SUPPLEMENTAL DECLARATION OF FRED ROTTNEK

I, **FRED ROTTNEK**, upon my personal knowledge, and in accordance with 28 U.S.C. § 1746, declare as follows:

1. My name is Fred Rottnek, MD, MAHCM. I submitted a declaration at the filing of this case. (DE 11) My background, qualifications, biography, and C.V. are described or attached therein. This supplemental declaration builds upon that declaration to incorporate new information that has been made available since the inspection on June 5, 2020. The statements contained in this declaration are based on my personal knowledge or on information that physicians would reasonably rely on in forming an opinion and are true and correct to the best of my knowledge.

2. I inspected the East Baton Rouge Parish Prison (EBRPP) on June 5, 2020, and I am convinced that the facility is unable to achieve social distancing and prevent the spread of COVID-19, both within the facility and to the broader Baton Rouge Parish. I submitted a supplemental declaration these points on June 8, 2020.

3. I have contributed my experience in this field and emerging science related to COVID-19 in a letter I wrote to the Supreme Court of Missouri and in declarations that I submitted in *Swain v. Junior*, No. 2020-cv-21457 (So. Dist. Fla., Apr. 5, 2020), and *Feltz v. Regalado*, No. 18-cv-00298 (D. Okla. June 6, 2018), stating the threat COVID-19 posed to detainees in prisons and jails, detailing the impossibility of jails and prisons meeting the Center for Disease Control's guidelines, and supporting the release of medically vulnerable people.

4. I have provided this supplemental declaration on a pro bono basis. If I am asked to provide testimony to the court, I will be providing testimony on a pro bono basis.

I. Assignment, Documents Reviewed, and Summary of Opinion

5. In my opinion, the East Baton Rouge Parish Prison has taken little meaningful action to prevent the spread of COVID-19 and to protect the health and safety of detainees, staff, visitors, and East Baton Rouge Parish since my inspection on June 5, 2020. Among other shortcomings, jailers have not made medical attention adequately available to detainees; have not implemented adequate social distancing guidelines; have not implemented adequate resources and instruction to ensure that the environment is cleaned routinely and as needed; have failed to provide free soap on demand; have failed to consistently provide detainees with clean and appropriate protective facemasks; have housed infected persons in the same cells with uninfected persons; and do not have a sufficient testing and tracing protocol.

6. As a consequence of the Defendants' continued failures to act, there is another outbreak of COVID-19 at the jail. Everyone working at or living in the East Baton Rouge Parish Prison is now at risk of serious illness or even death. The East Baton Rouge Sheriff's Office should take corrective action immediately in order to decrease the substantial risk of serious harm to detainees, staff, and the community at large.

7. In addition to the declarations and references I reviewed for my original and supplemental declarations, I have now also reviewed the declaration of witness John Leagard ("JL"), Calvin Kemp ("CK"), Jocquenee Bernard ("JoB"), Travis Day ("TD"), Ransom Parker ("RP"), Casey Harris ("CH"), and Alvin Banks ("AB"), the supplemental declaration of plaintiff Devonte Stewart ("DS"), Billy Pettice ("BP"), and Derick Mancuso ("DM"), and the transcript of the evidentiary hearing on the temporary restraining order. I have also been able to conduct phone interviews with plaintiffs Clifton Belton ("CB", on 8/14/2020), Jerry Bradley ("JB", on 7/29/2020), Forest Hardy ("FH", on 8/14/2020), Chris Rogers ("CR", on 8/4/2020), Devonte Stuart (on 7/29/2020) and Joseph Williams ("JW", on 7/29/2020). I anticipate conducting interviews of the remaining plaintiffs over the next few weeks.

Medically Vulnerable Detainees at EBRPP

8. As mentioned in my previous declarations, jails and prisons typically house detainees with chronic conditions, particularly in men, that were not well controlled prior to incarceration. Many of these chronic conditions are contained in the list of diagnoses provided by the CDC that would describe a detainee as being medically vulnerable[1]
    a. People of any age with the following conditions are at increased risk of severe illness from COVID-19:
        i. Cancer
        ii. Chronic kidney disease
        iii. COPD (chronic obstructive pulmonary disease)
        iv. Immunocompromised state (weakened immune system) from solid organ transplant
        v. Obesity (body mass index [BMI] of 30 or higher)
        vi. Serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies
        vii. Sickle cell disease
        viii. Type 2 diabetes mellitus
    b. Based on what we know at this time, people with the following conditions might be at an increased risk for severe illness from COVID-19:
        i. Asthma (moderate-to-severe)
        ii. Cerebrovascular disease (affects blood vessels and blood supply to the brain)
        iii. Cystic fibrosis
        iv. Hypertension or high blood pressure
        v. Immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines
        vi. Neurologic conditions, such as dementia
        vii. Liver disease

