretrial detainees in one cell at the Towers jail 13 for approximately twenty-two or twenty-three hours per day constitutes punishment in 14 violation of pretrial detainees' Fourteenth Amendment rights. 15 24. Prospective relief is necessary to correct this current and ongoing violation of pretrial detainees' constitutional rights. 16 17 Estrella Jail 18 25. The Estrella jail houses female pretrial detainees in four housing units and 19 eight dorms, which include maximum general population, administrative segregation 20 (minimum, medium, and maximum), closed custody (minimum, medium, and maximum), "nature of charges" (e.g., child abuse), disciplinary segregation, and security segregation 21 22 (minimum, medium, and maximum) classifications. The cells have either two-bed or 23 three-bed bunks without ladders or guard rails. Each cell has approximately twenty-eight 24 square feet of unencumbered space. 25 26. The general population pretrial detainees housed at the Estrella jail have approximately sixteen hours of dayroom access each day. 26 27 27. The pretrial detainees at the Estrella jail in segregation, closed custody, and 28 "nature of charges" classifications spend up to twenty-three hours per day in their cells.

1	28. Confining three segregation pretrial detainees in one cell at the Estrella jail
2	for approximately twenty-two or twenty-three hours per day would constitute punishment
3	in violation of pretrial detainees' Fourteenth Amendment rights.
4	29. However, currently pretrial detainees are not assigned to the top bunks of
5	the triple-bunks because the top bunks are considered to be too dangerous.
6	30. Therefore, there is no current and ongoing violation of pretrial detainees'
7	constitutional rights at the Estrella jail regarding overcrowding.
8	Durango Jail
9	31. During the relevant period, the Durango jail housed medium security
10	pretrial detainees in seven housing units and two dorms. The dorms (D8 and D9) are
11	comprised of double rows of three-tiered metal bunks without ladders to get to the upper
12	bunks. Each dorm has a capacity of 258. As of June 16, 2008, there were 251 inmates
13	housed in D8 and 249 inmates housed in D9.
14	32. Triple-bunking in open dorms, without more, does not violate pretrial
15	detainees' constitutional rights.
16	Portable Beds
17	33. Portable beds were used at the Lower Buckeye jail during the relevant
18	period and removed in May 2008 shortly before inspections conducted for this litigation.
19	34. Portable beds were used in the dayrooms of the housing units at the
20	Durango jail and removed in April 2008.
21	35. Using portable beds in cells significantly reduces the amount of
22	unencumbered space in the cells day and night, requires one inmate to sleep close to the
23	toilet in unsanitary conditions, requires the other two cellmates to wake the inmate on the
24	floor in order to use the toilet at night, increases the probability of injury when an inmate
25	climbs down from the top bunk without a ladder and needs to avoid stepping on the
26	portable bed below, and is likely to increase the level of tension among cellmates.
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	- 23 -
l	

36. Using portable beds in dayrooms significantly reduces the amount of 1 2 unencumbered space in the dayrooms and requires those inmates assigned to portable 3 beds to use toilets in cells assigned to others. 4 37. When detention officers were ordered to remove all of the portable beds at a jail, they were able to find a hard bed for each inmate by repairing unused cells and 5 6 transferring inmates to other facilities. 7 38. Chronic use of portable beds in lieu of maintaining cells with hard beds or 8 transferring inmates to other facilities violates pretrial detainees' constitutional rights. 9 39. As of July 2008, no portable beds were in use at any of the Maricopa 10 County Jail facilities, but the Court may assume that if prospective relief is not granted, 11 Maricopa County Jails are likely to return to the longstanding practice discontinued only 12 days before inspections for this litigation were to begin. 13 40. Therefore, prospective relief is necessary to correct a violation of pretrial detainees' constitutional rights. 14 15 16 **Court Holding Cells at Madison** 17 41. Pretrial detainees who have court appearances while housed in Maricopa 18 County Jails are transported from a housing unit to the court holding cells located in the 19 old Madison jail facility where they may remain for as long as eight hours in crowded, 20 dirty conditions. 21 42. Although overcrowding itself does not violate pretrial detainees' 22 constitutional rights, if it is not reasonably related to legitimate governmental objectives 23 and it causes risk of harm to pretrial detainees' safety and health, it does violate pretrial 24 detainees' constitutional rights. 25 43. At times, the court holding cells are so overcrowded that pretrial detainees 26 do not have room to sit or adequate access to toilet and sink facilities. 27 44. Overcrowding in the court holding cells causes sanitation problems and 28 health risks to pretrial detainees.

1	45. Overcrowding in the court holding cells is not reasonably related to a
2	legitimate governmental objective.
3	46. Overcrowding in the court holding cells at Madison violates pretrial
4	detainees' constitutional rights.
5	47. Prospective relief is necessary to correct this current and ongoing violation
6	of pretrial detainees' constitutional rights.
7	4 <sup>th</sup> Avenue Intake Holding Cells
8	48. Most pretrial detainees are taken to the 4 <sup>th</sup> Avenue Intake upon arrest.
9	49. During the intake process, pretrial detainees are moved in and out of
10	different holding cells.
11	50. The number of pretrial detainees held in each intake holding cell fluctuates
12	greatly.
13	51. Although there is no posted maximum occupancy in the intake holding
14	cells, the maximum number of inmates that should be held in each cell is approximately
15	thirty to thirty-five.
16	52. Often, substantially more than thirty-five pretrial detainees are held in one
17	cell.
18	53. At times, intake holding cells are so overcrowded that there is not room for
19	all inmates to sit on benches, and at times there is not room for all inmates to sit
20	anywhere, even on the floor.
21	54. At times, inmates sleep on the concrete floor, and sometimes there is not
22	enough room for inmates to sleep on the floor without coming into physical contact with
23	other inmates.
24	55. At times, the intake holding cells are too crowded for inmates to move to
25	use the toilet and sink.
26	56. Overcrowding in the 4 <sup>th</sup> Avenue Intake holding cells is not reasonably
27	related to a legitimate governmental objective.
28	
	- 25 -

1	57. Overcrowding in the 4 <sup>th</sup> Avenue Intake holding cells violates pretrial
2	detainees' constitutional rights.
3	58. Prospective relief is necessary to correct this current and ongoing violation
4	of pretrial detainees' constitutional rights.
5	59. Paragraphs 9-15 of the Amended Judgment will be modified to state:
6	"Defendants shall not house more than two pretrial detainees in one cell at the Towers jail
7	if the pretrial detainees usually are confined to their cell for twenty-two hours or more per
8	day. Defendants shall not make routine use of portable beds in cells or dayrooms.
9	Defendants shall not place more pretrial detainees in a court holding cell at Madison or in
10	a 4 <sup>th</sup> Avenue Intake holding cell than can sit in the holding cell without making physical
11	contact with another person."
12	60. Prospective relief regarding overcrowding, as modified in the preceding
13	paragraph, extends no further than necessary to correct the violation of the federal right, is
14	narrowly drawn, and is the least intrusive means to correct the violation.
15	D. Dayroom Access (AJ ¶¶ 18-19)
15 16	<ul> <li>D. Dayroom Access (AJ ¶¶ 18-19)</li> <li>61. The Amended Judgment states in paragraphs 18 and 19:</li> </ul>
	<ul><li>61. The Amended Judgment states in paragraphs 18 and 19:</li><li>18. Pretrial detainees, at jail facilities other than First Avenue,</li></ul>
16	<ul> <li>61. The Amended Judgment states in paragraphs 18 and 19:</li> <li>18. Pretrial detainees, at jail facilities other than First Avenue, including those opened subsequent to the effective date of this Amended Judgment which utilize a dayroom arrangement, shall be provided</li> </ul>
16 17	<ul> <li>61. The Amended Judgment states in paragraphs 18 and 19:</li> <li>18. Pretrial detainees, at jail facilities other than First Avenue, including those opened subsequent to the effective date of this Amended Judgment which utilize a dayroom arrangement, shall be provided complete freedom of access between cell and dayroom during waking hours, at least sixteen hours each day. For those facilities not utilizing a</li> </ul>
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16 17 18 19	61. The Amended Judgment states in paragraphs 18 and 19: 18. Pretrial detainees, at jail facilities other than First Avenue, including those opened subsequent to the effective date of this Amended Judgment which utilize a dayroom arrangement, shall be provided complete freedom of access between cell and dayroom during waking hours, at least sixteen hours each day. For those facilities not utilizing a dayroom arrangement, pretrial detainees shall be provided equivalent access to resources and free space as in dayrooms. Before pretrial detainees are placed in any facility plan without a dayroom arrangement, the defendants shall provide counsel for the plaintiff class, if any, a detailed
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<ol> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	<ul> <li>61. The Amended Judgment states in paragraphs 18 and 19:</li> <li>18. Pretrial detainees, at jail facilities other than First Avenue, including those opened subsequent to the effective date of this Amended Judgment which utilize a dayroom arrangement, shall be provided complete freedom of access between cell and dayroom during waking hours, at least sixteen hours each day. For those facilities not utilizing a dayroom arrangement, pretrial detainees shall be provided equivalent access to resources and free space as in dayrooms. Before pretrial detainees are placed in any facility plan without a dayroom arrangement, the defendants shall provide counsel for the plaintiff class, if any, a detailed summary of the proposed housing arrangement including the availability of resources and free space.</li> <li>19. Pretrial detainees at all jail facilities shall have access to a television, tables and benches sufficient for the number of persons who will be utilizing each dayroom. Defendants shall also provide small games such as checkers, chess, etc. in each dayroom.</li> <li>62. The Eighth Amendment does not require dayroom access, but the</li> </ul>
<ol> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ol>	<ul> <li>61. The Amended Judgment states in paragraphs 18 and 19:</li> <li>18. Pretrial detainees, at jail facilities other than First Avenue, including those opened subsequent to the effective date of this Amended Judgment which utilize a dayroom arrangement, shall be provided complete freedom of access between cell and dayroom during waking hours, at least sixteen hours each day. For those facilities not utilizing a dayroom arrangement, pretrial detainees shall be provided equivalent access to resources and free space as in dayrooms. Before pretrial detainees are placed in any facility plan without a dayroom arrangement, the defendants shall provide counsel for the plaintiff class, if any, a detailed summary of the proposed housing arrangement including the availability of resources and free space.</li> <li>19. Pretrial detainees at all jail facilities shall have access to a television, tables and benches sufficient for the number of persons who will be utilizing each dayroom. Defendants shall also provide small games such as checkers, chess, etc. in each dayroom.</li> <li>62. The Eighth Amendment does not require dayroom access, but the Fourteenth Amendment requires that pretrial detainees be given some opportunity for out-</li> </ul>
<ol> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ol>	<ul> <li>61. The Amended Judgment states in paragraphs 18 and 19:</li> <li>18. Pretrial detainees, at jail facilities other than First Avenue, including those opened subsequent to the effective date of this Amended Judgment which utilize a dayroom arrangement, shall be provided complete freedom of access between cell and dayroom during waking hours, at least sixteen hours each day. For those facilities not utilizing a dayroom arrangement, pretrial detainees shall be provided equivalent access to resources and free space as in dayrooms. Before pretrial detainees are placed in any facility plan without a dayroom arrangement, the defendants shall provide counsel for the plaintiff class, if any, a detailed summary of the proposed housing arrangement including the availability of resources and free space.</li> <li>19. Pretrial detainees at all jail facilities shall have access to a television, tables and benches sufficient for the number of persons who will be utilizing each dayroom. Defendants shall also provide small games such as checkers, chess, etc. in each dayroom.</li> <li>62. The Eighth Amendment does not require dayroom access, but the</li> </ul>

1 63. Plaintiffs do not contend that pretrial detainees' dayroom access is 2 constitutionally required. 3 64. Plaintiffs do contend that, under the current conditions, access to dayrooms does not compensate for insufficient outdoor recreation or reduce the unconstitutional 4 5 effects of overcrowding in the housing units. 65. Defendant Arpaio contends paragraphs 18 and 19 of the Amended 6 7 Judgment exceed the constitutional minimum and Maricopa County Jails are in 8 compliance with those provisions except where dayroom access has been reduced from 9 sixteen to eight hours for safety and security purposes. 10 66. Requiring sixteen hours of daily dayroom access exceeds the constitutional 11 minimum. 12 67. Requiring small games to be provided in dayrooms exceeds the constitutional minimum. 13 14 68. Therefore, paragraphs 18 and 19 of the Amended Judgment exceed the 15 constitutional minimum and must be terminated. 16 69. Although not constitutionally required, the amount of dayroom access 17 provided and the amount of available dayroom space per pretrial detainee are factors to be 18 considered in determining whether pretrial detainees are provided adequate living space 19 and outdoor exercise. 20 70. Maricopa County Sheriff's Office Policy DI-1 states that general population pretrial detainees "will normally receive access to dayrooms at a minimum of 21 16 hours daily." 22 23 71. General population inmates at the Towers, Estrella, and Durango jails have 24 access to dayrooms approximately sixteen hours per day. 72. In the 4<sup>th</sup> Avenue jail, general population inmates have access to dayrooms 25 26 approximately eight hours per day. 73. Dayroom access at the 4<sup>th</sup> Avenue jail was reduced from sixteen to eight 27 28 hours daily to reduce inmate violence.

