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17 UNITED STATES DISTRICT COURT
 18 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

19 UNITED STATES OF AMERICA,
 20 Plaintiff,
 21 vs.
 22 COUNTY OF LOS ANGELES AND LOS
 ANGELES COUNTY SHERIFF JIM
 23 MCDONNELL, in his Official Capacity ,
 24 Defendants.

25 TERESA POWERS, DAVID PENN,
 TIMOTHY POLK, MARK SARNI,
 26 DERRICK THOMAS, DARSEL
 WHITFIELD, ROYAL WILLIAMS, AND
 LEPRIEST VALENTINE

27 Plaintiff-Intervenors.
28

Case No. 15-cv-05903

**PLAINTIFF-INTERVENORS’
 FIRST AMENDED
 COMPLAINT IN
 INTERVENTION**

INTRODUCTION¹

1
2 1. Plaintiff-Intervenors are individuals with mental illnesses and
3 disabilities whom Los Angeles County frequently cycles between its jails and
4 streets. They seek to intervene in this matter to remedy violations of the Americans
5 with Disabilities Act (“ADA”) and the United States Constitution in the County and
6 Department of Justice’s Joint Settlement Agreement (“Settlement”). Paragraph 34 of
7 the Settlement dictates how persons with mental disabilities will be discharged from
8 the County’s jails—the most important stage of the County’s jail-to-streets-to-jail
9 cycle.

10 2. Left uncorrected, the discharge provisions of Paragraph 34 will lead to
11 pervasive ADA violations in at least three ways:

12 3. *First*, the Settlement facially discriminates against people with certain
13 mental disabilities by limiting the class of individuals who are eligible for discharge
14 planning to those who have a “serious mental illness” as defined in the Settlement.
15 Settlement ¶ 34. That definition expressly *excludes* those individuals whose mental
16 disabilities are the result of personality disorders (except when “associated with
17 serious or recurrent significant self-harm”), substance abuse and dependence
18 disorders, dementia, or developmental disabilities. *Id.* ¶ 15(aa). The Settlement also
19 excludes from most discharge planning those who have been in jail for seven days
20 or fewer. *Id.* ¶ 34(a). These arbitrary exclusions violate the ADA’s prohibition on
21
22

23 ¹ On September 28, 2015, Plaintiff-Intervenors moved to intervene in this case and
24 lodged a Complaint in Intervention. ECF Doc. 17; 17-3. On October 14, 2105,
25 Plaintiff-Intervenors lodged with the Court a [First Amended Proposed] Complaint
26 In Intervention, which added a third claim for relief. ECF Doc. 37. On December
27 15, 2015, this Court granted Plaintiff-Intervenors’ motion to intervene. ECF Doc.
28 75. As such, Plaintiff-Intervenors now file their First Amended Complaint In
Intervention, which was initially lodged with the Court under the title [First
Amended Proposed] Complaint In Intervention.

1 “[p]rovid[ing] different or separate ... services ...to any class of individuals with
2 disabilities than is provided to others” 28 C.F.R. § 35.130(b)(1)(i), (iv).

3 4. *Second*, the discharge provisions in Paragraph 34 run afoul of the ADA
4 because they deny disabled persons meaningful access to public services and
5 benefits in at least two ways: (1) the Settlement’s plan for connecting released
6 prisoners with needed medication and services—that is, by merely handing out a
7 prescription or a referral—is meaningless for many people with serious mental
8 disabilities because, owing to their disabilities, they have no realistic hope of finding
9 their way to those who can fulfill their medication or service needs; and (2) the
10 Settlement allows the County to refer seriously mentally ill individuals to services
11 without requiring that the County confirm that such services are available. The
12 Settlement therefore contravenes the ADA’s prohibition on “failure[s] to make
13 reasonable modifications in ... procedures ... necessary to afford ... services ... to
14 individuals with disabilities.” 42 U.S.C. § 12182(b)(2)(A).

15 5. *Third*, the Settlement violates the integration mandate of the ADA to
16 deliver “services, programs, and activities in the most integrated setting appropriate
17 to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d).
18 Paragraph 34(b)(iii) of the Settlement contemplates that the County will provide
19 “direct linkage” to restrictive institutional settings for persons with “intense need for
20 assistance” (a category that is undefined within the Settlement). This provision, if
21 implemented, would lead to the placement of certain disabled individuals in non-
22 integrated environments in violation of the ADA’s integration mandate.

23 6. Moreover, left uncorrected, the discharge provisions of Paragraph 34 of
24 the Settlement will lead to violations of the Eighth and Fourteenth Amendments of
25 the United States Constitution, as the policies provided for in Paragraph 34
26 demonstrate a deliberate indifference to the serious medical needs of Plaintiff-
27 Intervenors and other incarcerated individuals with mental illness.

