

DECLARATION OF PAUL B. GREEN

I, PAUL B. GREEN, hereby declare and state as follows:

1. I am an Assistant United States Attorney for the Central District of California, and am one of the counsel defending Respondents in the above-captioned action. I am fully familiar with the facts set forth herein and, if called as a witness, I could and would testify competently thereto.

2. On July 7, 2020, the Court conducted oral argument on Petitioners' *Ex Parte* Application for Temporary Restraining Order (the "TRO Application") and *Ex Parte* Application for Provisional Class Certification.

3. During oral argument, the Court indicated that it would not consider new evidence or additional submissions (including a notice of supplemental authority for cases that post-dated the briefing on the TRO Application) in connection with the TRO Application unless the parties stipulated to additional submissions.

4. On July 7, 2020, after the conclusion of oral argument, Petitioners' counsel contacted Respondents' counsel by e-mail stating, "at this stage, we intend to allow the Court to proceed with the TRO ruling on the papers." Soon after, in reply, I e-mailed Petitioners' counsel to request a stipulation to allow Respondents to file a notice of supplemental authority including *Swain v. Junior*, 2020 WL 3167628 (11th Cir. Jun. 15, 2020). At 4:16 p.m., Petitioners' counsel responded stating Petitioners would not stipulate to allowing supplemental authority to be submitted. I attach a true and correct copy of this e-mail correspondence as Exhibit 1 to this Declaration and incorporate it herein by this reference.

5. On July 8, 2020 at 10:09 a.m., Petitioners' counsel requested that Respondents stipulate to file a June 16, 2020 letter from Felix Garcia and a declaration of James Threath. Petitioners' counsel indicated that as part of this stipulation, Petitioners would permit Respondents to file a notice of supplemental authority including *Swain* provided that Petitioners could include a paragraph to distinguish *Swain*. I attach a true and correct copy of this 10:09 a.m. e-mail as Exhibit 2 to this

1 Declaration and incorporate it herein by this reference. At 11:01 a.m., before
2 Respondents had responded to Petitioners' counsel, she e-mailed the courtroom deputy
3 stating that the parties are still meeting and conferring concerning a stipulation. I attach a
4 true and correct copy of this 11:01 a.m. e-mail as Exhibit 3 to this Declaration and
5 incorporate it herein by this reference.

6 6. At 11:04 a.m., I e-mailed Petitioners' counsel stating Respondents'
7 objections to Petitioners' proposal. At 11:11 a.m., Petitioners' counsel e-mailed me
8 indicating that Petitioners would be filing a new declaration without a stipulation. I
9 attach a true and correct copy of this 11:11 a.m. email as Exhibit 4 to this Declaration
10 and incorporate it herein by this reference.

11 7. On July 8, 2020 at 11:28, a.m., I e-mailed the courtroom deputy to state that
12 the parties would not be stipulating to the filing of additional materials.

13 8. On July 8, 2020 at 1:59 p.m., Petitioners filed their Supplemental Filing in
14 support of their TRO Application. (ECF No. 39.)

15 I declare under penalty of perjury under the laws of the United States that the
16 foregoing is true and correct.

17 Executed on July 8, 2020 at Irvine, California.

18
19 
20 _____
21 PAUL B. GREEN
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24
25
26
27
28

From: Naeun Rim <nrim@birdmarella.com>
Sent: Tuesday, July 7, 2020 4:16 PM
To: Green, Paul (USACAC)
Cc: Staub, Keith (USACAC); Sara Norman; Yang, Jasmin (USACAC); Han, Chung (USACAC); Thayer, Damon (USACAC); Don Specter; Rita Lomio; Christopher J. Lee; Jimmy Threatt; Kate S. Shin; Patrick Booth; Peter Bibring; Peter Eliasberg; Shoshana E. Bannett
Subject: Re: Rule 706 expert/inspector -- meet and confer correspondence

Paul,

We will not stipulate to Swain based on the Court's comments today.

We are available at 3 pm.

Naeun

On Jul 7, 2020, at 5:26 PM, Green, Paul (USACAC) <Paul.Green@usdoj.gov> wrote:

Naeun,

Thank you for your email. Please let us know if Petitioners will stipulate to submit to Judge Marshall Swain v. Junior, –F.3d–, 2020 WL 3167628 (11th Cir. Jun. 15, 2020), as supplemental authority for consideration with the TRO application.

As for the meet and confer, we have a conflict tomorrow at 1 pm PT. We are available at 3pm tomorrow. Please let us know if that works.

One issue raised in your correspondence below is the BOP interrogatory responses in Wilson. We are happy to meet and confer on those. However, to help make that discussion more productive, we ask that Petitioners send us written correspondence, identifying each issue and/or discovery request that Petitioners contend is incomplete, further to Local Rule 37-1.

Regards,
Bart

Paul B. Green

Assistant United States Attorney
United States Attorney's Office for the Central District of California
300 N. Los Angeles St., Suite 7516, Los Angeles, CA 90012
Office: 213-894-0805, Cell: 213-247-4334
Email: Paul.Green@usdoj.gov

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Subject: RE: Rule 706 expert/inspector

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As to the Lompoc proceeding, at this stage, we intend to allow the Court to proceed with the TRO ruling on the papers. If you'd like to discuss further, please let me know. We ask that the meet and confer tomorrow also include the topics of discovery and briefing in Lompoc.

