

NO. DC-20-11810

**EMANUEL LEWIS,
on behalf of himself and a class
of certain Dallas County Detention
Service Officers**

Plaintiff,

v.

**DALLAS COUNTY SHERIFF MARIAN
BROWN, in her official capacity,**

Defendant.

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IN THE DISTRICT COURT

___ JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**PLAINTIFF’S ORIGINAL PETITION AND APPLICATION
FOR TEMPORARY AND PERMANENT INJUNCTIONS**

Plaintiff Emanuel Lewis (“Plaintiff” or “DSO Lewis”) is employed by Dallas County, Texas as a Detention Service Officer—a jailer--serving in the Suzanne Lee Kays Detention Facility (“South Tower”) of the Lew Sterrett Justice Center (the Jail”). He files this action on behalf of himself, and on behalf of a class of all Detention Service Officers working at the Jail who have not yet been diagnosed with the novel coronavirus disease 2019 (“COVID-19”), against Defendant Dallas County Sheriff Marian Brown in her official capacity (the “Sheriff”) under Texas statutory and common law. DSO Lewis brings this action, and seeks a temporary injunction and a permanent injunction, because the Sheriff allows conditions to exist at the Jail that promote the spread of COVID-19, are a public health nuisance, are unsafe, and excessively endanger the health and lives of the Detention Service Officers, their families and their communities.

Summary of Action

1. The COVID-19 pandemic is the most serious public health crisis the United States has confronted in over 100 years. Residents of Dallas County are in the pandemic’s crosshairs. As

of August 21, 2020, Dallas County health officials had confirmed 67,486 COVID-19 cases and 849 deaths among Dallas County residents.¹ Dallas County reports that 682 inmates in the Jail have been diagnosed with COVID-19², a figure that is likely a gross understatement because the Sheriff is doing very little testing of inmates at the jail.³

2. Approximately 900 Detention Service Officers (“DSOs”) work at the Jail as unarmed jailers for an inmate population that can reach more than 7,000. DSOs perform a critically important, but little noticed, public safety function for the citizens of Dallas County. In performing the daily requirements of their job, DSOs continuously come into close contact with the inmates. Dozens, if not hundreds, of DSOs have been diagnosed with COVID-19. Remarkably, the Sheriff and Dallas County do not provide testing for the DSOs at the Jail and do not disclose the cumulative total number of DSOs who have been diagnosed with COVID-19.

3. Given the lack of testing of the DSOs at the Jail by the Sheriff and Dallas County, it is impossible to determine the number of DSOs who are working in the Jail, and having contact with their families, who have undiagnosed COVID-19. DSOs are working with fellow officers who, while asymptomatic, might be contagious and spreading the virus but do not know to quarantine because of the lack of testing. Meanwhile, DSOs who are exposed to inmates with COVID-19 and need to be in quarantine must either use their sick time to do so, go without pay, or return to work without quarantining. And many of the DSOs who have been diagnosed with COVID-19 using other testing resources have suffered multiple hardships—they have gotten sick, sometimes seriously and sometimes infecting family members, but then have had their worker’s

¹ See <https://www.dallascounty.org/departments/dchhs/2019-novel-coronavirus.php> (last visited Aug. 22, 2020).

² See https://www.dallascounty.org/Assets/uploads/docs/hhs/2019-nCoV/COVID-19%20DCHHS%20Summary_082120.pdf (last visited Aug. 22, 2020).

³ See Paragraph 37 below.

compensation insurance claims denied. Indeed, one Dallas County human resources representative recently proudly declared that he was denying 99.9% of coronavirus worker's compensation claims.

4. The conditions at the Jail are unsafe for the DSOs for several reasons. First, the medical consensus, including the opinion of the Jail's own infectious disease doctor, is that at least 6 feet of social distancing is required to prevent the spread of COVID-19. But social distancing is not being enforced at the Jail. Instead, in the South Tower of the jail where the Plaintiff is assigned, the dozens of 64-person pods the Sheriff is using to house inmates are filled to at or near capacity. The Plaintiff and other DSOs work inside those pods where social distancing is impossible due to pods being at or near full capacity. There is simply insufficient room in the pods to have as many as 64 inmates, plus one or more DSOs, and maintain proper distancing. By way of example, the following image, with a DSO sitting at the desk in the foreground, shows a 64-person pod in the South Tower before the pandemic⁴:



⁴ Most of the detained persons in the Jail occupy bunk beds in tanks and pods capable of holding 8, 28, and 64 individuals, respectively. Each floor of the South Tower has 9 pods, each holding as many as 64 detained persons. The pre-pandemic photograph above depicts a typical pod in the South Tower. The West Tower alone has 132 8-person tanks. The tanks in the North Tower hold up to 24 detained persons.

The pods where DSO Lewis works continue to be as crowded as shown in the photo, which only increases the likelihood that the coronavirus will infect more inmates, who will in turn infect more DSOs as the DSOs go about performing their normally required duties. Meanwhile, other pods and other parts of the facility, as well as the 800 beds in the George Allen Courthouse jail, sit unused.

5. Second, the medical consensus is that testing is also critical to preventing the spread of COVID-19. Testing of DSOs at the jail is non-existent and testing of inmates at the jail is virtually non-existent. While the Texas Department of Criminal Justice says it has implemented wide-spread testing at its facilities⁵, the Sheriff does not even pretend to have done so at the Jail. As a result of inadequate testing, asymptomatic inmates and DSOs unknowingly can and do spread the disease. And that potential for spread among inmates and DSOs is exacerbated even further because of the overcrowding described above, and the lack of a ventilation system that properly filters the airflow at the Jail.

6. Third, an adequate supply and proper use of personal protective equipment (“PPE”) for DSOs and inmates is also an important part of preventing the spread of COVID-19. The supply and types of PPE available to DSOs and inmates at the jail, and the training provided on its proper use, are inadequate to safeguard them from COVID-19 infection.

7. Fourth, dealing properly with symptomatic inmates is critical for keeping DSO’s and inmates safe. The Sheriff has not provided DSOs with sufficient training to recognize and deal

⁵ See <https://www.tdcj.texas.gov/covid-19/faq.html> ; Cassandra Jaramillo, *Dallas County Jail has struggled to test for COVID-19, but help could be on the way*, May 15, 2020 (available at <https://www.dallasnews.com/news/crime/2020/05/15/dallas-county-jail-has-struggled-to-test-for-covid-19-but-help-could-be-on-the-way/>); Lauren McGaughy, *Ill Inmates’ Plight Worsened By Heat*, July 31, 2020 (available at <https://www.dallasnews.com/news/investigations/2020/07/31/the-heat-is-on-texas-inmates-say-they-are-battling-covid-19-in-prisons-with-no-ac/>).

with symptomatic inmates. The number of nurses working in the South Tower and available to deal promptly with potentially symptomatic inmates is woefully insufficient, which only heightens the safety risk for DSOs. And there have been frequent instances where a particular pod or tank in the Jail has been placed on quarantine, but new shifts of DSOs are not even apprised of the quarantine status and instead are allowed to be exposed to potentially infected inmates without proper protection. That has happened to DSO Lewis, most recently on August 13, 2020.

8. Fifth, ineffective cleaning and poor hygienic practices in the pods and tanks at the Jail make the lack of social distancing, and inadequacies regarding PPE, an even greater threat to the health and lives of the DSOs and the inmates.

9. By allowing these circumstances to exist during an ever-worsening pandemic, the Sheriff exposes DSOs, some of whom are medically vulnerable, and their families and communities, as well as other workers who have contact with inmates and DSOs at the Jail, without any testing, to the threat of severe illness and death.

10. By doing so, the Sheriff ignores mandatory duties that, among other things,
- she “shall abate *a public health nuisance* in or on a place [she] possess as soon as [she] knows that the nuisance exists”;⁶
 - a “county jail must be maintained in a *clean and sanitary condition in accordance with standards of sanitation and health*”;⁷
 - “[e]very facility shall have the appropriate number of jailers at the facility 24 hours each day”;⁸

⁶ Tex. Health & Safety Code § 341.012(a) (emphasis added). A “public health nuisance” includes “an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.” *Id.* § 341.011(12). Such a nuisance also included “a place, condition, or building controlled or operated by a state or local government agency that is not maintained in a sanitary condition”.

⁷ Tex. Local Gov. Code § 351.010(4) (emphasis added).

⁸ Tex. Admin. Code § 275.1.

- “sufficient staff to include supervisors, jailers and other essential personnel...shall be provided to perform required functions”;⁹ and
- “[p]reventive maintenance, to include necessary repairs, shall be conducted to ensure a safe, secure, and sanitary facility”.¹⁰

11. The DSOs at the Jail in normal times continuously put their own safety at risk to keep the citizens of Dallas County safe. In performing their everyday duties, including maintaining order, conducting rounds, and searching for contraband through pat downs, they risk injury. The physical nature of the work, along with the overtime the Sheriff mandates they work, lead to exhaustion and elevate the risk of accidents. But the DSOs do this work, with little public notice, so the citizens of Dallas County can stay safe.

12. It is simply unconscionable that the DSOs are now facing an extreme risk of being infected with the coronavirus inside the jail’s cramped quarters where the Sheriff has failed to take adequate steps to protect their safety. The Sheriff is not properly controlling the population of inmates in the pods and tanks to allow for social distancing, in addition to not providing sufficient PPE and not taking other basic safety measures. Most importantly, the Sheriff is conducting minimal testing of the inmates and no testing of DSOs and other workers who enter the jail. The County is not giving information to the Guards about test results to allow them to protect themselves. So not only do the DSOs in their normal work environment put their personal safety at risk to protect the citizens of Dallas County, the Sheriff is now forcing them to work in an even more dangerous environment caused by an inadequate response to the Covid-19 pandemic. The inaction and neglect create a greater risk for the DSOs, their families and the citizens of Dallas County, despite the DSOs’ key role in protecting the citizens of Dallas County through their work

⁹ *Id.* § 275.4

¹⁰ *Id.* § 279.3

at the Jail.