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PARTIES

11. Plaintiff is the United States of America.

12. Plaintiff-Intervenor Teresa Powers is a 45 year-old homeless woman who lives in the County of Los Angeles. She has been incarcerated at least four times, most recently in the Century Regional Detention Center, and she has been arrested over 15 times (primarily for drug offenses), including four times in the past year. She is on probation and lives on the streets. She suffers from paranoid schizophrenia, bipolar disorder, cancer and heart problems. Because of the number and nature of her offenses, her continued homelessness, her mental illness, and her history of substance abuse, she has a very high chance of being incarcerated again at which point the discharge language in the Settlement Agreement makes it not only likely but certain that she will again suffer injury in violation of the ADA and the Eighth and Fourteenth Amendments of the Constitution.

13. Plaintiff-Intervenor Royal Williams is a 44 year-old homeless man who lives in the County of Los Angeles. He has been arrested five to seven times (primarily for drug offenses), including once this year, and is on probation. He has been homeless or incarcerated for 20 years; he currently has a bed at a shelter. He suffers from “bipolar schizophrenia,” depression, and asthma and has a history of substance abuse. Because of the number and nature of his offenses, his continued homelessness, his mental illness and his history of substance abuse, he has a very high chance of being incarcerated again at which point the discharge language in the Settlement Agreement makes it not only likely but certain that he will again suffer injury in violation of the ADA and the Eighth and Fourteenth Amendments of the Constitution.

14. Plaintiff-Intervenor Lepriest Valentine is a 42 year-old homeless man who lives in the County of Los Angeles. He has been incarcerated at least three times for petty thefts of small items he could sell to buy food and was last released in November 2014. He is on probation. He has lived in Skid Row since 2013 and

1 currently has a bed at a shelter. He suffers from depression, schizophrenia, and
2 bipolar disorder and has a history of substance abuse. Because of the nature of his
3 offenses, his continued homelessness, his mental illness, and his history of substance
4 abuse, he has a very high chance of being incarcerated again at which point the
5 discharge language in the Settlement Agreement makes it not only likely but certain
6 that he will again suffer injury in violation of the ADA and the Eighth and
7 Fourteenth Amendments of the Constitution.

8 15. Plaintiff-Intervenor Mark Sarni is a 54 year-old homeless man who
9 lives in the County of Los Angeles. He has been arrested hundreds of times,
10 primarily for drug offenses. He currently has a bed at a shelter. He suffers from
11 paranoid schizophrenia, bipolar disorder, depression, anxiety, and kidney failure. He
12 was addicted to heroin for forty years and still struggles with addiction to crack
13 cocaine. Because of the number and nature of his offenses, his continued
14 homelessness, his mental illness, and his history of substance abuse, he has a very
15 high chance of being incarcerated again at which point the discharge language in the
16 Settlement Agreement makes it not only likely but certain that he will again suffer
17 injury in violation of the ADA and the Eighth and Fourteenth Amendments of the
18 Constitution.

19 16. Plaintiff-Intervenor Derrick Thomas is a 55 year-old homeless man
20 who lives in the County of Los Angeles. He has been arrested about 20 times,
21 primarily for drug offenses. He has served four jail terms since 2013 and is on
22 probation. He currently has a bed at a shelter. He suffers from paranoid
23 schizophrenia, post-traumatic stress disorder, and traumatic brain injury and has a
24 history of substance abuse. Because of the number and nature of his offenses, his
25 continued homelessness, his mental illness, and his history of substance abuse, he
26 has a very high chance of being incarcerated again at which point the discharge
27 language in the Settlement Agreement makes it not only likely but certain that he
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1 will again suffer injury in violation of the ADA and the Eighth and Fourteenth
2 Amendments of the Constitution.

3 17. Plaintiff-Intervenor Darsel Whitfield is a 50 year-old homeless woman
4 who lives in the County of Los Angeles. She has been in County jail about seven
5 times, primarily for drug offenses, most recently in 2014. She is on probation. She
6 currently has a bed at a shelter. She suffers from bipolar disorder, anxiety, and
7 schizoaffective disorder and has a history of substance abuse. Because of the nature
8 of her offenses, her continued homelessness, her mental illness, and her history of
9 substance abuse, she has a very high chance of being incarcerated again at which
10 point the discharge language in the Settlement Agreement makes it not only likely
11 but certain that she will again suffer injury in violation of the ADA and the Eighth
12 and Fourteenth Amendments of the Constitution.

13 18. Plaintiff-Intervenor David Penn is a 46 year-old homeless man who
14 lives in the County of Los Angeles. He has served five sentences in jail and four
15 sentences in prison, primarily for drug offenses. He began using crack cocaine as a
16 teenager and continued until earlier this year. He was last released from Los Angeles
17 County jail in February 2015. He currently has a bed at a shelter. He suffers from
18 bipolar disorder, depression, and schizoaffective disorder. Because of the number
19 and nature of his offenses, his continued homelessness, his mental illness, and his
20 history of substance abuse, he has a very high chance of being incarcerated again at
21 which point the discharge language in the Settlement Agreement makes it not only
22 likely, but certain that he will again suffer injury in violation of the ADA and the
23 Eighth and Fourteenth Amendments of the Constitution.