Naeun Rim

Principal

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F: 310.201.2110

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Drooks, Lincenberg & Rhow, P.C.

1875 Century Park East, 23rd Floor

Los Angeles, California 90067-2561

www.BirdMarella.com

From: Naeun Rim

Sent: Monday, July 6, 2020 11:24 AM

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Subject: RE: Rule 706 expert/inspector

Keith,

I understand you are declining to meet and confer with us to discuss any issues we might be able to resolve about the Lompoc matter prior to the hearing tomorrow. Please propose a range of times for a meet and confer call on Wednesday as to Terminal Island. Before or during our meet and confer call, please advise as to the following:

- Are you rejecting all of our proposed experts for the site visit? If so, please provide the basis for your objections.
- Are you rejecting our proposal to compromise by having your proposed NP visit the site along with one of our proposed experts? Please provide the basis for your objection.
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compromise and have received no response, so we will have to seek relief from the Court soon unless we are able to come to an agreement on the Wednesday call.

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Subject: RE: Rule 706 expert/inspector

We intend to comply with Judge Fitzgerald's instruction regarding a choice of one inspector at Terminal Island. We can meet and confer with you Wednesday afternoon about discovery. Thanks.

KEITH M. STAUB

Assistant United States Attorney

Deputy Chief, General Civil Section

300 N. Los Angeles Street, Suite 7516

Los Angeles, CA 90012

T: (213) 894-7423 | F: (213) 894-7819

keith.staub@usdoj.gov

<image001.jpg>

From: Naeun Rim <nrim@birdmarella.com>

Sent: Friday, July 3, 2020 11:39 AM

To: Staub, Keith (USACAC) <KStaub@usa.doj.gov>; Sara Norman <snorman@prisonlaw.com>; Green, Paul (USACAC) <PGreen1@usa.doj.gov>; Yang, Jasmin (USACAC) <JYang2@usa.doj.gov>; Han, Chung (USACAC) <CHan1@usa.doj.gov>; Thayer, Damon (USACAC) <DThayer1@usa.doj.gov>

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<PBibring@aclusocal.org>; Peter Eliasberg <PEliasberg@aclusocal.org>; Shoshana E. Barnett <sbannett@birdmarella.com>

Subject: RE: Rule 706 expert/inspector

Keith,

We would like to meet and confer on Monday about a number of outstanding items. Please let me know if you are available 1:30 p.m. or 4 p.m. to discuss the below.

- (1) Terminal Island Site Visit – I understand that Sara conferred with you on Monday about pairing your proposed expert with one of ours. To date, we have not heard from you on this. Please let us know the status, as the Court clearly expects us to move this along.
- (2) Terminal Island Interrogatories – Respondents did not respond to portions of some of the interrogatories. We would like to discuss these with you to avoid having to bring an ex parte application to compel.
- (3) Lompoc TRO Hearing – We would like to meet and confer prior to the hearing about whether we can come to an agreement on how the case should progress. We propose that we agree to the same arrangement we came to in Terminal Island to avoid unnecessary briefing:
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From: Staub, Keith (USACAC) <Keith.Staub@usdoj.gov>

Sent: Friday, June 26, 2020 1:33 PM

To: Sara Norman <snorman@prisonlaw.com>; Green, Paul (USACAC) <Paul.Green@usdoj.gov>; Yang, Jasmin (USACAC) <Jasmin.Yang@usdoj.gov>; Han, Chung (USACAC) <Chung.Han@usdoj.gov>; Thayer, Damon (USACAC) <Damon.Thayer@usdoj.gov>

Cc: Naeun Rim <nrim@birdmarella.com>; Don Specter <dspecter@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Christopher J. Lee <cleee@birdmarella.com>; Jimmy Threatt <jthreatt@birdmarella.com>; Kate S. Shin <kshin@birdmarella.com>; Patrick Booth <patrick@prisonlaw.com>; Peter Bibring <PBibring@aclusocal.org>; Peter Eliasberg <PEliasberg@aclusocal.org>; Shoshana E. Barnett <sbannett@birdmarella.com>

Subject: RE: Rule 706 expert/inspector

Respondents offer Linda Follenweider. Her CV is attached. We are still considering others but for now please prepare a joint list to submit to court today for our approval.

KEITH M. STAUB

Assistant United States Attorney
Deputy Chief, General Civil Section
300 N. Los Angeles Street, Suite 7516
Los Angeles, CA 90012
T: (213) 894-7423 | F: (213) 894-7819
keith.staub@usdoj.gov

<image001.jpg>

From: Sara Norman <snorman@prisonlaw.com>

Sent: Thursday, June 18, 2020 1:12 PM

To: Staub, Keith (USACAC) <KStaub@usa.doj.gov>; Green, Paul (USACAC) <PGreen1@usa.doj.gov>; Yang, Jasmin (USACAC) <JYang2@usa.doj.gov>

Cc: Naeun Rim <nrim@birdmarella.com>; Don Specter <dspecter@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Christopher J. Lee <clee@birdmarella.com>; Jimmy Threatt <jthreatt@birdmarella.com>; Kate S. Shin <kshin@birdmarella.com>; Patrick Booth <patrick@prisonlaw.com>; Peter Bibring <PBibring@aclusocal.org>; Peter Eliasberg <PEliasberg@aclusocal.org>; Shoshana E. Barnett <sbarnett@birdmarella.com>

Subject: Rule 706 expert/inspector

Dear Keith, Bart, and Jasmin,

We have three names to propose for a Rule 706 expert/inspector to advise the Court. All three have said that they are available to do the site inspection in the next few weeks.

