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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

MELISSA GODSEY

Plaintiff,

v.

KATHLEEN HAWK SAWYER, in her official
capacity as Director of the Federal Bureau of
Prisons, and NICOLE C. ENGLISH, in her
official capacity as Assistant Director of the
Health Services Division of the Federal Bureau
of Prisons,

Defendants.

No. 2:19-cv-1498

**PLAINTIFF MELISSA
GODSEY’S EMERGENCY
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

NOTE ON MOTION CALENDAR:
SEPTEMBER 19, 2019

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I. INTRODUCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiff Melissa Godsey hereby respectfully requests that this Court issue a temporary restraining order (TRO) and preliminary injunction requiring the Defendants, Dr. Kathleen Sawyer, Acting Director of the Federal Bureau of Prisons (“BOP”) and Dr. Nicole C. English, Assistant Direct of the Health Services Division of the BOP (collectively, “Defendants”), to provide Plaintiff with continued access to the Suboxone (buprenorphine/naloxone) treatment prescribed by her physicians during her incarceration under Defendants’ custody. Denying Plaintiff access to her medication, which Defendants will do if they follow BOP policy, constitutes (1) deliberate indifference to serious medical need in violation of the Eighth Amendment’s prohibition against cruel and unusual punishment and (2) unlawful discrimination against Plaintiff on the basis of disability and denial of reasonable accommodations in violation of the Rehabilitation Act.

Plaintiff Melissa Godsey has a deadly medical condition for which she receives FDA-approved and doctor-prescribed medication that keeps her alive. On September 30, 2019, she is scheduled to report to a federal Bureau of Prisons (BOP) facility to begin a two year and one-day sentence. At that time, unless this Court intervenes, BOP officials will halt Ms. Godsey’s life-saving medication. That is because her condition is opioid use disorder (“OUD”), her medication is Suboxone, and BOP’s policy categorically denies all non-pregnant inmates access to medication-assisted treatment (MAT) for opioid use disorder. This policy, as applied to Ms. Godsey, violates the Eighth Amendment, as well as the Rehabilitation Act. This Court should grant a preliminary injunction requiring the BOP to provide Ms. Godsey her medically necessary treatment.

1 The BOP's policy imminently threatens Ms. Godsey's ongoing recovery and her physical
2 and mental health. With the help of her doctor-prescribed Suboxone treatment, Ms. Godsey has
3 escaped years of active addiction and entered long-term recovery. There is clear and present
4 danger that in the absence of injunctive relief, Plaintiff, who is scheduled to self-surrender to a
5 BOP facility on September 30, 2019 to serve a two-year and one-day federal sentence, will suffer
6 severe, immediate and lasting medical harm from the denial of her Suboxone treatment. There is
7 particular urgency in this case because upon entering a BOP facility, Plaintiff is expected to be
8 subjected to a physically agonizing process for withdrawal of Suboxone treatment that is likely
9 to jeopardize her recovery from opioid use disorder and increase her risk of relapse and death.
10 Accordingly, Ms. Godsey seeks emergency injunctive relief to require the BOP to provide her
11 with continued access to her medically necessary, physician-prescribed medication to treat her
12 opioid use disorder when she is imprisoned on September 30, and throughout her incarceration.
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15 The relief Ms. Godsey seeks is not without precedent. A federal district court recently
16 granted a preliminary injunction requiring a Massachusetts county facility to provide an inmate
17 with continued access to methadone, despite a similar policy banning such treatment, because
18 denying methadone likely violated both the Eighth Amendment and the Americans with
19 Disabilities Act (ADA). *See Pesce v. Coppinger*, Civil Action No. 18-11972-DJC, 2018 WL
20 6171881 (D. Mass. Nov. 26, 2018). This Court should reach a similar conclusion here, as the
21 BOP's policy likely violates the Eighth Amendment and the Rehabilitation Act. Because the
22 other equitable factors also favor relief, this Court should issue an order requiring Defendants to
23 provide Ms. Godsey with continued access to her prescribed medication while in prison.
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1 **II. Facts**

2 **A. Opioid Use Disorder Is a Serious Medical Issue and a Public Health Crisis**

3 Opioid use disorder (“OUD”) is a chronic brain disease. Declaration of Dr. Adam
4 Kartman, Ex. 2 (“Kartman Decl.”) ¶ 13. OUD symptoms include cravings, withdrawal
5 symptoms, and a loss of control. *Id.* ¶¶ 13-15. Without treatment, people with OUD often cannot
6 control their use of opioids. Declaration of Dr. Alicia Ashby, Ex. 3 (“Ashby Decl.”) ¶ 19. Like
7 many other chronic diseases, genetic factors account for much of a person’s vulnerability to
8 addiction. Kartman Decl. ¶ 16.

10 More than half a million people in America have died from opioids in the last 20 years.

11 Kartman Decl. ¶ 18. Every day, an average of 130 Americans die after overdosing on
12 opioids. *Id.* The situation in Washington is particularly dire. There were an estimated 729
13 opioid-related overdose deaths in Washington in 2017, an average of almost two per day.
14 *Id.* ¶ 17.

16 As the President’s Commission on Combating Drug Addiction and the Opioid Crisis
17 recognized, OUD is especially dangerous for people who are or have been incarcerated. Chris
18 Christie et al., *The President’s Commission on Combating Drug Addiction and the Opioid Crisis*
19 72 (2017), [https://www.whitehouse.gov/sites/whitehouse.gov/files/images/
20 Final_Report_Draft_11-1-2017.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Final_Report_Draft_11-1-2017.pdf). This is directly linked to the practice of forcing inmates into
21 withdrawal even from prescribed MAT, which then puts them at risk of death if they obtain
22 opioids in prison or on the street after release because their tolerance has been greatly reduced.
23 Declaration of Dr. Ross MacDonald, Ex. 4 (“MacDonald Decl.”) ¶¶ 13-14, 22.