[1] People with Certain Medical Conditions, CDC (Updated August 14, 2020) *Available at* https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html

viii. Pregnancy
ix. Pulmonary fibrosis (having damaged or scarred lung tissues)
x. Smoking
xi. Thalassemia (a type of blood disorder)
xii. Type 1 diabetes mellitus

c. Additional guidance from the CDC has highlighted additional risks of COVID-19 infection among people with developmental and behavioral disorders. This increased risk is not necessarily due to these disorders but due to associated medical issues outline above as well as difficulty accessing information, understanding or practicing preventive measures, and/or communicating symptoms of this or other illness. [2]These disorders include
   i. Attention Deficit Hyperactivity Disorder (ADHD)
   ii. Autism
   iii. Cerebral Palsy
   iv. Fetal Alcohol Spectrum Disorders (FASDs)
   v. Fragile X
   vi. Intellectual Disability
   vii. Learning Disorder
   viii. Tourette Syndrome

II. **Previous Summary and Recommendations** (from the supplemental declaration and inspection report of June 8, 2020)

9. The administration and staff have made several steps forward to create a safer environment for detainees and staff by complying with some of the CDC's guidelines; however, there are multiple areas of non-compliance that are critical with respect to the health and safety of detainees.

   a. Lack of compliance
      i. There is still a lack of social distancing, which in the essential primary mitigation strategy. Many lines are just too populated to support social distancing. The built environment contains fixtures that are bolted to the floor and are too close to each other to allow distancing. Detainees are not routinely reminded to maintain a safe distance.
      ii. The Jail lacks a consistent approach to housing detainees based on their known COVID-19 status. Detainees are not consistently housed or moved based on signs, symptoms, or testing. Detainees report infections and what are likely reinfections based on lack of proper cohorting, lack of effective isolation/quarantine, and lack of prompt medical intervention.
      iii. Lack of secondary mitigation:

[2] People with Developmental & Behavioral Disorders, CDC (Updated May 27, 2020). *Available at* https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-developmental-behavioral-disabilities.html

1. Face masks are used sporadically and often incorrectly. Thin cloth bandanas are not PPE.
2. Cleaning surfaces: Detainee-witness Mancuso (16) reports that "This week, the guards have been cleaning the line a lot more than usual." This was presumably in preparation for the visit on 6/5/2020. (The declaration is dated 6/3/2020). Detainee-witness Evans reports the same (31, 33). This is again repeated by witness Cage. (30). And while this effort to clean is better than routine practice, it still left a filthy, toxic environment due to rust, mold, paint chips, and disrepair that could never be adequately cleaned.

iv. Lack of education and information about the virus was a recurrent theme in the declarations and in the site visit.

v. Lack of adequate testing. There are two types of testing: diagnostic testing is used when someone feels ill, and a provider makes a diagnosis; surveillance testing is used to see the prevalence or presence of coronavirus infection in a community. Surveillance testing is done for asymptomatic individuals. Surveillance testing is particularly important for coronavirus because the majority of people who are infected with the virus are asymptomatic. Surveillance testing would allow staff to identify asymptomatic positive detainees and inform them to make appropriate housing decisions. Surveillance testing would also identify staff who may be positive and shedding virus inside the facility and out in the community. The declarations in this case repeatedly demonstrate that diagnostic testing is inadequate. There is no mention of surveillance testing. Medical staff and correctional staff cannot rely only on temperatures and verbal screens to identify people who are infectious and may be shedding the virus to others. To control this outbreak and future outbreaks, both types of testing must be available for detainees, correctional staff, medical staff, and anyone else visiting the complex. Positive test results then need to follow up with contact tracing, for decisions regarding housing and repeat testing.

b. The East Baton Rouge Parish Prison remains an incubator for the coronavirus, and current practices ensure that people within the facility are not only a risk to themselves, they are also a profound risk to the surrounding parish.

