

No. S256149

**IN THE
SUPREME COURT
OF THE
STATE OF CALIFORNIA**

**SUPREME COURT
FILED**

NOV 13 2019

Jorge Navarrete Clerk

IN RE WILLIAM M. PALMER, ON HABEAS CORPUS

Deputy

AFTER A DECISION BY THE COURT OF APPEAL
FIRST APPELLATE DISTRICT, DIVISION TWO
APPEAL No. A154269

**RESPONDENT'S OPPOSITION TO MOTION
FOR JUDICIAL NOTICE;
DECLARATION OF WILLIAM M. PALMER**

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TABLE OF CONTENTS

	Page
INTRODUCTION	5
ARGUMENT	6
I. EXHIBITS Aa THROUGH Cc ARE NOT JUDICIALLY NOTICEABLE UNDER EVIDENCE CODE SECTIONS 452 AND 459	6
II. EXHIBITS Aa THROUGH Cc ARE NOT RELEVANT TO EITHER ISSUE PRESENTED IN THIS APPEAL	9
III. EXHIBITS Aa THROUGH Cc DO NOT SHOW “POOR PERFORMANCE” BY MR. PALMER; RATHER, THEY SHOW CONTINUED EXCESSIVE PUNISHMENT BY THE CDCR	10
CONCLUSION	14

TABLE OF AUTHORITIES

	Page
<u>CASES</u>	
<i>Barri v. Workers’ Comp. Appeals Bd.</i> , 28 Cal. App. 5th 428 (2018)	11
<i>In re Arroyo</i> , 37 Cal. App. 5th 727 (2019)	8
<i>Kilroy v. State of California</i> , 119 Cal. App. 4th 140 (2004)	7, 8
<i>Licudine v. Cedars-Sinai Med. Ctr.</i> , 3 Cal. App. 5th 881 (2016)	7, 8
<i>Love v. Wolf</i> , 226 Cal. App. 2d 378 (1964)	7
<i>Mangini v. R.J. Reynolds Tobacco Co.</i> , 7 Cal. 4th 1057 (1994), <i>overruled on other grounds by In re Tobacco Cases II</i> , 41 Cal. 4th 1257 (2007).....	7, 8
<i>People v. Banda</i> , 26 Cal. App. 5th 349 (2018)	11
<i>People v. Burden</i> , 205 Cal. App. 3d 1277 (1988)	13
<i>People v. Dominguez</i> , 256 Cal. App. 2d 623 (1967)	13
<i>People v. Lent</i> , 15 Cal. 3d 481 (1975)	13
<i>People v. Martinez</i> , 226 Cal. App. 4th 759 (2014)	13
<i>People v. Petty</i> , 213 Cal. App. 4th (2013)	13
<i>Planned Parenthood Shasta-Diablo, Inc. v. Williams</i> , 10 Cal. 4th 1009 (1995)	8, 9
<i>Ragland v. U.S. Bank Nat’l Ass’n</i> , 209 Cal. App. 4th 182 (2012)	7
<i>Scott v. JPMorgan Chase Bank, N.A.</i> , 214 Cal. App. 4th 743 (2013)	7

TABLE OF AUTHORITIES
(continued)

	Page
<i>StorMedia Inc. v. Superior Court</i> , 20 Cal. 4th 449 (1999)	11
<i>United States v. Wolf Child</i> , 699 F.3d 1082 (9th Cir. 2012)	13
<i>United States v. Wright</i> , 596 F. App'x 555 (9th Cir. 2015)	14
 <u>STATUTES</u>	
Cal. Evid. Code § 452.....	5, 9
Cal. Evid. Code § 452(c).....	5, 7
Cal. Evid. Code § 452(h).....	9
Cal. Evid. Code § 459.....	5, 9
Cal. Evid. Code § 459(a).....	5, 7
Cal. Evid. Code § 459(d).....	10
Cal. Penal Code § 1506	11
 <u>RULES</u>	
Cal. R. Ct. 8.387(b)(1).....	11

INTRODUCTION

There is no valid reason for the Board of Parole Hearings (the “Board”) to have submitted Exhibits Aa through Cc to this Court. It is an attempt to sway the Court with seemingly prejudicial documents that are not relevant to this appeal. The Board contends that these documents show that Mr. Palmer has acted poorly since he was released on parole in March, and that, consequentially, parole is good for him, and he needs it. Even if this were the proper inquiry, the documents show no such thing. Instead, they show that he is being held to an excessive number of special parole conditions, and being accused of violating these onerous conditions by, for example, attending a poetry reading and a graduation ceremony held by a local violence prevention organization. These irrelevant documents are not properly subject to judicial notice. The Court should deny the Board’s motion to notice Exhibits Aa through Cc.