B. MAT Is the Standard of Care for Treating Opioid Use Disorder

1 The standard of care for treating OUD is known as medication-assisted treatment (MAT),
2 which utilizes opioid-agonist medication such as buprenorphine or methadone. MacDonald Decl.
3 ¶ 6; Ashby Decl. ¶ 10; Kartman Decl. ¶ 19. The three FDA-approved medications for treating
4 this disease are methadone, buprenorphine (Suboxone (buprenorphine/naloxone)), and
5 naltrexone (Vivitrol). Kartman Decl. ¶ 19. Methadone and buprenorphine activate opioid
6 receptors to relieve withdrawal symptoms and control cravings. *Id.* Naltrexone, in contrast,
7 blocks opioid receptors, preventing opioids from producing euphoric effects. *Id.* Not every
8 medication works equally well for each patient, and if one form of MAT is working for a patient,
9 it is against the standard of care to involuntarily terminate it. Kartman Decl. ¶ 20.

10 MAT's effectiveness is well documented, and has been shown to decrease opioid use,
11 opioid-related overdose deaths, criminal activity, and infectious disease transmission. Kartman
12 Decl. ¶¶ 21-22; N.D. Volkow et al., *Medication-Assisted Therapies—Tackling the Opioid*
13 *Overdose Epidemic*, 370 NEW ENG. J. MED. 2063, 2064 (May 2014),
14 <http://www.nejm.org/doi/pdf/10.1056/NEJMp1402780>. Other regimens, such as abstinence, have
15 not proven successful in treating opioid addiction, and studies have shown that maintenance
16 medication treatments have a more robust effect than behavioral interventions. M.A. Schuckit,
17 *Treatment of Opioid-Use-Disorder*, 375 NEW ENGL. J. MED. 357, 358-59 (2016). As a result,
18 a growing number of state and federal government agencies and physicians groups have
19 advocated for increased access to MAT to combat the growing crisis of opioid addiction. For
20 example, the federal Substance Abuse and Mental Health Services Administration (SAMHSA)
21 increased funding of the "State Targeted Response to the Opioid Crisis" program from \$1 billion
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1 in 2017 to \$2 billion in 2018. Substance Abuse and Mental Health Services Administration, *State*
2 *Targeted Response to the Opioid Crisis Grants* (May 30, 2017),
3 <http://www.samhsa.gov/grants/grant-announcements/ti-17-014>; Substance Abuse and Mental
4 Health Services Administration, *State Targeted Response to the Opioid Crisis Grants* (June 14,
5 2018), <http://www.samhsa.gov/grants/grant-announcements/ti-18-015>.

7 The World Health Organization (WHO) deems buprenorphine and methadone “essential
8 medicines” for treating OUD. National Institute on Drug Abuse, *Effective Treatments for Opioid*
9 *Addiction* (Nov. 2016), [http://www.drugabuse.gov/publications/effective-treatments-opioid-](http://www.drugabuse.gov/publications/effective-treatments-opioid-addiction/effective-treatments-opioid-addiction)
10 [addiction/effective-treatments-opioid-addiction](http://www.drugabuse.gov/publications/effective-treatments-opioid-addiction/effective-treatments-opioid-addiction). The FDA has declared “[i]mproving access to
11 prevention, treatment and recovery services, including the full range of MAT, is a focus of the
12 FDA’s ongoing work to reduce the scope of the opioid crisis[.]” U.S. Food and Drug
13 Administration, *FDA approves first generic versions of Suboxone® sublingual film, which may*
14 *increase access to treatment for opioid dependence* (June 14, 2018),
15 <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm610807.htm>. The
16 President’s Commission recommends that OUD “[t]reatment should include . . . [a]ccess to
17 MAT. . . .” Chris Christie et al., *supra* p. 3, at 68. The President’s Office of National Drug
18 Control Policy (ONDCP) recently promised the “Administration will work across the Federal
19 government to remove barriers to substance use disorder treatments, including those that limit
20 access to any forms of FDA-approved MAT[.]” Office of National Drug Control Policy,
21 *National Drug Control Strategy* 10 (Jan. 2019), [https://www.whitehouse.gov/wp-](https://www.whitehouse.gov/wp-content/uploads/2019/01/NDCS-Final.pdf)
22 [content/uploads/2019/01/NDCS-Final.pdf](https://www.whitehouse.gov/wp-content/uploads/2019/01/NDCS-Final.pdf) [hereinafter *National Drug Control Strategy*]. And the
23 Substance Abuse and Mental Health Services Administration (SAMHSA) offers billions of
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1 dollars in federal grants to increase MAT programs and support. Substance Abuse and Mental
2 Health Services Administration, *State Targeted Response to the Opioid Crisis Grants* (June 14,
3 2018), <http://www.samhsa.gov/grants/grant-announcements/ti-18-015>; Substance Abuse and
4 Mental Health Services Administration, *FY 2018 Opioid State Targeted Response Technical*
5 *Assistance* (Nov. 8, 2017), <http://www.samhsa.gov/grants/grant-announcements/ti-18-004>.

7 C. Suboxone Is Medically Necessary for Ms. Godsey

8 Ms. Godsey suffers from OUD, anxiety, and bipolar disorder. Declaration of Melissa
9 Godsey, Ex. 5 (“Godsey Decl.”) ¶ 3; Ashby Decl. ¶ 3. Ms. Godsey has struggled with addiction
10 since she was 21 years old. She first began using methamphetamine in 2005. In April 2009, she
11 entered inpatient treatment for five months. Ms. Godsey remained drug free for six and a half
12 years. When she had her last child, she suffered from post-partum depression and her doctor
13 diagnosed her with ADHD and prescribed her Adderall. Soon, Ms. Godsey was seeking more
14 medication than her doctor had prescribed. Eventually, she found it easier to obtain meth than
15 Adderall and relapsed in October 2014. In October 2017, she smoked heroin for the first time.
16 Godsey Decl. ¶ 13.