13. Sovereign immunity does not shield the Sheriff’s conduct because Plaintiff is entitled to injunctive relief to prevent ongoing *ultra vires* conduct by the Sheriff and because the Texas Tort Claims Act waives immunity for threats of “personal injury and death so caused by a condition or use of tangible personal or real property.”¹¹ The worker’s compensation regime to which DSOs are subject, even if it were not being improperly manipulated by Dallas County, also does not bar this action because DSO Lewis seeks only injunctive relief to prevent possible future injury or death rather than damages for past injury or death.¹² And DSO Lewis has exhausted all administrative remedies. As detailed below, the responses he has received in the administrative process have been factually inaccurate, have failed to sufficiently address and remedy the dangerous conditions at the Jail, and have left DSO Lewis no option other than to file this suit to protect himself and his fellow DSOs.

14. Injunctive relief is necessary to prevent imminent irreparable injury to DSO Lewis and the other DSOs who have not been diagnosed with COVID-19—not to mention their family members and the community at large. As a study by experts at the University of Texas Southwestern Medical Center demonstrates, moreover, enforcing social distancing in the Jail will help to prevent serious viral infection of the Plaintiff, the other DSOs members of the class, and many others in Dallas County. See Paragraph 83 below. Abundant evidence amply supports injunctive relief, which will compel the Sheriff to do her statutory duty but will do so in a way that does not mandate particular methods. Accordingly, the Court should conditionally certify this case

¹¹ Tex. Civ. Prac. & Rem. Code § 101.021(2).

¹² See Tex. Lab. Code section 408.001(a) (“Recovery of workers’ compensation benefits is the exclusive remedy of an employee covered by workers’ compensation insurance coverage or a legal beneficiary against the employer or an agent or employee of the employer *for the death of or a work-related injury sustained by the employee.*” (emphasis added))

as a class action under Rule 42 of the Texas Rules of Civil Procedure and grant the class temporary and permanent injunctions to remedy the unlawful conditions at the Jail.

Discovery Level

15. Plaintiff intends to conduct discovery under Level 3.

Parties

16. Plaintiff Emanuel Lewis is a Texas citizen, a resident of Dallas County, and employed by Dallas County as a Detention Service Officer.

17. Defendant Dallas County Sheriff Marian Brown is a Dallas County official, the head of the Dallas County Sheriff's Department, and the keeper and possessor of the Jail. Although the Sheriff is the final policymaker for running and administering the Jail, she has mandatory, nondiscretionary obligations under statutory law. Plaintiff brings this action against the Sheriff solely in her official capacity.

Jurisdiction and Venue

18. The Court has jurisdiction over the subject matter under Section 65.021(a) of the Texas Civil Practice and Remedies Code. The case falls within the Court's jurisdictional limits.

19. Venue for the case properly lies in Dallas County under Section 15.015 of the Texas Civil Practice and Remedies Code because it is effectively, although not actually, an action against Dallas County.

Class Action

20. Plaintiff seeks to represent a class (the "Class") of all individuals employed by Dallas County and working as Detention Service Officers at the Jail who have not been diagnosed at any time with COVID-19.

21. This action has been brought and may properly be maintained as a class action under Texas law. It satisfies the numerosity, commonality, typicality, and adequacy requirements for maintaining a class action under Rule 42(a) of the Texas Rules of Civil Procedure.

22. Joinder is impracticable because (a) the Class is numerous; and (b) the Class includes future members.

23. Several hundred Class members currently work at the Jail. Common questions of law and fact exist as to all members of the Class: all are at unreasonable risk of serious harm from contracting COVID-19 due to the conditions in the Jail and the Sheriff's failure to take reasonable measures to assure their safety from the disease, and all have a right to receive adequate COVID-19 prevention and testing. Questions of fact common to all proposed Class members include whether COVID-19 is a serious disease that poses an intolerable risk to health and safety and whether the conditions in the Jail expose Class members to a heightened risk of contracting COVID-19 and heightened risk of serious illness, injury, or death. Questions of law common to all Class members include whether the Sheriff is violating her statutory obligations and what relief is available to mitigate the risks posed by their work in the Jail.

24. Plaintiff is a Detention Service Officer at the Jail and has not been diagnosed with COVID-19. The Sheriff has placed the Plaintiff at significant risk of harm by failing to take appropriate steps to address the risk of contracting, and being rendered seriously ill or injured by, COVID-19 in the Jail. Plaintiff faces heightened risk of contracting COVID-19 if he is not adequately protected by the Sheriff.

25. Plaintiff has the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the Class. Plaintiff has no interests adverse to the interests of the proposed Class. Plaintiff retained counsel with experience in class action litigation

and Counsel for Plaintiff know of no conflicts among proposed Class members or between counsel and proposed Class members.

26. The Sheriff has acted on grounds generally applicable to all proposed Class members, and this action seeks injunctive relief. Plaintiff therefore seeks class certification under Rule 42(b)(2).

FACTS

Overview

27. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. On March 13, 2020, the United States declared the COVID-19 pandemic a national emergency.

28. On March 23, 2020, the Centers for Disease Control and Prevention (CDC) issued its Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities (“CDC Interim Guidance”). The CDC Interim Guidance recommended “social distancing” as a “cornerstone” of any strategy to prevent the spread of COVID-19 in a jail setting. On July 14, 2020, the CDC issued an updated version of the CDC Interim Guidance (the “CDC Updated Interim Guidance” and collectively with the CDC Interim Guidance, the “CDC Guidance”).

29. Ank Nijhawan, M.D., is an associate professor at the University of Texas Southwestern Medical Center and a treating infectious disease doctor at Clements University Hospital and Parkland Health and Hospital Systems. She is the lead infectious disease doctor at the Jail. She works with the medical care providers who work at the Jail for Dallas County’s Parkland Health and Hospital System (“Parkland”).

30. The serious threat that COVID-19 poses in the Jail so concerned Dr. Nijhawan in

March 2020 that she sent a letter dated March 25, 2020 to Sheriff Brown and other Dallas County officials expressing her concerns in her personal capacity. Her letter provided dire warnings of “real and immediate danger to the health of the community.” She wrote in part (with emphasis added) as follows:

As an infectious diseases doctor, I strongly urge you to consider *releasing defendants* in the Dallas County Jail who are charged with non-violent offenses. For the reasons below, it is important to prioritize inmates who are older (over 50 years of age) or have pre-existing conditions such as cancer, diabetes, lung disease (such as asthma or chronic obstructive pulmonary disease), heart disease, or HIV.

The Dallas County Jail and other large correctional facilities *pose a real and immediate danger to the health of the community*. An even limited outbreak of COVID-19 in the Dallas County Jail has *the potential to overwhelm our already overburdened hospital system and will directly impact security staff and healthcare staff at the jail*. As we have already had *one incarcerated individual test positive for COVID-19*, and *this epidemic can spread quickly* both within the jail and to vulnerable people in our community.

31. Dr. Nijhawan’s concern was well-founded. Shortly before she sent her letter, the Jail for the first time discovered that a person detained in the Jail was positive for COVID-19. That person had entered the Jail in December 2019, meaning that he had been living in the general population, potentially spreading the virus to others for weeks if not months, and that he had contracted COVID-19 from someone else who had been in the Jail, but the Jail never determined who. Perhaps coincidentally, on the same day, the Jail received an autopsy report—for a detained person who had passed away in custody in February 2020—that identified the cause of death as “Bronchopneumonia”,¹³ “a common and potentially deadly complication of infection with the

¹³ Office of the Attorney General Of Texas, Custodial Death Report, Mar. 25,2020 (available at <https://oagtx.force.com/cdr/cdrreportdeaths>). Another detained person died in custody on May 6, 2020, after a nurse at the Jail placed him on “Crisis Stabilization”. Office of the Attorney General Of Texas, Custodial Death Report, June 19, 2020 (available at <https://oagtx.force.com/cdr/cdrreportdeaths>).

novel coronavirus that leads to COVID-19.”¹⁴

32. Before March 25, 2020, the individual who was the first to test positive had lived and slept in two different pods in the South Tower of the Jail, the tower in which DSO Lewis works. Pods in the Jail house up to 64 detainees at a time. This person may have exposed a large number of people to the disease, including other inmates, DSOs, nurses, food servers, and visiting lawyers and family members.

33. Despite the discovery of an active COVID-19 case in the Jail and the high probability that the individual had exposed others in the Jail, including detained persons and staff alike, the Sheriff did not promptly adopt or implement the CDC Interim Guidance. Nor did she at that time provide the CDC Interim Guidance to DSOs or other Jail staff or provide them with training about COVID-19. She failed to update the Jail’s policy—already a decade old—for handling infectious diseases within the Jail.

34. On May 22, 2020, the Governor of Texas officially recognized that “the jail population in Texas presents unique challenges in mitigating against and responding to the spread of COVID-19”.¹⁵ The Governor declared that exposing persons detained in a jail to persons who might have COVID-19 would create “an unacceptable risk of importing COVID-19” into the jail.¹⁶ Yet the Sheriff persisted in failing to take effective measures to address the “unacceptable risk” posed by the “unique challenges in mitigating against and responding to the spread of COVID-19” at the Dallas County Jail.

35. Since Dr. Nijhawan sent her letter to Sheriff Brown on March 25, 2020, the pace

¹⁴ Elaine K. Howley, What Is Coronavirus Pneumonia?, May 1, 2020 (access on May 19, 2020) (available at <https://health.usnews.com/conditions/articles/what-is-coronavirus-pneumonia>).

¹⁵ Governor of the State of Texas, *Executive Order GA 26* at 1, May 22, 2020 (available at https://gov.texas.gov/uploads/files/press/EO-GA-25_in-person_visitation_for_jails_COVID-19.pdf).