The contents of Exhibits Aa through Cc are not subject to judicial notice under Evidence Code sections 452(c) and 459(a). Section 452(c), in relevant part, only permits notice of “official acts” of an executive department of the state of California. The Board points to no “official act” of which the Court should take notice, and instead asks the Court to take notice of what the documents allege about *Mr. Palmer’s* acts. Thus, the Board’s real request is that the Court assume the truth of allegations about Mr. Palmer made by an agency that is managed by the same department as the Board—the California Department of Corrections and Rehabilitation (“CDCR”)—to further the Board’s appeal. Section 452(c) does not permit this. And, because the documents are not noticeable by a trial court under section 452, they are not noticeable on appeal under section 459.

Exhibits Aa through Cc are also irrelevant to either of the two issues implicated in this appeal. The Board does not contend they are relevant to the first, and the Board’s halfhearted argument that they are relevant to the

second—the proper remedy for a constitutional violation—does not withstand scrutiny. The second issue asks the parties to *assume* there was a constitutional violation, and address the proper remedy for that violation. The Board argues, in essence, that parole is the proper remedy because it could be good for Mr. Palmer. But Mr. Palmer’s alleged conduct after a constitutional wrong has been committed against him cannot bear on the appropriate remedy for the past wrong he suffered. Whether parole is good for Mr. Palmer (it is not) does not address the question of the right remedy.

Finally, Exhibits Aa through Cc do not establish that Mr. Palmer has performed poorly on parole. What the documents show, if taken at face value, is that Mr. Palmer is working hard to succeed outside prison after his lengthy sentence, despite enormous obstacles and no real help from those who incarcerated him for three decades. Mr. Palmer has been subjected to re-incarceration on a whim, and at the apparent direction of the Board, which is the only conclusion that can be drawn from the lengthy list of conditions that prohibit his reintegration. If anything, Exhibits Aa through Cc show that Mr. Palmer is still being subjected to overbroad and punitive parole conditions, which is prolonging the excessive punishment that the Court of Appeal has already found shocking.

ARGUMENT

I. EXHIBITS Aa THROUGH Cc ARE NOT JUDICIALLY NOTICEABLE UNDER EVIDENCE CODE SECTIONS 452 AND 459¹

The Board asks the Court to take judicial notice of the contents of three documents prepared by an employee of the Division of Adult Parole Operations of the CDCR on the ground that these three documents reflect

¹ Mr. Palmer takes no position as to Exhibit Dd, which is a compilation of San Francisco Superior Court minute orders, or Exhibit Ee, which is a copy of a publicly available website.

“official acts” of an executive department of the State of California that would be noticeable in a trial court and are thus noticeable in an appellate court. *See* Mot. at 4, citing Evid. Code §§ 452(c) and 459(a). The documents and the law show the error of this position, and the Court should reject it.

Evidence Code section 452(c) permits judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of . . . any state of the United States.” Evid. Code § 452(c). Evidence Code section 459(a) provides that “[t]he reviewing court may take judicial notice of any matter specified in Section 452.” Evid. Code § 459(a). One example of an act of the executive properly subject to judicial notice under section 452(c) and thus on appeal under 459(a) is a recorded deed. *See, e.g., Ragland v. U.S. Bank Nat’l Ass’n*, 209 Cal. App. 4th 182, 194 (2012). Another is the act of the publishing of a report by an executive agency. *See Scott v. JPMorgan Chase Bank, N.A.*, 214 Cal. App. 4th 743, 758 n. 6 (2013) (judicial notice of “undisputed legal effect of a legally operative document” appropriate).

In contrast, courts do not take judicial notice of “the truth of the facts relayed through” the official act of publishing a report. *Licudine v. Cedars-Sinai Med. Ctr.*, 3 Cal. App. 5th 881, 902 (2016); *see also Mangini v. R.J. Reynolds Tobacco Co.*, 7 Cal. 4th 1057, 1063-64 (1994) (denying request for judicial notice under section 452(c) where requestor asked the Court to notice truth of matters in document), *overruled on other grounds by In re Tobacco Cases II*, 41 Cal. 4th 1257 (2007); *Love v. Wolf*, 226 Cal. App. 2d 378, 403 (1964) (“While courts take judicial notice of public records, we do not take judicial notice of the truth of all matters stated therein.”). “Courts may not take judicial notice of allegations in affidavits, declarations and probation reports in court records because such matters are reasonably subject to dispute and therefore require formal proof.” *Kilroy v. State of California*, 119 Cal. App. 4th 140, 145 (2004).