18 While actively using, Ms. Godsey made poor decisions in an effort to obtain drugs. It was
19 during this period of time that Ms. Godsey engaged in the activities that led to her arrest and
20 federal charges. Ms. Godsey was arrested in May 2018 and released one week later. She relapsed
21 two weeks later on June 12, 2018, and reported the relapse to her probation officer. On June 14,
22 2018, she started a Suboxone program and inpatient treatment. Under treatment with Suboxone,
23 Ms. Godsey has now been in active recovery for fifteen months. According to her treating
24 physician, Dr. Ashby, this is particularly remarkable given her lengthy history of active addiction
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1 and her co-morbid bipolar disorder. Ashby Decl. ¶ 13. Dr. Ashby’s medical opinion is that
2 continued Suboxone treatment is medically necessary to treat Ms. Godsey’s OUD. *Id.* ¶ 12.

3 Since entering active recovery, Ms. Godsey has been a better mother to her children, has
4 sought significant mental health treatment and support, and has not been criminally involved.
5 Godsey Decl. ¶¶ 3, 15. Ms. Godsey wishes to remain in recovery for herself and for her children.
6 Godsey Decl. ¶ 3. As explained below, Defendants’ policies jeopardize Ms. Godsey’s health and
7 recovery.
8

9 **D. Absent Judicial Intervention, the BOP Will Contravene the Standard of Care and**
10 **Terminate Ms. Godsey’s Suboxone Treatment, Causing Her Unnecessary Pain and**
11 **Suffering**

12 Although the BOP permits the use of methadone for pain management, as a matter of
13 policy and practice the BOP does not provide methadone or buprenorphine to non-pregnant
14 inmates who suffer from OUD for treatment, even those who have been successfully prescribed
15 these medications before their incarceration and are in active recovery. Federal Bureau of
16 Prisons, *Program Statement: Pharmacy Services, No. P6360.01*, at 37 (Jan 15, 2005),
17 <http://www.bop.gov/policy/progstat/6360.001.pdf> [hereinafter *Program Statement: Pharmacy*
18 *Services*]; Federal Bureau of Prisons Health Services, *National Formulary Part I*, at 15 (Winter
19 2018), https://www.bop.gov/resources/pdfs/national_formulary-part_I-2018.pdf [hereinafter
20 *Nat’l Formulary Part I*]. The BOP’s Pharmacy Services Program Statement and National
21 Formulary, which apply to and bind all BOP institutions, mandate that “inmates will not be
22 maintained on methadone with the exception of pregnant inmates,” and that buprenorphine will
23 “NOT” be approved for “maintenance therapy.” *Id.* There are no exceptions to this policy.
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1 Under the BOP's detoxification procedure, Ms. Godsey will be involuntarily denied her
2 Suboxone and potentially provided with methadone to control objective signs of withdrawal for a
3 short period of time. Federal Bureau of Prisons, *Detoxification of Chemically Dependent Inmates*
4 16 (Jan. 2018), <https://www.bop.gov/resources/pdfs/detoxification.pdf> [hereinafter
5 *Detoxification Policy*]. Both of these protocols will trigger excruciating withdrawal symptoms,
6 such as vomiting, diarrhea, body shakes, and an inability to sleep for weeks or even months at a
7 time, which can lead to life-threatening complications. Kartman Dec. ¶ 24. Ms. Godsey will also
8 be at risk of relapsing into opioid use—either during or immediately following her
9 incarceration—increasing the chance that she will overdose and die. MacDonald Decl. ¶ 31.
10 Involuntarily halting Suboxone treatment is particularly risky for Ms. Godsey, as doing so could
11 trigger her bipolar disorder and depression symptoms, and because a previous attempt to taper
12 off Suboxone caused Ms. Godsey to experience suicidal ideation. MacDonald Decl. ¶ 43.

15 On August 16, 2019, Ms. Godsey's counsel sent a letter to Defendants informing them of
16 her serious medical need and requesting assurance that Ms. Godsey will be provided with her
17 physician-prescribed dose of Suboxone while in their custody. *See* Complaint at 20 (Dkt. No. 1).
18 On August 30, 2019, counsel for the BOP sent Ms. Godsey's counsel a letter stating that Ms.
19 Godsey would be given an individualized assessment of her general medical needs and would be
20 given treatment of some kind. *Id.* at 20-21 The letter also requested copies of Ms. Godsey's
21 medical records, and directed all questions to Dr. James K. Pelton, BOP Regional Medical
22 Director. *Id.* at 21. Counsel for Ms. Godsey called Dr. Pelton and though he stated that efforts
23 were being made to provide Ms. Godsey with Suboxone during her incarceration, when asked to
24 confirm this in writing, he directed counsel to George Cho, an attorney with the BOP. *Id.*

1 Counsel for Ms. Godsey sent Mr. Cho and Timothy Rodrigues, Supervisory Attorney and
2 Senior Attorney with the BOP, an email on September 9, 2019, reiterating the request in the
3 August 16, 2019 letter for confirmation that Ms. Godsey would receive Suboxone during her
4 incarceration. *Id.* Mr. Rodrigues did not provide such confirmation in his email response, and
5 only reiterated that Ms. Godsey would be given an individualized assessment of her medical
6 needs upon arriving at the BOP facility. *Id.* On September 11, 2019, counsel for Ms. Godsey also
7 requested assurance that Ms. Godsey's medical records would only be used for evaluating her
8 MAT treatment plan, but did not receive a response from BOP's counsel. *Id.*

9
10 Accordingly, the relevant officials at the BOP have been informed of Ms. Godsey's
11 diagnosis and need for medical treatment, but it appears that they will not provide such treatment
12 while she is incarcerated. Counsel for the BOP would not confirm that the treatment would be
13 continued, despite the statement by Dr. Pelton, BOP's counsel did not state that Defendants
14 could or would deviate from their mandatory blanket prohibition of Suboxone maintenance
15 treatment for inmates.
16

17 On September 17, 2019, the United States filed a Response to Ms. Godsey's Motion to
18 Extend Date for Voluntary Surrender, and made several statements therein that further
19 demonstrate their intention to withhold treatment from Ms. Godsey, which will result in serious
20 harm. *See* Nowlin Decl. Ex. 4. The Government makes vague claims that BOP is "trying to
21 arrange for Godsey to receive Suboxone treatment," but it notably avoids committing to
22 providing Suboxone to Ms. Godsey or making an exception to its policy. *Id.* at 3. Indeed, the
23 BOP admits that FCI Dublin has yet to implement a protocol for the implementation of MAT as
24 medically necessary, *id.* at 4, and argues that it should be allowed "to determine whether MAT is
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1 appropriate...pursuant to standard BOP procedures,” except BOP procedures do not permit MAT
2 for maintenance therapy. *Id.* at 5-6; *see supra* Section II.D.