Dr. Fred Rottnek – Dr. Rottnek was the medical director of the St. Louis County jails from 2001-2016 and is currently on the faculty of the Saint Louis University School of Medicine (CV attached). He has served as an expert in numerous Covid cases in corrections facilities; I attach a declaration from one case (*Belton v. Gautreaux*), in which he served as plaintiffs' expert. He has never been retained as an expert by any of plaintiffs' counsel.

Dr. Michael Rowe – Dr. Rowe provided medical care at San Quentin for more than a decade and acted as both the Chief Physician and Surgeon and Chief Medical Executive at that prison (CV attached). He has been appointed by the court as a Rule 706 expert in *Mays v. Sacramento*, a case in which the Prison Law Office represents the plaintiff class (see attached order). He has never been retained as an expert by any of plaintiffs' counsel.

Dr. Peter Chin-Hong – Dr. Chin-Hong is Associate Dean and Professor of Medicine at UC San Francisco, where he specializes in treating infectious diseases. (See <https://profiles.ucsf.edu/peter.chin-hong>.) He directs the immunocompromised host infectious disease program at UCSF and has emerged as an expert on Covid-19. He has never been retained as an expert by any of plaintiffs' counsel.

Please let us know your response.

--Sara

Sara Norman, Managing Attorney
Pronouns: she/her
Prison Law Office
1917 Fifth St.
Berkeley, CA 94710
(510) 280-2621
www.prisonlaw.com

From: Naeun Rim <nrim@birdmarella.com>
Sent: Wednesday, July 8, 2020 10:09 AM
To: Green, Paul (USACAC)
Cc: Staub, Keith (USACAC); Sara Norman; Yang, Jasmin (USACAC); Han, Chung (USACAC); Thayer, Damon (USACAC); Don Specter; Rita Lomio; Christopher J. Lee; Jimmy Threatt; Kate S. Shin; Patrick Booth; Peter Bibring; Peter Eliasberg; Shoshana E. Barnett
Subject: RE: Rule 706 expert/inspector -- meet and confer correspondence
Attachments: Letter from Felix 6.16.2020.pdf; Translated Letter from Felix Garcia.pdf; Lompoc - JST dec in further support of TRO (3).DOCX

Bart (apologies for calling you Paul),

We have some updated facts that respond to the Court's questions about the whereabouts of the petitioners. They are contained in the attached declaration. If the government agrees to allow us to submit the above declaration, we can also agree to the government submitting Swain, provided that we can include a paragraph distinguishing the case. Please let me know as soon as possible whether the government would agree to that, and I would suggest that we promptly email the Court to let her know the stipulation will be filed before the end of the day.

In a separate email, we will set forth the incomplete interrogatory responses in Terminal Island.

Naeun Rim

Principal

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Sent: Friday, June 26, 2020 1:33 PM

To: Sara Norman <snorman@prisonlaw.com>; Green, Paul (USACAC) <Paul.Green@usdoj.gov>; Yang, Jasmin (USACAC) <Jasmin.Yang@usdoj.gov>; Han, Chung (USACAC) <Chung.Han@usdoj.gov>; Thayer, Damon (USACAC) <Damon.Thayer@usdoj.gov>

Cc: Naeun Rim <nrim@birdmarella.com>; Don Specter <dspecter@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Christopher J. Lee <cleee@birdmarella.com>; Jimmy Threatt <jthreatt@birdmarella.com>; Kate S. Shin <kshin@birdmarella.com>; Patrick Booth <patrick@prisonlaw.com>; Peter Bibring <PBibring@aclusocal.org>; Peter Eliasberg <PEliasberg@aclusocal.org>; Shoshana E. Barnett <sbarnett@birdmarella.com>

Subject: RE: Rule 706 expert/inspector

Respondents offer Linda Follenweider. Her CV is attached. We are still considering others but for now please prepare a joint list to submit to court today for our approval.

KEITH M. STAUB

Assistant United States Attorney
Deputy Chief, General Civil Section
300 N. Los Angeles Street, Suite 7516
Los Angeles, CA 90012
T: (213) 894-7423 | F: (213) 894-7819
keith.staub@usdoj.gov

<image001.jpg>

From: Sara Norman <snorman@prisonlaw.com>

Sent: Thursday, June 18, 2020 1:12 PM

To: Staub, Keith (USACAC) <KStaub@usa.doj.gov>; Green, Paul (USACAC) <PGreen1@usa.doj.gov>; Yang, Jasmin (USACAC) <JYang2@usa.doj.gov>

Cc: Naeun Rim <nrim@birdmarella.com>; Don Specter <dspecter@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Christopher J. Lee <cleee@birdmarella.com>; Jimmy Threatt <jthreatt@birdmarella.com>; Kate S. Shin <kshin@birdmarella.com>; Patrick Booth <patrick@prisonlaw.com>; Peter Bibring <PBibring@aclusocal.org>; Peter Eliasberg <PEliasberg@aclusocal.org>; Shoshana E. Barnett <sbarnett@birdmarella.com>

Subject: Rule 706 expert/inspector

Dear Keith, Bart, and Jasmin,

We have three names to propose for a Rule 706 expert/inspector to advise the Court. All three have said that they are available to do the site inspection in the next few weeks.