Although the Board presents its request as one for judicial notice of an official act, it instead asks the Court to notice the contents of the CDCR records as they describe Mr. Palmer's acts. Indeed, the Board points to no official act to notice. Mot. at 3 (submitting documents to show "[Mr.] Palmer's poor performance on parole"); *see also* Opening Br. at 43-44 (same) and at 16 (contending the documents show Mr. Palmer has violated his parole conditions three times). Exhibits Aa through Cc are reports prepared by an employee of one division of the CDCR—the Division of Adult Parole Operations. Notably, the Board is also part of the CDCR. The allegations of a law enforcement officer about a parolee contained in a report do not amount to official acts subject to notice under Section 452 and are also not noticeable because they are reasonably subject to dispute. *See Mangini*, 7 Cal. 4th 1063-64; *Kilroy*, 119 Cal. App. 4th at 145. Thus, the Board's request is not a request for judicial notice of an "official act" itself but a request for "the truth of the facts relayed through that official act." *Licudine*, 3 Cal. App. 5th at 902. That is improper.

Unsurprisingly, the authorities cited by the Board provide no support for their misapplication of Section 452. *See* Mot. at 4, citing *In re Arroyo*, 37 Cal. App. 5th 727, 730 (2019) (judicial notice of change in CDCR regulation appropriate where neither party objected); *Planned Parenthood Shasta-Diablo, Inc. v. Williams*, 10 Cal. 4th 1009, 1021 (1995) (judicial notice of "government maps and surveys" appropriate under 452(h)). Here, unlike in *Arroyo*, Mr. Palmer objects to the documents' contents, which are not offered to establish any official act by the CDCR, but for their allegations about Mr. Palmer's acts. Mr. Palmer's acts are not official acts of the State of California subject to judicial notice. *Planned Parenthood* is likewise inapplicable since it notices government maps under section 452(h), and the Board does not contend the CDCR records are maps

admissible under section 452(h). 10 Cal. 4th at 1021 (noticing “official maps maintained by the Public Works Department of the City of Vallejo”).

The Board, in error, asks the Court to take judicial notice of Exhibits Aa through Cc, asking the Court to notice that such documents demonstrate Mr. Palmer’s “poor performance” on parole. Evidence Code sections 452 and 459 do not permit this.

II. EXHIBITS Aa THROUGH Cc ARE NOT RELEVANT TO EITHER ISSUE PRESENTED IN THIS APPEAL

Setting aside that these documents are not judicially noticeable to establish Mr. Palmer’s acts, and do not establish any “poor performance” by Mr. Palmer on parole (as explained below), the Court should refuse to take judicial notice of them because they are irrelevant to either of the issues delineated by the Court for this appeal.

The Board points only to the second issue presented in this appeal to justify their relevance, which is: “If [Mr. Palmer’s] continued confinement became constitutionally disproportionate, what is the proper remedy?” The Board contends that “these exhibits are relevant to this matter for the reasons explained in the Board’s opening brief on the merits.”² The Board goes on to explain that parole is the “proper remedy” for a constitutionally disproportionate sentence because of “the legislative and executive branch’s determination that parole is important to an inmate’s reintegration” and “Palmer’s poor performance on parole is relevant to this latter point.” Mot. at 3. In its opening brief, the Board similarly suggests

² The Board’s motion cites page 35 of its opening brief in support of its argument that the documents are relevant, suggesting that this page contains argument that “parole is important to an inmate’s reintegration into society.” See Mot. at 3. Because this page of Petitioner’s brief contains no such argument, Mr. Palmer assumes this was a typographical error and that the Board intended to site pages 16 or 43-44 of its opening brief, which are the only pages on which Exhibits Aa through Cc are mentioned.

that parole is the proper remedy because parole is “beneficial for someone like [Mr.] Palmer, who has been in prison much of his life and has performed poorly on parole.” Opening Br. at 43-44. These conclusions are divorced from any legal authority. And the Board fails to explain how its draconian parole conditions are in any way beneficial to Mr. Palmer. But even assuming these documents show that parole could be helpful to Mr. Palmer’s reintegration (which it has not been), the Board fails to explain how the right remedy for a past wrong committed by the State against an individual could be decided based on the wronged individual’s future conduct. The Board also fails to explain how an unconstitutionally disproportionate punishment for a specific crime could be remedied by a process it admits is further punishment for the same crime. *See id.* at 40 (“[B]oth parole and incarceration are punishment for the conviction[.]”). Because these documents are not relevant to this issue, the Court should not take notice of them.