3 Even assuming BOP intends to provide Ms. Godsey with her prescription medication,
4 which it is not clear that it does, BOP’s plan for doing so is unacceptable and will cause her
5 unnecessary harm. BOP states that it will not formally consider Ms. Godsey for MAT
6 maintenance until the initial screening exam, which occurs within 14 days of admission. *Id.* at 4.
7 If she is eligible, she would then be referred to the Chief Psychologist and Clinical Director for
8 formulation of a treatment plan. There is no timeline given for how long the referral or
9 formulation could take. Therefore, even if BOP does depart from its MAT policies, which it has
10 not committed to doing, it is likely to be weeks and could even be months before Ms. Godsey
11 receives her prescription medication, and then only if BOP approves. Such a delay would force
12 Ms. Godsey into withdrawal, the consequences of which can include vomiting, diarrhea, body
13 shakes, and an inability to sleep for weeks or even months at a time, which can lead to life-
14 threatening complications, as well of increased risk of relapse, overdose, and death. *See* Sections
15 II.D, III.C., above.
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18 **E. Providing Medication for Addiction Treatment to Inmates with Opioid Use**
19 **Disorder Has Had Demonstrable Success**

20 The BOP’s refusal to provide MAT to inmates stands in stark contrast to the positive
21 results other correctional institutions have experienced by offering MAT, and the federal
22 government’s own admonishments to state and local correctional institutions which have not yet
23 adopted this treatment regimen. Various state prisons either already administer methadone and
24 buprenorphine to their inmates or are preparing to do so. MacDonald Decl. ¶¶ 9-10. In addition,
25 the President’s ONDCP recently declared that one of the Administration’s priorities is
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1 “increasing the availability of MAT for incarcerated individuals.” *National Drug Control*
2 *Strategy, supra* p. 5. The Department of Justice has also invoked the ADA to eliminate barriers
3 to OUD recovery, and the U.S. Attorney is investigating several Massachusetts jails and prisons
4 based on their failure to provide MAT to incarcerated people. In so doing, the U.S. Attorney
5 emphasized “that all individuals in treatment for OUD, regardless of whether they are inmates or
6 detainees, are already protected by the ADA, and the DOC has existing obligations to
7 accommodate this disability.” Ex. 1, Letter from Andrew E. Lelling, United States Attorney for
8 the District of Massachusetts, to Kevin F. Coppinger, Sheriff, Essex County, at 2 (Dec. 4, 2018).

10 **III. ARGUMENT**

11 **A. Standard of Review**

12 “The standard for issuing a temporary restraining order is identical to the standard for
13 issuing a preliminary injunction.” *ET Trading, Ltd. v. ClearPlex Direct, LLC*, No. 15-CV-426-
14 LHK, 2015 WL 913911, at *2 (N.D. Cal. Mar. 2, 2015). A plaintiff seeking a preliminary
15 injunction or TRO must establish (1) that it is likely to succeed on the merits, (2) that it is likely
16 to suffer irreparable harm without the preliminary relief, (3) the balance of equities tips in its
17 favor, and (4) an injunction is in the public interest. *See Marlyn Nutraceuticals, Inc. v. Mucos*
18 *Pharma GmbH & Co.*, 571 F.3d 873, 877 (9th Cir. 2009) (quoting *Winter v. Natural Res. Def.*
19 *Council, Inc.*, 555 U.S. 7, 20 (2008)). Under the Ninth Circuit’s “serious questions” sliding scale
20 test for preliminary injunctions, these factors are balanced with each other, such that a strong
21 showing of irreparable harm may overcome a lesser showing of likelihood of success, and
22 likewise a strong showing on the merits justifies preserving the status quo even in cases with less
23 substantial irreparable harm. *See Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-
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1 35 (9th Cir. 2011) (“we join the Seventh and the Second Circuits in concluding that the ‘serious
2 questions’ version of the sliding scale test for preliminary injunctions remains viable after the
3 Supreme Court’s decision in *Winter*. . . . ‘A preliminary injunction is appropriate when a plaintiff
4 demonstrates . . . that serious questions going to the merits were raised and the balance of
5 hardships tips sharply in the plaintiff’s favor.”) (quoting *Lands Council v. McNair*, 537 F.3d 981,
6 987 (9th Cir. 2008) (en banc).

8 Applying this test, the United States District Court for the District of Massachusetts in
9 *Pesce v. Coppinger* recently granted a preliminary injunction under the Eighth Amendment and
10 the ADA to an individual suffering from OUD who challenged, as applied to him, a county
11 house of correction’s blanket policy denying methadone maintenance treatment. *See Pesce v.*
12 *Coppinger*, Civil Action No. 18-11972-DJC, 2018 WL 6171881 at *1 (D. Mass. Nov. 26, 2018).
13 All factors favor granting similar relief against the BOP’s MAT policy as applied to Ms. Godsey.