¹⁶ *Id*

of infection among inmates in the Jail has skyrocketed. By April 21, 2020, the number of confirmed positives among inmates stood at 81.¹⁷ As of May 19, 2020, it had quadrupled to 333.¹⁸ And despite the Governor’s explicit declaration of “unacceptable risk”, by August 21, 2020, the number of confirmed COVID-19 cases among inmates in the Jail had soared to 680.¹⁹

36. Meanwhile, as inmates at the Jail were getting sick with COVID-19, the DSOs have suffered a similar fate. The Sheriff reported to the Texas Commission on Jail Standards that as of April 30, 2020 there were 33 DSOs that had active positive tests for COVID-19. As of May 31 the number was 48, as of July 1 it was 19, as of July 28 it was 41, as of August 18, 2020 there were 31 DSOs who had *active* positive tests.²⁰ Those numbers are not cumulative—they are the numbers of DSOs who have active positive tests at the stated points in time, so if a DSO tests positive, recovers and then tests negative, he or she falls off the statistics. Neither the Sheriff nor Dallas County reports a cumulative number of DSOs who have tested positive for COVID-19, but it can reasonably be concluded that the number exceeds 100, perhaps by a substantial margin.

37. These alarming numbers are almost certainly dramatic undercounts of actual COVID-19 infections among inmates and DSOs, as demonstrated by the following. First, Dr. Ank Nijhawan has stated in a May 20, 2020 declaration filed in Dallas County District Court that “I believe the number of confirmed cases of COVID-19 in the Dallas County Jail is an undercount, as the jail is currently only testing symptomatic people and is averaging 10-20 tests

¹⁷ *Dallas County Summary*, April 21, 2020, Tab. 4 (available at https://www.dallascounty.org/Assets/uploads/docs/covid-19/hhs-summary/COVID-19-DCHHS-Summary_04/21/20.pdf).

¹⁸ *Dallas County Summary*, May 19, 2020, Tab. 6 (available at https://www.dallascounty.org/Assets/uploads/docs/covid-19/hhs-summary/COVID-19-DCHHS-Summary_05/19/20.pdf).

¹⁹ *Dallas County Summary*, August 21, 2020, Tab. 7 (available at https://www.dallascounty.org/Assets/uploads/docs/covid-19/hhs-summary/COVID-19-DCHHS-Summary_08/21/20.pdf).

²⁰ See Exhibit A.

per day. In addition, we have had multiple patients go to the hospital for reasons not related to COVID (=asymptomatic) who tests [sic] positive for COVID at the hospital.” Second, the Sheriff has reported to the Texas Commission on Jail Standards the following numbers of inmates who had *pending* COVID-19 test results on the stated dates: May 31—7; July 1—7; July 5—7; July 13—13; July 16—5; July 24—16; July 28--17; August 6—15; August 13--13; August 18--12.²¹

38. And astonishingly, no COVID-19 tests are being administered to DSOs at the Jail. To get tested, DSOs are left to fend for themselves. As a result of the Sheriff’s woefully inadequate testing program for inmates and her nonexistent testing program for DSOs, there very probably are many more inmates and DSOs who are sick with COVID-19 at the Jail than is currently known.²² And DSOs who are asymptomatic are also left to unknowingly place the health of their families and their community at great risk.

The Jail Complex

39. These events are occurring in a massive complex that consists of three connected buildings called the Lew Sterrett Justice Center near downtown Dallas. The complex comprises the South Tower, the North Tower, and the West Tower, and can hold a total of over 7,000 detained persons.²³

40. As of August 1, 2020, 5241 people were detained in the Jail. According to the Texas Commission on Jail Standards, Dallas County had 2,532 “Available Beds” as of August 1, 2020.²⁴

²¹ See Exhibit A.

²² *As Many as 50 Percent of People with COVID-19 Aren’t Aware They Have the Virus*, Apr. 24, 2020 (available at <https://www.healthline.com/health-news/50-percent-of-people-with-covid19-not-aware-have-virus#How-transmission-works>).

²³ *Dallas County Detention Centers* (available at <https://www.dallascounty.org/department/sheriff/detention.php>).

²⁴ *Texas Commission on Jail Standards—Abbreviated Population Report for 8/01/2020* at 2 (available at <https://www.tcjs.state.tx. /wp-content/uploads/2020/08/AbbreRptCurrent.pdf>).

41. The South Tower has a capacity of 2,304 and 0 single cells and is a “direct supervision facility” in which DSOs “work inside the actual housing unit with the inmates”. The North Tower is a maximum-security facility that houses up to 3,292 detained persons but has only 188 single cells. The West Tower has capacity for up to 1,530 detained persons but only 25 single cells.²⁵

42. Most of the detained persons in the Jail occupy bunk beds in tanks and pods capable of holding 8, 28, and 64 individuals, respectively. Each floor of the South Tower has 9 pods, each holding as many as 64 detained persons. The pre-pandemic photograph on page 3 above depicts a typical pod in the South Tower. The West Tower alone has 132 8- person tanks. The tanks in the North Tower hold up to 24 detained persons.

43. Inmates assigned to pods sleep in bunk beds within a few feet of each other and share a day room for meals and television viewing, a single sink, toilets, showers, tables, pay phones, an electronic kiosk for (among other things) video conferences and sending and receiving messages, and other common facilities.

The Role of the DSOs

44. According to the Sheriff’s website²⁶, DSOs “are hired to serve as jailer’s [sic] licensed by the Texas Commission on Law Enforcement Standards and Education (TCLEOSE).

All DSO applicants must successfully pass the following to be hired:

- Computerized Criminal History
- Background Investigation
- Polygraph
- Psychological Evaluation
- Physical Examination
- Drug screening”

²⁵ *Dallas County Detention Centers* (available at <https://www.dallascounty.org/department/sheriff/detention.php>).

²⁶ https://www.dallascounty.org/department/sheriff/dso_requirements.php

45. DSOs, who are hourly employees, are supervised by a chain of command, which consists of Sergeants, Lieutenants, Captains and the Chief Deputy. Each DSO typically is assigned to a particular tower at the Jail. DSOs work 8-hour shifts, although the Sheriff requires many to work periodic 16-hour shifts because she has failed to maintain adequate staffing levels.

46. DSOs are responsible for maintaining a first line of security within the Jail's three towers. DSOs begin their shifts in a "detail" at which the DSOs in a particular tower gather for instructions from their supervisors. Following the detail, the DSOs disperse to their assigned area of the Jail. In the South Tower, each floor has 9 pods and a control center. One DSO is assigned to each pod. Typically, 4 or 5 DSOs work the control center during a shift.

47. While working in a pod in the South Tower, the DSO is stationed at a desk as shown in the photograph on page 3. However, the DSO will have frequent close contact with inmates during a shift. For example, DSOs are required to conduct "rounds" no less frequently than every 44 minutes, meaning they must walk through the entire pod and visually inspect every inmate in their assigned area during that time. In addition, the Sheriff requires each DSO working in a pod in the South Tower to conduct "shakedowns" of two inmates inside the pod each shift. A "shakedown" is a search of the inmate and his or her belongings to look for any contraband. The Sheriff also requires DSOs to conduct 4 larger-scale shakedowns on each floor per shift. And when an inmate leaves a pod for an authorized reason and then returns, the DSO in the pod must conduct a shake-down of that inmate. The DSO in the pod will also have close contact with inmates if there is a disturbance or an inmate falls ill.

The Critical Lack of Social Distancing in the Jail

48. In Dallas County, congregate settings—jails and nursing homes—account for a

significant number of COVID-19 cases.²⁷ In a statement on May 16, 2020, Texas Governor Abbott referred to nursing homes, meat packing plants, and jails as the “most high-risk areas” in the state in terms of COVID-19 infection.²⁸ Six days later, as noted above, the Governor declared that “the jail population in Texas presents unique challenges in mitigating against and responding to the spread of COVID-19” and deemed the risk to detained persons and others “unacceptable”.²⁹

49. A lack of social distancing in congregate settings make them fertile ground for the spread of COVID-19. The CDC Interim Guidance makes abundantly clear the importance of social distancing in a jail: “Although social distancing is a challenging practice in correctional and detention environments it is a cornerstone of reducing transmission of respiratory diseases such as COVID-19.”

50. Practicing social distancing in jails, meaning people must keep at least 6 feet apart, is essential to reducing the likelihood the virus will spread. Furthermore, research shows that COVID-19 has a lengthy incubation period and that many people are asymptomatic carriers, meaning that a person can spread the disease to others without ever knowing that the individual is sick. This reality makes social distancing even more important as a precaution to prevent the spread of COVID-19 by undetected carriers of the novel coronavirus.

51. The Sheriff flouts the CDC guidance and local medical advice regarding social distancing. Those actions, and inactions, among others, cause the Jail to be a public health nuisance--“a possible and probable medium of disease transmission to or between humans”,

²⁷ See Dallas County Summary August 21, 2020, Table 7 (available at https://www.dallascounty.org/Assets/uploads/docs/covid-19/hhs-summary/COVID-19-DCHHS-Summary_082120.pdf).

²⁸ Office of Tex. Gov., Press Release: *Governor Abbott Releases Statement, Provides Details on Increased Cases in Amarillo*, May 16, 2020 (available at <https://gov.texas.gov/news/post/governor-abbott-releases-statement-provides-details-on-increased-cases-in-amarillo>).