The documents are equally irrelevant to the first issue in this appeal: “Did [Mr. Palmer’s] continued confinement become constitutionally disproportionate under article I, section 17 of the California Constitution and/or the Eighth Amendment of the United States Constitution?” The Board does not contend otherwise. *See Mot.* at 3.

III. EXHIBITS Aa THROUGH Cc DO NOT SHOW “POOR PERFORMANCE” BY MR. PALMER; RATHER, THEY SHOW CONTINUED EXCESSIVE PUNISHMENT BY THE CDCR

If the Court nevertheless decides Exhibits Aa through Cc may be appropriate for notice, the Court should also consider the attached declaration from Mr. Palmer describing his perspective of his time on

parole since he was released in March of this year.³ Rather than show “poor performance,” these documents, together with Mr. Palmer’s declaration, actually show that parole is failing to help him reintegrate, and in fact is only punishing him further, including by subjecting him to significant and further destabilizing periods of re-incarceration without justification. This is due, in part, to the fact that the Board’s special conditions of parole are not appropriately tailored, and are so broad, numerous, and oppressive that they are hindering his progress and causing financial and emotional harm. Rather than conclude that parole is the right “remedy,” the Court should conclude, based on these documents, that parole is punishment.⁴

³ Mr. Palmer’s declaration is properly submitted under Evidence Code section 459(d), which requires that he have an opportunity to object and respond to the Board’s exhibits. *See* Evid. Code § 459(d) (in determining propriety of taking judicial notice under section 452 of matter of substantial consequence, “the reviewing court shall afford each party reasonable opportunity to meet such information before judicial notice of the matter may be taken”); *People v. Banda*, 26 Cal. App. 5th 349, 360 (2018) (right to object to taking of judicial notice); *see also Barri v. Workers’ Comp. Appeals Bd.*, 28 Cal. App. 5th 428, 437 (2018) (improper to rely on judicially noticed documents to prove disputed facts because judicial notice “applies solely to undisputed facts”); *StorMedia Inc. v. Superior Court*, 20 Cal. 4th 449, 457 n.9 (1999) (“When judicial notice is taken of a document, however, the truthfulness and proper interpretation of the document are disputable.”).

⁴ As a threshold matter, Mr. Palmer is not even lawfully on parole, and cannot be found to have violated parole conditions not lawfully imposed. The opinion below required the CDCR to discharge Mr. Palmer from all forms of custody “upon the finality of the opinion,” and the opinion was final as of May 6, 2019. *See* Cal. R. Ct. 8.387(b)(1) (“Court of Appeal decision in a habeas corpus proceeding is final in that court 30 days after filing”); *see also* Penal Code § 1506 (if “an order granting the discharge or release” is on appeal, petitioner “shall be admitted to bail or released on his own recognizance or any other conditions which the court deems just and reasonable”). Because the State did not obtain a stay, its refusal to discharge Mr. Palmer from parole and instead continue to impose onerous conditions of parole is in violation of a court order.

Mr. Palmer's declaration reveals in detail how his parole conditions are so broad, numerous, and oppressive that they are causing substantial financial and emotional hardship. Contrary to the Board and CDCR's contentions, these conditions are substantial obstacles to his success. Since his release in March, Mr. Palmer has been required to comply with 31 special conditions of parole, and has been re-incarcerated for 20 days based on allegations that he has violated these conditions. Palmer Decl. ¶20. These special conditions were apparently imposed at the direction of the Board and are extraordinarily numerous. *Id.* ¶5. They are also being strictly interpreted for no good reason. For example, in June of this year, Mr. Palmer was arrested and re-incarcerated for two days for participating in a poetry reading at a restaurant across the street from his transitional housing facility; attending his own graduation ceremony from United Playaz, a San Francisco-based violence prevention and youth development organization (*see* <http://unitedplayaz.org/>); and a scheduling miscommunication with his social worker. *Id.* ¶¶21-25. He was later arrested and re-incarcerated in July for five days over a dispute with his parole agent about whether he could use his phone to record their communications, certain photos that he took across a train car, and whether he could make up certain required substance abuse classes that he missed because of work conflicts. *Id.* ¶¶26-31. These minor matters, which have been amplified by the poor relationship between Mr. Palmer and his parole officer—a former correctional officer at California State Prison Solano—have been disruptive to Mr. Palmer's progress outside prison, resulting in lost jobs, lost housing, and additional stress during his transition to living outside prison after 31 years of incarceration.