14 **B. Ms. Godsey Is Likely to Succeed on the Merits**

15 To obtain preliminary injunction relief, Ms. Godsey need only show that she is likely to
16 succeed on one of her legal claims. *See Fin. Express LLC v. Nowcom Corp.*, 564 F. Supp. 2d
17 1160, 1168 (C.D. Cal. 2008) (“In order to be granted a preliminary injunction, [plaintiff] only
18 needs to show the requisite combination of probable success on the merits and the possibility of
19 irreparable injury with respect to any one of its claims.”). First, Ms. Godsey is likely to prove
20 that Defendants, pursuant to BOP policy, will be deliberately indifferent to her serious medical
21 need in violation of her rights under the Eighth Amendment. And second, Ms. Godsey is also
22 likely to show that Defendants, pursuant to BOP policy, will violate Section 504 of the
23 Rehabilitation Act.
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1 **a. Ms. Godsey Is Likely to Show That Defendants’ Denial of Suboxone**
2 **Treatment Constitutes Deliberate Indifference to a Serious Medical Need**
3 **Violating the Eighth Amendment**

4 Ms. Godsey is likely to succeed on her Eighth Amendment claim that halting access to
5 her prescribed Suboxone treatment constitutes cruel and unusual punishment. Because “society
6 takes from prisoners the means to provide for their own needs,” they “are dependent on the State
7 for food, clothing, and necessary medical care.” *Brown v. Plata*, 563 U.S. 493, 510 (2011). “Just
8 as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical
9 care.” *Id.* at 510-11. “A prison that deprives prisoners of basic sustenance, including adequate
10 medical care, is incompatible with the concept of human dignity and has no place in civilized
11 society.” *Id.* at 511. Prison officials thus have an affirmative obligation to provide prisoners with
12 medical care. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976). An Eighth Amendment claim has
13 objective and subjective elements. *Disability Rights Mont., Inc. v. Batista*, 930 F.3d 1090, 1098
14 (9th Cir. 2019) (hereinafter, *Disability Rights*); *Kosilek v. Spencer*, 774 F.3d 63, 81 (1st Cir.
15 2014) (en banc). The objective element “requires that the plaintiff show that the conditions of the
16 prison pose ‘a substantial risk of serious harm.’” *Disability Rights*, 930 F.3d at 1098 (quoting
17 *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). Subjectively, it must be proven that Defendants
18 are deliberately indifferent “by being aware of the facts from which the inference could be drawn
19 that a substantial risk of serious harm exists,’ and ‘also draw[ing] the inference.’” *Id.*
20 Ms. Godsey is likely to satisfy both elements.
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1 **i. Ms. Godsey Is Reasonably Likely to Satisfy the Objective Prong of**
 2 **Her Eighth Amendment Claim**

3 Ms. Godsey is “reasonably likely to satisfy the objective inquiry” of the Eighth
 4 Amendment analysis. *Pesce*, 2018 WL 6171881, at *7.¹ First, OUD is a serious medical need. A
 5 medical need is “serious” if “[t]he existence of an injury that a reasonable doctor or patient
 6 would find important and worthy of comment or treatment; the presence of a medical condition
 7 that significantly affects an individual's daily activities; or the existence of chronic and
 8 substantial pain.” *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir. 2014) (quoting *McGuckin*
 9 *v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1992), *overruled in part on other grounds by WMX*
 10 *Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc). Ms. Godsey’s physician has
 11 prescribed Suboxone to treat her OUD, a chronic brain disease that kills more than one hundred
 12 Americans every single day. Kartman Decl. ¶ 18.

14 Second, Ms. Godsey’s Suboxone is medically necessary to adequately treat her OUD. Of
 15 her many attempts to achieve recovery, only Suboxone treatment has worked. Godsey Decl. ¶¶ 4,
 16 11-13, 18. Her prescribing physician has determined that “the continued administration of
 17 [Suboxone] is medically necessary” to treat Ms. Godsey’s OUD, and that “it would violate
 18 medical standards of care to involuntarily remove [her] from this treatment.” Ashby Decl. ¶ 12.
 19 That MAT is the standard of care to treat OUD is widely embraced by the medical community.
 20 *See MacDonald Decl. ¶ 6*. Once a patient is successfully recovering using MAT, abruptly and
 21 involuntarily halting that medication for reasons other than medical necessity contradicts sound
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 25 ¹ Ms. Godsey’s medical need is serious even though she is not yet in federal custody. “A significant risk of future
 26 harm that prison administrators fail to mitigate may suffice under the objective prong.” *Kosilek*, 774 F.3d at 85.
 27 The application of BOP’s MAT policies impose a grave risk to Ms. Godsey’s recovery, health, and life.

1 medical practice and prudent professional standards of care. Kartman Decl. ¶ 20; MacDonald
2 Decl. ¶¶ 21-22.

3 Directly contradicting Ms. Godsey’s own doctor and the weight of medical authority, the
4 BOP’s MAT policy will categorically deny Ms. Godsey access to adequate care. Declaration of
5 Dr. Michael Hauke, Ex. 6 (“Hauke Decl.”) ¶ 9; Ashby Decl., ¶ 21. Under the Eighth
6 Amendment, adequate care requires an individualized assessment of an inmate’s medical needs.
7 *Kosilek*, 774 F.3d at 91; *Roe v. Elyea*, 631 F.3d 843, 862-63 (7th Cir. 2011). But the BOP’s
8 blanket policy preempts this constitutionally required assessment, mandating that buprenorphine,
9 including Suboxone, “[w]ill only be approved for detoxification, NOT for pain or maintenance
10 therapy.” *Nat’l Formulary Part I, supra* p. 7, at 15. BOP officials have not claimed any authority
11 to deviate from this ban, for which there is no written exception. There can be no individualized
12 assessment under these circumstances, because any evaluation will necessarily ignore the option
13 of medication-assisted treatment regardless of Ms. Godsey’s needs. *Cf. Kosilek*, 774 F.3d at 91
14 (noting that “any such [blanket] policy would conflict with the requirement that medical care be
15 individualized based on a particular prisoner’s serious medical needs”).