24 19. Plaintiff-Intervenor Timothy Polk is a 54 year-old homeless man who
25 lives in the County of Los Angeles. He has been to Los Angeles County jail “dozens
26 and dozens” of times, most recently in June 2015. He currently has a bed at a
27 shelter. He suffers from epilepsy, bipolar disorder, and schizoaffective disorder.
28 Because of the number of his offenses, his continued homelessness, and his mental

1 illness, he has a very high chance of being incarcerated again at which point the
2 discharge language in the Settlement Agreement makes it not only likely, but certain
3 that he will again suffer injury in violation of the ADA and the Eighth and
4 Fourteenth Amendments of the Constitution.

5 20. Because of their status as mentally ill persons with no permanent home,
6 some of whom have substance abuse issues, Plaintiff-Intervenors are at serious risk
7 of being arrested and re-incarcerated for any of the numerous municipal code
8 sections that outlaw certain behaviors in public, such as public urination, possession
9 of an open container of alcohol, keeping property on the sidewalk, violations of
10 probation, and similar infractions.

11 21. Defendant LOS ANGELES COUNTY (the “County”) is a
12 governmental subdivision created under the laws of the State of California and
13 governed by the Los Angeles County Board of Supervisors. The County owns and,
14 through Defendant LOS ANGELES COUNTY SHERIFF JIM MCDONNELL (the
15 “Sheriff”), operates, the Jails, which consist of eight facilities located throughout the
16 County. The County, through the Los Angeles County Board of Supervisors, has
17 responsibility for funding the operation of the Jails.

18 22. Defendant LOS ANGELES COUNTY SHERIFF JIM MCDONNELL
19 is the Los Angeles County Sheriff, an independently elected constitutional officer
20 not under the County Board of Supervisors. CA. Const. Art. 11, § 1(b). The Sheriff
21 has responsibility for the security and custody operations of the Jails and for
22 protecting the safety of prisoners in the Jails. The Sheriff is sued in his official
23 capacity only.

24 23. The County and the Sheriff are together responsible for the conditions
25 of confinement and health and safety of persons incarcerated at the Jails. The
26 County, through its Department of Mental Health, provides mental health services to
27 prisoners in the Jails.

28

1 illegality of Paragraph 34 of the Settlement. The Court approved the Settlement,
2 however, less than a month after the undersigned first learned of its existence.
3 Plaintiff-Intervenors have intervened expeditiously and without delay at the earliest
4 practicable stage of the proceedings.

5 29. Plaintiff-Intervenors have significant interests in meaningful and
6 integrated access to public services that are protected by the ADA, which are
7 implicated by the Complaint in this matter, but which are impaired by Paragraph 34
8 of the Settlement. Absent intervention and subsequent modification, Paragraph 34 of
9 the Settlement will impair Plaintiff-Intervenors' significant protected interests in
10 avoiding discrimination prohibited by Title II of the ADA, as set forth in paragraphs
11 76-93 of this Complaint.

12 30. Plaintiff-Intervenors also have significant interests in the continuing
13 provision of medical care for a transitional period after release from custody, as
14 guaranteed under the Eighth and Fourteenth Amendments of the Constitution.
15 Absent intervention and subsequent modification, Paragraph 34 of the Settlement
16 will impair Plaintiff-Intervenors' significant protected interests in the provision of
17 needed medical care, as set forth in paragraphs 76-93 of this Complaint.

18 31. Plaintiff-Intervenors' right to be free from ADA and Eighth and
19 Fourteenth Amendment violations will be impaired as a practical matter by
20 Paragraph 34 of the Settlement.

21 32. The present parties do not adequately represent Plaintiff-Intervenors.
22 Both the United States and the County have agreed to a Settlement that itself
23 violates Plaintiff-Intervenors' rights under Title II of the ADA and the Eighth and
24 Fourteenth Amendments of the Constitution. Neither is an adequate representative
25 of the very persons whose rights are impaired by the Settlement to which they
26 agreed. The parties are also bound by Paragraph 120 of the Settlement to defend its
27 terms, including Paragraph 34, and thus each is bound to dispute that the Settlement
28 violates Plaintiff-Intervenors' rights.

1 Center, which is a psychiatric urgent-care center, but she is afraid to go there
2 because she does not want to be locked up again.

3 36. Ms. Powers currently lives on the streets. Her mental health and
4 physical conditions continue to worsen.

5 **Royal Williams**

6 37. Plaintiff-Intervenor Royal Williams (“Mr. Williams”) has been
7 homeless or incarcerated for over 20 years. He is 44 years old, and has been arrested
8 five to seven times. He has been released from County jails at least twice, including
9 in 2015. Mr. Williams has been living on Skid Row since 2013. He has lived in a
10 tent and slept under cardboard.

11 38. Mr. Williams has been diagnosed with “bipolar schizophrenia” and
12 depression, and he takes psychotropic medications including Risperdal and Atarax.
13 In 2014, he was detained under an involuntary psychiatric hold pursuant to Welfare
14 and Institutions Code § 5150 after he tried to commit suicide. Mr. Williams believes
15 that his family does not trust him, and his mother has custody of his eight-year-old
16 son.