1 74. In the Towers jail, administrative segregation, disciplinary segregation, and 2 security segregation inmates have access to dayrooms no more than one hour per day, 3 during which time they must also tend to their personal hygiene needs, including taking 4 showers and cleaning their cells. 5 75. In the Estrella jail, closed custody, administrative segregation, disciplinary 6 segregation, security segregation, and "nature of crimes" inmates have access to the 7 dayrooms no more than one hour per day, during which time they must also tend to their 8 personal hygiene needs, including taking showers and cleaning their cells. 9 76. In the Durango jail, administrative segregation, disciplinary segregation, 10 and security segregation inmates have access to the dayrooms no more than one hour per 11 day. 12 77. Because pretrial detainees do not have a constitutional right to dayroom 13 access apart from adequate opportunity for out-of-cell movement and sufficient space 14 within cells, there is no current and ongoing constitutional violation regarding dayroom 15 access. 16 78. Paragraphs 18 and 19 of the Amended Judgment will be terminated 17 because they exceed the constitutional minimum. 18 E. **Temperature (AJ ¶ 23)** 19 79. The Amended Judgment states in paragraph 23: 23. Defendants shall provide pretrial detainees with heating and 20 cooling systems and all equipment and structures necessary to provide healthful and comfortable living conditions. 21 22 80. The Eighth Amendment requires that the temperature of the areas in which 23 pretrial detainees are held or housed does not threaten their health or safety. 24 81. The Fourteenth Amendment requires that the temperature of the areas in 25 which pretrial detainees are held or housed must not constitute punishment, *i.e.*, 26 deviations from a reasonably comfortable temperature must be reasonably related to a 27 legitimate governmental objective. 28

1 82. Plaintiffs contend that temperatures in some of the Maricopa County Jail 2 housing units present a health risk for pretrial detainees on psychotropic medications and 3 reduce the ability of pretrial detainees to exercise in their cells. 4 83. Defendant Arpaio contends there is no current or ongoing violation of 5 federal rights regarding temperature. 6 84. Defendant Arpaio is not constitutionally required to provide pretrial 7 detainees with "comfortable" living conditions to the extent the uncomfortable conditions 8 are rationally related to maintaining security and order and operating the institution in a 9 manageable fashion. 10 85. Defendant Arpaio is constitutionally required to maintain heating and 11 cooling systems necessary to provide healthful living conditions for pretrial detainees. 12 86. Temperatures in most of the Maricopa County Jail housing areas are 13 maintained at a reasonably comfortable level, but ambient temperatures in some of the 14 Towers cells and peripheral areas have exceeded 85° F. 15 87. Air temperatures in excess of 85° F. greatly increase the risk of heat stroke and other heat-related illnesses for pretrial detainees who are taking psychotropic 16 17 medications. 18 88. Defendant Arpaio does not have a list of all pretrial detainees taking 19 psychotropic medications and cannot readily determine where pretrial detainees taking 20 psychotropic medications are housed. 21 89. Detention officers generally do not know which pretrial detainees are 22 taking psychotropic medications. 23 90. Defendant Arpaio does not ensure that pretrial detainees taking 24 psychotropic medications are housed at temperatures that provide healthful living 25 conditions. 26 91. There is no current and ongoing violation of pretrial detainees' 27 constitutional right to be housed in living conditions maintained at a healthful temperature 28

generally, but there is a current and ongoing violation of that right for pretrial detainees
 taking pyschotropic medications.

92. Prospective relief remains necessary to correct a current and ongoing
violation of a federal right to living conditions maintained at a healthful temperature for
pretrial detainees taking pyschotropic medications.

93. Paragraph 23 of the Amended Judgment will not be terminated and will be

7 modified to state: "Defendants shall provide pretrial detainees who are taking prescribed

8 psychotropic medications with housing in which the temperature does not exceed 85° F."

94. Prospective relief regarding temperature, as modified in the preceding

10 paragraph, extends no further than necessary to correct the violation of the federal right, is

11 narrowly drawn, and is the least intrusive means to correct the violation.

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F. Sanitation, Safety, Hygiene, and Toilet Facilities (AJ ¶¶ 43, 45-47)

95. The Amended Judgment states in paragraphs 43 and 45-47:

43. Defendants shall provide a fire protection service sufficient to assure the safety of staff, pretrial detainees and visitors at the jails and a system of fire inspection and testing of equipment by local fire officials at least every three months. Defendants shall assure that all jails comply with the current fire safety code promulgated by the National Fire Protection Association.

45. Defendants shall provide for the prompt removal of pretrial detainees from cells with inoperable toilets and sinks to a place where such facilities are available.

46. Defendants shall provide pretrial detainees with sufficient, safe cleaning supplies to enable pretrial detainees to properly clean their cells. Defendants shall assure that cells, including but not limited to medical isolation cells, are properly cleaned and sanitized prior to occupancy by pretrial detainees.

47. Defendants shall maintain a written plan for daily housekeeping and regular maintenance of the jail. Defendants shall provide toilets, showers, and sinks to pretrial detainees that are in good repair and can be cleaned properly.

25 96. The Eighth Amendment requires that prisoners be provided basic elements

26 of hygiene, sanitation, and safety, including freedom from unreasonable threat of injury

- 27 from fire and from vermin and rodent infestation.
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1 97. The Fourteenth Amendment requires that pretrial detainees be held and 2 housed in conditions that do not constitute punishment, *i.e.*, confinement conditions may 3 be unpleasant, but not excessively unpleasant in light of the legitimate governmental objectives those conditions serve. 4 5 **Fire Protection** 6 98. Regarding paragraph 43 of the Amended Judgment, Plaintiffs contend 7 Defendant Arpaio's failure to perform quarterly evacuation drills required by the 8 International Fire Code places pretrial detainees in potentially life threatening 9 circumstances in violation of both the Eighth and Fourteenth Amendments. 10 99. Defendant Arpaio contends paragraph 43 of the Amended Judgment 11 exceeds the constitutional minimum. 12 100. Paragraph 43 of the Amended Judgment exceeds the constitutional 13 minimum to the extent that it requires the Maricopa County Jails to comply with the 14 current fire safety code promulgated by the National Fire Protection Association and 15 requires fire inspection and equipment testing by local fire officials. 16 101. In each of its facilities the Maricopa County Jails has fire protection 17 equipment, provides fire safety training for jail staff, and conducts emergency evacuation 18 drills and training. 19 102. The Maricopa County Jails do not conduct fire drills or other emergency 20 drills that include evacuating inmates because doing so would present a substantial risk to 21 the safety and security of inmates and staff. 22 103. Therefore, there are no current and ongoing violations of pretrial 23 detainees' constitutional rights regarding paragraph 43 of the Amended Judgment. 24 **Toilets, Sinks, and Showers** 25 104. Regarding paragraph 45 of the Amended Judgment, Plaintiffs do not 26 contend that Defendant Arpaio does not usually remove pretrial detainees from cells with 27 inoperable toilets or sinks. 28

1 105. Defendant Arpaio usually removes pretrial detainees from cells with
 2 inoperable toilets or sinks within a reasonable time.

- 3 106. There are no current and ongoing violations of pretrial detainees'
  4 constitutional rights regarding paragraph 45 of the Amended Judgment.
- 107. Regarding the second sentence of paragraph 47 of the Amended
  Judgment, which requires the Maricopa County Jails to provide toilets, showers, and
  sinks to pretrial detainees that are in good repair and can be cleaned properly, Plaintiffs
  contend that toilets and sinks in the 4<sup>th</sup> Avenue Intake holding cells are unsanitary, the
  toilets in the 4<sup>th</sup> Avenue Intake holding cells often are not functional, and the toilets and
  showers at the Towers, Durango D8 and D9, and Estrella jails often are not functional.
- 11 108. Plaintiffs contend that the ratios of pretrial detainees to toilets in the 4<sup>th</sup>
  12 Avenue Intake holding cells, Durango D8 and D9 housing units, Estrella dorms, and court
  13 holding cells at Madison exceed reasonable standards.
- 14 109. Defendant Arpaio contends that pretrial detainees are provided with15 functioning plumbing and not punished by non-functioning plumbing.
- 16 110. In all housing areas, Defendant Arpaio provides toilets, showers, and17 sinks to pretrial detainees, which are frequently repaired.
- 18 111. In the 4<sup>th</sup> Avenue Intake holding cells and the court holding cells at
  19 Madison, Defendant Arpaio provides toilets and sinks, but they are often unsanitary, and
  20 frequently there is insufficient soap and toilet paper to maintain basic elements of hygiene
  21 and sanitation.
- 112. The excessive ratios of pretrial detainees to toilets at the 4<sup>th</sup> Avenue Intake
  holding cells, Durango D8 and D9 housing units, Estrella dorms, and court holding cells
  at Madison are the result of overcrowding (*see* III.C *supra*), but pretrial detainees do not
  have a constitutional right to a certain ratio of pretrial detainees to toilets.
- 26 113. Although toilets, showers, and sinks in the Maricopa County Jails require
  27 frequent repair, Defendant Arpaio's current provision of functioning toilets, showers, and
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sinks does not violate pretrial detainees' constitutional rights except in the 4<sup>th</sup> Avenue 1 2 Intake holding cells and the court holding cells at Madison. 3 114. Therefore, there are current and ongoing violations of pretrial detainees' constitutional rights regarding the second sentence of paragraph 47 of the Amended 4 Judgment in the 4<sup>th</sup> Avenue Intake holding cells and the court holding cells at Madison. 5 **Cleaning Supplies, Sanitation, Housekeeping, and Maintenance** 6 7 115. Regarding paragraph 46 of the Amended Judgment, Plaintiffs contend 8 Defendant Arpaio does not consistently provide pretrial detainees with adequate supplies 9 to clean their cells and shared areas. 10 116. Defendant Arpaio contends pretrial detainees are provided with sufficient 11 cleaning supplies. 12 117. Defendant Arpaio provided inmates with sufficient cleaning supplies, and 13 even brought in trustees to assist with cleaning, shortly before the jail inspections for this 14 litigation. 15 118. Defendant Arpaio provides inmates with cleaning supplies, but does not consistently provide sufficient supplies for effective cleaning. 16 17 119. Failure to consistently provide pretrial detainees with sufficient cleaning 18 supplies for effective cleaning causes an unconstitutional health risk to pretrial detainees. 19 120. Administrative segregation pretrial detainees are provided cleaning 20 supplies and expected to clean their cells during the one hour they have out of their cells 21 to shower and make telephone calls. 22 121. Failure to provide administrative segregation pretrial detainees with 23 adequate opportunity to clean their cells causes an unconstitutional health risk to pretrial 24 detainees. 25 122. Rats and/or mice remain a chronic problem in Maricopa County Jails, which Defendant Arpaio has made some efforts to eradicate. 26 27 123. Cells are not consistently cleaned and sanitized prior to occupancy by

28 pretrial detainees thereby causing an unconstitutional health risk.

1	124. There are, therefore, current and ongoing violations of pretrial detainees'
2	constitutional rights regarding paragraph 46 of the Amended Judgment.
3	125. Regarding the first sentence of paragraph 47 of the Amended Judgment,
4	Plaintiffs do not contend that a written plan for daily housekeeping and regular
5	maintenance is constitutionally required.
6	126. Defendant Arpaio contends that a written plan for daily housekeeping and
7	regular maintenance exceeds the constitutional minimum.
8	127. Paragraph 47 of the Amended Judgment exceeds the constitutional
9	minimum to the extent it requires, "Defendants shall maintain a written plan for daily
10	housekeeping and regular maintenance of the jail."
11	128. Therefore, paragraph 43, paragraph 45, and the first sentence of paragraph
12	47 of the Amended Judgment will be terminated, paragraph 46 will not be terminated, and
13	the second sentence of paragraph 47 will not be terminated and will be modified to state:
14	"Defendants shall provide functional and sanitary toilets and sinks, with toilet paper and
15	soap, to pretrial detainees in 4 <sup>th</sup> Avenue Intake and the court holding cells at Madison."
16	129. Prospective relief remains necessary to correct a current and ongoing
17	violation of the federal right to sanitary living conditions, and paragraph 46 of the
18	Amended Judgment and the second sentence of paragraph 47 as modified extend no
19	further than necessary to correct the violation of the federal right, are narrowly drawn,
20	and are the least intrusive means to correct the violation.
21	G. Medical, Dental, and Psychiatric Care (AJ ¶¶ 56-62, 64, 67, 69-70)
22	130. The Amended Judgment states in paragraphs 56-62, 64, 67, and 69-70:
23	56. Defendants shall provide a receiving screening of each pretrial detained prior to placement of any pretrial detained in the general
24	detainee, prior to placement of any pretrial detainee in the general population. The screening will be sufficient to identify and begin percent sources and treatment of these with mental or physical
25	necessary segregation, and treatment of those with mental or physical illness and injury; to provide necessary medication without interruption; to
26	recognize, segregate, and treat those with communicable diseases; to provide medically necessary special diets; and to recognize and provide necessary services to the physically handicapped.
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28	57. All pretrial detainees confined in the jails shall have access to medical services and facilities which conform to the standards designated

1 as "essential" by the National Commission on Correctional Health Care ("NCCHC") Standards for Health Services in Jails, as amended from time 2 to time. When necessary, pretrial detainees confined in jail facilities which lack such services shall be transferred to another jail or other location 3 where such services or health care facilities can be provided or shall otherwise be provided with appropriate on-site medical services. 4 58. Defendants shall assure that all policies, procedures, and 5 programs instituted pursuant to the preceding paragraph are fully implemented and that each pretrial detainee is provided health services in conformity with such policies, procedures, and programs. 6 7 59. A copy of all then-current Correctional Health Services policies, procedures and programs shall be made available to plaintiffs' counsel for 8 inspection and/or copying upon reasonable request. 9 60. Defendants shall ensure that orders by the responsible health care authority and its qualified health care personnel are not interfered with or 10 overridden by security staff. 11 61. Defendants shall ensure that the pretrial detainees' prescription medications are provided without interruption where medically prescribed 12 by correctional medical staff. 13 62. Defendants shall maintain unit dose records of all psychiatric and narcotic prescription medications administered to pretrial detainees. All other prescription medications shall be recorded in the pretrial detainees' 14 medical records indicating the type and amount of medication dispensed 15 and the date. 16 64. Defendants shall provide a monitoring system by which pretrial detainees may be assured that sick call requests are delivered to the 17 responsible health care authority and its qualified health care personnel in a timely manner by security staff and that written responses from health care 18 personnel are also handled in a timely manner. 19 67. Defendants shall provide sufficient equipment to provide emergency medical treatment to the pretrial detainees at the jails when 20 needed. 21 69. Defendants shall provide pretrial detainee with dental care in cases of emergency. 22 70. Defendants shall arrange for and obtain written evaluations of 23 health care services within the jails by independent persons, organizations or agencies experienced in evaluating such services, which evaluations 24 shall utilize generally accepted standards for correctional facilities as described by the NCCHC. Reports shall be obtained based upon the regular review schedule (currently one every three years) of the NCCHC or 25 other independent reviewing agency; provided, however, that an annual, 26 interim internally-prepared report shall be provided to the attorney for the plaintiff class, if any, at the same time that such report is provided to the 27 independent review organization. 28

1 131. The Eighth Amendment requires that the Maricopa County Jails provide a
 system of ready access to adequate medical, dental, and mental health care; medical staff
 competent to examine prisoners and diagnose illnesses; timely treatment for prisoners'
 medical problems or referral to others who can; and an adequate system for responding to
 emergencies.