16 This, therefore, is not a case where “two alternative courses of treatment exist, and both
17 alleviate negative effects within the boundaries of modern medicine.” *Cf. Kosilek*, 774 F.3d
18 at 90. Here, the BOP’s policy does not permit any treatment during incarceration. But even if it
19 did, there is no reasonable alternative to Suboxone here given that (1) Ms. Godsey has had
20 tremendous success with Suboxone, (2) her physician has determined Suboxone is medically
21 necessary to treat her OUD and that it would violate the standard of care to terminate this
22 treatment, and (3) she is at high risk for dangerous withdrawal and relapse if Suboxone is
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1 abruptly withdrawn. Ashby Decl. ¶¶ 12-20. The BOP's policies denying Suboxone, and indeed
2 all MAT maintenance to non-pregnant inmates, therefore deny Ms. Godsey constitutionally
3 adequate care for her serious medical need.

4 **ii. Ms. Godsey Is Likely to Satisfy the Subjective Prong to Her Eighth**
5 **Amendment Claim**

6 As applied to Ms. Godsey, the BOP's Suboxone policy constitutes deliberate
7 indifference. The subjective prong is satisfied if the plaintiff can demonstrate that the official
8 acted or failed to act despite his knowledge of substantial risk of serious harm. *Disability Rights*,
9 930 F.3d at 1099 (citing *Farmer v. Brennan*, 511 U.S. 825, 842 (1994)). Here, the BOP's policy
10 is designed to disregard Ms. Godsey's medical needs in favor of a one-size-fits-all prohibition of
11 buprenorphine and Suboxone maintenance treatment for all inmates. Ms. Godsey's Complaint
12 "includes more than sufficient allegations" to satisfy the subjective prong of her Eighth
13 Amendment claim. *Id.* Indeed, the Defendants have been notified of Ms. Godsey's serious
14 medical need and her Suboxone prescription, yet they have not agreed that she will be able to
15 continue her treatment.
16

17 Moreover, at least two other individuals have sued Defendants regarding their refusal to
18 provide MAT. *See, e.g., DiPierro v. Hurwitz*, No. 1:19-cv-10495, (March 15 2019, D. Mass.);
19 *Crews v. Sawyer*, No. 19-cv-2541 (Sept. 6, 2019, D. Kansas). These prior lawsuits are further
20 evidence to satisfy the subjective prong of Ms. Godsey's Eighth Amendment Claim, as
21 Defendants have been alerted to the substantial risk of serious harm of its policies denying
22 Suboxone and all MAT. *Disability Rights*, 930 F.3d at 1099.
23

24 Although prison officials might not be deliberately indifferent if they "make judgments
25 balancing security and health concerns that are within the realm of reason and made in good
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1 faith,” *Kosilek*, 774 F.3d at 92 (citation omitted), that is not the situation here. The BOP already
 2 offers Suboxone to inmates for detoxification and methadone to inmates for pain management,
 3 and permits methadone maintenance therapy for pregnant inmates. *Program Statement:*
 4 *Pharmacy Services*, *supra* p. 7, at 37; *Nat’l Formulary Part I*, *supra* p. 7, at 15; *but see*
 5 *Detoxification Policy*, *supra* p. 8, at 17 (detoxification will not utilize buprenorphine). BOP’s
 6 policies do not identify security reasons for banning Suboxone, much less weigh them against
 7 Ms. Godsey’s urgent need for continued treatment. Indeed, numerous state jails and prisons have
 8 implemented MAT policies that allow inmates to continue Suboxone treatment for OUD. *See*
 9 MacDonald Decl. ¶¶ 10-12.

11 And several institutions, including the National Commission on Correctional Health Care
 12 and the National Sheriffs’ Association, have called for the provision of all three forms of MAT
 13 in jails and prisons. National Sheriffs’ Association & National Commission on Correctional
 14 Health Care, *Jail-Based Medication-Assisted Treatment* 9 (2018),
 15 <https://www.sheriffs.org/publications/Jail-Based-MAT-PPG.pdf>. Thus, security concerns cannot
 16 justify denying Ms. Godsey her Suboxone treatment. *Pesce*, 2018 WL 6171881, at *6.

18 **b. Ms. Godsey Is Likely to Show That Defendants’ Denial of Suboxone**
 19 **Treatment Violates the Rehabilitation Act**

20 Ms. Godsey is also likely to succeed on her claim that denying her access to Suboxone
 21 constitutes unlawful discrimination under the Rehabilitation Act.² Section 504 of the
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 24 ² Cases interpreting the Rehabilitation Act and the ADA are interchangeable. *See Collings v. Longview Fibre Co.*, 63
 25 F.3d 828 (9th Cir. 1995) (“[t]he legislative history of the ADA indicates that Congress intended judicial
 26 interpretation of the Rehabilitation Act be incorporated by reference when interpreting the ADA”); *Therault v.*
Flynn, 162 F.3d 46, 48 n.3 (1st Cir. 1998) (“Title II of the ADA was expressly modeled after Section 504 of the
 Rehabilitation Act, and is to be interpreted consistently with that provision”); *Hainze v. Richards*, 207 F.3d 795,

1 Rehabilitation Act prohibits federal entities like the BOP from discriminating against a qualified
 2 individual with a disability on the basis of that disability. *See* 29 U.S.C. § 794. To succeed, Ms.
 3 Godsey must show: “(1) that [s]he is a qualified individual with a disability; (2) that [s]he was
 4 either excluded from participation in or denied the benefits of some public entity’s services,
 5 programs, or activities or was otherwise . . . discriminated against; and (3) that such exclusion,
 6 denial of benefits, or discrimination was by reason of [her] disability.” *Updike v. Multnomah*
 7 *Cty.*, 870 F.3d 939, 949 (9th Cir. 2017); *Buchanan v. Maine*, 469 F.3d 158, 170-71 (1st Cir.
 8 2006). Each element is satisfied here.