17 39. In approximately April of 2015, Mr. Williams was sitting in front of his
18 tent on Fifth Street near Crocker Street. A police car pulled up, and an officer asked
19 if he was on probation or parole. When the officers determined that Mr. Williams
20 was in violation of his probation, they arrested him. Mr. Williams was forced to
21 leave behind all of his belongings, including his medications.

22 40. In jail, Mr. Williams was housed in the mental health unit.

23 41. Upon release, Mr. Williams was handed several pamphlets with
24 referrals on them. He estimates that the pamphlets listed 50 referrals in total. Mr.
25 Williams did not know which referrals would be relevant to him or how to access
26 the services, so he threw the pamphlets away.

27 42. The jail provided Mr. Williams with a prescription for Risperdal, but
28 Mr. Williams did not have any money, his MediCal coverage had been suspended,

1 and he did not know that there are places where he could fill the prescription for
2 free. As a result, Mr. Williams went without necessary psychotropic medication for
3 over six weeks. Without his medications and the discharge care he required, Mr.
4 Williams experienced suicidal ideation and sank into substance abuse, fighting, and
5 stealing.

6 43. Luckily, another homeless person told Mr. Williams about the Lamp
7 Community shelter. Mr. Williams then worked with his probation officer to obtain a
8 bed at Lamp Community. Mr. Williams is currently living at Lamp but has only a
9 shelter bed.

10 **Lepriest Valentine**

11 44. Plaintiff-Intervenor Lepriest Valentine (“Mr. Valentine”) is 42 years
12 old. He was about 35 years old when he began to experience debilitating depression
13 and anxiety and to hear his father’s voice telling him that he was worthless. Mr.
14 Valentine withdrew from his family and became homeless when he could no longer
15 work as a result of his mental condition. He has slept in shelters and on the street.

16 45. Mr. Valentine has been diagnosed with depression, schizophrenia, and
17 bipolar disorder, for which he takes or has taken Lithium, Risperdal, and Remeron.
18 When Mr. Valentine does not take his medications, he hears voices, cannot sleep,
19 cannot eat, and experiences anxiety.

20 46. Mr. Valentine has served three sentences in County facilities and been
21 arrested at least twice more in Los Angeles County. During his time in Skid Row,
22 Mr. Valentine has cycled in and out of jail for petty thefts: he stole batteries and
23 toiletries from drug stores so that he could sell them and use the money to buy food.
24 He has not been given discharge planning services on his release from jail. In fact,
25 on one occasion, he failed to appear in court because battling the symptoms of his
26 mental illness and needing to find food and shelter meant that court was not a
27 priority for him.

28

1 47. The County housed Mr. Valentine in the mental health unit of Twin
2 Towers Correctional Facility (“Twin Towers”) and provided him with psychotropic
3 medication while he was incarcerated. The County did not provide Mr. Valentine
4 with any referrals, medications, or prescriptions when he was released. Mr.
5 Valentine simply asked another inmate how to get back to Skid Row and walked
6 there.

7 48. A cousin who is also homeless told Mr. Valentine about Lamp
8 Community. With a bed at Lamp Community, Mr. Valentine now takes his
9 medications regularly. He attends mental health classes, including a class on how to
10 be a peer advocate to other people with co-occurring disorders. After taking that
11 class, Mr. Valentine obtained a part-time job at a drop-in center, and he is saving up
12 for an apartment. Next spring, Mr. Valentine plans to enroll in a course to become a
13 certified substance abuse counselor.

14 49. Mr. Valentine has been cited for riding the Metro without paying a fare,
15 and he fears that he may have outstanding warrants as a result. He stays indoors at
16 night and avoids certain streets, in the hope that no police officers will stop him and
17 ask him if he is on probation or parole. He fears that, if he answers yes, they will run
18 his ID, find the warrants, and take him back to jail.

19 **Mark Sarni**

20 50. Plaintiff-Intervenor Mark Sarni (“Mr. Sarni”) is 54 years old and has
21 been homeless most of his life. He has been arrested hundreds of times in the past
22 35 years. In the 1990s, Mr. Sarni was diagnosed with paranoid schizophrenia,
23 bipolar disorder, depression, and anxiety. He now takes Thorazine, Remeron,
24 Seroquel, and Buspar.

25 51. Mr. Sarni was a heroin addict for forty years. He has served at least
26 three sentences in County facilities since 2013, all for violating his probation. In
27 2014, Mr. Sarni served 90 days in County jail. The County housed Mr. Sarni in the
28 mental health unit at the Twin Towers and provided him with psychotropic

1 medications. While he was incarcerated, the County did blood tests on Mr. Sarni.
2 Just before his release, Mr. Sarni was told that there was something “seriously
3 wrong” with his blood and that he needed to go to an emergency room. The County
4 then released Mr. Sarni with only a prescription for his necessary psychotropic
5 medications.