²⁹ Governor of the State of Texas, *Executive Order GA 26* at 1, May 22, 2020 (available at https://gov.texas.gov/uploads/files/press/EO-GA-25_in-person_visitation_for_jails_COVID-19.pdf).

namely the DSOs and the inmates. The Sheriff is failing to implement social distancing in at least the following ways.

a. **Over-Crowded Pods**--Pods are filled to at or near capacity—as many as 64 inmates are jammed into a single pod in the South Tower. By way of example, DSO Lewis during his shifts in recent months has been in pods in the South Tower with the following inmate counts:

- August 18-61 inmates in each of Pod 3I
- July 25-60 inmates in each of Pod 1I and 1H
- July 14-60 inmates in Pod 1D
- July 11-49 inmates in Pod 1L
- July 8-58 inmates in Pod 1E
- July 1-57 inmates in Pod 1E
- June 24-57 inmates in Pod 1E
- June 13-52 inmates in Pod 3D
- June 12-53 inmates in Pod 3C and 54 inmates in Pod 3E
- June 9-53 inmates in Pod 1D
- June 2-49 inmates in Pod 1D
- May 29-60 inmates in Pod 2E
- May 26-61 inmates in Pod 2A

b. **Inmate Congregation**--In those over-crowded pods, inmates sleep in bunk beds that are essentially side-by-side. They congregate together in the day rooms while they are awake or eating. They stand in line near one another to get food at mealtimes. They eat together at tables. There is one sink in each pod, and there is also a single video kiosk for inmate use. The large number of inmates in a pod make social distancing virtually impossible.

c. **Social Distancing in Quarantined Pods**—When an inmate becomes symptomatic, all the inmates in that pod—as many as 64—are quarantined together where they commingle with one another as they had done before one of them came under suspicion. If someone else in the pod did not have COVID-19 at the time the quarantine started, they now face very likely exposure to the virus with little hope for relief or safe social distancing. But DSOs continue to staff the pod, and other Jail staff, and inmate trustees who deliver meals and the mail, continue to move in and out of the quarantined pods.

d. **Shakedowns**—As discussed above, the Sheriff currently requires each DSO working in a pod in the South Tower to conduct “shakedowns” of two inmates inside the pod each shift. A “shakedown” is a search of the inmate and his or her belongings to look for any contraband. The Sheriff also requires DSOs to conduct 4 larger-scale shakedowns on each floor of the South Tower per shift. Social distancing is impossible during such shakedowns. Significantly, within days after certain Jail inmates filed suit in federal court against the Sheriff in April 2020, the Sheriff stopped requiring that DSOs conduct the foregoing shakedowns. In July 2020, however, the Sheriff reinstated those shakedown requirements.

52. The over-crowding in the pods, the handling of over-crowded quarantined pods, and the reinstated shakedown requirements, are inconsistent with sound social distancing practices. Following social distancing guidelines in the Jail would require reducing density inside the Jail by using currently unoccupied pods and tanks, thus allowing for enough space in the Jail for detained persons, DSOs, and other staff and visitors to keep at least 6 feet apart.

Lack of Testing in the Jail

53. Testing for COVID-19 is essential to determining how far it has spread and

preventing its further spread. It is therefore important to expand testing in Jail populations in to be able to understand how many persons may be asymptomatic and to identify people who have COVID-19 so they can be removed them from the general population. The Texas Department of Criminal Justice claims to have implemented widespread testing in state facilities, but the Sheriff has entirely failed to implement such testing at the Jail.

54. Parkland Hospital currently handles testing of inmates for COVID-19 at the Jail, but it is rare and haphazard. As Dr. Nijhawan has stated, and as the data addressed above bear out, few inmates are tested. Indeed, the Parkland administrator responsible for medical care in the Jail has acknowledged that more testing should be done in the Jail.

55. DSOs meanwhile are completely excluded from testing for COVID-19 at the Jail because Parkland provides healthcare exclusively for detained persons, not staff. So even if a DSO is exposed to an inmate who has COVID-19, the DSO must look elsewhere to be tested. Non-existent testing for DSOs at the Jail is even more dangerous because inmates who have COVID-19 and are shedding the coronavirus but are asymptomatic are not tested in the Jail. Many people infected with COVID-19, whether inmates or DSOs, are very likely undetected in the Jail.

56. Nor are people entering and leaving the Jail—other Jail staff, lawyers, or medical staff from Parkland—tested for COVID-19 by the Jail. The only people who get tested are people who are symptomatic inmates and for some reason or another come to the attention of Parkland and who Parkland chooses to test—and that number is in the range of no more than 10-20 per day out of an inmate population of about 5,000.

57. The lack of wide-spread testing of inmates, DSOs, and other staff and visitors also renders the Jail a public health nuisance—“a possible and probable medium of disease transmission to or between humans.”

Inadequate Supplies of PPE

58. The CDC Guidance stresses that jail and prison management should “[e]nsure that sufficient stocks of hygiene supplies, cleaning supplies, PPE, and medical supplies...are on hand and available and have a plan in place to restock as needed.” Although PPE is not a substitute for social distancing in preventing the spread of COVID-19, it is unquestionably important to have it in adequate supply and, according to the guidance, “ensure that PPE is available where and when needed....” And the guidance goes on identify the following as the recommended PPE, depending on the relevant circumstances: “surgical masks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one-piece coveralls.”

59. Jail management asserted in a memorandum dated May 13, 2020, and purportedly addressed to DSOs, that appropriate PPE is available and plentiful and will be restocked in DSOs’ areas as necessary, referring to gloves, paper masks, safety glasses, face shields and protective suits. That statement was wrong. Some of the listed PPE was not available to DSOs in the South Tower until within hours after certain inmates a week later filed a suit in state court against the Sheriff regarding conditions in the Jail. And since then, the supply and placement of the PPE has been far less than sufficient. For example, PPE is not available in the pods or at the control centers in the South Tower, which are the locations “where and when [the PPE] is needed.” A nurse assigned to the South Tower told DSO Lewis that the Jail limits nurses to 3 masks per week. Inmates receive a single-use mask and many have to use the same mask for as long as 2 weeks or more. And contrary to the CDC Interim Guidance and Updated Interim Guidance, no “PPE donning/doffing/disposal stations” have been set up for use by the DSOs in the South Tower. All of these inadequacies in the supply and location of PPE contribute to the

unhealthy conditions at the Jail.

Handling of Symptomatic Inmates

60. The Sheriff's handling of symptomatic inmates further contributes to the unsafe and unhealthy conditions at the Jail. DSOs have received no training on identifying or handling inmates who appear to be symptomatic (if the DSO is even able to recognize symptoms). To make those circumstances even more dangerous, the nurses responsible for health issues in the South Tower have been seriously understaffed. That understaffing was brought to Jail management's attention in May 2020, but management has not remedied that deficiency, endangering inmates and DSOs.

61. Additional dangers have arisen when crowded pods are placed under quarantine after a symptomatic inmate is identified. Shockingly, the Sheriff does not even ensure that DSOs arriving on a new shift are informed that they are entering a quarantined pod. For example, DSO Lewis learned he was entering a quarantined pod only after he entered the pod and then saw a handwritten sign on the door of a holding area in which the symptomatic inmate was being held. DSO Lewis and other DSOs have been assigned to quarantined pods but not even learned of the quarantine until several hours after their arrival in the pod, leaving them exposed for an extended time without the necessary PPE.

Lack of Cleaning Shared Areas and Common Surfaces in the Jail

62. The lack of effective cleaning and poor hygienic practices in the Jail make the lack of social distancing, the failure to implement appropriate testing, and inadequacies regarding PPE, an even greater threat to the health and lives of the DSOs and the inmates.

63. The CDC Interim Guidance recommends intensifying cleaning and disinfecting procedures, including wiping down commonly touched surfaces several times per day, as a means

of preventing and containing a COVID-19 outbreak. Cleaning at the Jail falls well short of meeting that standard. All routine cleaning inside the pods and tanks is done by the people who are detained there—but they are not professional cleaners and are not trained on proper cleaning techniques. Further, the Jail fails to provide the inmates who perform the cleaning functions with appropriate cleaning supplies. Immediately after inmates filed their federal lawsuit in April 2020, the jail began providing sufficient quantities of disinfectant and of bleach-based cleaner, but no alcohol wipes or disinfectant wipes. But soon after an evidentiary hearing in the federal lawsuit concluded, the stock of cleaning supplies, particularly the bleach-based cleanser, ran low and has not been restocked.

64. And even when there are sufficient cleaning supplies, common surfaces, where droplets of the coronavirus may accumulate, are not cleaned. When detainees are using the dayrooms in South Tower pods, for example, they take the plastic chairs stacked underneath the staircase and set them up at the tables. In a typical shift, the chairs are not cleaned, wiped down, or sprayed with disinfectant.

65. So too, the electronic kiosks and pay phones inmates use for communications are not cleaned or disinfected. Despite being in almost constant use, the kiosks and pay phones are not cleaned, wiped down, or sprayed with disinfectant. The video kiosks in South Tower pods are used by up to 64 people and have been used a lot more frequently since the Jail stopped in-person visits as a result of the pandemic.

66. Cleaning of areas that have been occupied by people showing COVID-19 symptoms is also haphazard. Pods where such detainees had been held are not cleaned thoroughly by professional cleaners.

67. And personal hygiene is impaired at the jail. There is one sink in each of the

South Tower pods. The sink and the bar of soap at the sink are used by up to 64 people in the pod. Although inmates can obtain their own soap, they are not discouraged from all using that single bar of soap at the single sink and, contrary to the CDC Guidance, liquid soap is not made available to the inmates. And all of these unhygienic conditions exist in buildings with common ventilation systems that further exacerbate the conditions for the virus to flourish, further contributing to the Jail being a public health nuisance.

Lack of Training for DSOs and Detainees in the Jail

68. Poor or non-existent training further heightens the danger of coronavirus infection to detained persons in the Jail.

69. The CDC Guidance calls for providing up to date information about COVID-19 to DSOs and detainees on a regular basis. It also recommends updating DSOs about facility policies regarding COVID-19 on a regular basis. It further specifies that training should be given by medical personnel.

70. The Parkland Hospital administrator for medical care at the Jail has agreed that it is important for DSOs to have training specific for social distancing in the age of COVID-19 in order to effectively implement social distancing. Yet Parkland has never provided training for social distancing or other matters addressed by the CDC Guidance to DSOs or detained persons in the Jail—other than making brief videos available for DSOs to view regarding putting on PPE and taking it off.

71. The only training that most of the DSOs have received relating to COVID-19 has consisted of a pair of 3-minute videos about how to wear PPE. And the Sheriff has failed to widely disseminate to DSOs written training materials about social distancing, about guidance for COVID-19 by the CDC, or about how to identify COVID-19. DSOs typically have had to rely

on their own common sense and whatever they were able to research on their own about COVID-19 because few have been given appropriate training, either orally or in writing, from the Sheriff about what to do during this pandemic.

72. The lack of adequate training further adds to the dangerous conditions at the Jail and imperils the health of the DSOs and the inmates in the Jail.

Conditions at the Jail Are Worsening

73. The rapid increase in detected COVID-19 cases at the Jail reflects worsening conditions and portend graver circumstances in the near future.