10 **i. Ms. Godsey Is a Qualified Individual with a Disability**

11 Individuals with OUD, including Ms. Godsey, are qualified individuals with disabilities
 12 under the Rehabilitation Act. *See Pesce*, 2018 WL 6171881, at *6 (finding same under the
 13 ADA). A “disability” includes “a physical or mental impairment that substantially limits one or
 14 more major life activities.” 42 U.S.C. § 12102; 29 U.S.C. § 705(20)(B). Such impairments
 15 include “drug addiction, and alcoholism.” 28 C.F.R. § 35.108(b)(2). Ms. Godsey’s disability is
 16 severe and chronic. Ashby Decl. ¶¶ 13, 15; MacDonald Decl. ¶¶ 39-40. Left untreated, her OUD
 17 substantially limits her major life activities, such as caring for herself, learning, concentrating,
 18 thinking, communicating, and working. Godsey Decl. ¶ 13. Ms. Godsey therefore qualifies for
 19 protection under the Rehabilitation Act.
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25 799 (5th Cir. 2000) (“[j]urisprudence interpreting either [Title II or the Section 504 of the Rehabilitation Act] is
 26 applicable to both”).

1 **ii. Ms. Godsey Will Be Denied the Benefit of Health Care Services and**
2 **Discriminated Against Because of Her Disability**

3 Ms. Godsey also satisfies the second and third elements for demonstrating a
4 Rehabilitation Act violation: medical care is a service within the meaning of the Rehabilitation
5 Act, and the Defendants' Suboxone policy will deny that service to Ms. Godsey by reason of her
6 disability. *See Pesce*, 2018 WL 6171881, at *6. In *Pesce*, the Court held that a county policy
7 resembling the BOP's was "either 'arbitrary or capricious-as to imply that it was pretext for
8 some discriminatory motive' or 'discriminatory on its face.'" *Pesce*, 2018 WL 6171881, at *7.
9 Likewise, the U.S. Attorney has instigated ADA investigations against state and county facilities
10 for imposing such a blanket policy to deny inmates access to methadone and buprenorphine
11 during incarceration. Ex. 1, Letter from Andrew E. Lelling, United States Attorney for the
12 District of Massachusetts, to Kevin F. Coppinger, Sheriff, Essex County (Dec. 4, 2018). Here, in
13 at least two ways, Ms. Godsey is likely to show that the BOP's blanket policy of refusing to
14 administer Suboxone treatment to her denies services based on her disability, and thus violates
15 the Rehabilitation Act.
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17 First, halting Ms. Godsey's Suboxone treatment discriminates based on her disability
18 because Defendants' policy, as applied to Ms. Godsey, discriminates "amongst classes of the
19 disabled." *Iwata v. Intel Corp.*, 349 F. Supp. 2d 135, 148-49 (D. Mass. 2004) (citing *Olmstead v.*
20 *L.C.*, 527 U.S. 581 (1999)). If Ms. Godsey suffered from diabetes, heart disease, or any number
21 of other chronic health conditions requiring regular medication, Defendants would meet her
22 medical needs. Federal Bureau of Prisons, *Program Statement: Patient Care, No. 6031.04*, at 6
23 (Jun. 3, 2014), https://www.bop.gov/policy/progstat/6031_004.pdf (chronic conditions including
24 diabetes and heart disease considered "medically necessary"). But because Ms. Godsey suffers
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1 from OUD, she will be denied the Suboxone her physician has prescribed. Highlighting the
2 discriminatory nature of the denial, BOP policy provides another form of MAT, methadone,
3 when the inmate's condition is chronic pain or when the inmate is pregnant, but it prohibits the
4 same exact medication when the non-pregnant inmate's diagnosis is OUD. *Program Statement:*
5 *Pharmacy Services, supra p. 7, at 37-39.* This disparity underscores that the reason the BOP will
6 not provide Ms. Godsey with MAT has nothing to do with a legitimate security or health concern
7 and everything to do with her diagnosis. That is quintessential disability discrimination that the
8 Rehabilitation Act forbids.

10 Second, halting Ms. Godsey's Suboxone treatment discriminates based on her disability
11 because it is a refusal to provide a reasonable accommodation. "Discrimination" under the
12 Rehabilitation Act and the ADA includes failing to make reasonable accommodations for a
13 qualified individual with a disability. *Snapp v. United Transp. Union*, 889 F.3d 1088, 1095 (9th
14 Cir. 2018); 29 U.S.C. § 794; 42 U.S.C. § 12112(b)(5)(A). Here, Ms. Godsey seeks a reasonable
15 accommodation of her OUD—her prescribed Suboxone treatment—that will not fundamentally
16 alter the BOP's health services, which already provide Suboxone for detoxification. *See Program*
17 *Statement: Pharmacy Services, supra p. 7, at 37; Nat'l Formulary Part I, supra p. 7, at 15;*
18 *Pesce*, 2018 WL 6171881, at *6. Defendants' policy requiring Ms. Godsey to discontinue
19 treatment, undergo painful and dangerous withdrawal, and risk relapse, overdose, and death, is
20 not a reasonable accommodation. Far from relying on "reasoned medical judgment," Defendants
21 "have not given any consideration to [Ms. Godsey's] specific medical needs nor indicated any
22 likelihood to do so when [s]he is incarcerated given their present policy against [MAT]." *Pesce*,
23 2018 WL 6171881, at *6.