132. The Eighth Amendment requires that the Maricopa County Jails not be
deliberately indifferent to prisoners' serious medical, dental, and mental health needs,
including conditions that are likely to cause serious illness and needless suffering in the
future.

10 133. The Fourteenth Amendment requires that Maricopa County Jails provide
pretrial detainees with access to care to meet their serious medical, dental, and mental
health needs, which means that in a timely manner, a pretrial detainee can be seen by a
clinician, receive a professional clinical judgment, and receive care that is ordered.

14 134. The Fourteenth Amendment requires that the Maricopa County Jails not
15 withhold or delay medical, dental, or mental health care unless doing so is reasonably
16 related to a legitimate governmental objective. Budgetary constraints do not justify delay
17 in treatment for a serious medical need.

18 135. Plaintiffs contend the medical, dental, and mental health care provided to
19 pretrial detainees at the Maricopa County Jails is grossly inadequate and that Defendants
20 disregard pretrial detainees' serious health needs and unnecessarily subject them to pain
21 and substantial risk of significant injury and deterioration of their health.

136. Plaintiffs further contend that systemic deficiencies prevent pretrial
detainees from receiving timely access to care to meet their serious medical and mental
health needs, care based on professional medical judgments, and the care that is ordered.

137. Defendant Arpaio contends the only constitutional obligation regarding
medical, mental health, and dental care applicable to him is that jail officials must not
interfere with an inmate's ability to obtain medical care and treatment, and there is no

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evidence that jail officials systematically interfere with inmates obtaining medical care
 and treatment.

138. The Board Defendants contend the Court should terminate the prospective
relief provided in paragraphs 56-62, 64, 67, and 69-70 of the Amended Judgment because
there are no current and ongoing systemic violations of any federal rights contained in the
Amended Judgment.

139. The Board Defendants argue that because the parties stipulated to
incorporate in the Amended Judgment the "essential" standards for health services in jails
of the National Commission on Correctional Health Care ("NCCHC"), Correctional
Health Services adopted policies conforming to NCCHC standards, and Correctional
Health Services substantially complies with all of the "essential" NCCHC standards, they
have met their burden in proving there are no current and ongoing violations of pretrial
detainees' federal rights.

14 140. The Court decides independently whether there are current and ongoing
15 violations of pretrial detainees' constitutional rights and does not rely on any
16 determinations made by an accrediting organization such as the NCCHC.

17 141. The NCCHC standards represent NCCHC's recommended practices for
18 jail health services and consist of seventy-two standards grouped under nine general
19 areas. Each standard is classified as either "essential" or "important." Standards, whether
20 classified as "essential" or "important," may not apply in a particular situation.

21 142. The NCCHC "essential" standards do not specifically focus on all of
22 pretrial detainees' constitutional rights.

23 143. Some of the NCCHC "essential" standards address administrative
24 functions and are not narrowly tailored to meet constitutional requirements.

144. Although the NCCHC standards may be helpful for a jail, the Court
makes its findings based on the Eighth and Fourteenth Amendments of the United States
Constitution.

1	Medical, Dental, and Mental Health Needs
2	145. The Maricopa County Jails booked more than 93,000 pretrial detainees
3	from June 1, 2007, through May 31, 2008. It houses approximately 8,000 pretrial
4	detainees daily. Some pretrial detainees remain in the Maricopa County Jails for days,
5	and others for years.
6	146. A substantial number of pretrial detainees in the Maricopa County Jails
7	require medical treatment and/or prescription medication.
8	147. Many of the pretrial detainees in the Maricopa County Jails have alcohol
9	and drug addictions, physical injuries, and chronic diseases, such as diabetes, asthma,
10	hypertension, seizure disorders, and Parkinson's disease.
11	148. Many pretrial detainees have physical conditions, including dental care
12	needs, caused or exacerbated by their living conditions before incarceration, such as
13	illegal drug use, homelessness, inadequate health care, and inadequate nutrition.
14	149. It is estimated that twenty percent of the pretrial detainees housed in the
15	Maricopa County Jails are seriously mentally ill. Many of these have schizophrenia,
16	bipolar disease, anxiety disorders, attention deficit disorder, and other serious chronic
17	mental illnesses.
18	150. Providing appropriate treatment and care for the large number of
19	individuals with serious mental illness is a significant statewide problem, and state
20	facilities and services are inadequate to sufficiently address the problem.
21	151. Often people with serious mental illness, who are untreated or
22	undertreated, commit minor crimes and end up in the Maricopa County Jails.
23	152. Because the state hospital for the seriously mentally ill is overcrowded,
24	the Maricopa County Jails often must house and provide treatment for those who should
25	receive in-hospital psychiatric care.
26	153. Although many pretrial detainees' medical and mental health care needs
27	could be addressed more effectively and efficiently through public services outside of
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criminal justice institutions, they frequently are not, and the responsibility for doing so
 falls upon the Maricopa County Jails.

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#### Maricopa County Jails Medical Facilities

154. The 4<sup>th</sup> Avenue jail contains an intake center with its own dedicated health 4 personnel whose responsibility is to process incoming pretrial detainees. The 4<sup>th</sup> Avenue 5 jail also contains an outpatient clinic. Correctional Health Services has clinics on the 6 7 second, third, and fourth floors, each of which consists of three examination rooms and 8 two offices. A central clinic is located in the basement comprised of a medication room, 9 three examination rooms, four offices, an x-ray area, laboratory, a medical records room, 10 and a dental office. The clinic provides medications administration, sick call, chronic 11 care clinics, outpatient psychiatric care, dental care, and radiology services.

12 155. The Lower Buckeye jail contains various medical, mental health, and 13 dental facilities, including a 60-bed infirmary, and a 260-bed inpatient psychiatric facility. 14 Outpatient care is provided as well as infirmary care at this facility. The outpatient clinic 15 has seven offices, four examination rooms, a medical records room, two medication 16 rooms, a specimen processing area, and a two-chair dental office. The scope of services 17 at the infirmary includes follow-up care for transfers from area hospitals following 18 surgical procedure and treating illness or injury that requires acute care. Health services 19 administration is also located at the Lower Buckeye jail. The 260-bed psychiatric facility 20 is available for patients who need a higher level of psychiatric care than can be provided 21 in general population housing.

156. The Towers, Estrella, and Durango jails all contain outpatient clinics. The
Towers jail has an office, medication room, a specimen processing area, two medical
examination rooms, and a mental health interview room. The Estrella jail contains an
office, dental office, medication room, a specimen processing area, medical records room,
and four examination rooms. The Durango jail has three examination rooms, a specimen
processing area, a medication room, two offices, and a medical records area.

1	Receiving Screening
2	157. Paragraph 56 of the Amended Judgment requires Defendants to provide a
3	receiving screening of each pretrial detainee prior to placement of any pretrial detainee in
4	the general population. Paragraph 56 further requires the screening to be sufficient to
5	identify and begin necessary segregation, treatment, medication, special diets, and
6	accommodations.
7	158. Paragraph 56 of the Amended Judgment does not exceed the
8	constitutional minimum because the required receiving screening is essential to providing
9	adequate medical, mental, and dental health care for pretrial detainees and maintaining
10	jail safety and security.
11	159. All pretrial detainees entering the jail system, with the exception of self
12	surrenders, are processed through the 4 <sup>th</sup> Avenue jail. The central intake unit has three
13	health assessment stations. There is a Correctional Health Services technician at each
14	station who is either a Certified Nursing Assistant, a Medical Assistant, and/or an
15	Emergency Medical Technician. The technicians in the intake unit are trained to perform
16	screenings.
17	160. All incoming detainees receive a screening when they arrive and prior to
18	booking. It takes eight minutes on average to complete this process.
19	161. The intake technicians often ask pretrial detainees the screening questions
20	very quickly in a noisy environment that lacks privacy and is not conducive to pretrial
21	detainees giving thoughtful responses to very personal questions.
22	162. Although the 4 <sup>th</sup> Avenue jail has clinical facilities to allow pretrial
23	detainees following their initial pre-intake screening to proceed to a post-intake area and
24	have a more comprehensive evaluation done by a clinician, a secondary screening at
25	booking often does not occur. The number of pretrial detainees who receive the more
26	comprehensive correcting is significantly loss than the number of protected detained with
	comprehensive screening is significantly less than the number of pretrial detainees with
27	serious medical needs who are booked.

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1 163. During the intake screening, health personnel are instructed to check for a
 2 history of substance abuse or intoxication, diabetic care, seizure medications, and wound
 3 care.

4 164. However, the intake screening often does not capture basic and necessary
5 information from detainees, including an adequate history from those suffering from
6 chronic diseases.

165. Screening also is intended to identify persons with mental illnesses, who
are to be scheduled for appropriate follow-up consistent with their level of need. Mental
health screening questions include mental health treatment history, prescription
medications, outpatient treatment provider, history of suicide attempts and self-injury, and
current thoughts of suicide, in addition to subjective observations of the pretrial
detainee's appearance and behavior noted.

13 166. Mental health staff are available for immediate assessment in the intake14 area seven days a week, twenty-four hours per day.

15 167. In addition, the booking area contains ten "safe cells" in which persons
16 determined to be at imminent risk of harm to themselves or others can be housed
17 temporarily until the risk is reduced or the person is transferred to the inpatient
18 psychiatric unit at Lower Buckeye jail or the county psychiatric hospital.

19 168. However, many pretrial detainees with serious mental illness are not20 identified and assessed by a mental health clinician during the intake process.

169. Pretrial detainees are to be provided immediate care, if needed, at the time
of screening. If appropriate, pretrial detainees are to be transported to the hospital for
further analysis and care not available on-site either to be returned later for booking or
booked in Ward 41 at the Maricopa Medical Center.

170. Pretrial detainees who are not identified as requiring immediate care may
not receive any care for at least two weeks, following a more thorough health assessment.

1 171. During screening, when pretrial detainees identify that they are on
 2 medications, staff are trained to verify these medications, obtain orders, and initiate
 3 administration of the medications in a timely fashion.

4 172. However, incoming pretrial detainees with chronic medical problems,
5 such as diabetes, hypertension, and HIV disease, often do not receive their medications in
6 a timely manner. Many people do not know the name or address of their pharmacy, or
7 they might not have a pharmacy because they were prescribed medication in prison.

8 173. For certain psychotropic medications, when verification indicates the
9 pretrial detainee has been prescribed a medication not on the jail's medication formulary,
10 sometimes a two-week order for the non-formulary medication is written to permit
11 continuity while the process to order non-formulary medication is undertaken.

12 174. However, for some pretrial detainees, Correctional Health Services
13 prescribes a formulary medication instead of the non-formulary medication the pretrial
14 detainee was taking before arrest.

15 175. Following the receiving screening, Correctional Health Services makes16 efforts to obtain outside medical records of pretrial detainees.

17 176. Once processed, pretrial detainees are turned over to the detention staff of
18 the jail, who then officially accept pretrial detainees into the jail. Upon admission,
19 pretrial detainees receive handbooks that are available in English and Spanish, which
20 contain information on the availability of health care services, procedures for requesting
21 care, fees for certain services, and the facility's health grievance procedures. Pretrial
22 detainees also are to be given oral instructions on how to obtain medical care.

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177. Systemic deficiencies in the screening process significantly impair continuity of care and result in failure to identify pretrial detainees with immediate medical needs.

178. Therefore, paragraph 56 of the Amended Judgment will not be terminated
because it does not exceed the constitutional minimum and there are continuing and
ongoing violations of pretrial detainees' constitutional rights.