6 52. Ten hours after his release onto the streets, Mr. Sarni flatlined. He had
7 gone to Pershing Square station to panhandle. The security guards kept telling him
8 to leave, and he kept falling down. Then Mr. Sarni died for four minutes. He was
9 revived by emergency medical services. Mr. Sarni is now on dialysis because of his
10 failed kidneys and likely has less than two years to live.

11 53. Mr. Sarni was given a referral to a housing program for which he did
12 not qualify.

13 54. Mr. Sarni has stopped using heroin. He is staying at Lamp Community
14 and is saving up for an apartment; he hopes to have stable housing in the next few
15 months. He has just been taken off probation. Lamp Community has helped Mr.
16 Sarni with matters such as obtaining ID and a copy of his birth certificate. Mr. Sarni
17 tries to be independent but appreciates that someone will assist him when he needs
18 help.

19 **Derrick Thomas**

20 55. Plaintiff-Intervenor Derrick Thomas (“Mr. Thomas”) is a 55-year-old
21 veteran of the Gulf War, in which he served two tours as a First Sergeant in the
22 Army. Mr. Thomas has been diagnosed with Post Traumatic Stress Disorder and 10
23 years ago was diagnosed with paranoid schizophrenia. Mr. Thomas is a former
24 boxer who has suffered numerous head injuries. He takes psychotropic medications,
25 including Seroquel and Celexa. Without his medications, Mr. Thomas cannot be in
26 crowds and may have potentially violent reactions to perceived threats.

27 56. Mr. Thomas has been arrested approximately 20 times and served four
28 sentences in County facilities since 2010. At least four of his sentences were for

1 drug-related offenses, and several others were for probation violations. He has never
2 received mental health treatment while in jail, despite having prescriptions with him
3 upon arrest and telling County officials how to contact his previous health providers.
4 Without his medications, Mr. Thomas’s symptoms became unbearable to the point
5 that he wants to kill himself.

6 57. Mr. Thomas was released from jail earlier this year around 2:00 a.m.
7 without being offered any services. He had no help and did not know where to go. It
8 was cold out and he had only a t-shirt; none of his belongings, including his
9 identification and prescription medications, had been returned to him on his release.
10 For six weeks, he slept either under cardboard or in a shelter. He was unable to get
11 medication because he had no identification. Without identification he could not
12 prove who he was, and without money he could not get new identification. It took
13 Mr. Thomas 10 weeks to obtain more medication after he was released.

14 58. Mr. Thomas is saving up for an apartment and is working hard not to
15 come into contact with the police, so that he can be taken off probation at his next
16 hearing on October 28.

17 **Darsel Whitfield**

18 59. Plaintiff-Intervenor Darsel Whitfield (“Ms. Whitfield”) is 50 years old.
19 Ms. Whitfield has three daughters. She worked for over 25 years as a nursing
20 assistant and in other healthcare positions. Then, in 2010, her mental illness
21 overwhelmed her. She was depressed, could no longer be around other people, and
22 lost control of her emotional responses. In 1994, Ms. Whitfield was diagnosed with
23 manic depression, bipolar disorder, anxiety, and schizoaffective disorder. Since
24 then, she has taken Prozac, Seroquel, and various anxiety medications.

25 60. Ms. Whitfield has been in County jails about seven times. In fact, her
26 mental illness was first diagnosed while she was in jail. In early 2014, she spent a
27 month in Lynwood. Lynwood officials placed Ms. Whitfield in the mental health
28 unit but would not give her any of her medications. They would give her only

1 Tylenol and even denied her Benadryl when she asked for it to help her sleep. Ms.
2 Whitfield was scared and frantic, and she paced and cried.

3 61. Upon release, Ms. Whitfield was not given any medications,
4 prescriptions, or information about where to go. She found herself living between
5 shelters and the streets. She felt completely desolate. A few months later, someone
6 in her Alcoholics Anonymous group happened to tell Ms. Whitfield about Lamp
7 Community. She has stayed at Lamp Community since June and is in the process of
8 obtaining a Single Room Occupancy unit. Lamp Community has also helped her
9 apply for Supplemental Security Income, and she is waiting for a response. This is
10 not the first time Ms. Whitfield has applied, but it is the first time she has been
11 stable and supported enough to be able to follow through with the application. Ms.
12 Whitfield hopes to move into her own apartment in the next few weeks.

13 **David Penn**

14 62. Plaintiff-Intervenor David Penn (“Mr. Penn”) is 46 years old and began
15 using drugs when he was nine years old. He has lived in Skid Row since 2010,
16 sleeping on the streets, in tents, and under trees. In 2011, Mr. Penn was diagnosed
17 with bipolar disorder and depression. While he was living on the street, Mr. Penn
18 often forgot to take his medication (Abilify and Zoloft) and had it stolen from him
19 while he slept. More recently, he was diagnosed with schizoaffective disorder, and
20 he now takes Seroquel.