Further showing their punitive nature, as opposed to any useful purpose, the Board-imposed special parole conditions are untethered from Mr. Palmer's underlying offense and not reasonably related to any

rehabilitative purpose. A condition of parole is unlawful if it “(1) has no relation to the commitment offense; (2) bars conduct that is not in itself criminal; and (3) requires or forbids conduct that is not reasonably related to future criminality.” *People v. Lent*, 15 Cal. 3d 481, 486 (1975); *see also* *People v. Dominguez*, 256 Cal. App. 2d 623, 627 (1967); *People v. Petty*, 213 Cal. App. 4th (2013); *People v. Martinez*, 226 Cal. App. 4th 759, 764 (2014) (“The validity and reasonableness of parole conditions is analyzed under the same standard as that developed for probation conditions.”). Many of Mr. Palmer’s special conditions do not survive this analysis, and are instead punitive.

For example, Parole Condition 16 provides that “You shall not have contact with your biological or adopted children.” Mot. Ex. Cc at 33. Parole Condition 21 provides that “You shall not date, socialize or form a romantic interest or sexual relationship with any person who has physical custody of a minor.” *Id.* Mr. Palmer’s crime—kidnapping for robbery, where the victim was an adult man—does not justify any of these parole conditions. In *United States v. Wolf Child*, the Ninth Circuit held that very similar special conditions of probation, which prohibited the defendant from being around his own children and from dating his fiancée, were improperly imposed. 699 F.3d 1082, 1096 (9th Cir. 2012).

As another example, Parole Condition 36 prevents Mr. Palmer from obtaining “employment that allows [him] to enter a residence where a stranger resides.” Mot. Ex. Cc at 35. This condition also has no relationship to the underlying offense and thus is inappropriately punitive. *See People v. Burden*, 205 Cal. App. 3d 1277, 1279 (1988) (restrictions on employment must have relationship to the underlying offense). As another example, Parole Condition 3 prevents Mr. Palmer from consuming alcohol, and Parole Condition 37 prevents him from volunteering without preapproval by his parole agent. Mot. Ex. Cc at 33-35. These conditions bear no

relationship to Mr. Palmer's rehabilitation or past crime, and only serve to further punish him. *See United States v. Wright*, 596 F. App'x 555, 557 (9th Cir. 2015) (same conditions unreasonable).

Contrary to the Board's characterization, Mr. Palmer's parole conditions and lack of support are setting him up for failure and re-incarceration, despite already being subjected to an unconstitutionally excessive period of confinement. Mr. Palmer spent more than three decades in custody before being released in March. Since then, he has spent 20 additional days in custody. Palmer Decl. ¶20. He spent 19 of these days in custody before he was ever brought to a court to have the reasons for his re-incarceration heard by a judge. *Id.* ¶¶21, 26, 32. He lost his job as a result of the third re-incarceration, and he has lost housing opportunities and forgone volunteer commitments based on the onerous conditions of his parole. *Id.* ¶¶9, 3-15, 17. Mr. Palmer does not need the Division of Adult Parole Operations in his life. *Id.* ¶¶. He needs a good job, affordable housing, and other social services. *Id.* ¶¶6-19. He needs help making up for the time that he lost in prison. *Id.* He needs a support network of people who understand what he has been through. *Id.* ¶17. The Division of Adult Parole Operations has not helped with any of this. Mr. Palmer does not need or want to be on parole as a "remedy" for his unconstitutionally excessive incarceration. *Id.* ¶¶3, 32.


CONCLUSION

The Court should deny the Board's motion for judicial notice as to Exhibits Aa through Cc.

Dated: November 13, 2019

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DECLARATION OF WILLIAM MONROE PALMER

I, William Monroe Palmer, declare:

1. I am the respondent, William Monroe Palmer, in this appeal, and the petitioner in the underlying petition for a writ of habeas corpus.

I have personal knowledge of the contents of, and may competently testify concerning, this declaration.