10. In my opinion, East Baton Rouge Parish Prison needs to move as quickly as possible, in a timeline of days rather than weeks, to:

a. Release as many medically vulnerable detainees from East Baton Rouge Parish Prison as possible. There is no effective way to eliminate the risk for medically vulnerable detainees in the jail. The best chance for medically vulnerable detainees to survive the pandemic is to release them from the jail so they have the opportunity to practice social distancing. Delays will result in more infections

among detainees and staff, more advanced disease, more disease brought back to the community, and preventable disease and death.

b. Continue reducing the population that remains in order to best approximate social distancing. Enough detainees should be released so that remaining detainees can more closely approximate social distancing as defined by the CDC.

c. Enforce CDC guidelines to reduce the risk of infection and sequelae, through strict adherence to use of PPE, cleaning, and hygiene practices, to all in the jail environment, including detainees, correctional staff, medical staff, vendors, and other visitors.

III. The East Baton Rouge Parish Prison Has Still Not Implemented Basic Measures to Control the Spread of COVID-19

11. By failing to implement the most basic measures to control the spread of COVID-19, EBRPP continues to place detainees' physical and mental health at serious risk. The lack of implementation and maintenance of these measures, as well as the increasing census, and uncontrolled spread of the virus in East Baton Rouge Parish have created a tinderbox for a viral outbreak in the facility and even more viral spread in the surrounding community.

12. The review of the materials provided indicates that the administration at EBRPP is setting itself for a viral outbreak seen in several facilities around the country, including the Cook County Jail, the Wayne County Jail, and Riker's Island.

13. The following sections describe conditions that have worsened since my inspection of June 5, 2020:
    a. Continued Inability of EBRPP to Observe CDC Guidelines by Detainees and Staff
    b. Continued Inability of EBRPP to conduct diagnostic and surveillance testing
    c. Continued Inability of EBRPP to provide adequate care to patients who are diagnosed with COVID-19
    d. Continued Inability of EBRPP to provide basic medical care to detainees

IV. Continued Inability of EBRPP to Observe CDC Guidelines by Detainees and Staff

14. The currently increasing census of East Baton Rouge Parish Prison, as reported by multiple declarations [Harris Decl. ¶ 36; Parker Decl. ¶ 15; Mancuso Decl. ¶ 5.] in addition to the dormitory style housing units, the dramatic state of disrepair, the lack of enforcement of behaviors such as appropriate mask-wearing, hygiene, and regular and as-needed cleaning, and the physical structure of the complex makes it impossible to fully comply with CDC guidance for social distancing measures. This places detainees, staff, and any visitors at risk for COVID-19 infection. But it appears EBRPP has not escalated any concern or efforts to further mitigate risk of infection within the facility as more data and guidelines are released.

15. The deplorable living conditions in EBRPP are best summarized in witness Leagard's deposition. He describes filthy living conditions, instructions to the detainees to clean the

unit and then receiving a disciplinary charge if they attempt to do so "correctly," inability to social distance, neglectful medical care, and disincentives to submitting sick calls and grievances. [Leagard Decl. ¶ 6.]

16. **Continued lack of free soap on demand.** Plaintiff CB reports that soap is given out once a week and if they run out, it is very difficult to get additional soap from staff. The detainees often have to do without or borrow soap from others. CR states the same and that officers often state that they don't have any soap to give detainees. JW confirms this and states that the only way to get extra soap is to buy it on commissary. JB states that he does not receive antibacterial soap and CK reports that they no longer provide additional soap but will sometimes give more upon request. [Bernard Decl. ¶ 1]2; Kemp Decl. ¶ 35-36.]

17. **Continued lack of cleaning supplies**

    a. CB reports that detainees in the medical units had to clean their units, including their showers, toilets, and sinks, themselves. Trustees only came in to clean one day after COVID-19 infections started in the spring.

    b. On the lines, detainees have to clean the showers and bathroom themselves, as well as the rest of their lines. Mop buckets are available twice daily, but the buckets are not refilled with fresh water or new chemicals during each episode of use. Also, detainees have to use their own rags or towels to clean (JB).

    c. FH states that he hasn't seen any cleaning supplies in his current housing unit, E 5—he has also been housed on Q9-10 and F6. He states that it's impossible to keep the unit clean. No one is cleaning the phones. The air-conditioning isn't working. There are rats in the housing units and the kitchen.