Dr. Fred Rottnek – Dr. Rottnek was the medical director of the St. Louis County jails from 2001-2016 and is currently on the faculty of the Saint Louis University School of Medicine (CV attached). He has served as an expert in numerous Covid cases in corrections facilities; I attach a declaration from one case (*Belton v. Gautreaux*), in which he served as plaintiffs' expert. He has never been retained as an expert by any of plaintiffs' counsel.

Dr. Michael Rowe – Dr. Rowe provided medical care at San Quentin for more than a decade and acted as both the Chief Physician and Surgeon and Chief Medical Executive at that prison (CV attached). He has been appointed by the court as a Rule 706 expert in *Mays v. Sacramento*, a case in which the Prison Law Office represents the plaintiff class (see attached order). He has never been retained as an expert by any of plaintiffs' counsel.

Dr. Peter Chin-Hong – Dr. Chin-Hong is Associate Dean and Professor of Medicine at UC San Francisco, where he specializes in treating infectious diseases. (See <https://profiles.ucsf.edu/peter.chin-hong>.) He directs the immunocompromised host infectious disease program at UCSF and has emerged as an expert on Covid-19. He has never been retained as an expert by any of plaintiffs' counsel.

Please let us know your response.

--Sara

Sara Norman, Managing Attorney
Pronouns: she/her
Prison Law Office
1917 Fifth St.
Berkeley, CA 94710
(510) 280-2621
www.prisonlaw.com

From: Naeun Rim <nrim@birdmarella.com>
Sent: Wednesday, July 8, 2020 11:01 AM
To: Yolanda Skipper; Rebekah A. Flores
Cc: Green, Paul (USACAC); Staub, Keith (USACAC); Yang, Jasmin (USACAC); Han, Chung (USACAC); Thayer, Damon (USACAC); Shoshana E. Barnett; 'dspecter@prisonlaw.com'; Kate S. Shin; PBibring@aclusocal.org; Dorothy Wolpert; Jimmy Threatt; Oliver Rocos; Terry W. Bird
Subject: RE: CV 20-4450-CBM(PVCx): Yonnedil Carror Torres et al v. Louis Milusnic et al

Good morning Yolanda. The parties are still meeting and conferring about whether we will file a stipulation regarding a narrow set of additional facts and law for the Court to consider for the TRO. We will update the Court by 5 p.m. as to the status.

Naeun Rim

Principal

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F: 310.201.2110

E: nrim@birdmarella.com

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Drooks, Lincenberg & Rhow, P.C.**

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Los Angeles, California 90067-2561

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From: Yolanda Skipper <Yolanda_Skipper@cacd.uscourts.gov>
Sent: Monday, July 6, 2020 4:07 PM
To: Rebekah A. Flores <rflores@birdmarella.com>
Cc: Naeun Rim <nrim@birdmarella.com>; Paul.Green@usdoj.gov; Keith.Staub@usdoj.gov; Jasmin.Yang@usdoj.gov; Chung.Han@usdoj.gov; Damon.Thayer@usdoj.gov; Shoshana E. Barnett <sbarnett@birdmarella.com>; 'dspecter@prisonlaw.com' <dspecter@prisonlaw.com>; Kate S. Shin <kshin@birdmarella.com>; PBibring@aclusocal.org
Subject: RE: CV 20-4450-CBM(PVCx): Yonnedil Carror Torres et al v. Louis Milusnic et al

Good Afternoon Counsel,

The Court has scheduled a telephonic conference call regarding RE Ex parte application for Restraining Order and Ex parte application for provisional class [22] for Tuesday, July 7, 2020 @ 11:00 a.m. Below are your instructions for you to call in and attend the phone call.

Audio Conference Information:

USA Toll-Free Number: (877) 848-7030

Access Code: 1347573

**After counsel calls in and enters the access code, wait for the Court to enter the conference call.
Please call at least 5-10 minutes prior to the hearing.**



YOLANDA SKIPPER
CRTROOM DEPUTY TO TERRY J. HATTER JR./CONSUELO B. MARSHALL
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
350 West 1st Street STE 4311 Room 4176
Los Angeles CA, 90012-4565
Office: 213-894-5276-TJH/ 213-894-5288-CBM Fax: 213-894-0249
Email: yolanda_skipper@cacd.uscourts.gov

From: Rebekah A. Flores <rfflores@birdmarella.com>

Sent: Monday, July 6, 2020 12:37 PM

To: Yolanda Skipper <Yolanda_Skipper@cacd.uscourts.gov>

Cc: nrim_birdmarella.com <nrim@birdmarella.com>; Paul.Green@usdoj.gov; Keith.Staub@usdoj.gov; Jasmin.Yang@usdoj.gov; Chung.Han@usdoj.gov; Damon.Thayer@usdoj.gov; Shoshana E. Bannett <sbannett@birdmarella.com>; 'dspecter@prisonlaw.com' <dspecter@prisonlaw.com>; Kate S. Shin <kshin@birdmarella.com>; PBibring@aclusocal.org

Subject: RE: CV 20-4450-CBM(PVCx): Yonnedil Carror Torres et al v. Louis Milusnic et al

Good afternoon Ms. Skipper,

Appearing tomorrow for Plaintiffs are:

Naeun Rim	(678) 492-6707
Dorothy Wolpert	(310) 562-0459
Shoshana Bannett	(973) 271-8726
Chris Lee	(617) 631-2122
Oliver Rocos	(310) 871-2490
Kate Shin	(310) 433-6481
Jimmy Threatt	(650) 384-5319
Don Spector	(510) 778-4655

Please advise if anything further is needed.