74. The circumstances are worse than currently known, given that the deplorable lack of testing at the Jail obscures the true severity of the COVID-19 outbreak in the Jail. Because the Jail tests only those inmates who exhibit obvious symptoms of COVID-19 and come to the attention of a Parkland nurse, inmates and DSOs who have COVID-19 but are asymptomatic do not receive tests for the disease and continue to expose others. The number of inmates who have COVID-19—and who are quietly spreading it in the Jail, including to DSOs—and those who had it or have left the Jail is thus likely far higher than the 682 cumulative confirmed cases among inmates. The number of DSOs who have tested positive for COVID-19 likely exceeds 100, perhaps by a significant number, and the number of DSOs who have the disease and have gone untested is currently unknown.

75. Nor is that all. When a 64-person pod has been suspected of being exposed to COVID-19, all 64 of the men are quarantined together where they commingle with one another as they had done before one of them came under suspicion. If someone else in the pod did not have COVID-19 at the time the quarantine started, they now face very likely exposure to the virus with little hope for relief or safe social distancing. And Dallas County reported to the Texas

Commission on Jail Standards that as of August 21, 2020, 544 inmates were quarantined at the Jail.³⁰

76. The reason people who may not have COVID-19 have to wait with and potentially be exposed to somebody who does have the virus is because the Jail keeps people detained in 64-person pods rather than in smaller groups. If the Jail had enough single cells or used smaller cells to house just one person or even a few, the Jail would not have to house potentially exposed people with so many others who have not yet been exposed.

The Jail Poses a Growing Danger to the Larger Community

77. As the Sheriff has conceded through the testimony in the federal lawsuit of her representative, Chief Deputy Fredrick Robinson, there is no assurance that the Jail is not partly responsible for spread of COVID-19 beyond the Jail's walls or that it will not do so in the future. That is an unsurprising concession. Hundreds of people, including hundreds of DSOs, enter and leave the Jail every day.

78. Except for DSOs who voluntarily quarantine after being exposed to known COVID-19 at the Jail, all DSOs leaving the Jail after their shifts end have contact with their families and their communities and may be unknowingly endangering loved ones and others.

Necessity for Temporary Injunctive Relief

79. As discussed in the CLAIMS section below, the Sheriff's conduct violates Texas statutory and common law. Plaintiff seeks temporary injunctive relief to stop the unsafe and unlawful conditions causing immediate and irreparable harm and the imminent loss of human life and serious damage to human health.

80. Plaintiff and the members of the Class meet all the elements necessary for

³⁰ See Exhibit A.

immediate injunctive relief. Plaintiff states valid causes of action and has a probable right to the relief sought. For the reasons detailed above, there is a substantial likelihood that Plaintiffs will prevail after a trial on the merits because the Sheriff's actions and inactions in her official capacity violate the Sheriff's mandatory obligations under Texas statutory law, and would, unless restrained, cause personal injury and death in contravention of Texas tort law.

81. The purpose of temporary injunctive relief is to maintain the status quo pending trial. "The status quo is the last actual, peaceable, non-contested status that preceded the controversy" and "the continuation of illegal conduct cannot be justified as preservation of the status quo."³¹ Here, the Sheriff's actions and inactions in her official capacity have caused Plaintiff to be subject to imminent and irreparable harm that upended the status quo. The last peaceable, non-contested state existed before Plaintiff faced that risk of harm because of the Sheriff's actions and inactions, and injunctive relief is warranted to preserve human life and health and maintain the status quo.

82. Class members face the same imminent and irreparable injuries as DSO Lewis. There is completely inadequate testing and the Sheriff has chosen to house people close together in the Jail, putting as many as 64 individuals together in the closely confined quarters of a pod. Unlike members of the general public, Class members are unable to avoid close contact with inmates who are spreading COVID-19 within the Jail, and Class members are also unable to take other steps to protect themselves from injury and death and depend on the Sheriff to implement uniform practices for protection of their health and lives. The Sheriff's failure to provide adequate PPE, cleaning, training, and other measures to stop needless spread of COVID-19 makes the lack of adequate testing and social distancing even more dangerous to Plaintiffs and Class members.

³¹ *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

83. An ongoing study by UT Southwestern Medical Center finds that an increase in the use of preventative measures, including social distancing, will have a material impact on reducing the spread of COVID-19 in Dallas County.³² The study shows that the effectiveness rate of preventative measures is crucial in avoiding explosively rapid growth in the spread of COVID-19 in Dallas County.

84. The UT Southwestern study makes abundantly clear that establishing social distancing and other preventative measures in the Jail would confer significant benefits on members of the Class and inmates. Reinforced by the Governor's May 22, 2020 declaration regarding the "unacceptable risk" to detained persons from exposure to COVID-19, the study also suggests that those benefits will inure to the entire community given the thousands of people who will cycle in and out of the Jail in the coming months. Enabling distancing to prevent infection at the Jail is necessary to control the spread of the infection around the community, and thus critical to avoiding the need for future disruptions and shutdowns.

85. Urgent action from this Court is needed. The novel coronavirus spreads rapidly, and every day matters. The DSOs in their normal work environment put their personal safety at risk to protect the citizens of Dallas County, but now the Sheriff is forcing them to work in an even more dangerous environment caused by an inadequate response to the Covid-19 pandemic. The Sheriff's inaction and neglect create an unconscionable and imminent risk for the DSOs, their families and the citizens of Dallas County, despite the DSOs' key role in protecting the citizens of Dallas County through their work at the Jail.

86. Plaintiff requests that the Court enjoin Sheriff Brown from continuing to subject Plaintiff and the Class members to the threat of imminent and irreparable harm. Plaintiff requests

³² UT Southwestern Medical Center, *COVID-19 Current State Analysis and Forecasting for the DFW Region* (access on August 22, 2020) (available at <https://www.utsouthwestern.edu/covid-19/assets/modeling.pdf>).

the Court immediately set an evidentiary hearing, then issue a temporary injunction following that hearing, and a permanent injunction after a trial on the merits. Since there is no adequate remedy at law that is complete, practical, and efficient to the prompt administration of justice in this case, equitable relief is necessary to enjoin the Sheriff's illegal conduct, preserve the status quo, and ensure justice.

87. Plaintiff requests that the Court set a nominal bond because the Sheriff is acting in a governmental capacity, has no pecuniary interest in the suit, and no monetary damages are available. Tex. R. Civ. P. 684.

Sovereign Immunity Does Not Apply

88. Under Texas law, a plaintiff may bring a claim against a government official who engages in *ultra vires* conduct. Sovereign immunity does not bar an action to protect a private party's rights against a county official who has acted without legal or statutory authority.³³ Suits to require a county official to comply with statutory provisions are not prohibited by sovereign immunity.³⁴ Such a case does not seek to alter government policy but rather to enforce existing policy, as reflected in statutory requirements, in order to protect Plaintiff and the class members from personal harm

89. Sovereign immunity does not protect a county official whose actions are without legal authority because in violation of Texas statutory law and sovereign immunity does not protect a county official who fails to perform a ministerial act that Texas statutory law mandates.³⁵ In this case, the Sheriff has acted without legal authority by virtue of her violations of, and/or failure to perform, multiple ministerial acts under, the Texas Local Government Code, the Texas

³³ *Federal Sign v. Texas State Univ.* 951 S.W.2d 401, 405 (Tex. 1997).

³⁴ *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

³⁵ *City of Houston v. Houston Municipal Employees Pension System*, 549 S.W.3d 566, 576 (Tex. 2018).

Health and Safety Code, and the Texas Administrative Code. This suit does not seek monetary damages but rather seeks to enjoin the Sheriff from further *ultra vires* conduct that will harm Plaintiff and other class members.

90. The Local Government Code provides in relevant part that a “county jail *must be ...maintained* in a clean and sanitary condition *in accordance with standards of sanitation and health.*”³⁶ The Health and Safety Code mandates that “a person *shall abate* a public health nuisance existing in or on a place the person possesses as soon as the person knows that the nuisance exists.”³⁷ A “public health nuisance” includes a “building controlled or operated by a state or local government agency that is not maintained in a sanitary condition” and “an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.”³⁸ The Administrative Code demands that a county jail “*shall have the appropriate number of jailers* at the facility 24 hours each day” in order to observe detained persons and enforce protective measures like social distancing, that “[s]*ufficient staff* to include supervisors, jailers and other essential personnel....*shall be provided* to perform required functions”, and that “[p]*reventive maintenance, to include necessary repairs, shall be conducted* to ensure a safe, secure, and *sanitary facility*”.³⁹ The Sheriff violates these Code provisions by allowing these conditions at the Jail to exist—the overcrowded pods and lack of social distancing, the lack of testing, the inadequate supplies of PPE, the improper handling of symptomatic inmates and the understaffing of medical personnel, and the ineffective cleaning and hygiene practices. Because the Plaintiff seeks to enjoin the Sheriff from continuing to act contrary to these Code provisions, and therefore without

³⁶ Tex. Local Gov. Code § 351.010(4).

³⁷ Tex. Health & Safety Code § 341.012(a) (emphasis added). The Code defines “person” as “an individual, corporation, organization, government, business trust, partnership, association, or any other legal entity.” *Id.* § 341.011(5).

³⁸ *Id.* §§ 341.011(4) & (12).

³⁹ Tex. Admin. Code §§ 273.3, 275.1, 275.4 & 279.3 (emphasis added).

legal authority, and to enjoin the Sheriff to perform her mandatory, ministerial duties under these statutory provisions, sovereign immunity does not apply to Plaintiff's claims.

91. The Texas Tort Claims Act provides a further basis for waiver of sovereign immunity in this case. Plaintiff seeks injunctive relief because "a condition or use of tangible personal or real property" by the Sheriff threatens to cause them personal injury and death.⁴⁰ The Sheriff's use of the Jail and the condition of pods, tanks, and other common areas in the Jail, and of tangible personal property in the pods, tanks, and other common areas, poses an inherent danger and hazard in the intended and ordinary use of the property due to the presence and concentration of disease-causing elements of the novel coronavirus and COVID-19 in or on the tangible personal and real property and due to the Sheriff's employment of tangible personal and real property in ways that expose DSOs, other Jail staff, and inmates to such disease-causing elements.