    d. CR states that the older buildings have rats and the newer buildings have more roaches. He states that he had to sleep with his commissary on F or else the rats would steal it.

    e. JW states that they have access to a mop once daily, there is no routine availability of cleaning supplies, and he has never seen anyone ever clean a shower.

    f. CK states "guards leave no disinfectant for us to clean. We just get regular soap." And that guards bring a mop and bucket for the detainees to clean but the water is the bucket is brown when they get it. [Kemp Decl. ¶ 33.]

    g. BP states that the guards bring only one bucket of water, which is only enough for a small kitchen, "not a bathroom, day room, and two bedrooms shared by up to 116 men." BP also says that the guards do not provide the people who clean with adequate supplies, forcing some to use paper towels to wipe the phones and bath towels for the rest. [Pettice Decl. ¶29.] They are not provided any hand sanitizer.

    h. JoB states that EBRPP places signs up detailing the importance of hand washing but do not give the antibacterial soap or liquid soap. [Bernard Decl. ¶ 12.]

i. RP states that trustees who are responsible for cleaning the kitchen have to reuse supplies and use the same gloves to both take out the trash and serve the food. [Parker Decl. ¶ 14.] Further, trustees only get on 5-gallon container of a half bleach half water mix, which has to be distributed between all four trustee lines. [Parker Decl. ¶ 12.]

j. CH reports only getting a liquid called "purple power" to clean their lines but that the substance is only provided once every two days. [Harris Decl. ¶14.] Further, CH recounts waiting days before finally receiving a bar of soap and toilet paper and never received toothpaste or a toothbrush. [Harris Decl. ¶ 20.]

18. Inconsistent provision of clean mask and/or bandanas

a. JB reports only one mask exchange in the last 30 days.

b. CR states that he has had his cloth mask for 2 weeks without a change and he tries to wash it himself.

c. DS reports that most of the men on his current unit have bandanas, not masks, and they are switched out about every 2 weeks.

d. JW states that there are a few detainees who haven't received masks or bandanas yet.

e. JoB states that he received a cloth mask for the first time in July and that even those masks are only changed out every 2-3 weeks. [Bernard Decl. ¶ 9.]

f. CK reports never getting a real mask but instead a bandana, which is only cleaned every 7-10 days. [Kemp Decl. ¶ 39.]

g. BP states that guards and nurses do not make detainees wear masks, even when they are right next to each other in roll call and that the masks they are given are only washed every 7-10 days. [Pettice Decl.¶ 37.]

19. Inconsistent use of masks and PPE and reminders to use masks. Currently most detainees wear masks only when they are outside of their housing units. They are not reminded by staff to wear masks by the staff. Correctional staff only sometimes wear masks and are not consistently following CDC guidelines on this point, notwithstanding their propensity to bring the virus onto the housing lines (CB, CR, DS, JW, JoB, BP, CK, RP, CH, DM).

20. Lack of consistent reminders or ability to socially distance

a. FH reports that on E5 they have a census of 22 for a capacity of 24. Bunk beds are attached in pairs. Because the line is almost entirely full, the men cannot effectively socially distance.

b. JB reports his line, Q9-10 is over 50% full, and they cannot socially distance.

c. CR reports that even on the isolation lines, detainees are grouped into just a few cells rather than spreading them out in other cells on the otherwise empty lines.

d. CR states that the Q building is crowded, and census seems to be increasing.

e. BP states that "social distancing is really impossible" due in part to capacity and the jail continues to bring more people into the facility. There are about 100 people in his line, which can only hold 116 people. [Pettice Decl. ¶ 27.]

f. JoB states that in Q he is unable to socially distance and immediately following my inspection, more people were brought onto his line, which is now almost at full capacity with nearly 120 people. [Bernard Decl. ¶ 13.]

g. CK states that the "day room is particularly full in the afternoons when everyone is awake—we're stacked on top of each other then, and it's impossible to social distance. The benches and tables are bolted down, and the guards have never told us to spread out." [Kemp Decl. ¶ 25.]

h. RP, who is a trustee responsible for cleaning the facility, reports that the beds he and other trustee's sleep in are about 2.5 feet apart from one another and if they try to create extra space by hanging towels, the guards make them take them down. [Parker Decl. ¶ 10.]

i. TD reports that his line, Q, has nearly 120 people who are "piled on top of each other," making it impossible to practice social distancing. [Day Decl. ¶ 8.] Day states that in the bathrooms there is a "traffic jam" due to the amount of people in on the line. [*Id.* ¶ 9.]

j. CH reports that on the L line there are about 16 people for 20 beds and that the bathroom area is in the same area as the beds, so toilets are only about 6 feet from the television. People in this line are only ever about three feet apart. [Harris Decl. ¶ 38-39.] The guards do not enforce social distancing.

k. DM states that most nurses do not make detainees social distance during pill call and guards do not make them stay six feet apart at all.