1 179. Prospective relief in paragraph 56 of the Amended Judgment remains 2 necessary to correct a current and ongoing violation of the federal right to adequate 3 medical, mental health, and dental care, extends no further than necessary to correct the 4 violation of the federal right, is narrowly drawn, and is the least intrusive means to correct 5 the violation. National Commission on Correctional Health Care ("NCCHC") Standards for Health Care in Jails 6 7 180. Regarding paragraph 57 of the Amended Judgment, pretrial detainees 8 have a constitutional right to access to adequate health care, but there is no constitutional 9 requirement that the adequacy of health care be defined by the NCCHC. 10 181. Paragraph 57 of the Amended Judgment will be modified to terminate the 11 references to the NCCHC, which exceed the constitutional minimum. 12 **Access to Adequate Health Care** 13 182. Paragraph 57 of the Amended Judgment does not exceed the 14 constitutional minimum to the extent it requires Defendants to ensure pretrial detainees' 15 ready access to care to meet their serious medical, dental, and mental health needs, which 16 means that in a timely manner, a pretrial detainee can be seen by a clinician, receive a 17 professional clinical judgment, and receive care that is ordered. 18 Staffing 19 183. Correctional Health Services provides medical, mental health, and dental 20 care through a combination of county employees and independent contractors. 21 184. Correctional Health Services fills vacant positions with independent 22 contractors and over-time services of county staff. 23 185. Correctional Health Services has difficulty filling vacant positions for 24 psychiatrists. 25 Initiating Treatment 26 186. Within fourteen days of booking, pretrial detainees usually receive 27 medical and mental health assessments that are more thorough than the brief screening 28 - 43 -

during intake and are performed by nurses, physician assistants, nurse practitioners, or
 physicians.

3 187. Sometimes pretrial detainees receive medical care because their family
4 members, attorneys, or clergy have requested it.

5 188. Sometimes pretrial detainees receive medical care based on a detention
6 officer's referral.

7 189. Pretrial detainees seeking medical care must complete sick call request
8 forms and hand them to nursing staff, usually the Licensed Practical Nurse administering
9 medications in the morning.

10 190. Sick call requests are to be triaged by nurses within twenty-four hours,
11 seven days a week, without actually seeing the pretrial detainees who have submitted the
12 sick call requests.

13 191. Although the nurses administering medications are expected to talk to
14 pretrial detainees submitting sick call requests and to record additional information for
15 triaging and treatment, they do not consistently do so well.

16 192. Some pretrial detainees do not speak or write English; some are not
17 literate at all. They have difficulty communicating about their health care needs in
18 writing on the sick call request forms.

19 193. Pretrial detainees frequently are denied access to adequate medical,
20 mental health, and dental care because they do not receive a timely in-person assessment
21 of the urgency of their need for treatment.

22

### Medical Records and Information Management

194. Clinicians at the Maricopa County Jails often cannot provide a
professional medical judgment because Correctional Health Services does not have a
medical record and information system capable of timely providing health care
professionals with the information they need to diagnose and treat pretrial detainees
appropriately, including laboratory results and results of specialty consults.

1 195. Correctional Health Services does not maintain a list of pretrial detainees
 2 with chronic diseases and cannot readily determine where they are housed and what
 3 medications have been prescribed for them.

- 4 196. Correctional Health Services does not maintain a list of pretrial detainees
  5 on prescription medications.
- 6 197. Detention officers often do not know which pretrial detainees in their
  7 custody are on medications that may have adverse side effects.

8 198. Detention officers often do not know which pretrial detainees in their
9 custody are taking psychotropic medications and may suffer heat-related illnesses if
10 subjected to temperatures exceeding 85° F.

11 199. Correctional Health Services does not maintain a list of pretrial detainees
12 identified as seriously mentally ill and cannot readily determine where they are housed
13 and what medications have been prescribed for them.

200. Because Correctional Health Services does not have ready access to the
number and location of seriously mentally ill pretrial detainees, it cannot determine
whether it has enough qualified mental health staff available to provide adequate mental
health services.

18 201. Correctional Health Services does not know how many hours of19 psychiatric service it provides to pretrial detainees.

20 202. Although electronic record management is not constitutionally required,
21 the volume of pretrial detainees housed in the Maricopa County Jails suggests that
22 Correctional Health Services likely cannot manage medical records, track inmate
23 locations for pretrial detainees with medical needs, and produce reports necessary for
24 health care staff and detention officers to provide access to adequate health care without
25 an electronic system.

26

### Discipline of the Seriously Mentally Ill

27 203. Detention officers often do not know which pretrial detainees in their28 custody have been identified as seriously mentally ill.

204. There is no jail policy requiring that mental health staff be notified or
 involved in the disciplinary process of mentally ill detainees, and mental health clinical
 staff are not consulted about disciplinary actions against mentally ill detainees.

4 205. Some pretrial detainees have been punished for behavior related to serious
5 mental illness.

6 206. The vast majority of seriously mentally ill pretrial detainees are not
7 housed in the Lower Buckeye psychiatric unit, and seriously mentally ill pretrial
8 detainees may be placed in segregation at other housing facilities without detention staff's
9 knowledge that the pretrial detainees are seriously mentally ill.

207. Lockdown for twenty-three hours per day, alone or with cellmates, can beseriously detrimental to the condition of a seriously mentally ill pretrial detainee.

12 208. Although seriously mentally ill pretrial detainees require more supervision13 when placed in segregation, they usually receive less.

14

#### Treatment of the Seriously Mentally Ill

209. Thorazine is an antipsychotic medication with potentially severe and
permanent side effects, including extremely painful involuntary muscle spasms of the
neck, tongue, eyes or other muscles, a profound restlessness and constant movement of
the feet and legs, drug-induced Parkinsonism (a resting tremor with some muscle
rigidity), and tardive diskenesia (potentially permanent and disfiguring involuntary
movements around the face).

21 210. Although Correctional Health Services witnesses testified they would not
22 prescribe thorazine as a first line of treatment, in fact, Correctional Health Services has
23 prescribed thorazine for many psychotic, and even some not psychotic, pretrial detainees
24 without justification for its use. Correctional Health Services psychiatrists sometimes
25 prescribe thorazine as a sleep aid.

26 211. Some of the seriously mentally ill pretrial detainees are housed in the
27 psychiatric unit at the Lower Buckeye jail, and the most seriously mentally ill of those are
28 housed in cells that do not permit psychiatrists and pretrial detainees to have visual

contact while communicating or to have private therapeutic communications. Mental
 health staff frequently provide cell-side treatment without privacy in other housing units
 as well. In some cases, this detriment to therapeutic treatment is necessary to preserve the
 safety and security of staff and pretrial detainees; in some cases, it is not.

5 212. Many of the pretrial detainees housed at the Lower Buckeye jail
6 psychiatric unit need hospital level psychiatric care.

7 213. The psychiatric unit at the Lower Buckeye jail does not provide hospital
8 level psychiatric care.

9 214. Many of the pretrial detainees housed at the Lower Buckeye jail
10 psychiatric unit are maintained in segregation lockdown with little or no meaningful
11 therapeutic treatment, which results in needless suffering and deterioration.

12 215. Although mental health staff are on site twenty-four hours a day, seven
13 days a week, psychiatrists are not. Therefore, acutely psychotic pretrial detainees, pretrial
14 detainees on suicide watch, and pretrial detainees in restraints or on forced medications,
15 are being treated after hours and on weekends without the personal supervision of a
16 psychiatrist.

17 216. Regarding paragraph 57 of the Amended Judgment, Defendants do not
18 ensure that pretrial detainees receive access to adequate medical and mental health care
19 because Correctional Health Services does not provide timely in-person assessment of the
20 urgency of their need for treatment, is not able to readily retrieve information from
21 pretrial detainees' medical and mental health records and housing records, and does not
22 identify and appropriately treat many pretrial detainees with serious mental illness.

23

24

217. Prospective relief remains necessary to correct a current and ongoing violation of the federal right to adequate medical and mental health care.

25 218. Therefore, paragraph 57 of the Amended Judgment will not be terminated,
26 but will be modified to state: "All pretrial detainees confined in the jails shall have ready
27 access to care to meet their serious medical and mental health needs. When necessary,
28 pretrial detainees confined in jail facilities which lack such services shall be transferred to

another jail or other location where such services or health care facilities can be provided
 or shall otherwise be provided with appropriate alternative on-site medical services."

219. Prospective relief granted in paragraph 57 of the Amended Judgment, as
modified in the preceding paragraph, extends no further than necessary to correct the
violation of the federal right, is narrowly drawn, and is the least intrusive means to correct
the violation.

# 7 8 9 10 11 12 13 14 Plaintiffs' counsel. 15 16 17 18 19 20 21 22 23 24

#### **Policies, Procedures, and Programs**

8 220. Pretrial detainees' constitutional rights do not include requiring the
9 Maricopa County Jails to implement policies, procedures, and programs that it adopts and
0 to provide health services in conformity with its policies, procedures, and programs.

11 221. Therefore, paragraph 58 of the Amended Judgment will be terminated12 because it exceeds the constitutional minimum.

222. Pretrial detainees' constitutional rights do not include requiring the
Maricopa County Jails to provide copies of its policies, procedures, and programs to
Plaintiffs' counsel.

16 223. Therefore, paragraph 59 of the Amended Judgment will be terminated17 because it exceeds the constitutional minimum.

### **Interference with Health Care Orders**

224. Paragraph 60 of the Amended Judgment, which prohibits security staff
from interfering with or overriding orders by the responsible health care authority and its
qualified health care personnel, does not exceed the constitutional minimum.

22 225. Detention officers often do not know which pretrial detainees are
23 receiving health care or have been prescribed medication.

226. Detention officers do not currently handle sick call requests.

25 227. Detention officers, on occasion, report their observations that pretrial
26 detainees may require health care.

27 228. Custody staff do not knowingly interfere with or override orders by28 Correctional Health Services personnel regarding health care for pretrial detainees.

229. Therefore, paragraph 60 of the Amended Judgment will be terminated 1 2 because there is no current and ongoing violation of pretrial detainees' constitutional 3 rights related to this paragraph. **Prescription Medications Without Interruption** 4 5 230. Paragraph 61 of the Amended Judgment, which requires Defendants to 6 ensure that pretrial detainees' prescription medications are provided without interruption 7 where medically prescribed by correctional medical staff, does not exceed the constitutional minimum. 8 9 231. Providing pretrial detainees' prescription medications without interruption 10 is essential to constitutionally adequate medical care. 11 232. Lapses in medication for certain medical conditions, e.g., HIV, seizure 12 disorders, diabetes, organ transplants, can be life threatening even if the lapse is only a 13 few days. 14 233. In addition to inconsistencies in obtaining necessary prescription

15 information during the intake process, Correctional Health Services does not consistently
16 ensure that all pretrial detainees actually receive all prescribed medications as ordered.

17 234. Prescription orders are recorded in pretrial detainees' individual paper
18 records, but Correctional Health Services is not able to generate a list of pretrial detainees
19 in each housing facility to whom prescription medications are to be administered.

20 235. Licensed Practical Nurses administer medications to pretrial detainees on
21 "pill passes" through the jail housing facilities twice a day.

22 236. During the pill pass, the pill nurse has the individual medical records of
23 pretrial detainees who are to receive medication at a facility, which may number in the
24 hundreds, and he or she records those who come forward when pill pass is called and
25 receive medication.

26 237. During the pill pass, the pill nurse also receives sick call requests from
27 pretrial detainees and is expected to determine the urgency of any of the sick call
28 requests.

238. The pill nurse does not have a list of which pretrial detainees are supposed
 to come for medication.

3 239. The pill nurse does not know whether a pretrial detainee who is supposed
4 to receive medication is at court, recreation, church, or sleeping.

5 240. It may take the pill nurse several days to determine that a pretrial detainee
6 has missed or continues to miss his or her prescribed medications.

7 241. If a pretrial detainee does not come to pill pass to receive medication,
8 when it is noticed, the pill nurse may enter into the pretrial detainee's medical record that
9 he or she refused medication, even if the pill nurse does not know in fact why the pretrial
10 detainee did not come to the pill pass.

242. Some "evening" pill passes have been conducted as early as 3:00 p.m.
even though some of the prescribed medications are to be taken at bedtime and are known
to cause drowsiness.

14 243. Therefore, paragraph 61 of the Amended Judgment will not be terminated
15 because it does not exceed the constitutional minimum and there are current and ongoing
16 violations of pretrial detainees' constitutional rights.

17 244. Prospective relief provided in paragraph 61 of the Amended Judgment
18 remains necessary to correct a current and ongoing violation of the federal right to
19 adequate medical, mental health, and dental care, extends no further than necessary to
20 correct the violation of the federal right, is narrowly drawn, and is the least intrusive
21 means to correct the violation.

#### **Prescription Records**

23 245. Regarding paragraph 62 of the Amended Judgment, pretrial detainees'
24 constitutional rights do not include a specific right to "unit dose records" of all psychiatric
25 and narcotic prescription medications administered to pretrial detainees, but they do
26 include the right to complete and accurate medical records indicating the type and amount
27 of medication dispensed and the date.