2. On March 11, 2019, I was released from California State Prison Solano after more than thirty-one years of incarceration. Before that day, I had been continually incarcerated since I was seventeen years old. I was forty-eight years old on the day of my release. On the day of my release, I was driven to my transitional housing in San Francisco. I cannot adequately describe how it felt to be finally released. Above all, I was excited to see how the world had changed, to get a job that gives me a sense of purpose and provides meaning to my lengthy incarceration, and to have a family of my own.

3. Since being released on parole, I have been continually subjected to disrespectful treatment by my parole officer that often makes me feel like I am still incarcerated. I do not have the freedom to do what other people can do, and the restrictions that the parole office has placed on me are preventing me from achieving my goals—to have a family and to be able to support my family and myself with work that provides meaning to my life and my lengthy period of incarceration. I submit this declaration because I think it is important for the Court to understand why parole is not helping me. Parole is preventing my healthy transition into society. I am not allowed to participate in activities that allow me to be a good citizen. Parole makes me feel isolated. I do not want to be on parole.

Special Conditions of Parole

4. The day after my release, on March 12, 2019, I reported to my assigned parole office and met with my first parole agent. During our meeting that day, the agent asked me to sign a document containing thirty-one special conditions for my parole. He told me that I did not have a choice and that I was required to sign. When I asked him what would happen if I did not sign the document, he refused to answer the question and remained silent. I was not provided with an attorney or told that I had the right to consult an attorney before signing the conditions of my parole at that meeting. I was not sure what would happen if I did not sign the document and was worried that my parole would be revoked and I would again return to prison after only one day out. I felt that I had no choice but to sign the document and had no understanding of how the special conditions of parole would impact my ability to readjust to life outside custody after thirty-one years in custody.

5. When I asked my first parole agent why I had so many parole conditions, he told me that he has never seen any parolee with this many conditions, that most people have about three conditions, and that there had been a special meeting about my parole conditions. He stated that the Board of Parole Hearings had insisted on adding the numerous conditions.

Requests for Assistance with Social Services and Volunteer Work

6. When I was first released on parole, I thought that I might receive from my parole officer the help that I need to readjust from my lengthy period of incarceration. Right now, my priorities are to obtain affordable housing, to obtain a job that allows me to be able to support myself that I find meaningful and gives me a sense of purpose, to have health care, to build a social support network, and to have a family of my own. It has been difficult to learn so much in so little time over the past few

months. Since my release in March, I have felt that the parole office and my parole officer have made my life more difficult, not less difficult.

7. My parole officers have never helped me with my basic needs. Furthermore, when I specifically asked for help with education and job training, parole officers refused to help me and instead told me I am on my own. This makes me feel isolated.

8. For example, when I asked the parole office to enroll me in a life skills program, I was refused. I was told that I should have signed up for this program before leaving prison. However, I did not learn about this program until after I was released from prison. The parole office is supposed to assist me to gain life skills training. Instead of allowing me to participate in any programs, they simply refused to enroll me in these programs.

9. As another example, the parole office has not helped me obtain employment. Instead, I found my first job at Community Housing Partnership through a friend and former prisoner at Solano. I was a resident services counselor who assisted homeless individuals to reintegrate into society. I helped with housing, employment training, mental health referrals, and creating programming for general well-being. I love helping others, and it gave me a sense of self-worth. I had this job for approximately six months, during which time I had a good relationship with my boss and my coworkers. Unfortunately, I lost this job after I was re-incarcerated for an alleged violation of my parole conditions.

10. My second parole officer is Mr. Marco Montano. Before becoming a parole officer, Mr. Montano was a correctional officer at California State Prison Solano. I have had more difficulty interacting with Mr. Montano than my first parole officer. Mr. Montano does not treat me with respect, and instead treats me like I am still a prisoner at Solano.

11. Instead of helping me find employment, Mr. Montano has made the process more difficult. After I told him I had a scheduled job interview, he demanded that I come to the parole office to see him in person at the exact time of my interview. After I insisted on going to the interview, he relented.

12. As another example, I asked a different parole officer for help in obtaining a driver's license and a social security card. He refused to help me, saying that it was my responsibility to figure it out myself. I was only able to get a driver's license, social security card, and to open a bank account with the assistance of a friend and former prisoner. No one from the parole office assisted me with these basic tasks.