Respectfully,

Rebekah A. Flores

*Assistant to: Naeun Rim, Naomi S. Solomon,
Julia B. Cherlow, and Darren L. Patrick*

O: 310.201.2100

F: 310.201.2110

E: rfflores@birdmarella.com

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Los Angeles, California 90067-2561

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Begin forwarded message:

From: Yolanda Skipper <Yolanda_Skipper@cacd.uscourts.gov>

Date: July 6, 2020 at 11:52:37 AM PDT

To: "Green, Paul (USACAC)" <Paul.Green@usdoj.gov>

Cc: "Staub, Keith (USACAC)" <Keith.Staub@usdoj.gov>, "Yang, Jasmin (USACAC)" <Jasmin.Yang@usdoj.gov>, "Han, Chung (USACAC)" <Chung.Han@usdoj.gov>, "Thayer, Damon (USACAC)" <Damon.Thayer@usdoj.gov>, Naeun Rim <nrim@birdmarella.com>, "Shoshana E. Barnett" <sbannett@birdmarella.com>, Don Specter <dspecter@prisonlaw.com>, "Kate S. Shin" <kshin@birdmarella.com>, Peter Bibring <PBibring@aclusocal.org>
Subject: RE: CV 20-4450-CBM(PVCx): Yonnedil Carror Torres et al v. Louis Milusnic et al

Thank you I'm waiting to hear from plaintiff's as the Judge will also be appearing by phone.
Thank you again.

<image001.png>

From: Green, Paul (USACAC) <Paul.Green@usdoj.gov>
Sent: Monday, July 6, 2020 10:32 AM
To: Yolanda Skipper <Yolanda_Skipper@cacd.uscourts.gov>
Cc: Staub, Keith (USACAC) <Keith.Staub@usdoj.gov>; Yang, Jasmin (USACAC) <Jasmin.Yang@usdoj.gov>; Han, Chung (USACAC) <Chung.Han@usdoj.gov>; Thayer, Damon (USACAC) <Damon.Thayer@usdoj.gov>; nrim_birdmarella.com <nrim@birdmarella.com>; Shoshana E. Barnett <sbannett@birdmarella.com>; Don Specter <dspecter@prisonlaw.com>; Kate S. Shin <kshin@birdmarella.com>; Peter Bibring <PBibring@aclusocal.org>
Subject: RE: CV 20-4450-CBM(PVCx): Yonnedil Carror Torres et al v. Louis Milusnic et al

Dear Ms. Skipper,

For the telephonic hearing tomorrow in this matter, the five counsel of record for Respondents will appear. Our names and phone numbers are as follows:

Counsel for Respondents Louis Milusnic and Michael Carvajal

Keith Staub: 213-393-7689
Paul Bart Green: 213-247-4334
Jasmin Yang: 213-507-2410
Chung Han: 310-994-9470
Damon Thayer: 213-219-7666

Please let us know if you'd like any additional information.

Thank you,

Paul B. Green

Assistant United States Attorney
United States Attorney's Office for the Central District of California
300 N. Los Angeles St., Suite 7516, Los Angeles, CA 90012
Office: 213-894-0805, Cell: 213-247-4334
Email: Paul.Green@usdoj.gov

From: Yolanda Skipper <Yolanda_Skipper@cacd.uscourts.gov>
Date: July 2, 2020 at 5:23:01 PM PDT

#1667

To: "nrim_birdmarella.com" <nrim@birdmarella.com>, "sbannett@birdmarella.com" <sbannett@birdmarella.com>, "dspecter@prisonlaw.com" <dspecter@prisonlaw.com>, "kshin@birdmarella.com" <kshin@birdmarella.com>, "pbibring@aclu-sc.org" <pbibring@aclu-sc.org>, "Han, Chung (USACAC)" <CHan1@usa.doj.gov>, "Staub, Keith (USACAC)" <KStaub@usa.doj.gov>

Subject: CV 20-4450-CBM(PVCx): Yonnedil Carror Torres et al v. Louis Milusnic et al

Counsel the hearing set for 7/7/20 at 11am will be by telephone, please provide me with who will be appearing by phone.

I need the name of the attorney, who they represent and a phone number for when the Court calls you.

Thank you all.

<image001.png>

From: Naeun Rim <nrim@birdmarella.com>
Sent: Wednesday, July 8, 2020 11:11 AM
To: Green, Paul (USACAC)
Cc: Staub, Keith (USACAC); Sara Norman; Yang, Jasmin (USACAC); Han, Chung (USACAC); Thayer, Damon (USACAC); Don Specter; Rita Lomio; Christopher J. Lee; Jimmy Threatt; Kate S. Shin; Patrick Booth; Peter Bibring; Peter Eliasberg; Shoshana E. Bannett
Subject: RE: Rule 706 expert/inspector -- meet and confer correspondence

Bart,

We will be filing the declaration, as it is responsive to questions raised by the Court, and let the Court decide whether or not to consider it. We can do so in one filing, where you can note the Government's objections below and include *Swain*, or we can do so in separate filings. Please advise as to which you prefer.

Naeun Rim

Principal

O: 310.201.2100

F: 310.201.2110

E: nrim@birdmarella.com

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Drooks, Lincenberg & Rhow, P.C.