28

1 246. Although the medical record keeping system is inadequate for 2 Correctional Health Services and detention staff to readily determine which pretrial 3 detainees have certain medical needs and medication prescriptions and where those 4 pretrial detainees are located, there is no current and ongoing violation regarding 5 maintaining individual medical records for pretrial detainees. 6 247. Therefore, paragraph 62 of the Amended Judgment will be terminated 7 because it exceeds the constitutional minimum regarding maintaining "unit dose records," 8 and because there is no current and ongoing violation of the remainder of paragraph 62. 9 **Monitoring System for Sick Call Requests** 10 248. Regarding paragraph 64 of the Amended Judgment, although pretrial 11 detainees have a constitutional right to access to medical care, they do not have a 12 constitutional right to a system to monitor the delivery of sick call requests to the health care providers and delivery of written responses to pretrial detainees. 13 14 249. Further, the procedure of submitting written sick call requests and 15 receiving written responses occurs regularly, often without any practical benefit to the 16 pretrial detainee who is told only that an appointment with a medical provider will be 17 scheduled at some undetermined date in the future. 18 250. Therefore, paragraph 64 of the Amended Judgment will be terminated 19 because it exceeds the constitutional minimum. 20 **Emergency Medical Equipment** 21 251. Paragraph 67 of the Amended Judgment does not exceed the 22 constitutional minimum because sufficient equipment to provide emergency medical 23 treatment is essential to adequate medical care. 24 252. The Maricopa County Jails provides sufficient equipment, including 25 oxygen and automated external defibrillators, to provide emergency medical treatment to 26 pretrial detainees at the jails as needed. 27 28

1	253. Therefore, paragraph 67 of the Amended Judgment will be terminated
2	because there is no current and ongoing violation of pretrial detainees' constitutional
3	rights related to this paragraph.
4	Emergency Dental Care
5	254. Paragraph 69 of the Amended Judgment does not exceed the
6	constitutional minimum because pretrial detainees have a constitutional right to adequate
7	dental care.
8	255. Correctional Health Services has two dentists who provide dental care to
9	pretrial detainees at the Lower Buckeye jail, the 4 <sup>th</sup> Avenue jail, and the Estrella jail.
10	Pretrial detainees housed at other facilities are transported to one of these jails for their
11	dental care.
12	256. The dental staff have appropriate equipment to treat dental emergencies.
13	257. Dental staff attempt to schedule pretrial detainees for routine dental
14	examinations if they have been in the Maricopa County Jails for a year.
15	258. Many pretrial detainees have not had adequate preventive dental care
16	before incarceration, and tooth extractions often are necessary by the time they receive
17	emergency treatment in jail.
18	259. When a pretrial detainee submits a sick call request for non-emergent
19	dental care, it often takes several weeks before the pretrial detainee is examined by a
20	dentist, which is not an unreasonable delay of treatment.
21	260. When a pretrial detainee requests emergency dental treatment, any delay
22	in treatment usually is caused by the ineffective sick call request and triage system, not by
23	inadequate dental care services.
24	261. Therefore, paragraph 69 of the Amended Judgment will be terminated
25	because there is no current and ongoing violation of pretrial detainees' constitutional
26	rights related to this paragraph.
27	
28	
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1	Independent Evaluations of Health Care Services
2	262. Regarding paragraph 70 of the Amended Judgment, pretrial detainees do
3	not have a constitutional right to require the Maricopa County Jails to obtain an
4	independent evaluation of health care services it provides.
5	263. Therefore, paragraph 70 of the Amended Judgment will be terminated
6	because it exceeds the constitutional minimum.
7	264. Paragraphs 56, 57, and 61 of the Amended Judgment will not be
8	terminated, but paragraph 57 will be modified.
9	265. Paragraphs 58-60, 62, 64, 67, 69, and 70 of the Amended Judgment will
10	be terminated because paragraphs 58, 59, 64, and 70 exceed the constitutional minimum
11	and there is no current and ongoing violation of paragraphs 60, 62, 67, and 69.
12	H. Intake Areas (AJ ¶¶ 71-72)
13	266. The Amended Judgment states in paragraphs 71 and 72:
14	71. Defendants shall continuously monitor conditions, including the population of pretrial detainees, in the designated intake areas. Defendants
15	shall formulate, adopt and implement programs designed to reduce overcrowding and improve conditions for pretrial detainees in the intake
16	areas and to reduce the time of incarceration in the intake areas.
17	72. With respect to the intake areas, defendants shall adopt the following goals:
18	A. No pretrial detainee shall be incarcerated in an intake area for
19	more than forty-eight (48) hours;
20	B. Pretrial detainees in the intake areas shall have access to toilet and wash basin facilities;
21	C. Pretrial detainees incarcerated in an intake area for twenty-four
22	(24) continuous hours shall be provided with a blanket and a bed or mattress on which to sleep.
23	<ul><li>D. Defendants shall ensure that a report reflecting the length of stay</li></ul>
24	of pretrial detainees in the intake area is generated by the Sheriff and made available to counsel for the plaintiff class, if any, upon
25	implementation of the Sheriff's LEJIS 2.0 computer system, or by January 1, 1995, whichever occurs first.
26	267. The Eighth Amendment requires that the Maricopa County Jails take
27	reasonable measures to guarantee the health and safety of prisoners.
28	
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268. The Fourteenth Amendment requires that pretrial detainees not be
 subjected to confinement conditions that constitute punishment, *i.e.*, conditions that pose
 a risk to health and safety beyond that which is reasonably related to legitimate
 governmental objectives.

269. Plaintiffs contend that the conditions in the 4<sup>th</sup> Avenue Intake present an
unconstitutional risk to pretrial detainees' health and safety because the intake areas are
overcrowded, unsanitary, and inadequately monitored.

8 270. Defendant Arpaio contends that paragraphs 71 and 72 of the Amended
9 Judgment do not include enforceable standards and that he has formulated and adopted
10 plans to reduce crowding and improve conditions in intake.

271. Defendant Arpaio admits he is constitutionally required to provide pretrial
detainees with humane conditions of confinement, including adequate food, clothing,
shelter, and medical care, and to take reasonable measures to guarantee the safety of
pretrial detainees.

15 272. The second sentence of paragraph 71 of the Amended Judgment, which
16 requires Defendant Arpaio to develop and implement programs regarding the intake
17 areas, exceeds the constitutional minimum and that portion of paragraph 71 must be
18 terminated.

19 273. Paragraph 71's requirement that Defendant Arpaio "continuously monitor
20 conditions, including the population of pretrial detainees, in the designated intake areas"
21 does not exceed the constitutional minimum because Defendant Arpaio cannot protect the
22 health and safety of pretrial detainees in intake areas without continuously monitoring
23 conditions.

24 274. Conditions Defendant Arpaio must monitor under paragraph 71 include
25 not only population in the intake areas, but also the number of inmates per holding cell;
26 provision of adequate food and water; inmates' access to toilets, toilet paper, sinks, and
27 soap; sanitation of the holding cells; the length of time each pretrial detainee is held in
28 intake; provision of a bed and blanket for any pretrial detainee held in intake more than

1 twenty-four continuous hours; violence among inmates; and any emergent medical 2 conditions. 3 275. Paragraph 72 of the Amended Judgment exceeds the constitutional minimum to the extent it requires Defendant Arpaio to adopt certain goals regarding 4 5 intake areas. 6 276. However, some of the goals identified in paragraph 72 of the Amended 7 Judgment relate to constitutional rights of pretrial detainees. 8 277. The requirement under subparagraph 72(A) that no pretrial detainee be 9 incarcerated in an intake area for more than forty-eight hours exceeds the constitutional 10 minimum. 11 278. The requirement under subparagraph 72(B) that pretrial detainees in the intake areas shall have access to toilet and wash basin facilities does not exceed the 12 constitutional minimum. 13 14 279. The requirement under subparagraph 72(C) that pretrial detainees 15 incarcerated in an intake area for twenty-four continuous hours shall be provided with a 16 blanket and a bed or mattress on which to sleep does not exceed the constitutional 17 minimum. 18 280. The requirement under subparagraph 72(D) that Defendants report length-19 of-stay information for pretrial detainees in the intake area does not exceed the 20 constitutional minimum because such information is necessary for determining whether 21 pretrial detainees must be provided with a blanket and a bed or mattress for sleeping. 281. Most pretrial detainees are taken to the 4<sup>th</sup> Avenue Intake area upon arrest. 22 23 282. During the pre-booking stage, pretrial detainees undergo a very short 24 medical screening, are searched, and have their photographs taken. At this point, pretrial detainees are accepted into intake at the 4<sup>th</sup> Avenue jail and placed in an "identification" 25 26 holding cell where they are held until they are interviewed by pretrial services. 27 283. After the pretrial service interview, pretrial detainees typically are placed 28 in "court" holding cells to await their initial court appearance.

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1	284. The booking process from pre-booking through the initial court
2	appearance typically takes two to four hours.
3	285. After pretrial detainees go to their initial court appearance, they are placed
4	in a "classification" holding cell.
5	286. Each intake identification and classification holding cell consists of a
6	concrete floor, two concrete benches, one uncovered toilet, and one sink.
7	287. The classification process typically takes two to six hours.
8	288. After classification, pretrial detainees typically receive jail clothing within
9	two to four hours.
10	289. After receiving jail clothing, pretrial detainees are placed in holding cells
11	to wait to be transported to their assigned jail housing units. It typically takes two to three
12	hours to be transported to a housing unit.
13	290. The jail intake process should take no more than twenty-four hours.
14	291. Defendant Arpaio's records regarding a pretrial detainee's length of stay
15	in intake document when a pretrial detainee begins the intake process and when he or she
16	is assigned to a housing unit, but they may not indicate how long a pretrial detainee
17	waited in a holding cell to be transported to a housing unit. The records also may not
18	indicate how long a pretrial detainee was physically located at the 4 <sup>th</sup> Avenue Intake if he
19	or she was taken to a hospital or to the United States Immigration and Customs
20	Enforcement.
21	292. From June 1, 2007, through May 31, 2008, 93,065 pretrial detainees were
22	booked into the 4 <sup>th</sup> Avenue Intake. Of these, 21,987 (24%) were in intake more than
23	twenty-four hours, 1,910 were in intake more than forty-eight hours, and 358 inmates
24	were in intake more than seventy-two hours.
25	293. Regardless of the length of time a pretrial detainee remains in the intake
26	process, Defendant Arpaio does not provide the pretrial detainee with a bed and blanket
27	unless the pretrial detainee is placed in an isolation cell.
28	

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1	294. As previously found, intake holding cells often are overcrowded, without
2	room for all inmates to sit, sleep, or move to use the toilet and sink.
3	295. At times, the intake holding cells are extremely dirty, and the sinks and
4	toilets unsanitary and inoperable.
5	296. At times, the intake holding cells do not have toilet paper, and pretrial
6	detainees are not provided with toilet paper when they request it.
7	297. At times, the intake holding cells do not have soap for pretrial detainees to
8	wash their hands after using the toilet.
9	298. During intake, inmates usually have no access to a shower until they
10	receive their jail uniforms.
11	299. Some inmates have not been permitted to take a shower in intake before
12	putting on their jail uniforms.
13	300. When inmates are brought into intake, usually little is known about their
14	mental and physical conditions, sexual orientation, and security threat levels.
15	301. During intake, repeat offenders charged with serious violent crimes may
16	be placed in holding cells with individuals charged with DUI or criminal speeding.
17	302. There are no panic buttons or intercom systems in the intake holding cells.
18	303. Pretrial detainees placed in intake holding cells usually can communicate
19	with a detention officer only when the door is opened to move pretrial detainees in or out
20	of a holding cell.
21	304. Although security cameras record activity within intake holding cells,
22	detention officers do not continuously watch the security cameras.
23	305. Security staff provide only minimal visual and audio supervision of the
24	intake holding cells.
25	306. Detention officers do not conduct routine security walks on a regular basis
26	in the intake areas.
27	307. Detention officers do not continuously monitor the intake holding cells.
28	
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308. The intake incident reports do not include every incident that occurs in the
 intake holding cells, even some that require pretrial detainees to receive medical
 treatment.

309. Defendant Arpaio does not consistently take reasonable measures to
guarantee the safety of the pretrial detainees during the intake process, which constitutes a
current and ongoing violation of pretrial detainees' constitutional rights.

7 310. Prospective relief remains necessary to correct a current and ongoing8 violation of the federal right to physical safety.

9 311. Paragraph 71 of the Amended Judgment will be modified to delete the
10 second sentence, which exceeds the constitutional minimum, and the first sentence will
11 not be terminated because there are current and ongoing violations of pretrial detainees'
12 constitutional rights.

13 312. Paragraph 71 of the Amended Judgment, as modified, extends no further
14 than necessary to correct the violation of the federal right to physical safety, is narrowly
15 drawn, and is the least intrusive means to correct the violation.

16 313. Portions of paragraph 72 of the Amended Judgment that exceed the17 constitutional minimum will be terminated.

18 314. Prospective relief remains necessary to ensure that pretrial detainees have19 access to toilet and wash basin facilities in the holding cells in intake areas.

315. Prospective relief remains necessary to ensure that pretrial detainees
incarcerated in the intake area for more than twenty-four hours are provided with a
blanket and a bed or mattress on which to sleep.

316. Prospective relief remains necessary to ensure that length-of-stay
information is available for enforcement of the order that pretrial detainees incarcerated in
the intake area for more than twenty-four hours are provided with a blanket and a bed or
mattress on which to sleep.