13. As a further example, I have had difficulty finding affordable housing in San Francisco. I was initially provided with transitional housing in San Francisco. Before this appeal in the Supreme Court, my parole officer told me, on the same day that the Court of Appeal's decision ordering me off parole became final, that I would be ineligible to live in the transitional housing. It was very stressful to face the reality of having to immediately support myself. As a result, I had planned to move to an apartment on the day I would have been required to leave the transitional housing. When the Supreme Court decided to hear this appeal, the parole office changed its position and said I had to keep living in transitional housing. As a result, I had to give up the apartment that I had found.

14. At one point when it still appeared that I would be off parole by August 2019, I found a place to live in the South Bay. I was working at a secondhand store to pay the deposit required for this apartment while still on parole. I had to stop working there after Mr. Montano learned that the secondhand store offered services to single mothers. He told me I could no longer work there because it violated one of the special conditions of my parole. I lost one month of earned wages valued at \$900.

15. More recently, I was looking for housing because my time in transitional housing was ending. After I signed a lease for another apartment and paid a deposit, the landlady spoke to Mr. Montano about my special conditions of parole. She then told me to return the lease and that she did not want me to live in her building. As a result, I had to find somewhere else to live.

16. Earlier in November, I moved out of the transitional housing and am now living in an apartment, for which I pay the rent. I am not receiving any financial assistance from the parole office to pay rent or any expenses.

17. As another example, I am trying to develop a network and to volunteer with different organizations that help others avoid making the mistakes that I made that led to my lengthy incarceration. This work is essential to my mental well-being. It makes me feel like my time in prison was not a waste and that I have something to contribute. For example, I have done some work with a violence prevention organization called United Playaz. I also marched across the Golden Gate Bridge to protest gun violence with Moms Demand Action for Gun Sense in America. I am also on the board of directors for a group that runs a podcast called Uncuffed that is aired on NPR. Its mission is to empower former inmates to share their stories to heal and grow. I am also a member of California Prison Focus. Its purpose is to tell the stories of people who have been incarcerated. Unfortunately, the conditions of my parole and my parole officers have made these activities very difficult due to my curfew and geographic restrictions. Being on parole severely restricts me from engaging in positive citizenship.

18. Throughout his time as my parole officer, Mr. Montano has not asked me how he could help me. Instead, when I ask him for help, he refuses. When I asked him for help getting a bus pass, he refused. When

I asked him for a subsidized pass to ride BART, he refused, and instead wrote the word "BART" on a piece of paper and taped it to my bicycle. I felt humiliated by this. Instead of trying to help me succeed, Mr. Montano has repeatedly threatened to put me back in prison. For example, after he looked through photos on my phone on one occasion, he saw a screenshot of a friend drinking alcohol. He told me that this picture alone would support a parole violation and he could use it to put me back in prison. These threats have caused me incredible stress. I live in constant fear of being re-incarcerated for events that I cannot control. I have tried to find additional support to help me adjust and to deal with this stress. But Mr. Montano stands in the way of that. When I asked Mr. Montano if I could attend a family reunion to seek social support, he refused to allow it. His actions have contributed to my feelings of isolation, fear, and depression.

19. Ever since Mr. Montano was assigned to be my parole agent, I have repeatedly asked for a different parole agent but have been refused. Earlier this month, Mr. Montano's supervisor told me that I would be reassigned to a different parole agent.

Re-incarceration Since Release on March 11, 2019

20. Since being released on March 11, I have been held in San Francisco County Jail three times. In total, I have spent 20 days in jail across these three times that I have been in custody since March.

21. The first time, I was arrested and taken to San Francisco County Jail on June 4, 2019. I was held there until June 5, 2019. During that time, I was not provided with an attorney and did not receive a hearing in court or appeal in front of a judge.

22. Based on my conversations with Mr. Montano immediately before my arrest, I believe that I was arrested on this date based, in part, on

photos that he found on my phone when he searched it. The photos he took issue with showed me at my graduation ceremony that I was invited to by United Playaz to celebrate my release from custody. United Playaz is a San Francisco-based violence prevention and youth development organization. I attended the United Playaz graduation ceremony on June 3, 2019, at which I received an award for community service. The graduation ceremony was held at a park. Many of the other program graduates are minors who were accompanied by their parents. My parole officer had prior notice that I was attending this graduation. Mr. Montano stated that the photos showed unapproved contact with minors, a failure to inform my parole agent of contact with minors, failure to obtain approval for volunteer work, and loitering on recreation center grounds where children congregate, all which he claims are violations of my special parole conditions.