Exhaustion of Administrative Remedies

92. DSO Lewis has exhausted all administrative remedies available to a Dallas County Detention Service Officer before filing this action. On April 21, 2020, DSO Lewis testified, pursuant to a subpoena, as a witness in a hearing on an application for temporary restraining order in the federal court lawsuit filed by certain inmates against the Sheriff. (He was later informed that on the day he was testifying pursuant to the federal court subpoena, one of his supervisors stated to other DSOs in the presence of inmates that "They should fire his ass.")

93. On May 6, 2020, DSO Lewis submitted a memorandum to the sergeants in his chain of command detailing his concerns about the conditions at the Jail and the implications of those conditions for the health and safety of DSOs. He received no response to that memorandum. On June 4, 2020, DSO Lewis submitted to the Dallas County Human Resources Department and

⁴⁰ Tex. Civ. Prac. & Rem. Code § 101.021.

his chain of command an Application for Discretionary Review, with a completed grievance form attached, reiterating and updating the concerns he expressed in his May 6 chain of command memorandum. Later on June 4, 2020, his supervisors provided him with the memorandum from Chief Deputy Fredrick Robinson dated May 13, 2020 which is referred to in Paragraph 58 above. That memorandum, which purported to be addressed to all DSOs, was a response to DSO Lewis' May 6 memorandum. However, neither DSO Lewis nor any of several DSOs he contacted had received or seen the memorandum, and it did not accurately describe the existing conditions at the Jail.

94. In a letter dated June 9, 2020 but delivered by email to the Dallas County Human Resources Department on June 10, 2020, the Sheriff's legal advisor asserted that DSO Lewis' grievance should be dismissed because "there are no improper working conditions...." at the Jail. A mere two days later, DSO Lewis received a June 12, 2020 letter from Dallas County Director of Human Resources/Civil Service informing him that his grievance had been rejected and that he would not receive a civil service hearing.

95. DSO Lewis responded to that June 12 letter, and the June 9 letter by letter dated June 18, 2020, which he addressed to the Human Resources Department and also sent to his chain of command. DSO Lewis detailed again the unsafe and improper working conditions at the Jail, requested that his grievance be investigated and that he be given a civil service hearing, or that his letter be considered his appeal to the Civil Service Commission. Despite the passage of two months, DSO Lewis has received no response.

CLAIMS
First Cause of Action: *Ultra Vires* Conduct Contrary to Statutory Duties
(Injunction)

96. Plaintiff realleges each of the preceding allegations.

97. Under Texas law, the Sheriff is the “keeper of the county jail” and must exercise “supervision and control over the jail...”⁴¹ The Sheriff’s actions and inactions regarding the use of and conditions in the Jail in the midst of a pandemic are *ultra vires*. By her actions and inactions, the Sheriff (a) has created an ongoing “public health nuisance” for DSO Lewis and the Class members under sections 341.011(4) and 341.011(12) of the Texas Health and Safety Code, and the Sheriff has failed to abate that nuisance as required by section 341.012 of that Code; (b) has failed to maintain the Jail “in a clean and sanitary condition in accordance with standards of sanitation and health” under section 351.010(4) of the Texas Local Government Code; and (c) has ignored the requirements that the Jail “shall have the appropriate number of jailers at the facility 24 hours each day” in order to observe detained persons and enforce protective measures like social distancing, that “sufficient staff to include supervisors, jailers and other essential personnel...shall be provided to perform required functions”, and that “[p]reventive maintenance, to include necessary repairs, shall be conducted to ensure a safe, secure, and sanitary facility” under sections 275.1, 275.4, and 279.3 of the Texas Administrative Code. A condition or use of tangible personal or real property by the Sheriff threatens to cause DSO Lewis and the members of the Class personal injury and death

98. Unless the Court immediately enjoins the Sheriff from continuing to operate the Jail such that it constitutes a public health nuisance under sections 341.011(4) and 341.011(12)

⁴¹ Tex. Local Gov. Code § 351.041(a) & (b).

of the Texas Health and Safety Code and violates section 351.010(4) of the Texas Local Govern Code and sections 275.1, 275.4, and 279.3 of the Texas Administrative Code, DSO Lewis and Class members, including those who are medically vulnerable, will suffer irreparable injury from exposure to COVID-19 and severe risk to their health, safety, and lives.

99. The Court should accordingly enter temporary and permanent injunctions awarding Plaintiff and the Class all appropriate injunctive relief necessary to remedy the Sheriff's *ultra vires* conduct in violation of the Texas Health and Safety, Local Government, and Administrative Codes, requiring that the Sheriff must immediately begin and continue to maintain effective preventative measures to control the spread of COVID-19 at the Jail.

**Second Cause of Action: Negligence and Gross Negligence and
Negligence and Gross Negligence Per Se
(Injunction)**

100. Plaintiffs reallege each of the preceding allegations.

101. The Sheriff's actions and inactions regarding DSO Lewis and the Class members, including those who are medically vulnerable, in the use and conditions of the Jail are negligent and grossly negligent, and are negligent and grossly negligent per se, in that they create an unreasonable danger to DSO Lewis, and all DSOs, and violate CDC health and safety rules and guidance that the Sheriff claims to adhere to as a matter of policy, as well as the Texas statutes set forth above, and exhibit an entire want of care and a high degree of recklessness towards the DSOs, including those who are medically vulnerable, who depend on the Sheriff to act in a manner that does not imperil their health, safety, and lives. A condition or use of tangible personal or real property by the Sheriff threatens to cause DSO Lewis and the Class members personal injury and death

102. Unless the Court immediately enjoins the Sheriff from continuing to operate the

Jail in a negligent and grossly negligent manner, DSO Lewis and the Class members, including the medically-vulnerable, will suffer irreparable injury from exposure to COVID-19 and severe risk to their health, safety, and lives.

103. The Court should accordingly enter temporary and permanent injunctions awarding Plaintiff and the Class all appropriate injunctive relief, requiring that the Sheriff must immediately begin and continue to maintain effective preventative measures to control the spread of COVID-19.

CONCLUSION AND PRAYER

The Sheriff's failure to take basic steps to mitigate the extreme danger that the COVID-19 pandemic poses to Detention Service Officers working at the Jail, or who will work there in the future, violates fundamental principles that underlie Texas statutory and common law. Those principles forbid the Sheriff to continue to subject DSO Lewis and the members of the Class to working conditions that gravely endanger their safety, their health, and their lives. Because the Sheriff has refused to remedy those conditions by, among other things, implementing and continuing effective preventative measures to control the spread of COVID-19 in the Jail, the Court should grant Plaintiff and the Class all appropriate relief, including certification of this case as a class action, and issuance of temporary and permanent injunctions, and costs of court.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

EMANUEL LEWIS

EXHIBIT A



TCJS COVID-19 Form A

County: DALLAS
Date: 4/30/2020

Inmates

Number of inmates with active positive test confirmation	<u>171</u>
Number of inmates pending test results	<u>33</u>
Number of inmates quarantined/isolated, not active	<u>819</u>
Number of inmates being treated offsite for active, COVID-19	<u>5</u>
Number of confirmed deaths related to COVID-19	<u>0</u>
Number of suspected deaths related to COVID-19	<u>0</u>

Staff

Number of jailers with active positive test confirmation	<u>33</u>
Number of jailers quarantined/isolated pending test results	<u>23</u>



TCJS COVID-19 Form A

County: DALLAS
Date: 5/31/2020

Inmates

Number of inmates with active positive test confirmation	<u>100</u>
Number of inmates pending test results	<u>7</u>
Number of inmates quarantined/isolated, not active	<u>541</u>
Number of inmates being treated offsite for active, COVID-19	<u>2</u>
Number of confirmed deaths related to COVID-19	<u>0</u>
Number of suspected deaths related to COVID-19	<u>0</u>

Staff

Number of jailers with active positive test confirmation	<u>48</u>
Number of jailers quarantined/isolated pending test results	<u>6</u>



TCJS COVID-19 Form A

County: DALLAS
Date: 7/1/2020

Inmates

Number of inmates with active positive test confirmation	<u>71</u>
Number of inmates pending test results	<u>7</u>
Number of inmates quarantined/isolated, not active	<u>356</u>
Number of inmates being treated offsite for active, COVID-19	<u>2</u>
Number of confirmed deaths related to COVID-19	<u>0</u>
Number of suspected deaths related to COVID-19	<u>0</u>

Staff

Number of jailers with active positive test confirmation	<u>19</u>
Number of jailers quarantined/isolated pending test results	<u>13</u>



TCJS COVID-19 Form A

County: DALLAS
Date: 7/5/2020

Inmates

Number of inmates with active positive test confirmation	<u>80</u>
Number of inmates pending test results	<u>7</u>
Number of inmates quarantined/isolated, not active	<u>402</u>
Number of inmates being treated offsite for active, COVID-19	<u>0</u>
Number of confirmed deaths related to COVID-19	<u>0</u>
Number of suspected deaths related to COVID-19	<u>0</u>

Staff

Number of jailers with active positive test confirmation	<u>19</u>
Number of jailers quarantined/isolated pending test results	<u>14</u>



TCJS COVID-19 Form A

County: DALLAS
Date: 7/13/2020

Inmates

Number of inmates with active positive test confirmation	<u>47</u>
Number of inmates pending test results	<u>13</u>
Number of inmates quarantined/isolated, not active	<u>245</u>
Number of inmates being treated offsite for active, COVID-19	<u>0</u>
Number of confirmed deaths related to COVID-19	<u>2</u>
Number of suspected deaths related to COVID-19	<u>0</u>

Staff

Number of jailers with active positive test confirmation	<u>25</u>
Number of jailers quarantined/isolated pending test results	<u>22</u>