21. **Lack of reentry preparation and education.** CB reports he was told nothing about how to safely reenter the community upon his release.

V. Inability of EBRPP to conduct diagnostic and surveillance testing

22. Perhaps the most concerning finding in review of the information since the June 5 inspection is the lack of surveillance testing in the facility.[3] The CDC is clear on the need to test to identify people with asymptomatic infections.

[3] Guidance for Correctional & Detention Facilities, CDC (Last updated July 22, 2020). *Available at* https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.

a. *Because many individuals infected with SARS-CoV-2 do not display symptoms, the virus could be present in facilities before infections are identified. Good hygiene practices, vigilant symptom screening, wearing cloth face coverings (if able), and social distancing are critical in preventing further transmission.*
b. *Testing symptomatic and asymptomatic individuals and initiating medical isolation for suspected and confirmed cases and quarantine for close contacts can help prevent spread of SARS-CoV-2.*

23. All of the plaintiffs stated that there is no surveillance testing of officers, visitors, and staff; even diagnostic testing is difficult to obtain. (CB, JB, FH, DS; Stewart Decl. ¶ 5; Day Decl. ¶ 3; Parker Decl. ¶ 8; Leagard Decl. ¶ 19; Day Decl. ¶ 5; Harris Decl. ¶ 6; Mancuso Decl. ¶ 6; Banks Decl. ¶ 6.)
24. The CDC has recently provided updated guidelines on testing in detention facilities. These guidelines provide rationales and needs/indications to do such testing whenever possible.[4] *Testing asymptomatic individuals without known or suspected exposure to SARS-CoV-2 for early identification*

a. *Correctional and detention facilities may consider testing asymptomatic individuals without known or suspected SARS-CoV-2 exposure in communities with moderate to substantial levels of community transmission. Practical considerations for implementing this strategy include the availability of resources, timeliness of results, and the ability for a coordinated response between the health department or other testing agency/provider and the correctional or detention facility. Decisions about testing strategies in correctional and detention facilities should be made in collaboration with state/local health departments. The testing strategies below aim to reduce the risk of introducing SARS-CoV-2 into the correctional or detention facility (i.e., testing newly incarcerated or detained persons) and to reduce the risk of widespread transmission through early identification of infection among existing IDP* (Incarcerated or Detained Person) *and staff. Facilities in communities with moderate to substantial levels of community transmission can consider the following:*
    i. *Baseline testing for all current IDP.*
    ii. *Testing all new IDP at intake before they join the rest of the population in the facility, and housing them individually while test results are pending to prevent potential transmission. Some facilities may choose to implement a "routine intake quarantine" in which new IDP are housed individually for 14 days before being integrated into general housing.*
    iii. *Testing for SARS-CoV-2 and reviewing results before transferring IDP to another facility or releasing them to the community, particularly if an IDP will transition to a congregate setting with persons at increased risk for severe illness from COVID-19. Refer to Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities for more information about transfer and release recommendations. Consider combining pre-transfer/release testing with a 14-day quarantine (ideally in single cells) before an individual's projected*

[4] Testing in Correctional & Detention Facilities, CDC (August 10, 2020), *available at* https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/testing.html.

transfer or release date to further reduce risk of transmission to other facilities or the community.