21 63. Mr. Penn has been to jail five times and prison four times. In January
22 2015 he was arrested when he allegedly shoplifted toiletries for personal use. He
23 was housed in the mental health unit at Twin Towers for three weeks and then
24 abruptly released at 11:00 p.m. onto the street with no referrals or other assistance.
25 Mr. Penn immediately sought out drugs to help him forget the experience of being
26 incarcerated, including the fresh memories of another inmate trying to hang himself
27 and the sounds of him choking. He had nowhere to stay and walked the streets all
28 night.

1 64. Since March 2015, Mr. Penn has had more stable housing. He stayed at
2 the Weingart Center for 90 days, slept on the streets for a few weeks, and then
3 obtained a bed at Lamp Community. He has been drug-free and sober since March.
4 As a result, he has reconnected with his family.

5 65. Mr. Penn is about to start learning a trade as an underwater welder, and
6 he writes poetry. He would like to make a documentary about Skid Row.

7 **Timothy Polk**

8 66. Plaintiff-Intervenor Timothy Polk (“Mr. Polk”) is 54 years old. He was
9 first institutionalized as a teenager and has been to prison seven times. He has been
10 incarcerated in County jails dozens of times.

11 67. Mr. Polk has been homeless for approximately 20 years and has been
12 diagnosed with epilepsy, bipolar disorder, and schizoaffective disorder. He has also
13 suffered traumatic brain injuries. He takes Depakote, Paxil, and Risperdal. Without
14 his medication, Mr. Polk experiences heightened anxiety and depression.

15 68. Most recently, Mr. Polk was arrested in June of 2015 for allegedly
16 violating his probation. He was released without medication or any connection to
17 community resources. He had no possessions because he had been forced to leave
18 them all—including his medications, ID, and tent—behind on the sidewalk. As a
19 result, he was worse off than when he was arrested and had to begin the exhausting
20 process of rebuilding his life from scratch. He still lacks ID.

21 69. Mr. Polk spent 10 days in the mental health unit at Twin Towers, where
22 he did not receive his psychotropic medications. The County did not provide Mr.
23 Polk with any assistance when he was released, and it took him several days to
24 obtain medication from Exodus. Mr. Polk relies on Exodus for most of his mental
25 health treatment.

26 **THE SETTLEMENT PROVISIONS AT ISSUE**

27 70. On August 5, 2015, the United States filed a Complaint against the
28 County of Los Angeles and Sheriff Jim McDonnell in his official capacity

1 (collectively, “the County”) for violations of 42 U.S.C. §§ 1997-1997j (the Civil
2 Rights of Institutionalized Persons Act or “CRIPA”) and 42 U.S.C. § 14141 (the
3 Violent Crime Control and Law Enforcement Act of 1994). ECF Doc. 1. At the
4 same time, the United States and the County filed the Settlement, ECF Doc. 4-1, and
5 a Joint Stipulation and Proposed Order seeking the Court’s approval of the
6 Settlement. ECF. Doc 4. While Plaintiff-Intervenors were diligently investigating,
7 collecting evidence, and preparing intervention papers, the Court approved the
8 Settlement on September 3, 2015. ECF Docs. 13, 14.

9 71. A key aspect of the United States’ investigation and the resulting
10 Complaint and Settlement is the need for appropriate discharge planning and
11 services for mentally disabled prisoners. The United States alleges in its Complaint
12 that the County has “repeatedly failed to provide adequate mental health services,
13 including psychological and psychiatric services, to prisoners with serious
14 psychiatric needs that are known or obvious due to, but not limited to, insufficient
15 and inadequate ... *discharge planning*.” ECF Doc. 1, Compl. ¶ 23 (emphasis added).

16 72. The Settlement purports to address the County’s inadequate discharge
17 planning in Paragraph 34, which provides in full:

18 The County and the Sheriff will conduct discharge planning and
19 linkage to community mental health providers and aftercare services for
20 all prisoners with serious mental illness as follows:

21 a. For prisoners who are in Jail seven days or less, a preliminary
22 treatment plan, including discharge information, will be developed.

23 b. For prisoners who are in Jail more than seven days, a QMHP
24 [Qualified Mental Health Professional] will also make available:

25 i. For prisoners who are receiving psychotropic medications,
26 a 30-day prescription for those medications will be offered either through the release
27 planning process, through referral to a re-entry resource center, or through referral to
28 an appropriate community provider, unless clinically contraindicated;

1 ii. In person consultation to address housing, mental
2 health/medical/substance abuse treatment, income/benefits establishment, and
3 family/community/social supports. This consultation will also identify specific
4 action to be taken and identify individuals responsible for each action;

5 iii. If the prisoner has an intense need for assistance, as
6 described in [County Department of Mental Health] policies, the prisoner will
7 further be provided direct linkage to an Institution for Mental Disease (“IMD”),
8 IMD-Step-down facility, or appropriately licensed hospital;

9 iv. If the prisoner has a moderate need for assistance, as
10 described in [County Department of Mental Health] policies, and as clinically
11 appropriate to the needs of the prisoner, the prisoner will be offered enrollment in
12 Full Service Partnership or similar program, placement in an Adult Residential
13 Facility (“Board and Care”) or other residential treatment facility, and direct
14 assistance accessing community resources;

15 v. If the prisoner has minimal needs for assistance, as
16 described in [County Department of Mental Health] policies, the prisoner will be
17 offered referrals to routine services as appropriate, such as General Relief, Social
18 Security, community mental health clinics, substance abuse programs, and/or
19 outpatient care/support groups.