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Los Angeles, California 90067-2561

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From: Green, Paul (USACAC) <Paul.Green@usdoj.gov>
Sent: Wednesday, July 8, 2020 11:04 AM
To: Naeun Rim <nrim@birdmarella.com>
Cc: Staub, Keith (USACAC) <Keith.Staub@usdoj.gov>; Sara Norman <snorman@prisonlaw.com>; Yang, Jasmin (USACAC) <Jasmin.Yang@usdoj.gov>; Han, Chung (USACAC) <Chung.Han@usdoj.gov>; Thayer, Damon (USACAC) <Damon.Thayer@usdoj.gov>; Don Specter <dspecter@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Christopher J. Lee <clee@birdmarella.com>; Jimmy Threatt <jthreatt@birdmarella.com>; Kate S. Shin <kshin@birdmarella.com>; Patrick Booth <patrick@prisonlaw.com>; Peter Bibring <PBibring@aclusocal.org>; Peter Eliasberg <PEliasberg@aclusocal.org>; Shoshana E. Bannett <sbannett@birdmarella.com>
Subject: RE: Rule 706 expert/inspector -- meet and confer correspondence

Naeun,

Respondents do not agree to Petitioners' proposal. The Court indicated that she would issue an order today, and consistent with our understanding of her directions, the time for the parties to submit a stipulation with supplemental evidence or case law has passed. Furthermore, the letter from Mr. Garcia is dated June 16, 2020 and was not raised during the hearing yesterday. Nor is the translation of it certified. Respondents also object to the supplemental argument and hearsay evidence contained in the declaration. Respondents further object to the Petitioners' proposal to provide supplemental argument by distinguishing *Swain v. Junior*, –F.3d–, 2020 WL 3167628 (11th Cir. Jun. 15, 2020). For these reasons, Respondents will not stipulate to Petitioners' proposal.

Regards,
Bart

Paul B. Green

Assistant United States Attorney
United States Attorney's Office for the Central District of California
300 N. Los Angeles St., Suite 7516, Los Angeles, CA 90012
Office: 213-894-0805, Cell: 213-247-4334
Email: Paul.Green@usdoj.gov

From: Naeun Rim <nrim@birdmarella.com>
Sent: Wednesday, July 8, 2020 10:09 AM
To: Green, Paul (USACAC) <PGreen1@usa.doj.gov>
Cc: Staub, Keith (USACAC) <KStaub@usa.doj.gov>; Sara Norman <snorman@prisonlaw.com>; Yang, Jasmin (USACAC) <JYang2@usa.doj.gov>; Han, Chung (USACAC) <CHan1@usa.doj.gov>; Thayer, Damon (USACAC) <DThayer1@usa.doj.gov>; Don Specter <dspecter@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Christopher J. Lee <clee@birdmarella.com>; Jimmy Threatt <jthreatt@birdmarella.com>; Kate S. Shin <kshin@birdmarella.com>; Patrick Booth <patrick@prisonlaw.com>; Peter Bibring <PBibring@aclusocal.org>; Peter Eliasberg <PEliasberg@aclusocal.org>; Shoshana E. Bennett <sbennett@birdmarella.com>
Subject: RE: Rule 706 expert/inspector -- meet and confer correspondence

Bart (apologies for calling you Paul),

We have some updated facts that respond to the Court's questions about the whereabouts of the petitioners. They are contained in the attached declaration. If the government agrees to allow us to submit the above declaration, we can also agree to the government submitting Swain, provided that we can include a paragraph distinguishing the case. Please let me know as soon as possible whether the government would agree to that, and I would suggest that we promptly email the Court to let her know the stipulation will be filed before the end of the day.

In a separate email, we will set forth the incomplete interrogatory responses in Terminal Island.

Naeun Rim

Principal

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F: 310.201.2110

E: nrim@birdmarella.com

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On Jul 7, 2020, at 5:26 PM, Green, Paul (USACAC) <Paul.Green@usdoj.gov> wrote:

Naeun,

Thank you for your email. Please let us know if Petitioners will stipulate to submit to Judge Marshall Swain v. Junior, –F.3d–, 2020 WL 3167628 (11th Cir. Jun. 15, 2020), as supplemental authority for consideration with the TRO application.

As for the meet and confer, we have a conflict tomorrow at 1 pm PT. We are available at 3pm tomorrow. Please let us know if that works.

One issue raised in your correspondence below is the BOP interrogatory responses in Wilson. We are happy to meet and confer on those. However, to help make that discussion more productive, we ask that Petitioners send us written correspondence, identifying each issue and/or discovery request that Petitioners contend is incomplete, further to Local Rule 37-1.

Regards,
Bart

Paul B. Green

Assistant United States Attorney
United States Attorney's Office for the Central District of California
300 N. Los Angeles St., Suite 7516, Los Angeles, CA 90012
Office: 213-894-0805, Cell: 213-247-4334
Email: Paul.Green@usdoj.gov

From: Naeun Rim <nrim@birdmarella.com>

Sent: Tuesday, July 7, 2020 1:25 PM

To: Staub, Keith (USACAC) <KStaub@usa.doj.gov>; Sara Norman <snorman@prisonlaw.com>; Green, Paul (USACAC) <PGreen1@usa.doj.gov>; Yang, Jasmin (USACAC) <JYang2@usa.doj.gov>; Han, Chung (USACAC) <CHan1@usa.doj.gov>; Thayer, Damon (USACAC) <DThayer1@usa.doj.gov>

Cc: Don Specter <dspecter@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Christopher J. Lee <clee@birdmarella.com>; Jimmy Threatt <jthreatt@birdmarella.com>; Kate S. Shin <kshin@birdmarella.com>; Patrick Booth <patrick@prisonlaw.com>; Peter Bibring <PBibring@aclusocal.org>; Peter Eliasberg <PEliasberg@aclusocal.org>; Shoshana E. Barnett <sbarnett@birdmarella.com>

Subject: RE: Rule 706 expert/inspector

We are following up on our request for a meet and confer on the below. Please let us know if you are available at 1 pm Pacific.