TCJS COVID-19 Form A

County: DALLAS
Date: 7/16/2020

Inmates

Number of inmates with active positive test confirmation	<u>56</u>
Number of inmates pending test results	<u>5</u>
Number of inmates quarantined/isolated, not active	<u>241</u>
Number of inmates being treated offsite for active, COVID-19	<u>3</u>
Number of confirmed deaths related to COVID-19	<u>0</u>
Number of suspected deaths related to COVID-19	<u>2</u>

Staff

Number of jailers with active positive test confirmation	<u>35</u>
Number of jailers quarantined/isolated pending test results	<u>16</u>



TCJS COVID-19 Form A

County: DALLAS
Date: 7/24/2020

Inmates

Number of inmates with active positive test confirmation	<u>60</u>
Number of inmates pending test results	<u>16</u>
Number of inmates quarantined/isolated, not active	<u>344</u>
Number of inmates being treated offsite for active, COVID-19	<u>2</u>
Number of confirmed deaths related to COVID-19	<u>0</u>
Number of suspected deaths related to COVID-19	<u>2</u>

Staff

Number of jailers with active positive test confirmation	<u>39</u>
Number of jailers quarantined/isolated pending test results	<u>11</u>



TCJS COVID-19 Form A

County: DALLAS
Date: 7/28/2020

Inmates

Number of inmates with active positive test confirmation	<u>71</u>
Number of inmates pending test results	<u>17</u>
Number of inmates quarantined/isolated, not active	<u>243</u>
Number of inmates being treated offsite for active, COVID-19	<u>2</u>
Number of confirmed deaths related to COVID-19	<u>0</u>
Number of suspected deaths related to COVID-19	<u>2</u>

Staff

Number of jailers with active positive test confirmation	<u>41</u>
Number of jailers quarantined/isolated pending test results	<u>12</u>



TCJS COVID-19 Form A

County: DALLAS
Date: 8/6/2020

Inmates

Number of inmates with active positive test confirmation	<u>71</u>
Number of inmates pending test results	<u>15</u>
Number of inmates quarantined/isolated, not active	<u>318</u>
Number of inmates being treated offsite for active, COVID-19	<u>0</u>
Number of confirmed deaths related to COVID-19	<u>1</u>
Number of suspected deaths related to COVID-19	<u>1</u>

Staff

Number of jailers with active positive test confirmation	<u>37</u>
Number of jailers quarantined/isolated pending test results	<u>15</u>



TCJS COVID-19 Form A

County: DALLAS
Date: 8/13/2020

Inmates

Number of inmates with active positive test confirmation	<u>61</u>
Number of inmates pending test results	<u>13</u>
Number of inmates quarantined/isolated, not active	<u>410</u>
Number of inmates being treated offsite for active, COVID-19	<u>1</u>
Number of confirmed deaths related to COVID-19	<u>1</u>
Number of suspected deaths related to COVID-19	<u>1</u>

Staff

Number of jailers with active positive test confirmation	<u>33</u>
Number of jailers quarantined/isolated pending test results	<u>4</u>



TCJS COVID-19 Form A

County: DALLAS
Date: 8/18/2020

Inmates

Number of inmates with active positive test confirmation	<u>53</u>
Number of inmates pending test results	<u>12</u>
Number of inmates quarantined/isolated, not active	<u>505</u>
Number of inmates being treated offsite for active, COVID-19	<u>1</u>
Number of confirmed deaths related to COVID-19	<u>1</u>
Number of suspected deaths related to COVID-19	<u>1</u>

Staff

Number of jailers with active positive test confirmation	<u>31</u>
Number of jailers quarantined/isolated pending test results	<u>11</u>



TCJS COVID-19 Form A

County: DALLAS
Date: 8/21/2020

Inmates

Number of inmates with active positive test confirmation	<u>48</u>
Number of inmates pending test results	<u>4</u>
Number of inmates quarantined/isolated, not active	<u>544</u>
Number of inmates being treated offsite for active, COVID-19	<u>0</u>
Number of confirmed deaths related to COVID-19	<u>1</u>
Number of suspected deaths related to COVID-19	<u>0</u>

Staff

Number of jailers with active positive test confirmation	<u>26</u>
Number of jailers quarantined/isolated pending test results	<u>8</u>

DISCOVERY REQUESTS

EMANUEL LEWIS,
on behalf of himself and a class
of certain Dallas County Detention
Service Officers

Plaintiff,

v.

DALLAS COUNTY SHERIFF MARIAN
BROWN, in her official capacity,

Defendant.

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IN THE DISTRICT COURT

___ JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**PLAINTIFF’S REQUESTS FOR DISCLOSURES, FIRST REQUESTS
FOR ADMISSIONS, FIRST SET OF INTERROGATORIES,
AND FIRST REQUESTS FOR PRODUCTION**

Plaintiff Emanuel Lewis (“Plaintiff”) serves Plaintiff’s Requests for Disclosure pursuant to Texas Rule of Civil Procedure 194, First Requests for Admissions pursuant to Texas Rule of Civil Procedure 198, First Set of Interrogatories pursuant to Texas Rule of Civil Procedure 197, and First Requests for Production pursuant to Texas Rule of Civil Procedure 196. Defendant Dallas County Sheriff Marian Brown, in her official capacity, is to serve responses to the requests for disclosures, requests for admissions, answers to the interrogatories, and responses to the document requests by the earlier of the deadline set by the foregoing rules or by any order of the Court in this action.

Definitions and Instructions

The following definitions and instructions apply to each of the requests for admission below:

1. “Plaintiff” refers to Emanuel Lewis.
2. “Jail” means Dallas County’s Lew Sterrett Justice Center, including the North Tower,

South Tower, and West Tower.

3. “Inmates” means individuals who have been detained in the Jail at any time from December 1, 2019 up to the date you respond to these discovery requests or serve any supplemental response to these requests.

4. “Sheriff”, “you” and “your” refer to Dallas County Sheriff Marian Brown, in her official capacity. The Sheriff is responsible for the day-to-day operations of the Dallas County Jail and has the custody, control, and charge of the Jail and Inmates.

5. "Dallas County" means the governmental subdivision created under the laws of the State of Texas. Dallas County owns and operates the Jail.

6. "COVID-19" means coronavirus disease 2019, the disease caused by the novel coronavirus called SARS-CoV-2.

7. “DSOs” means Detention Service Officers at the Jail at any time from December 1, 2019 up to the date up to the date you respond to these discovery requests or serve any supplemental response to these requests.

8. “Jail Staff” means Dallas County Sheriff’s Department staff members, other than DSOs, who have regularly worked in the Dallas County Jail at any time from December 1, 2019 up to the date you respond to these discovery requests or serve any supplemental response to these requests, including deputy sheriffs, sergeants, lieutenants, captains, assistant chief deputies, chief deputies, and support personnel.

9. “CDC Interim Guidance” means the Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities issued by the Centers for Disease Control and Prevention on or about March 23, 2020 and updated on or about July 14, 2020.

10. “Document” and “documents” have the same meaning as they do under Texas Rule of Civil Procedure 192.3(b). These Requests use the terms “document” and documents in their broadest sense. Both terms include all written, printed, typed, recorded, or graphic matter of every kind and description, both originals and copies, and all attachments and appendices thereto. Both terms also include all agreements, contracts, communications, correspondence, letters, electronic mail, teletypes, telegrams, telexes, messages, memoranda, records, reports, books, summaries or other records of telephone conversations or interviews, summaries or other records of personal conversations, minutes or summaries or other records of meetings and conferences, summaries or other records of negotiations, other summaries, diaries, diary entries, calendars, appointment books, time records, instructions, work assignments, visitor records, forecasts, statistical data, statistical statements, financial statements, worksheets, work papers, drafts, graphs, maps, charts, tables, accounts, analytical records, consultants’ reports, appraisals, bulletins, brochures, pamphlets, circulars, trade letters, press releases, notes, notices, marginal notations, notebooks, telephone bills or records, bills, statements, records of obligations and expenditures, invoices, lists, journals, advertising, recommendations, files, printouts, compilations, tabulations, purchase orders, receipts, sale orders, confirmations, checks, canceled checks, letters of credit, envelopes or folders or similar containers, vouchers, analyses, studies, surveys, transcripts of hearings, transcripts of testimony, expense reports, microfilm, microfiche, articles, speeches, tape or disc recordings, sound recordings, video recordings, film, tape, photographs, punch cards, programs and data compilations from which information can be obtained (including matter used in data processing), and other printed, written, handwritten, typewritten, recorded, stenographic, computer-generated, computer-stored, or electronically stored matter, however and by whomever produced, prepared, reproduced, disseminated, or made. Both terms further include all copies of

documents by whatever means made, except that where a document is identified or produced, identical copies that do not contain any markings, additions, or deletions different from the original need not be separately produced. You must produce all documents in your possession, custody, or control.

11. “Communication” and “communications” mean the transmittal of information (whether in the form of facts, ideas, inquiries, or otherwise) and includes every manner or means of statement, declaration, utterance, notation, disclaimer, transfer, or exchange of information of any nature whatsoever, by or to whomever, whether oral, in writing, or in some other form and whether face to face, by telephone, text message, mail, facsimile, email, social media, personal delivery, or otherwise, including correspondence, conversations, dialogue, discussions, interviews, consultations, agreements, and other understandings.

12. “Relating to” includes concerning, referring to, regarding, dealing with, discussing, involving, mentioning, arising from, and otherwise having a logical connection to or with a person, subject, event, matter, concept, document, place, or thing.

13. “Person” and “persons” include natural persons and entities, including partnerships, firms, associations, joint ventures, corporations, limited liability companies, and any other form of business organization or arrangement, as well as governmental or quasi- governmental agencies.

14. The conjunction "and" includes "or", and the conjunction "or" includes "and".

15. "Including" means "including, without limitation".

16. Unless otherwise specified below, the time period covered by these discovery requests is December 31, 2019 up to the date you respond to these requests or serve any supplemental response to these requests.

17. You have a duty to supplement your responses to this discovery under the Texas Rules of

Civil Procedure. You must make supplementation reasonably promptly after you discover the need for supplementation and in any event at least 30 days before trial in this case.

Requests for Disclosures

Plaintiff requests that the Sheriff disclose all matters set forth in Rule 194.2 (a)-(l).