25. While this CDC guidance is not mandatory, it provides a clear path forward to understanding the health of the detainee population as well as the correctional and medical staff. EBRPP is not utilizing this guidance.
    a. EBRPP is not cohorting new detainees for the recommended 14 days of isolation. Also, these detainees are not being tested prior to coming off isolation and going to general population (DS). As the number of people testing positive in East Baton Rouge Parish, this increases risk of new detainees being more likely to bring the virus into the jail.
    b. When he was transferred from EBRPP to two other jails, Plaintiff Belton did not receive COVID-19 test at any point.
    c. During the evidentiary hearing, Ms. McNeel indicated that they could "absolutely" provide surveillance testing if it were ordered by the judge and could do so within 10 days (p. 198, line 20). Notably, EBRPP has made no efforts to conduct that testing in compliance with the CDC's guidance, even though they have had two months to do so. Many other jails, including ones I have visited have completed three and four rounds of surveillance testing in order to assess the health status of the stakeholders and make better housing, isolation, and quarantine practices. I do not understand why EBRPP is not taking advantage of this resource to best detect and manage the virus in the facility.
26. EBRPP's lack of testing is likely why they are experiencing yet another COVID-19 outbreak.
    a. AB was brought into EBRPP on July 20, more than a month after my inspection. AB was brought into central booking and received only a temperature check. AB never received a mask when he arrived at EBRPP; luckily, AB has a flimsy mask that his arresting officer provided him. When he asked EBRPP staff for a real mask but they said they did not have any. AB did not receive a mask from EBRPP staff until he had been in the facility for a week. [Banks Decl. ¶ 6-8].
    b. While in central booking AB was cramped in with 20 other men. He reports that they were less than a foot apart. He was kept in central booking for a day or two. [Banks Decl. ¶ 6.] He was transferred to A3 where there are four people in each cell. In his cell the toilet was full of urine and feces. New people are transferred onto A3 every day from the streets just as AB was and none of them were tested for COVID-19. After being in EBRPP AB contracted COVID-19. He believes he contracted in on the quarantine line since some med did not wear masks and it took the jail a while to bring some of them masks. [Banks Decl. ¶ 12-14.]
    c. AB experienced stomach aches, headaches, diarrhea, burping, and loss of appetite. Additionally, he eyes were sore, he was hot and cold. He feared for his life. When people tried to help him, they were threatened by the guards. He was eventually moved to the solitary line, before testing positive for the virus. He was on the line with one other person Mr. Knoten who AB says is still very sick with COVID-19. [Banks Decl. ¶20-22.]
    d. DM reports that guards have been seen in full PPE, the kind they were only in when there was the original outbreak and that guards told him that COVID-19 was active in the jail again. [Mancuso Decl. ¶ 8-9] Further, a person on DM's line

reported having COVID-19 symptoms but was told to fill out a sick call form and when guards came they said he was faking it. [Mancuso Decl. ¶ 10.]

e. TD reports that multiple people on the Q line have COVID-19 but he has still not been tested for the virus. [Day Decl. ¶3-4]
f. RP reports that there are 6 people who have COVID-19 right now in the facility. [Parker Decl. ¶16.]

VI. Inability of EBRPP to provide adequate care to patients who are diagnosed with COVID-19

27. The following detainees experience a COVID-19 infection and, by their report, experienced an uncoordinated and inadequate response from both the jail and the medical system. Although all these men report feeling better now, the medical community is learning that there can be serious long-term complications from COVID-19 infections.[5]

a. JB was diagnosed with COVID-19 in April. He was first housed on C01—in a one-man cell, with roaches a broken toilet, and a cold shower—and then moved to A01, which was a larger populated line—where he thinks he was reinfected with the virus, and then moved to B03—where there was no social distancing, 3 phones, one shower, and "rats so bold they wouldn't run away." He was on the isolation line for 84 days, because he kept testing positive, likely due to reinfection from others.
b. CR was infected with the virus sometime in March when he lost his senses of taste and smell. He was housed on F5 at the time. He described the conditions as filthy, with only 2 of the 4 showers working and access to cleaning supplies only once a day. Phones aren't cleaned. Once he was moved to the isolation line, B3, he was treated with a sinus pill and Tylenol once or twice a day. He had to call someone at his home to complain to the jail that they had no drinking water on the line. He had to ask for his pills to be renewed every three days. He asked one of the officers why the Warden or Captain don't walk this line like the other lines, and he was told they didn't want to risk they health. He lost 7 pounds during his 16 days on the isolation line. (This is a significant and unhealthy weight loss in a short period of time).
c. DS is 25 years old and contracted COVID-19 about 2 months ago. He spent about 50 days on B3 with about 20 other people until he had the required two negative tests so he could move back to general population. He was diagnosed with hypertension after his infection, and he now takes daily medication. He reports that one of the nurses (Snow) has refused him and others their medication if they aren't lined up in a straight queue or if they bring the wrong cup to get water to use with their medications. He is worried about his new diagnosis of hypertension—especially because he is young to have that diagnosis and did not have any of the comorbid risk factors.
d. JW has been in EBRPP since August 2019. He was infected with the virus in April and spent about a month and a half on B3. There were about 4 men to a cell, and there were days in April when they were locked down all day (4/24/2020 and 4/25/2020). He states that medications were only given out, even on isolation, if