As to the Lompoc proceeding, at this stage, we intend to allow the Court to proceed with the TRO ruling on the papers. If you'd like to discuss further, please let me know. We ask that the meet and confer tomorrow also include the topics of discovery and briefing in Lompoc.

Naeun Rim

Principal

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F: 310.201.2110

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From: Naeun Rim

Sent: Monday, July 6, 2020 11:24 AM

To: Staub, Keith (USACAC) <Keith.Staub@usdoj.gov>; Sara Norman <snorman@prisonlaw.com>; Green, Paul (USACAC) <Paul.Green@usdoj.gov>; Yang, Jasmin (USACAC) <Jasmin.Yang@usdoj.gov>; Han, Chung (USACAC) <Chung.Han@usdoj.gov>; Thayer, Damon (USACAC) <Damon.Thayer@usdoj.gov>

Cc: Don Specter <dspecter@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Christopher J. Lee <clee@birdmarella.com>; Jimmy Threatt <jthreatt@birdmarella.com>; Kate S. Shin <kshin@birdmarella.com>; Patrick Booth <patrick@prisonlaw.com>; Peter Bibring <PBibring@aclusocal.org>; Peter Eliasberg <PEliasberg@aclusocal.org>; Shoshana E. Barnett <sbarnett@birdmarella.com>

Subject: RE: Rule 706 expert/inspector

Keith,

I understand you are declining to meet and confer with us to discuss any issues we might be able to resolve about the Lompoc matter prior to the hearing tomorrow. Please propose a range of times for a meet and confer call on Wednesday as to Terminal Island. Before or during our meet and confer call, please advise as to the following:

- Are you rejecting all of our proposed experts for the site visit? If so, please provide the basis for your objections.
- Are you rejecting our proposal to compromise by having your proposed NP visit the site along with one of our proposed experts? Please provide the basis for your objection.
- When do you propose we come to an agreement or seek a Court ruling regarding who will conduct the site visit? We reached out to you last Monday, a week ago, to discuss a potential compromise and have received no response, so we will have to seek relief from the Court soon unless we are able to come to an agreement on the Wednesday call.
- Are you refusing to meet and confer with us about what steps Respondents have taken to improve conditions at Terminal Island since the lawsuit commenced? Please explain why.

Thanks.

Naeun Rim

Principal

O: 310.201.2100

F: 310.201.2110

E: nrim@birdmarella.com

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Drooks, Lincenberg & Rhaw, P.C.**

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Los Angeles, California 90067-2561

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From: Staub, Keith (USACAC) <Keith.Staub@usdoj.gov>

Sent: Monday, July 6, 2020 11:10 AM

To: Naeun Rim <nrim@birdmarella.com>; Sara Norman <snorman@prisonlaw.com>; Green, Paul (USACAC) <Paul.Green@usdoj.gov>; Yang, Jasmin (USACAC) <Jasmin.Yang@usdoj.gov>; Han, Chung (USACAC) <Chung.Han@usdoj.gov>; Thayer, Damon (USACAC) <Damon.Thayer@usdoj.gov>

Cc: Don Specter <dspecter@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Christopher J. Lee <clee@birdmarella.com>; Jimmy Threatt <jthreatt@birdmarella.com>; Kate S. Shin <kshin@birdmarella.com>; Patrick Booth <patrick@prisonlaw.com>; Peter Bibring <PBibring@aclusocal.org>; Peter Eliasberg <PEliasberg@aclusocal.org>; Shoshana E. Barnett <sbarnett@birdmarella.com>

Subject: RE: Rule 706 expert/inspector

We intend to comply with Judge Fitzgerald's instruction regarding a choice of one inspector at Terminal Island. We can meet and confer with you Wednesday afternoon about discovery. Thanks.

KEITH M. STAUB

Assistant United States Attorney
Deputy Chief, General Civil Section
300 N. Los Angeles Street, Suite 7516
Los Angeles, CA 90012
T: (213) 894-7423 | F: (213) 894-7819
keith.staub@usdoj.gov

<image001.jpg>

From: Naeun Rim <nrim@birdmarella.com>

Sent: Friday, July 3, 2020 11:39 AM

To: Staub, Keith (USACAC) <KStaub@usa.doj.gov>; Sara Norman <snorman@prisonlaw.com>; Green, Paul (USACAC) <PGreen1@usa.doj.gov>; Yang, Jasmin (USACAC) <JYang2@usa.doj.gov>; Han, Chung (USACAC) <CHan1@usa.doj.gov>; Thayer, Damon (USACAC) <DThayer1@usa.doj.gov>

Cc: Don Specter <dspecter@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Christopher J. Lee <clee@birdmarella.com>; Jimmy Threatt <jthreatt@birdmarella.com>; Kate S. Shin <kshin@birdmarella.com>; Patrick Booth <patrick@prisonlaw.com>; Peter Bibring <PBibring@aclusocal.org>; Peter Eliasberg <PEliasberg@aclusocal.org>; Shoshana E. Barnett <sbarnett@birdmarella.com>

Subject: RE: Rule 706 expert/inspector

Keith,

We would like to meet and confer on Monday about a number of outstanding items. Please let me know if you are available 1:30 p.m. or 4 p.m. to discuss the below.