20 c. The County will provide a re-entry resource center with QMHPs
21 available to all prisoners where they may obtain information about available mental
22 health services and other community resources.

23 73. Paragraph 15(aa) defines “serious mental illness” as follows: “‘Serious
24 mental illness’ includes psychotic disorders, major mood disorders (including major
25 depression and bipolar disorders), and any other condition (excluding personality
26 disorders, substance abuse and dependence disorders, dementia, and developmental
27 disability) that is associated with serious or recurrent significant self-harm, suicidal
28 ideation, imminent danger to others, current grave disability, or substantially

1 impaired ability to understand routine instructions, or that prevents access to
2 available programs. Although personality disorders alone generally do not qualify as
3 serious mental illness, personality disorders associated with serious or recurrent
4 significant self-harm do qualify as serious mental illness.”

5 74. According to the County’s Criminal Justice Mental Health Advisory
6 Board Report “A Blueprint for Change,” (“MHAB Report”),² Institutions for Mental
7 Disease (“IMD”) are “Licensed long term care psychiatric facilities which may be
8 locked, and are similar to hospital beds.”

9 75. The Settlement does not conform with applicable law because it
10 violates the ADA and Section 504 of the Rehabilitation Act.

11 **FACTUAL ALLEGATIONS**

12 **Exclusion of Certain Disabled Persons**

13 76. Paragraph 34 offers discharge planning only to persons with mental
14 disabilities of certain specified origins but expressly excludes others protected by
15 the ADA. It provides government services only to persons with “serious mental
16 illness,” while denying discharge planning to those with “substance abuse and
17 dependence disorders, dementia, and developmental disability.” Settlement
18 ¶¶ 15(aa), 34. Under the Settlement, it is not clear that persons with “substance
19 abuse and dependence disorders, dementia, and developmental disabilit[ies]” or with
20 personality disorders (except when “associated with serious or recurrent significant
21 self-harm”) would receive any discharge planning services at all.

22 77. Significant numbers of disabled individuals will be affected by the
23 Settlement’s arbitrary discrimination among classes of disabled persons.

24 **Exclusion of Disabled Persons Who Have Been In Jail for Seven or Fewer Days**

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26
27 ² See MHAB Report, published summer 2015, available at
28 <http://da.co.la.ca.us/about/reports>.

1 78. Prisoners who are in jail for seven or fewer days are excluded from
2 most of the Settlement’s discharge planning services and are entitled only to a
3 “preliminary treatment plan, including discharge information.” Settlement ¶ 34(a).
4 This line-drawing is arbitrary and will exclude from services many mentally
5 disabled persons. In fact, it may harm some of the most vulnerable individuals
6 because they will not have been stabilized through treatment in jail.

7 79. This exclusion is not mandated by any apparent practical necessities.
8 The Settlement requires prisoners to be screened for mental health needs within 12
9 hours after their arrival and to receive a mental health assessment within 24 hours or
10 within 72 hours on weekends and legal holidays, if not sooner. *Id.* ¶¶ 27, 29.
11 Prisoners with “emergent or urgent mental health needs” must be evaluated “as soon
12 as possible but no later than four hours from the time of identification.” *Id.* ¶ 26.
13 Thus, under the Settlement, all prisoners with mental health needs should be
14 identified and assessed within 24 hours (or 72 hours on weekends and holidays)
15 from arrival in jail. Once these persons are identified and their mental health needs
16 assessed, they should be eligible for discharge planning services congruent to their
17 level of needs, irrespective of the length of time they are incarcerated.

18 **The Discharge Planning In Paragraph 34 Does Not Provide Meaningful Access**
19 **To The Benefits It Purports To Offer**

20 80. Paragraph 34(b) of the Settlement Agreement provides that prisoners
21 should be released either with a prescription for 30 days’ worth of psychotropic
22 medications or with a referral to obtain such a prescription. For many mentally
23 disabled individuals, including Plaintiff-Intervenors, this does not provide
24 meaningful access to necessary medication. Such individuals are often clinically
25 disorganized, meaning that their thoughts do not follow a logical progression. A
26 series of many successive steps must be taken in order to turn a prescription into
27 medication, posing significant barriers for individuals with mental disability.
28

1 81. Paragraph 34(b) also allows mentally disabled prisoners to be
2 discharged not with a prescription but with a referral to a “re-entry resource center,
3 or . . . to an appropriate community provider.” This erects still more barriers that
4 prevent the mentally disabled from accessing the medications that they require to
5 treat their condition.

6 82. The failure to provide reasonable access to medications poses a grave
7 danger to released prisoners with mental disabilities. Without medication, they are
8 likely to become psychotic, manic, or depressive, which are conditions that pose
9 risks to the individuals suffering from them and to others nearby.