27 317. Therefore, paragraph 72 of the Amended Judgment will be modified to
28 state: "Defendants shall ensure that pretrial detainees always have access to toilet and

1	wash bas	sin facilities in the holding cells in intake areas. Defendants shall ensure that
2	pretrial of	letainees incarcerated in an intake area for more than twenty-four hours are
3	provided	with a blanket and a bed or mattress on which to sleep. Defendants shall ensure
4	that a rep	port reflecting the length of stay of pretrial detainees in intake areas is generated
5	by the S	heriff and made available to Plaintiffs' counsel."
6		318. Paragraph 72 of the Amended Judgment, as modified in the preceding
7	paragrap	oh, extends no further than necessary to correct the violation of the federal right, is
8	narrowly	drawn, and is the least intrusive means to correct the violation.
9	I.	Recreation Time Outside (AJ ¶¶ 84-85)
10		319. The Amended Judgment states in paragraphs 84 and 85:
11		84. Except for pretrial detainees in special management and those
12		who do not desire outdoor recreation, pretrial detainees shall be allowed one hour per day six days per week in the outdoor exercise areas with reasonable space for physical activities and a reasonable variety of
13		recreation and exercise equipment for use by the pretrial detainees, such as basketball, volleyball, table tennis, other equipment, so that inmates may
14		engage in physical activities during their outdoor recreation period. At the First Avenue jail, the one hour shall not include transit time.
15		
16 17		85. Pretrial detainees in special management shall be entitled to the same outdoor exercise rights as in paragraph 84, above, provided, however, that pretrial detainees reasonably classified as a special security risk shall be provided exercise as practicable.
18		320. The Eighth Amendment requires that inmates have opportunity for some
19	form of	regular outdoor or vigorous physical exercise, deprivation of which may not be
20	justified	solely by cost or inconvenience.
21		321. The Fourteenth Amendment requires that pretrial detainees not be denied
22	adequate	e opportunities for outdoor or vigorous physical exercise without a legitimate
23	governm	nental objective.
24		322. The Maricopa County Jails do not have indoor facilities for vigorous
25	physical	exercise equivalent to outdoor exercise. For convenience of expression,
26	"outdoor	r exercise" will be used in this order to mean outdoor or vigorous physical
27	exercise	
28		
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1 323. Determining what constitutes adequate opportunities for exercise requires 2 consideration of the physical characteristics of the cell and dayroom access if the 3 dayrooms provide space and equipment for detainees for vigorous physical exercise. 4 **Outdoor Exercise for General Population Pretrial Detainees** 5 324. Regarding paragraph 84 of the Amended Judgment, Plaintiffs contend that 6 Defendant Arpaio's failure to provide sufficient time for outdoor exercise at the Towers, 7 Durango, and Estrella jails violates pretrial detainees' constitutional rights. 8 325. Plaintiffs further contend that Defendant Arpaio's failure to provide sufficient space for outdoor exercise at the 4<sup>th</sup> Avenue jail violates pretrial detainees' 9 10 constitutional rights. 11 326. Plaintiffs do not contend that Defendant Arpaio is constitutionally 12 required to provide exercise and recreation equipment, and Defendant Arpaio's decision 13 not to provide exercise and recreation equipment is reasonably related to safety and 14 security purposes. 15 327. Defendant Arpaio contends there is no ongoing and current constitutional 16 violation because pretrial detainees, except those classified as special management, are 17 provided opportunity to engage in recreational activities one hour per day, six days per 18 week. 19 328. Maricopa County Sheriff's Office Policy DI-1 states that general 20 population pretrial detainees at all jails shall be allowed one hour of recreation six days a 21 week. 22 329. However, general population pretrial detainees at the Towers, Durango, 23 and Estrella jails do not receive one hour of recreation per day, six days per week. 24 330. Towers and Estrella jails are unable to offer pretrial detainees one hour of 25 recreation per day, six days per week, because they do not have enough staff and 26 recreation yards. 27 331. Durango jail would be able to offer pretrial detainees one hour of 28 recreation per day, six days per week, if it had fewer inmates. - 60 -

332. General population inmates at the Towers, Estrella, and Durango jails
 have access to dayrooms approximately sixteen hours per day.

3 333. Dayroom access permits some out-of-cell movement for general
4 population pretrial detainees.

334. The dayrooms do not have exercise equipment, but inmates may walk and
do push-ups in the dayrooms if space permits. Vigorous physical exercise is not practical
and is prohibited in the dayrooms.

8 335. The dayrooms do not provide sufficient opportunity for exercise to justify
9 reducing pretrial detainees' opportunity for outdoor exercise to less than one hour per
10 day, four days per week, the constitutional minimum.

336. Defendant Arpaio's contention that pretrial detainees can do physical
exercise in their cells, or in their cells and dayrooms, sufficient to meet their
constitutional entitlement is unworthy of belief, and the Court does not believe it.

14 337. Requiring that general population pretrial detainees at the Towers,
15 Estrella, and Durango jails be given opportunity for outdoor exercise at least one hour per
16 day, four days per week, does not exceed the constitutional minimum.

17 338. Towers, Estrella, and Durango jails do not offer general population
18 pretrial detainees at least one hour of recreation per day, four days per week, and there is,
19 therefore, a current and ongoing violation of the pretrial detainees' federal right to
20 outdoor exercise.

21 339. At the 4<sup>th</sup> Avenue jail, general population inmates are locked down sixteen
22 hours per day.

340. At the 4<sup>th</sup> Avenue jail, each pod, which has a maximum capacity of thirtysix inmates, has access to a 620-square-foot recreation yard one hour per day. If the pod
is filled to capacity and all of the inmates wanted outdoor exercise, each inmate would
have approximately 17 square feet in which to exercise.

341. The 4<sup>th</sup> Avenue jail recreation yards do not provide sufficient space to
 satisfy pretrial detainees' constitutional right to outdoor exercise one hour per day, four
 days per week.

4 342. Under these circumstances, there is a current and ongoing violation of
5 general population pretrial detainees' constitutional right to outdoor exercise at the 4<sup>th</sup>
6 Avenue jail.

343. Some inmates decline outdoor exercise because they are not allowed to
have water with them during outdoor exercise, and no drinking water is available in the
recreation yards.

344. Permitting pretrial detainees to exercise outdoors without drinking water
when the outside temperature exceeds 85° F. does not satisfy the constitutionally required
opportunity for outdoor exercise.

345. Paragraph 84 of the Amended Judgment must be modified because
Defendant Arpaio's failure to provide exercise and recreation equipment is reasonably
related to a legitimate governmental objective and therefore does not unconstitutionally
punish pretrial detainees.

17 346. Regarding the remainder of paragraph 84 of the Amended Judgment, there
18 is a current and ongoing violation of general population pretrial detainees' constitutional
19 right to approximately one hour per day, at least four days per week, of outdoor exercise
20 at the Towers, Durango, and Estrella jails that is not reasonably related to a legitimate
21 governmental objective.

347. Further, there is a current and ongoing violation of pretrial detainees'
constitutional right to outdoor exercise at the 4<sup>th</sup> Avenue jail that is not reasonably related
to a legitimate governmental objective because the recreation yards are too small to
permit each pretrial detainee an actual opportunity to exercise approximately one hour per
day, four days per week.

27 348. Paragraph 84 of the Amended Judgment will be modified to state:28 "Pretrial detainees classified as general population who are housed at the Towers,

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Durango, Estrella, and 4<sup>th</sup> Avenue jails shall be allowed a minimum of one hour, at least
 four days per week, in areas that permit outdoor recreation or equivalent fresh air
 recreation with sufficient space for pretrial detainees to move freely."

349. Paragraph 84 of the Amended Judgment, as modified in the preceding
paragraph, extends no further than necessary to correct a current and ongoing violation of
the federal right to outdoor exercise, is narrowly drawn, and is the least intrusive means to
correct the violation.

8

#### **Outdoor Exercise for Special Management Pretrial Detainees**

9 350. Regarding paragraph 85 of the Amended Judgment, special management
10 pretrial detainees include those classified as administrative segregation (including "nature
11 of crimes"), closed custody, disciplinary custody, and security segregation.

12 351. Pretrial detainees classified as security segregation are segregated
13 temporarily and do not have a constitutional right to outdoor exercise during the brief
14 time during which they are classified as security segregation.

352. Pretrial detainees classified as disciplinary segregation have a
constitutional right to outdoor exercise for one hour per day, four days per week, after the
first seven days of their disciplinary period, unless security or safety risks prohibit such
activity.

19 353. Pretrial detainees classified as closed custody pose a serious threat to life,
20 property, staff, other inmates, or to the orderly operation of the jail and may be offered
21 outdoor exercise less than general population inmates because of their special security
22 and safety risks.

- 354. Pretrial detainees classified as administrative segregation, who are
  segregated from the general population for their own safety, have a constitutional right to
  the same amount of outdoor exercise as general population inmates, *i.e.*, one hour per day,
  four days per week.
- 27
- 28

355. Pretrial detainees confined in medical and psychiatric units may be
 provided outdoor exercise as appropriate for their individual medical and psychiatric
 conditions.

4 356. Pretrial detainees who are in lockdown twenty-three hours per day and
5 also entitled to outdoor exercise must be offered outdoor exercise in addition to their one
6 hour out-of-cell time to be used for showers, cell cleaning, and telephone calls.

7 357. Pretrial detainees classified as administrative segregation are not routinely
8 provided with outdoor exercise one hour per day, four days per week.

9 358. Pretrial detainees classified as disciplinary segregation and who do not
10 present security or safety risks are not routinely provided with outdoor exercise one hour
11 per day, four days per week, after the first seven days of their disciplinary period.

359. Maricopa County Jails could provide administrative segregation and
disciplinary segregation pretrial detainees opportunity for outdoor exercise one hour per
day, four days per week, if it had more staff, more recreation yards, and/or fewer inmates.
360. Defendant Arpaio has not shown that denial of adequate outdoor exercise
to administrative segregation and disciplinary segregation pretrial detainees is reasonably
related to a legitimate governmental objective because inconvenience and cost do not
justify deprivation of pretrial detainees' constitutional rights.

19 361. There is, therefore, a current and ongoing violation of the constitutional
20 right of administrative segregation and disciplinary segregation pretrial detainees to
21 outdoor exercise, and prospective relief remains necessary to correct the violation.

362. Paragraph 85 of the Amended Judgment will not be terminated because
prospective relief remains necessary to correct a current and ongoing violation of special
management pretrial detainees' federal right to outdoor exercise, but will be modified to
state: "Pretrial detainees in administrative segregation shall be entitled to the same
outdoor exercise rights as general population pretrial detainees. Pretrial detainees in
disciplinary segregation who do not present security or safety risks shall be entitled to the
same outdoor exercise rights as general population detainees after the seventh day of their

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1	disciplinary period. Time for outdoor exercise will be in addition to the one hour out-of-
2	cell time that is permitted for non-recreational purposes for pretrial detainees in lockdown
3	for twenty-two hours or more per day."
4	363. Paragraph 85 of the Amended Judgment, as modified, extends no further
5	than necessary to correct a current and ongoing violation of the federal right to outdoor
6	exercise, is narrowly drawn, and is the least intrusive means to correct the violation.
7	J. Food (AJ ¶¶ 95, 98)
8	364. The Amended Judgment states in paragraphs 95 and 98:
9	95. Defendants shall provide food to pretrial detainees that meets or exceeds the dietary allowances as stated in the Department of Agriculture's
10	Guide to Daily Food Choices.
11	98. Defendants shall provide reasonable, nutritional substitutions for pretrial detainees who are prohibited from eating certain foods due to
12	established religious beliefs that demand they adhere to dietary practices or because they are vegetarians.
13	365. The Eighth Amendment requires that pretrial detainees be provided food
14	
15	that is adequate to maintain the pretrial detainees' health and that is prepared under conditions that do not threaten their health and well being.
16	366. The Fourteenth Amendment requires that the taste and appearance of food
17	provided to pretrial detainees not constitute punishment, <i>i.e.</i> , not be more distasteful than
18	is inherent in institutionalized confinement.
19	
20	367. Regarding paragraph 95 of the Amended Judgment, Plaintiffs contend that
21	Defendant Arpaio's failure to provide adequate nutritional food violates pretrial
22	detainees' constitutional rights.
23	368. Defendant Arpaio contends paragraph 95 of the Amended Judgment
24	exceeds the constitutional minimum and there is no current and ongoing violation of
25	federal rights.
26	369. No persuasive evidence was presented to show that the Department of
27	Agriculture's Guide to Daily Food Choices exceeds minimal requirements for adequate
28	nutrition.

1 370. Therefore, paragraph 95 of the Amended Judgment does not exceed the 2 constitutional minimum by requiring Defendant Arpaio to meet or exceed the Department 3 of Agriculture's Guide to Daily Food Choices as long as the term "Department of 4 Agriculture's Guide to Daily Food Choices" is construed as referring to the Department 5 of Agriculture's current version of its dietary guidelines.

6

371. Maricopa County Sheriff's Office Policy DG-1 and Policy DG-2 require 7 that inmates be provided two or more meals during each 24-hour period, sufficient to 8 provide a minimum of 2900 calories daily, and the interval between the evening and 9 morning meals not exceed fourteen hours.

10 372. Maricopa County Jails employ one dietician, who is responsible for 11 ensuring that basic nutritional needs of pretrial detainees are met according to the 12 National Research Council's recommended dietary allowances.

13 373. When the Maricopa County Jails dietician prepares monthly menus, he 14 intends to comply with the United States Dietary Guidelines.