- (1) Terminal Island Site Visit – I understand that Sara conferred with you on Monday about pairing your proposed expert with one of ours. To date, we have not heard from you on this. Please let us know the status, as the Court clearly expects us to move this along.
- (2) Terminal Island Interrogatories – Respondents did not respond to portions of some of the interrogatories. We would like to discuss these with you to avoid having to bring an ex parte application to compel.
- (3) Lompoc TRO Hearing – We would like to meet and confer prior to the hearing about whether we can come to an agreement on how the case should progress. We propose that we agree to the same arrangement we came to in Terminal Island to avoid unnecessary briefing:
 - a. The Government will agree to answer the same interrogatories and produce the same documents it produced in Terminal Island (we can propound these formally)
 - b. The parties will come to an agreement on a site visit
 - c. Following that, the parties will finalize briefing in support of or in opposition to dismissal/injunction/class certification
- (4) Status of Activities at Terminal Island and Lompoc – We are being told that hundreds of prisoners are being transferred out of Terminal Island and Lompoc, and that there are large groups being moved around within the Lompoc facilities. We would like to understand the status of what efforts the BOP is making to protect these prisoners. If changes are being made that would moot all or some of the claims/allegations, we would like to work with Respondents, but we cannot do so without communication from counsel.

Naeun Rim

Principal

O: 310.201.2100

F: 310.201.2110

E: nrim@birdmarella.com

Bird, Marella, Boxer, Wolpert, Nessim,

Drooks, Lincenberg & Rhow, P.C.

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Los Angeles, California 90067-2561

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From: Staub, Keith (USACAC) <Keith.Staub@usdoj.gov>

Sent: Friday, June 26, 2020 1:33 PM

To: Sara Norman <snorman@prisonlaw.com>; Green, Paul (USACAC) <Paul.Green@usdoj.gov>; Yang, Jasmin (USACAC) <Jasmin.Yang@usdoj.gov>; Han, Chung (USACAC) <Chung.Han@usdoj.gov>; Thayer, Damon (USACAC) <Damon.Thayer@usdoj.gov>

Cc: Naeun Rim <nrim@birdmarella.com>; Don Specter <dspecter@prisonlaw.com>; Rita Lomio <rlomio@prisonlaw.com>; Christopher J. Lee <cleee@birdmarella.com>; Jimmy Threatt <jthreatt@birdmarella.com>; Kate S. Shin <kshin@birdmarella.com>; Patrick Booth <patrick@prisonlaw.com>; Peter Bibring <PBibring@aclusocal.org>; Peter Eliasberg <PEliasberg@aclusocal.org>; Shoshana E. Bennett <sbennett@birdmarella.com>

Subject: RE: Rule 706 expert/inspector

Respondents offer Linda Follenweider. Her CV is attached. We are still considering others but for now please prepare a joint list to submit to court today for our approval.

KEITH M. STAUB

Assistant United States Attorney

Deputy Chief, General Civil Section

300 N. Los Angeles Street, Suite 7516

Los Angeles, CA 90012

T: (213) 894-7423 | F: (213) 894-7819

keith.staub@usdoj.gov

<image001.jpg>

From: Sara Norman <snorman@prisonlaw.com>

Sent: Thursday, June 18, 2020 1:12 PM

To: Staub, Keith (USACAC) <KStaub@usa.doj.gov>; Green, Paul (USACAC) <PGreen1@usa.doj.gov>; Yang, Jasmin (USACAC) <JYang2@usa.doj.gov>

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Subject: Rule 706 expert/inspector

Dear Keith, Bart, and Jasmin,

We have three names to propose for a Rule 706 expert/inspector to advise the Court. All three have said that they are available to do the site inspection in the next few weeks.

Dr. Fred Rottnek – Dr. Rottnek was the medical director of the St. Louis County jails from 2001-2016 and is currently on the faculty of the Saint Louis University School of Medicine (CV attached). He has served as an expert in numerous Covid cases in corrections facilities; I attach a declaration from one case (*Belton v. Gautreaux*), in which he served as plaintiffs' expert. He has never been retained as an expert by any of plaintiffs' counsel.

Dr. Michael Rowe – Dr. Rowe provided medical care at San Quentin for more than a decade and acted as both the Chief Physician and Surgeon and Chief Medical Executive at that prison (CV attached). He has been appointed by the court as a Rule 706 expert in *Mays v. Sacramento*, a case in which the Prison Law Office represents the plaintiff class (see attached order). He has never been retained as an expert by any of plaintiffs' counsel.

Dr. Peter Chin-Hong – Dr. Chin-Hong is Associate Dean and Professor of Medicine at UC San Francisco, where he specializes in treating infectious diseases. (See <https://profiles.ucsf.edu/peter.chin-hong>.) He directs the immunocompromised host infectious disease program at UCSF and has emerged as an expert on Covid-19. He has never been retained as an expert by any of plaintiffs' counsel.

Please let us know your response.

--Sara

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