First Requests for Admissions

Request for Admission No. 1

Dallas County owns and operates the Dallas County Jail.

Request for Admission No. 2

The Sheriff is the keeper of the Jail under section 351.041(a) of the Texas Local Government Code.

Request for Admission No. 3

The Sheriff must always exercise supervision and control over the Jail under section 351.041(a) of the Texas Local Government Code.

Request for Admission No. 4

The Sheriff is responsible for the physical condition of the Jail.

Request for Admission No. 5

The Sheriff has a mandatory duty under section 341.012(a) of the Texas Health and Safety Code to abate any public health nuisance existing in the Jail as soon as the Sheriff knows that the nuisance exists.

Request for Admission No. 6

The Sheriff has a mandatory duty under section 351.010(4) of the Texas Local Government

Code to maintain the Jail in a clean and sanitary condition in accordance with standards of sanitation and health.

Request for Admission No. 7

The Jail is a public health nuisance if it is a place that is a possible and probable medium of COVID-19 transmission to or between humans.

Request for Admission No. 8

The Jail is a place in which COVID-19 has been transmitted to or between Inmates.

Request for Admission No. 9

The Jail is a place in which COVID-19 has been transmitted to or between Inmates and DSOs.

Request for Admission No. 10

The Jail is a place in which COVID-19 has been transmitted to or between DSOs.

Request for Admission No. 11

The Jail is a place in which COVID-19 has been transmitted to or between Inmates and Jail Staff.

Request for Admission No. 12

As of August 24, 2020, the Sheriff had not provided a copy of the CDC Interim Guidance to DSOs.

Request for Admission No. 13

Social distancing should be a cornerstone of any strategy to control the spread of COVID-19 in the Dallas County Jail.

Request for Admission No. 14

There currently are empty pods, tanks and cells in the Jail.

Request for Admission No. 15

There currently are empty cells or other facilities at the George Allen Courthouse that could hold up to 800 Inmates.

Request for Admission No. 16

A feasible way to achieve social distancing between Inmates in the Jail is to move Inmates being held in relatively crowded pods and tanks to pods and tanks that are relatively less crowded or not being currently used.

Request for Admission No. 17

The Sheriff has a mandatory duty under section 275.1 of the Texas Administrative Code to have the appropriate number of jailers at the Jail 24 hours each day.

Request for Admission No. 18

The Sheriff has a mandatory duty under section 275.4 of the Texas Administrative Code to provide sufficient staff at the Jail, to include supervisors, jailers and other essential personnel, to perform required functions.

Request for Admission No. 19

Nurses are essential personnel as that term is used in section 275.4 of the Texas Administrative Code.

Request for Admission No. 20

The Sheriff has a mandatory duty under section 279.3 of the Texas Administrative Code to conduct necessary repairs at the Jail, to include preventive maintenance, to ensure a safe, secure, and sanitary facility.

Request for Admission No. 21

The Sheriff has a mandatory duty under section 273.3 of the Texas Administrative Code to follow all medical instructions of designated physicians in the Dallas County Jail.

Request for Admission No. 22

As of August 21, 2020, the total number of Inmates with confirmed cases of COVID-19 was 682.

Request for Admission No. 23

There are Inmates currently in the Jail who have not been tested for COVID-19.

Request for Admission No. 24

On average, no more than 20 Inmates have been tested per day since March 25, 2020.

Request for Admission No. 25

There have been more than 50 DSOs with positive test confirmation for COVID-19.

Request for Admission No. 26

There have been more than 100 DSOs with positive test confirmation for COVID-19.

Request for Admission No. 27

There have been more than 200 DSOs with positive test confirmation for COVID-19.

Request for Admission No. 28

As of August 24, 2020, no DSO has received a test for COVID-19 at the Jail.

Request for Admission No. 29

Jail Staff have tested positive for COVID-19.

Request for Admission No. 30

As of August 24, 2020, no member of the Jail Staff has received a test for COVID-19 at the Jail.

Request for Admission No. 31

Inmates who have not tested positive for COVID-19 have been placed in a living unit with one or more Inmates who have tested positive for COVID-19.

Request for Admission No. 32

The current conditions in the Jail are such that Inmates cannot maintain a minimum distance of six feet from all other Inmates at all times.

Request for Admission No. 33

The Jail is not currently in full compliance with the CDC Interim Guidance.

Request for Admission No. 34

COVID-19 poses a serious threat to the health and life of DSOs while they are on duty at the Jail.

First Set of Interrogatories

Interrogatory No. 1

State (a) the total number of DSOs who have had confirmed cases of COVID-19; (b) the total number of DSOs whom you believe have recovered from confirmed cases of COVID-19; (c) the total number of Jail Staff who have had confirmed cases of COVID-19; (d) the total number of Jail Staff whom you believe have recovered from confirmed cases of COVID-19; (e) the total number of DSOs who have submitted claims for worker's compensation benefits after testing positive for COVID-19; (f) the total number of DSOs who have submitted claims for worker's compensation benefits after testing positive for COVID-19.

Interrogatory No. 2

Identify by stating the name, address, and telephone number of each designated physician

for the Jail, as that term is used in section 273.3 of the Texas Administrative Code, at any time from January 1, 2020 to the present, and describe in detail the advice any such physician provided to the Sheriff, any member of the Jail Staff or any other employee or office holder of Dallas County regarding COVID-19 at the Jail.

Interrogatory No. 3

For each Request for Admission above that you did not admit, state the factual basis for your failure to admit the request.

First Requests for Production

Request for Production No. 1

All infectious disease policies for the Jail.

Request for Production No. 2

All written policies adopted or implemented by the Sheriff, the Jail, or Dallas County at any time regarding management of the COVID-19 pandemic as it relates to the Jail, Inmates, DSOs, or Jail Staff.

Request for Production No. 3

All documents that relate to COVID-19 and have been provided to DSOs, Jail Staff, or Inmates at any time, and all documents showing that such documents were so provided.

Request for Production No. 4

All documents that have been used to train DSOs, Jail Staff or Inmates at any time regarding COVID-19.

Request for Production No. 5

Documents sufficient to show the horizontal dimensions of and square footage in each room in each pod and tank in the Jail and in the George Allen Courthouse, and the horizontal

dimensions of and square footage in each cell in each pod and tank in the Jail and in the George Allen Courthouse.

Request for Production No. 6

Documents relating to the number of Inmates housed in each pod and tank in the Jail on a daily basis from March 1, 2020 to the date of your response or any supplemental response.

Request for Production No. 7

Documents showing the overtime work performed at the Dallas County Jail on each day and shift since January 1, 2020 (a) by DSOs and (b) by Jail Staff, including the name of each person who performed the overtime work, the physical area to which the person was assigned to perform the work, the number of overtime hours the person performed, and whether the overtime work was mandatory or voluntary.

Request for Production No. 8

All videotape records showing whether any Inmates, DSOs or Jail Staff practiced social distancing in pods, tanks, cells, and other areas in the Jail since March 25, 2020.

Request for Production No. 9

Documents reflecting or relating to communications (including emails, text messages, and other electronic messaging methods), projections, estimates, studies, graphs, charts, spreadsheets, memos, reports, models, or calculations relating to the actual or potential impact of COVID-19 on Inmates, DSOs, Jail Staff, or the Jail at any time.

Request for Production No. 10

All documents reflecting or relating to communications (including emails, text messages, and other electronic messaging methods), projections, estimates, studies, graphs, charts,

spreadsheets, memos, reports, models, or calculations relating to any of the following: (a) COVID-19 testing protocols for Inmates, including who and how many are to be tested; and (b) whether or not to conduct COVID-19 testing of DSOs and/or Jail Staff.

Request for Production No. 11

All documents relating to whether the Sheriff, the Jail, or Dallas County is implementing or enforcing the CDC's Interim Guidance.

Request for Production No. 12

All documents (including emails, text messages, and other electronic messaging methods) relating to any of the following as referred to in Plaintiff's Original Petition in this action: (a) Plaintiff's April 21, 2020 federal court testimony; (b) Plaintiff's May 6, 2020 memo to his chain of command; (c) the memo dated May 13, 2020 from Chief Deputy Fredrick Robinson, including all documents used or referred to in the preparation of that memo; (d) the "folder" in the Jail into which the May 13, 2020 memo was placed for DSOs; (e) Plaintiff's June 4 application for discretionary review and grievance; (f) the June 9, 2020 letter from the Sheriff's legal advisor to the Dallas County Human resources department, including all documents used or referred to in the preparation of that letter; (g) the June 12, 2020 letter to the Plaintiff from Dallas County Human Resources Director; and (h) Plaintiff's June 18, 2020 letter to the Dallas County Human Resources Department.

Request for Production No. 13

Documents sufficient to show the factual basis of the statistics you, the Jail or Dallas County communicate to the Texas Commission on Jail Standards that are in turn reflected in the type of reports attached as Exhibit A to Plaintiff's Original Petition in this action.

Request for Production No. 14

Documents sufficient to show (a) the total number of DSOs who have had confirmed cases of COVID-19; (b) the total number of DSOs whom you believe have recovered from confirmed cases of COVID-19; (c) the total number of Jail Staff who have had confirmed cases of COVID-19; (d) the total number of Jail Staff whom you believe have recovered from confirmed cases of COVID-19; (e) the total number of DSOs who have submitted claims for worker's compensation benefits after testing positive for COVID-19; (f) the total number of DSOs who have submitted claims for worker's compensation benefits after testing positive for COVID-19.

Request for Production No. 15

All documents (including emails, text messages, and other electronic messaging methods) relating to any instructions about COVID-19 from each designated physician for the Jail, as that term is used in section 273.3 of the Texas Administrative Code.

Request for Production No. 16

All documents you used or relied on to answer any of the interrogatories in Plaintiff's First Set of Interrogatories above.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF
EMANUEL LEWIS**

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

John Eichman on behalf of John Eichman
Bar No. 6494800
john@eichmanfirm.com
Envelope ID: 45648642
Status as of 8/25/2020 11:10 AM CST

Case Contacts

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