27 PLAINTIFF MELISSA GODSEY'S EMERGENCY
MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION - 20

AMERICAN CIVIL LIBERTIES UNION OF
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1 **c. Ms. Godsey’s Claims Do Not Require Exhaustion**

2 Finally, no exhaustion requirement defeats Ms. Godsey’s likelihood of success on the
 3 merits of her claims. The Department of Justice’s administrative remedy for the Rehabilitation
 4 Act is not mandatory and can be waived in the discretion of the court. *See, e.g., Greater Los*
 5 *Angeles Council on Deafness, Inc. v. Community Television of Southern California*, 719 F.2d
 6 1017, 1021 (9th Cir. 1983). It is appropriate to do so where, as here, the plaintiff may suffer
 7 undue prejudice from requiring exhaustion, and where the agency has “otherwise predetermined
 8 the issue before it.” *Bricker v. Rockwell Int’l Corp.*, 22 F.3d 871, 879 (9th Cir. 1993). And
 9 because Ms. Godsey is not yet incarcerated, she need not exhaust any administrative remedies
 10 under the BOP’s Remedy Program, which applies only to “inmates in institutions operated by the
 11 Bureau of Prisons, to inmates designated to contract Community Corrections Centers (CCCs)
 12 under Bureau of Prisons responsibility, and to former inmates for issues that arose during their
 13 confinement.” 28 C.F.R. § 542.10 (emphasis added).³

14 **C. Ms. Godsey Faces Immediate Irreparable Injury**

15 Ms. Godsey will suffer irreparable harm unless she receives her Suboxone treatment
 16 throughout her incarceration. A plaintiff seeking preliminary relief must “demonstrate that
 17 irreparable injury is *likely* in the absence of an injunction.” *Winter v. Natural Res. Def. Council,*
 18 *Inc.*, 555 U.S. 7, 22 (2008) (emphasis in original). Absent injunctive relief, Defendants’ policy⁴
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22 ³ The APA does not impose an independent exhaustion requirement. *Darby v. Cisneros*, 509 U.S. 137, 154 (1993).

23 ⁴ As discussed above, BOP policies do not include an exception to the ban on MAT maintenance treatment for non-
 24 pregnant individuals. *See supra*, Section II.D. BOP has indicated that it may consider an exception for Ms.
 25 Godsey, but even then, that it could be up to two weeks before Ms. Godsey may be determined to be eligible for
 26 MAT, and an indefinite period of time before she actually receives her medication if it is approved. *Id.* Therefore,
 27 even if BOP does determine at some point to provide Ms. Godsey with her MAT, by their own account, they will
 have already forced her into withdrawal.

1 will force Ms. Godsey into acute withdrawal with painful physical and psychological symptoms.
2 Ashby Decl. ¶ 16; Kartman Decl. ¶ 24; MacDonald Decl. ¶ 26. Forced withdrawal will also
3 increase Ms. Godsey’s risk of relapsing, overdosing, and dying. Kartman Decl. ¶¶ 21, 25;
4 MacDonald Decl. ¶¶ 22. Putting Ms. Godsey at risk of these dire consequences is irreparable
5 harm. *See Pesce*, 2018 WL 6171881, at *8 (finding irreparable harm where there was a “high
6 risk of overdose and death upon [] release if not treated during [] incarceration.”).

8 **D. The Balance of Harms Favors Granting Ms. Godsey’s Motion**

9 The irreparable, and potentially permanent, harm suffered by Ms. Godsey absent relief
10 greatly outweighs any potential harm to Defendants. As discussed above, the BOP already
11 provides Suboxone for detoxification purposes. *National Formulary Part I, supra* p. 7, at 15;
12 *Program Statement: Pharmacy Services, supra* p. 7, at 37-39. It is difficult to conceive of how
13 providing the same exact medication to Ms. Godsey would pose any burden on Defendants.
14

15 Granting injunctive relief would therefore impose no measurable harm on Defendants
16 aside from the cost of providing Suboxone, which is extremely cost-effective. By contrast, the
17 harm Ms. Godsey would face absent her prescribed-Suboxone treatment includes a high risk of
18 overdose and death. The balance of harms therefore clearly favors granting Ms. Godsey’s
19 motion.

20 **E. The Public Interest Strongly Favors the Grant of Emergency Injunctive Relief**

21 The public interest also favors Ms. Godsey’s requested injunctive relief. Defendants’
22 policy of denying MAT, even to people with existing prescriptions, provides one more barrier to
23 effective treatment for those suffering from OUD, thus worsening rather than ameliorating the
24 ongoing opioid crisis. Indeed, Defendants’ policies worsen that crisis by disrupting effective
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1 treatment and making relapse and potential overdose more likely. “[T]he public interest is better
2 served by ensuring [Ms. Godsey] receives the medically necessary treatment that will ensure
3 [s]he remains in active recovery.” *See Pesce*, 2018 WL 6171881, at *8.

4 **F. The Court Should Not Require a Bond as a Condition of the TRO**

5 Courts may issue a preliminary injunction or TRO only if the moving party gives security
6 in an amount the court determines to be proper to pay the costs and damages of any party found
7 to be wrongfully enjoined or restrained. *See Fed. R. Civ. P. 65(c)*. “The district court retains
8 discretion as to the amount of security required, if any.” *Diaz v. Brewer*, 656 F.3d 1008, 1015
9 (9th Cir. 2011) (internal quotation marks and citation omitted). The court may “dispense with
10 the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant
11 from enjoining his or her conduct.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003).

12 No bond is necessary here because there is no realistic likelihood of harm to BOP
13 resulting from a temporary restraining order.

14 **IV. CONCLUSION**

15 Ms. Godsey has shown that she has a likelihood of success on the merits of her claims
16 that Defendants’ conduct will violate Ms. Godsey’s rights under the Eighth Amendment and the
17 Rehabilitation Act; that Ms. Godsey is likely to suffer irreparable harm if the order is not
18 granted; that the potential harm to Ms. Godsey if the order is not granted outweighs the potential
19 harm to Defendants if the order is granted; and that issuance of the order is in the public interest..
20 Ms. Godsey respectfully requests that this Court grant Plaintiff’s Motion and, per the Proposed
21 Order submitted contemporaneously, issue a Temporary Restraining Order and Preliminary
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1 Injunction requiring Defendants to provide Ms. Godsey with her prescribed MAT throughout her
2 incarceration in a BOP facility.⁵

3 DATED this 19th day of September 2019.

4
5 Respectfully submitted,

6 AMERICAN CIVIL LIBERTIES UNION OF
7 WASHINGTON FOUNDATION

8 By: /s/Lisa Nowlin

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PLAINTIFF MELISSA GODSEY'S EMERGENCY
MOTION FOR TEMPORARY RESTRAINING
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