[5] Erin Schumaker, *What We Know About Coronavirus' Long-Term Effects*, ABC News (April 17, 2020), *available at* https://abcnews.go.com/Health/coronavirus-long-term-effects/story?id=69811566.

detainees put in a sick call every three days to renew medications. He states that the sick call process is even less reliable now that officers accept the sick calls. He states that when he has submitted sick calls that were not answered, the medical staff states that they hadn't received any sick calls.

VII. Inability of EBRPP to provide basic medical care to detainees

28. Medical care, even pre-COVID-19, in a jail setting is difficult due to the acuity of care, unaddressed medical needs of detainees prior to incarceration, including mental illness and substance abuse. Medical staffing is always challenging. Baton Rouge leadership has publicly stated these challenges. An example of worsening of medical care due to poor institutional management is illustrated with the medical course of Clifton Belton.
29. Clifton Belton is a 60-year-old man who was detained at EBRPP from December 2018 until June 4, 2020.
    a. Hospitalizations while at EBRPP: He developed an infection in his knee in or before February 2019. He requested medical care to address the increasing swelling and pain in his knee. He saw a doctor in a few days, but then despite multiple conversations with the medical professional who was passing medications, he was sent to the hospital about a month later. At the hospital in New Orleans, he underwent a surgical procedure to have the knee irrigated. He was told by the surgeon that he would have permanent damage from the infection. He is currently using a walker because he cannot bear full weight on that knee. Subsequent to that hospitalization, he had 3 additional hospitalizations while at EBRPP: in March 2019, for a coronary artery bypass graft (due to coronary artery blockage); April 15, 2019, for a valve replacement and an additional coronary artery bypass graft; and January 17, 2020, for treatment of a post-surgical complications of the previous surgery.
    b. Prior to his incarceration at EBRPP, he had already had toes amputated due to gangrene infection secondary to poor circulation. He also had hypertension, insulin-dependent type 2 diabetes mellitus, congestive heart failure, and episodic cocaine use disorder.
    c. Access to medical care: CB states that his medical conditions worsened when he was in general population. He could only speak to a nurse during pill call, he was told to put in sick calls for his knee pain and chest pain. As a result of his insufficient access to medical care, CB's condition was not properly managed and deteriorated in general population. He was housed permanently in the medical unit after his January hospitalization. He states he received better medical care once he was moved to the infirmary because it was nearer the nursing services.
    d. Infection with coronavirus: When he returned from his last hospitalization in January 2020, the EBRPP staff took away the mask he was given at the hospital. At some point after in early spring, while housed in the COVID- medical unit, CB tested positive for the coronavirus and was transferred over to the COVID+ medical unit. He and the other men in the medical unit were tested so that medical staff could house them on either side, and men were moved back and forth between the two sides regularly.
30. Calvin Kemp is a 54-year-old man who has been in EBRPP since August 27, 2019.

a. CK suffers from diabetes and high blood pressure. While in the care of EBRPP CK acquired Hepatitis A and the medical staff could not figure out where or how he contracted it. Additionally, he had to start insulin because the medication that they were providing him did not control his diabetes. [Kemp Decl. ¶ 6-7].

31. Billy Pettice is a 40-year-old man who has been in EBRPP since June 22, 2018.
    a. BP contracted COVID-19 while in the custody of EBRPP and is still experiencing lingering symptoms of the virus, with no care from the medical staff. BP has pain in his stomach, sides, and lower back. He does not have regular bowel movements and his eyes occasionally burn.
    b. When BP finally received medical care, he was only given stool softeners and milk of magnesia. No one conducted additional testing of his kidneys and he is still waiting to be seen by a doctor for the sharp pains he experiences.
32. John Leagard is a 31-year-old man who has been in EBRPP since February 18, 2020.
    a. JL reports having a toothache for so long that he cannot even remember when it started. Instead of helping him, his concerns were ignored by the medical staff. He believes treatment is being delayed because they were unable to charge for medical care due to the pandemic. He has asked for his tooth to be pulled but the medical staff will not do it. After waiting he received one penicillin shot, that's it. [Leagard Decl. ¶ 20.]
33. Derick Mancuso is a 30-year-old man who has been in EBRPP since March 1, 2020.
    a. DM contracted COVID-19 while in the custody of EBRPP. Lately he reports feeling numbness on his left side. It started in his hand and then his food. He has had strokes in the past but he reports that the nurses do not care about his symptoms. DM has frequent headaches, join paint, and a raspy throat, some of which has gotten worse since having COVID-19. [Mancuso Decl. ¶ 21-22.]