23. Another basis for this arrest was him saying that he had seen something on my phone showing that I was at a poetry reading at a restaurant across the street from my transitional housing. The restaurant had an open-mic night, at which I was given permission to read my poetry. Mr. Montano stated that this showed that I had entered a business selling alcoholic beverages, which he claims is a violation of one of my special parole conditions. I was required to test a breath test each time I returned to the transitional housing and I have never failed the test.

24. Another basis for this arrest was Mr. Montano saying that I had not been meeting with my counselor, Dr. Pitta, as required by my conditions of parole. At that point, Dr. Pitta did not have my personal contact information and had been unable to reach me to inform me of a future appointment. I understand that Dr. Pitta later told my parole officer that she had no way of contacting me. Mr. Montano claimed that this showed that I had intentionally missed a mandatory appointment.

25. Based on these activities, I was held for two days in custody in San Francisco County Jail.

26. The second time, I was arrested and taken to San Francisco County Jail on July 8, 2019. I was held there until July 12, 2019. During that time, I was not provided with an attorney and did not receive a hearing in front of a judge.

27. Based on my conversations with Mr. Montano immediately before my arrest, I believe that I was arrested on this date based, in part, on a disagreement that we had about whether I could use the voice notes feature on my phone to record my conversations with him. Based on the hostility that he demonstrated toward me and my prior arrest, I felt it was important to take careful notes of our interactions. I asked him whether I could record our conversation and he said yes. I had my phone out and was recording at that time. He appears to have misunderstood me since I was also taking notes with a pen and paper. When he later discovered the voice recording of our meeting, he became angry with me and told me that it was a crime to record someone without their consent.

28. Another basis for this arrest was a video that he found on my phone showing children dancing at an event in Palo Alto that I attended. The event was a Juneteenth celebration. I was working at a booth at that fair in connection with my work for the secondhand store that provides services to single mothers. Mr. Montano claims the video shows violations of my special parole conditions.

29. Another basis for this arrest was the fact that I had missed some substance abuse treatment meetings because of work obligations. I thought that I could make up these meetings at a different time that did not conflict with my work, but Mr. Montano refused to allow me to do so.

30. Another basis for this arrest was a photo that Mr. Montano found on my phone showing a woman on a train who was sitting several

rows away from me. The photo I took only captured that which was publicly visible from an approximate distance of several rows of seats on the train.

31. Based on these activities, I was held for five days in custody in San Francisco County Jail.

32. The third time that I was re-incarcerated since my release in March, I reported to San Francisco County Jail myself on September 14, 2019, when I was told by my parole officer that there was a warrant out for my arrest after they had been unable to contact me. After twelve days in custody, I was provided with a court hearing on the petition to revoke my parole. At my court appearance, I was represented by a public defender and I did not admit any violations of my parole conditions. My matter was diverted to Parole Revocation Court, and I was released the next day. In that process, I have been assigned a social worker named Charles Brown. Mr. Brown's help and support have been extraordinary. He listens to me and helps me with my basic needs. He works with my parole agents to manage my dealings with them. He has helped me find the housing and the emotional support that I need. I wish my parole officers had provided this help so that I could have avoided the stress and further incarceration since March.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 12, 2019 in San Francisco, California.



William Monroe Palmer

PROOF OF SERVICE

Case Name: **In re Palmer**

Case No.: **S256149**

I, Sanaa Kharufeh, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Two Embarcadero Center, 28th Floor, San Francisco, California 94111-3823. I am over 18 and am not a party to this action.

On November 13, 2019, I served the within document(s):

**RESPONDENT'S OPPOSITION TO MOTION
FOR JUDICIAL NOTICE;
DECLARATION OF WILLIAM M. PALMER**

by placing a true and correct copy thereof together with an unsigned copy of this declaration, in a sealed envelope addressed as follows, with delivery fees paid or provided for, for delivery the next business day:

XAVIER BECERRA
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LANCE E. WINTERS
Chief Assistant Attorney General
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The Honorable J. Anthony Kline
Presiding Justice
Court of Appeal of the State of California
First Appellate District, Division Two
350 McAllister Street
San Francisco, CA 94102-3600

First District Appellate Project
First District Appellate Project - San Francisco
730 Harrison Street, #201
San Francisco, CA 94107

I declare under penalty of perjury under the laws of the State of California that the
above is true and correct. Executed on November 13, 2019, at San Francisco, California.



Sanaa Kharufeh