15 374. In 2003, the Maricopa County Jails dietician wrote that, in his professional 16 opinion, the activity level of Maricopa County Jail inmates fell between sedentary and 17 lightly active, which indicated that they would require an average of 2400 to 2500 18 calories daily. Maricopa County Jails wrongfully deny opportunity for most pretrial 19 detainees to have a minimum of four hours outdoor exercise per week, which exercise 20 would take pretrial detainees above a sedentary lifestyle.

21 375. The United States Dietary Guidelines recommend that males ages 19-30 22 with a sedentary activity level have 2400 calories daily and that males ages 19-30 with a 23 moderately active lifestyle should have 2600-2800 calories daily.

24 376. The Maricopa County Jails dietician currently plans menus that he 25 estimates would provide approximately 2400 to 2500 calories daily.

26 377. Maricopa County Jails do not comply with its policies requiring inmates to 27 be served 2900 calories daily.

1	378. Maricopa County Sheriff's Office Policy DG-1 requires that a written
2	nutritional analysis be prepared annually by a qualified nutritionist/dietician to compare
3	the nutritional values of meals served against national standards.
4	379. The Maricopa County Jails dietician prepared the annual analysis for the
5	February 2007 menu, but to do so, he substituted specific fruits and vegetables for the
6	items identified only as "fruit" and "vegetable" without knowing what foods actually
7	were served to any pretrial detainees.
8	380. When the Maricopa County Jails dietician prepared the annual analysis for
9	the June 2008 menu, he learned that Maricopa County Jails kept a sample of meals served
10	for the previous thirty days for quality assurance purposes, and he used those samples to
11	determine what foods had been served to at least some of the pretrial detainees.
12	381. Maricopa County Jails provide pretrial detainees two meals each day: a
13	sack meal in the morning and a warm meal in the late afternoon or early evening.
14	382. Pretrial detainees may purchase additional food from the Canteen, which
15	earned a net profit of \$5,144,507.99 in fiscal year 2007.
16	383. The morning meal is served to each pretrial detainee in a transparent
17	plastic bag referred to throughout the record as a "Ladmo bag." <sup>3</sup>
18	384. The menu for each Ladmo bag in May 2008 and June 2008 is:
19	2 hoagie rolls (3-oz. each) 5 oz. meat or 4 oz. peanut butter
20	1 snack item
21	2 condiment packets or 2 jelly 2 pieces fresh fruit 1 milk
22	385. The menu for each dinner meal in May 2008 and June 2008 includes:
23	1 dinner roll (2 oz.)
24	
25	<sup>3</sup> The term "Ladmo bag" derives from a character in the 1954-1989 local
26	Phoenix children's television program "The Wallace and Ladmo Show." At live events,
27	Ladmo (Ladimir Kwiakowski) would distribute paper bags to children with food and toy treats (not a meal as such). Once understood by youngsters in the Phoenix community as
28	a bag of surprises, the term now survives in the Maricopa County Jails.

1	2 "margarine reddie"
2	1 pepper packet 1 cup vegetables
3	1 dessert or 1 fresh fruit
4	386. In addition, the dinner menus include one of the following groups of
5	items:
6	2 "pizza stix," 1 cup potatoes, and 4 oz. cheese sauce 4 oz. "pizza stix," 1 cup rice, and 2 oz. cheese sauce 4 oz. chili beans and 1 cup rice
7	8 oz. chili beans and 1 cup rice 1 cup macaroni and 1 cup cheese sauce
8	4 oz. meat sauce and 1 cup spaghetti 8 oz. meat sauce and 1 cup spaghetti
9	4 oz. marinara sauce/meatballs and 1 cup spaghetti 1 cup sloppy joe and 1 cup rice
10	1 cup sloppy joe and 1 cup potatoes 1 cup chicken stew and 1 cup potato
11	1 cup BBQ chicken and 1 cup potatoes 6 oz. baked chicken, 1 cup potatoes, and 2 oz. chicken gravy
12	4 oz. baked chicken, 1 cup potatoes, and 2 oz. chicken gravy 1 cup turkey & gravy and 1 cup rice
13	1 cup turkey & gravy and 1 cup potatoes 1 cup BBQ ham and 1 cup rice
14	1 cup ham stew and 1 cup potatoes 4 oz. Italian sausage wraps, 1 cup rice, and 2 oz. cheese sauce
15	4 oz. Italian sausage wraps, 1 cup rice, and 2 oz. teriyaki sauce 4 oz. "stuffed sandwich" and 1 cup potatoes
16	4 oz. hot dog, 1 cup potatoes, and 2 oz. brown gravy
17	387. It is impossible to determine from the menus the nutritional or caloric
18	value of items identified only as "meat," "fresh fruit," "vegetables," "dessert," or "snack
19	item."
20	388. The Maricopa County Jails dietician's opinion is that there is no
21	nutritional difference among different fruits, vegetables, meats, and starches, and it is
22	unnecessary to distinguish a cup of lettuce from a cup of green beans, a banana from an
23	apple, or a hot dog from turkey.
24	389. The Maricopa County Jails dietician's opinion is that French fries, diced
25	potatoes, rice, and macaroni are of equal nutritional value.
26	390. The Maricopa County Jails dietician's opinion is that one ounce of beef
27	has the same nutritional value as one ounce of turkey.
28	
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1	391. The Maricopa County Jails dietician's opinions regarding nutritional
2	equivalents are not credible, and the Court does not believe them.
3	392. Maricopa County Sheriff's Office Policy DG-1 requires that menus of
4	meals actually served be retained for five years to verify the provisions of a nutritionally
5	adequate diet.
6	393. During the relevant time period, Defendant Arpaio did not keep menus of
7	meals actually served.
8	394. Pretrial detainees often receive food that is different than that stated on the
9	Maricopa County Jails monthly menus, and not all inmates ordered to receive the same
10	diet actually receive the same food at the same meal.
11	395. Although Maricopa County Sheriff's Office Policy DG-1 requires that any
12	substitutions in the planned menu be of equal nutritional value and properly documented,
13	not all substitutions are documented, and none of the menu substitutions from April
14	through May 2008 were approved by the Maricopa County Jails dietician.
15	396. The snack item included in a Ladmo bag usually is pre-packaged cookies,
16	a snack cake, a Twinkie, cheese and crackers, or a candy bar.
17	397. A Ladmo bag may include an artificially flavored drink instead of milk.
18	398. The fruit provided in the Ladmo Bags often is overripe or bruised and
19	frequently inedible.
20	399. The bread provided in the Ladmo Bags frequently is moldy and entirely or
21	in part inedible
22	400. In 2003, the Maricopa County Jails dietician wrote that Maricopa County
23	Jails receive "a tremendous amount of donated food, which arrives on a daily basis," and
24	the "calorie content of the menu will change on a daily basis, depending on the types of
25	meats and deserts [sic] and fruit donated."
26	401. Maricopa County Jails currently receive a large volume of donated food,
27	which is fed to inmates.
28	

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1	402. Maricopa County Jails staff do not know who donated the food, the
2	circumstances under which it was donated, or the age of the food.
3	403. Extra meals are prepared and transported to jail facilities to replace meals
4	containing moldy or spoiled food items.
5	404. Inmates must request a replacement meal before leaving the serving line,
6	but often are not allowed time to inspect their meals before leaving the serving line.
7	405. If inmates are not permitted to obtain edible food to replace inedible
8	portions of their meals, they have not been provided with all of the food included in the
9	Maricopa County Jails dietician's nutritional analysis.
10	406. Defendant Arpaio cannot establish what edible food inmates actually
11	received during much of the relevant period.
12	407. Defendant Arpaio cannot establish that pretrial detainees are served
13	adequate nutrition.
14	408. The Maricopa County Jails dietician's opinion that pretrial detainees are
15	served adequate nutrition is not supported by the evidence, is contrary to evidence, and is
16	unworthy of belief. The Court does not believe it.
17	409. Food served to pretrial detainees is prepared either at the Maricopa County
18	Sheriff's Office Food Factory or at the smaller Estrella jail kitchen.
19	410. The warm evening meals often contain a meat and sauce or gravy product
20	referred to as "cook/chill" because it is cooked in 300-gallon tanks, pumped into two-
21	gallon bags, and chilled, to be reheated before serving.
22	411. The evening meals usually contain a starch, such as potatoes, rice, or
23	beans, which have been found to include small rocks.
24	412. Defendant Arpaio currently employs two food sanitarians to monitor food
25	production and distribution at both the Food Factory and the Estrella jail kitchen.
26	413. The jail sanitarians have instituted an improved process for washing
27	potatoes to avoid having rocks in the potatoes served to inmates.
28	
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414. The Maricopa County Jails food production facilities appear to be well
 managed, well maintained, and operated in accordance with industry standards.

415. Although there was some evidence that meals are not always maintained
at safe temperatures during the distribution process, this does not constitute a current and
ongoing constitutional violation based on Defendant Arpaio's policies, procedures, and
efforts to ensure safe temperatures during distribution and ongoing improvement work by
the jail sanitarians.

8 416. Therefore, prospective relief remains necessary to correct a current and9 ongoing violation of the pretrial detainees' federal right to adequate nutrition.

417. Paragraph 95 of the Amended Judgment will not be terminated because
Defendant Arpaio has not met his burden of proving there is no current and ongoing
violation of pretrial detainees' constitutional right to adequate nutrition.

418. Paragraph 95 of the Amended Judgment will be modified to reflect current
terminology as follows: "Defendants shall provide food to pretrial detainees that meets or
exceeds the United States Department of Agriculture's *Dietary Guidelines for Americans.*"

419. Paragraph 95 of the Amended Judgment, as modified in the preceding
paragraph, extends no further than necessary to correct the violation of the federal right to
adequate nutrition, is narrowly drawn, and is the least intrusive means to correct the
violation.

420. Regarding paragraph 98 of the Amended Judgment, Plaintiffs do not
contend that Defendant Arpaio has failed to "provide reasonable, nutritional substitutions
for pretrial detainees who are prohibited from eating certain foods due to established
religious beliefs that demand they adhere to dietary practices or because they are
vegetarians," except to the extent that he fails to comply with paragraph 95 for all pretrial
detainees.

27

1	421. Paragraph 98 of the Amended Judgment will be terminated because there			
2	is no evidence of a current and ongoing violation of pretrial detainees' rights to an			
3	alternative meal based on religious or vegetarian dietary practices.			
4	K. Staff Members, Training, and Screening (AJ ¶¶ 102-104)			
5	422. The Amended Judgment states in paragraphs 102 through 104:			
6	102. Defendants shall assure that each pretrial detainee is visually observed by detention officers in a manner and frequency that complies			
7	with the guidelines contained in the Manual of Standards for Adult Local Detention Facilities, Commission on Accreditation, American Correction Association, December 1977.			
8				
9 10	103. Defendants shall assure that detention officers are in a position to respond promptly to calls for help by pretrial detainees.			
10	104. Defendants shall assure that written reports are recorded and statistics are compiled of all instances of inputs or officer abuse, injuries			
11	statistics are compiled, of all instances of inmate or officer abuse, injuries, violence, assaults, sexual assaults, suicides, deaths and inmate riots and demonstrations, in a manner conducive to informed access by the Court.			
13	423. The Eighth Amendment requires that the Maricopa County Jails take			
14	reasonable measures to guarantee the health and safety of prisoners.			
15	424. The Fourteenth Amendment requires that pretrial detainees not be			
16	subjected to confinement conditions that constitute punishment, <i>i.e.</i> , conditions that pose			
17	a risk to health and safety beyond that which is reasonably related to legitimate			
18	governmental objectives.			
19	425. Plaintiffs contend Defendant Arpaio does not ensure that each pretrial			
20	detainee is visually observed frequently enough to protect the pretrial detainee's health			
21	and safety, does not consistently ensure that detention officers are in a position to respond			
22	promptly to calls for help by pretrial detainees, and does not record and compile statistics			
23	for all instances of inmate or officer abuse, injuries, violence, assaults, sexual assaults,			
24	suicides, deaths, and inmate riots and demonstration.			
25	426. Defendant Arpaio contends paragraphs 102-104 of the Amended			
26	Judgment exceed the constitutional minimum and that detention officers perform the			
27	necessary functions, such as security walks and monitoring to provide for the safety,			
28	security, and control of the inmates.			