VIII. What if the Status Quo is Maintained?

34. **Medically Vulnerable Detainees in Particular Face Severe Health Risks if Protective Measures Are Not Taken.** If medically vulnerable detainees are not released as soon as possible, in a matter of days, rather than weeks, they are at risk of infection, sequelae such as long-lasting and permanent organ damage, and even death.[6] Survival from COVID-19 does not guarantee a life free from damage from the virus. Long-term effects of COVID-19 infection include the following:
    a. Lung scarring and decreased lung capacity;
    b. Stroke, embolism, and blood clotting disorders, which may result in permanent disabilities and amputations;
    c. Heart damage, including cardiomyopathy and enlarged, ineffectively pumping hearts;
    d. Neurological deficits, psychological deficits, and mental illness;[7]

[6] As demonstrated by some of the plaintiffs in this case—including DS and CR—even individuals who are not currently deemed medically vulnerable may nonetheless suffer long-lasting and potentially serious consequences from the virus.

[7] *See, e.g.*, Lois Parshley, The Emerging Long-Term Complications of Covid-19, Explained, Vox (June 12, 2020), https://www.vox.com/2020/5/8/21251899/coronavirus-long-term-effects-symptoms.

e. Many of the detainees in the East Baton Rouge Parish Prison already have these deficits; infection with coronavirus could cause additional permanent damage and impairment.

35. Coronavirus infections continue to grow unchecked in East Baton Rouge Parish. In the last 2 weeks, there have been a daily average of 100-200 new positive results daily. This growing number indicates increased daily risk of a new detainee or any staff member or visitor bringing the virus into the facility.[8]

IX. Conclusions

36. For the reasons above, it remains my professional judgment that individuals placed in the East Baton Rouge Parish Prison are at a significantly higher risk of infection with COVID-19 as compared to the population in the community, given the procedural and housing conditions in the facilities, and that they are at a significantly higher risk of harm if they do become infected. These harms include serious illness (pneumonia and sepsis), permanent lung damage, and even death.

37. Moreover, in the review of these declarations and in these conversations with plaintiffs, it is my professional judgment that conditions are worsening in the facility. What little progress had been made in thinning the population and distancing the detainees has reverted. Mask-wearing is not reinforced or encouraged. And interventions as simple as free soap on demand and scheduled and as needed cleaning are not practiced. And surveillance testing and contact tracing, a hallmark of risk mitigation in society in general and in closed facilities like detention centers and nursing homes in particular, has not been utilized. EBRPP is located in enduring coronavirus hot spot; I find it irresponsible for professionals responsible for the health and well-being of the stakeholders to "not believe" the virus is in their facility.

38. On review of the transcript of the hearing as well as the lack of surveillance testing, it appears as if the jail administration and the health services administrator are in denial that the pandemic can spread within the walls of the EBRPP.

39. Reducing the size of the population in jails and prisons is crucially important to reducing the level of risk both for those who are housed and those who work within those facilities. Masks and other facial coverings do not supersede the need for social distancing.

40. From a public health perspective, it is my strong opinion that there is no way short of release to protect the medically vulnerable from grave risk of imminent infection and death. Jails and prisons will remain incubators of coronavirus until there is adequate testing, routine testing, and appropriate mitigating strategies—the most important being social distancing—throughout the facility for all stakeholders. If these detainees are released, they have an opportunity to practice social distancing—something they cannot do while incarcerated—and more effectively engage in other behaviors recommended by the CDC. Until these measures

[8] *COVID-19 Status Report*, Johns Hopkins University (last updated 8/15/2020), *available at* https://bao.arcgis.com/covid-19/jhu/county/22033.html.

are in place, all people entering and exiting the facility become vectors to bring the virus back to their homes, their neighborhoods, and the community at large.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information and belief.

DocuSigned by:
Fred Rottnek, MD
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August 17, 2020

Fred Rottnek, MD