1	427. Paragraph 102 of the Amended Judgment exceeds the constitutional				
2	minimum to the extent that it requires compliance with "the guidelines contained in the				
3	Manual of Standards for Adult Local Detention Facilities, Commission on Accreditation,				
4	American Correction Association, December 1977," and that portion of paragraph 102				
5	will be terminated.				
6	Visual Observation of Pretrial Detainees				
7	428. Pretrial detainees' constitutional rights require that detention officers				
8	visually observe each pretrial detainee as frequently as necessary to protect the pretrial				
9	detainees' health and safety.				
10	429. There are no panic buttons or intercom systems in any of the holding or				
11	housing areas that would permit pretrial detainees to contact detention officers in the				
12	event of inmate violence or medical emergency.				
13	430. Detention officers do not perform security walks in the 4 <sup>th</sup> Avenue Intake				
14	areas or the Madison court holding cells.				
15	431. Detention officers provide only minimal visual and audio supervision of				
16	the pretrial detainees in the 4 <sup>th</sup> Avenue Intake holding cells and the Madison court holding				
17	cells by looking into a cell when a door is opened to move pretrial detainees into and out				
18	of the cell.				
19	432. Security cameras in the 4 <sup>th</sup> Avenue Intake holding cells do not sufficiently				
20	protect pretrial detainees' health and safety because detention officers do not				
21	continuously watch what is being recorded by the security cameras.				
22	433. In the 4 <sup>th</sup> Avenue psychiatric unit, many pretrial detainees are locked				
23	down in single cells for twenty-three hours per day and have only brief contact with				
24	detention and health care staff at their cell doors.				
25	434. In segregation units, pretrial detainees are locked down for twenty-three				
26	hours per day and unable to contact a detention officer except when a detention officer				
27	passes by during a security walk.				
28					

1	435. Many pretrial detainees housed in segregation units are seriously mentally
2	ill and/or have chronic medical conditions.
3	436. Security cameras do not permit effective visual and audio supervision of
4	pretrial detainees while they are locked down or inside their cells.
5	437. Detention officers usually perform security walks in housing units
6	approximately every twenty-five minutes.
7	438. In special management locations and heightened classification facilities,
8	security walks are conducted by two officers, rather than one.
9	439. Detention officers have been unaware that pretrial detainees were
10	assaulted in their cells until the scheduled security walk.
11	440. The only way a detention officer can monitor the welfare of each pretrial
12	detainee is to actually look into each locked cell, but security walks often are performed
13	too quickly to permit a detention officer to actually look into each locked cell.
14	441. Detention officers do not visually observe pretrial detainees as frequently
15	as necessary to protect the pretrial detainees' health and safety in the 4 <sup>th</sup> Avenue Intake
16	areas, the Madison court holding cells, the 4 <sup>th</sup> Avenue psychiatric unit, and segregation
17	units.
18	442. There is a current and ongoing violation of pretrial detainees'
19	constitutional rights regarding paragraph 102 of the Amended Judgment, as modified by
20	this order.
21	443. Prospective relief remains necessary to correct a current and ongoing
22	violation of the federal right to protection of health and safety.
23	444. Paragraph 102 of the Amended Judgment will be modified to state:
24	"Defendants shall assure that each pretrial detainee in the 4 <sup>th</sup> Avenue Intake areas, the
25	Madison court holding cells, the 4 <sup>th</sup> Avenue psychiatric unit, and segregation units is
26	visually observed by detention officers in a manner and frequency that protects the
27	pretrial detainee's health and safety."
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1 445. Paragraph 102 of the Amended Judgment, as modified in the preceding 2 paragraph, extends no further than necessary to correct the violation of the federal right to 3 protection of health and safety, is narrowly drawn, and is the least intrusive means to 4 correct the violation. Detention Officers Positioned to Respond Promptly to Pretrial Detainees' Calls for Help 5 6 446. Pretrial detainees' constitutional rights require that detention officers be in 7 a position to respond promptly to calls for help by pretrial detainees. 8 447 At the Towers and Estrella jails, there is one control tower for each 9 housing unit, which is located in the middle of four housing pods. The cells and dayroom 10 in each housing pod are separated from other housing pods and the control tower by a 11 door and Plexiglas windows. Each control tower is encased in Plexiglas, creating a third 12 barrier between the officer in the control tower and pretrial detainees locked in their cells 13 in the housing pods. 14 448. Although detention officers perhaps could respond more quickly to calls 15 for help if the control tower was not separated by barriers, such protection is reasonably 16 related to the legitimate governmental objectives of safety and security. 17 449. Therefore, there is not a current and ongoing violation of pretrial 18 detainees' constitutional rights regarding paragraph 103 of the Amended Judgment. 19 450. Paragraph 103 of the Amended Judgment will be terminated. 20 **Incident Reports** 21 451. Paragraph 104 of the Amended Judgment, requiring incident reports of all 22 instances of inmate or officer abuse, injuries, violence, assaults, sexual assaults, suicides, 23 deaths, and inmate riots and demonstrations, does not exceed the constitutional minimum 24 because such reports are relevant to prospective relief necessary to correct current and 25 ongoing violations of pretrial detainees' constitutional rights. 26 452 Incident reports are not prepared for every incident of inmate violence, 27 including some incidents for which pretrial detainees required medical treatment. 28

1	453. There is a current and ongoing violation of pretrial detainees'			
2	constitutional rights regarding paragraph 104 of the Amended Judgment.			
3	454. Prospective relief remains necessary to correct a current and ongoing			
4	violation of the federal right to protection of health and safety, and paragraph 104 of the			
5	Amended Judgment will not be terminated.			
6	455. Paragraph 104 of the Amended Judgment extends no further than			
7	necessary to correct the violation of the federal right to protection of health and safety, is			
8	narrowly drawn, and is the least intrusive means to correct the violation.			
9	456. Therefore, paragraph 102 of the Amended Judgment will be modified,			
10	paragraph 103 will be terminated, and paragraph 104 will not be terminated.			
11	L. Reports and Record Keeping (AJ ¶ 114)			
12	457. The Amended Judgment states in paragraph 114:			
13	114. Defendants agree to provide counsel for the plaintiff-class, if			
14	any, the following information on a quarterly basis: (1) jail population statistics for each facility for the preceding period; (2) health inspection reports for the preceding period; (3) Custody Bureau statistics reflecting			
15	reports for the preceding period; (3) Custody Bureau statistics reflecting incidents reported during the preceding period; (4) copies of the Inmate Services Division's monthly reports: (5) any summary notice of			
16	Services Division's monthly reports; (5) any summary notice of Department of Agriculture nutritional requirements; (6) all security overrides issued during the preceding period: and (7) reports of the fire			
17	overrides issued during the preceding period; and (7) reports of the fire inspectors. The defendants also agree to make good faith efforts to respond to reasonable requests for additional information from counsel for			
18	the plaintiff-class.			
19	458. The Eighth Amendment requires that the Maricopa County Jails take			
20	reasonable measures to guarantee the health and safety of prisoners.			
21	459. The Fourteenth Amendment requires that pretrial detainees not be			
22	subjected to confinement conditions that constitute punishment, <i>i.e.</i> , conditions that pose			
23	a risk to health and safety beyond that which is reasonably related to legitimate			
24	governmental objectives.			
25	460. Plaintiffs contend that if the Court finds any current and ongoing			
26	violations of pretrial detainees' constitutional rights, the relief granted should include			
27	reports to the Court with copies to Plaintiffs' counsel providing information specifically			
28	related to those violations.			

1	461. Defendant Arpaio contends paragraph 114 of the Amended Judgment		
2	exceeds the constitutional minimum.		
3	462. Portions of paragraph 114 of the Amended Judgment exceed the		
4	constitutional minimum, but reporting requirements specifically related to correcting		
5	current and ongoing violations of pretrial detainees' constitutional rights do not exceed		
6	the constitutional minimum.		
7	463. Prospective relief remains necessary to correct current and ongoing		
8	violations of pretrial detainees' federal rights.		
9	464. Paragraph 114 of the Amended Judgment will be modified to state:		
10	"Defendants will maintain records of their compliance with the Second Amended		
11	Judgment and will provide quarterly summaries of those records to Plaintiffs' counsel."		
12	465. Paragraph 114 of the Amended Judgment, as modified in the preceding		
13	paragraph, extends no further than necessary to correct the violation of the federal right to		
14	protection of health and safety, is narrowly drawn, and is the least intrusive means to		

15 correct the violation.

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### M. Dispute Resolution (AJ ¶ 116)

466. The Amended Judgment states in paragraph 116:

116. In the event of a dispute regarding the scope or meaning of any provision of this Amended Judgment, or the compliance of any party with any provision of this Amended Judgment, the parties shall meet and confer in an effort to resolve such dispute. In the absence of agreement on the subject, the parties shall submit their differences to non-binding mediation before a person selected by the chief judge of the federal district court in the State of Arizona. No application for order to show cause or other request for an Order of the District Court relating to enforcement of this Amended Judgment may be filed unless it is accompanied by a certificate from the selected mediator certifying that, after personal consultation and good faith efforts, the parties have been unable to resolve the dispute. Said certificate shall be accompanied by a report of the mediator summarizing the dispute, and setting out the mediator's recommended resolution, if any.

### 25 467. Plaintiffs do not oppose Defendants' motion to terminate the Amended

26 Judgment with respect to paragraph 116. (Doc. #1614 at 2.)

## 468. The parties excluded paragraph 116 from the paragraphs relevant to the

28 evidentiary hearing in their joint proposed final pre-hearing order, and paragraph 116 was

not identified as relevant to the evidentiary hearing in the final pre-hearing order. (Doc. 1 2 ##1443, 1458.) 3 469. However, the Board Defendants have argued in their post-hearing brief 4 that if the Court denies their motion to terminate the Amended Judgment or grants it in 5 part, the statutory automatic stay is lifted and paragraph 116 would remain in effect. 6 (Doc. #1612 at 14-15.) 7 470. PLRA requires termination of prospective relief that is not necessary to 8 correct a current and ongoing violation of a constitutional right, narrowly drawn, and least 9 intrusive. 18 U.S.C. § 3626(b). 10 471. Paragraph 116 of the Amended Judgment exceeds the constitutional 11 minimum and will be terminated. 12 472. Termination of paragraph 116 of the Amended Judgment does not 13 preclude further orders regarding mediation during the remedial and enforcement stages 14 of this proceeding. 15 N. Second Amended Judgment to Be Entered 16 473. Based on the foregoing findings of fact and conclusions of law, 17 Defendants' motion to terminate the Amended Judgment will be granted as to paragraphs 18 1-8, 16-22, 24-45, 48-55, 58-60, 62-70, 73-83, 86-94, 96-101, 103, 105-113, and 115-116 19 and denied as to paragraphs 9-15, 23, 46-47, 56-57, 61, 71-72, 84-85, 95, 102, 104, and 20 114. The Court will enter by separate document a Second Amended Judgment that 21 effects the termination of certain provisions of the Amended Judgment and restates those 22 provisions that remain in effect. 23 **O.** Ending of the Automatic Stay; Further Enforcement Proceedings 24 474. With this order and the entry of the Second Amended Judgment this day, 25 Defendants' Renewed Motion to Terminate the Amended Judgment (doc. #906) is ruled 26 upon and concluded this day. By operation of 18 U.S.C. § 3616(e)(2)(B), this ruling ends 27 the § 3616(e)(2)(A) automatic stay of the Amended Judgment, which now resumes its 28 force and effect as restated and changed in today's Second Amended Judgment.

1 475. This leaves the parties in the following status. Plaintiffs have proven, or 2 Defendants failed to disprove, current and ongoing violations of constitutional right and 3 of the Amended Judgment as originally written or as narrowed by the Second Amended 4 Judgment. Defendants are in breach of the Amended Judgment as found in these findings 5 and conclusions and as it is restated and narrowed by the Second Amended Judgment 6 entered this day.

7 476. With this conclusion to Defendants' Renewed Motion to Terminate the 8 Amended Judgment (doc. #906), there is now no matter pending before the Court. As in 9 any case closed by entry of a permanent injunction, enforcement for non-compliance with 10 the permanent injunction may be sought by an aggrieved Plaintiff. Such enforcement 11 may be in the form of further specific orders to implement the permanent injunction 12 and/or contempt remedies to give incentive to cease the violations of the permanent 13 injunction.

14 477. The Court contemplates that the parties will confer immediately about 15 prompt compliance with the Second Amended Judgment, and new proceedings will be 16 brought at Plaintiffs' initiative to enforce the Second Amended Judgment if Plaintiffs are 17 not satisfied. A status conference will be set on December 5, 2008, with written status 18 reports due by December 2, 2008, concerning anticipated enforcement proceedings.

19

#### **P**. **Attorney Fees**

20 478. Pursuant to 42 U.S.C. § 1988(b) for the award of attorney fees, Plaintiffs 21 are the prevailing parties on Defendants' Renewed Motion to Terminate the Amended 22 Judgment (doc. #906) and its predecessors.

23

479. Subject to the limitations of 42 U.S.C. § 1997e(d), Plaintiffs are entitled to 24 award of attorney fees incurred in defending against the motion. Fees may be claimed 25 under the procedures in Fed. R. Civ. P. 54(d)(2) and LRCiv 54.2 upon entry of this order. 26 If enforcement proceedings become necessary, future fees may be claimed and will be 27 determined and awarded at appropriate intervals during the enforcement proceedings.

### 1 IV. Order

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2	Based on the foregoing findings of fact and conclusions of law,
3	IT IS ORDERED that Defendants' Renewed Motion to Terminate the Amended
4	Judgment (doc. #906) is granted as to paragraphs 1-8, 16-22, 24-45, 48-55, 58-60, 62-70,
5	73-83, 86-94, 96-101, 103, 105-113, and 115-116 and <b>denied</b> as to paragraphs 9-15, 23,
6	46-47, 56-57, 61, 71-72, 84-85, 95, 102, 104, and 114. For the convenience of the parties,
7	those provisions of the Amended Judgment that remain in effect, as originally written or
8	as modified by this order, are restated in the Second Amended Judgment entered this day.
9	IT IS FURTHER ORDERED setting a hearing on December 5, 2008 at 11:00
10	<b><u>a.m.</u></b> to address contemplated enforcement proceedings. The parties shall file written
11	status reports by December 2, 2008, concerning whether Defendants are then in
12	compliance with the Second Amended Judgment and each party's proposed proceedings
13	or course of action concerning enforcement. This order does not preclude any party from
14	commencing enforcement proceedings at an earlier time.
15	DATED this 22 <sup>nd</sup> day of October, 2008.
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17	1/2il/Unko
18	Neil V. Wake United States District Judge
19	Child Suits District Judge
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