10 83. The Settlement’s vague terms of “linkage,” “referral,” and “making
11 available” a “consultation” appear to allow the County simply to hand a mentally
12 disabled person a pamphlet with a list of service providers. Handing a piece of paper
13 with a list of addresses or phone numbers to mentally disabled individuals such as
14 Plaintiff-Intervenors does not provide those persons with a meaningful discharge
15 plan or with meaningful access to services. People with serious mental disabilities
16 that impede organized thinking do not have the ability to navigate the complex
17 systems of services outside jail without individualized assistance.

18 84. In addition, there is no requirement that the County confirm that the
19 places to which it chooses to refer people in fact have services that are available and
20 appropriate for the person being released. Providing a mentally disabled person with
21 a discharge plan consisting of instructions that he or she cannot follow to services
22 that may or may not be available is not a meaningful discharge plan. In fact, it
23 causes an independent harm, over and above the harm from the lack of services. If
24 an individual attempts to seek services recommended to her and finds the door shut
25 in her face, she is much less likely to continue to seek essential services and obtain
26 the treatment she requires.

27 85. Because they are ineffective and do not immediately provide access to
28 needed medication and services, the discharge-planning protocols established by

1 Paragraph 34 of the Settlement actually set up barriers to released prisoners with
2 mental illness, particularly for those who are homeless. While a list of referrals and
3 tasks may be an effective discharge plan for some people, for many mentally
4 disabled people being released from jail, such a list amounts to no discharge plan at
5 all. Such individuals often do not have the ability to navigate the complex system of
6 care outside of the jail. They need to be engaged by an individual case manager or a
7 service provider who is in a position to accommodate the released prisoner's illness
8 and to help him or her to navigate the system.

9 86. County jails can and must provide an outgoing inmate with continuing
10 medical care and a sufficient supply of medication upon discharge to ensure that he
11 or she is receiving needed medical care during the period of time reasonably
12 necessary to permit him or her to consult a doctor and obtain other necessary
13 services.

14 87. Reasonable accommodations exist that will provide Plaintiff-
15 Intervenors meaningful access to the services contemplated by the Settlement
16 Agreement.

17 88. For example, County jails can connect a mentally disabled person upon
18 release with an individual in the community who has the capacity to address the
19 person's essential needs. County jails can facilitate this process by providing this
20 service connector with essential medical, legal, and other information about the
21 released prisoner.

22 89. Models of this "warm handoff" have been implemented around the
23 country. For instance, the Critical Time Intervention ("CTI") model is an evidence-
24 based practice, used around the world, that supports vulnerable people, such as
25 mentally disabled people being released from jail, during time-limited periods of
26 transition.³ In the model, a community-based caseworker builds a trusting

27 _____
28 ³ <http://sssw.hunter.cuny.edu/cti/cti-model/>

1 relationship with a vulnerable client to help him or her navigate a complex and
2 fragmented system of care over a limited period of time. Supportive housing has
3 also been shown to be an effective accommodation to improve and promote physical
4 and mental health, reduce substance abuse, decrease incarceration, and lower overall
5 costs for services.

6 90. Defendants have direct experience with one such model. Project 50, a
7 housing-first project with the goal of permanently housing 50 of Skid Row’s most
8 chronic homeless individuals, successfully decreased incarceration rates, emergency
9 health care usage, and County costs.⁴ Los Angeles County Department of Health
10 Services’ pilot project called Housing for Health, which provides housing as part of
11 its health services, has also proven successful in improving outcomes and cutting
12 costs.⁵

13 **Violation Of The ADA’s Integration Mandate**

14 91. The post-release institutionalizations contemplated in Paragraph 34 of
15 the Settlement are not the most integrated setting appropriate to Plaintiff-
16 Intervenors’ needs. Specifically, Paragraph 34(b)(iii) provides prisoners with an
17 “intense need for assistance” with “direct linkage to an Institutional for Mental
18 Disease (‘IMD’), IMD-Step-down facility, or appropriately licensed hospital.”

19 92. The IMDs or “similarly restrictive facilities” contemplated in
20 Paragraph 34(b)(iii) of the Settlement would unnecessarily segregate and isolate
21 Plaintiff-Intervenors when reasonable alternatives, such as permanent supportive
22 housing, are available and are thus required to be provided to those for whom they
23 are clinically appropriate.

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25 ⁴ L.A. Times, Housing project for hard-core homeless pays off,
26 <http://articles.latimes.com/2012/jun/08/local/la-me-0608-homeless-savings-20120608>

27 ⁵ Los Angeles County Department of Health Services, Housing for Health,
28 http://file.lacounty.gov/dhs/cms1_217171.pdf

1 Settlement to seriously mentally ill individuals being released from jail do not
2 reasonably accommodate these disabilities.

3 100. Solely by reason of their mental disabilities, each of the Plaintiff-
4 Intervenor has been denied and under the Settlement terms will continue to be
5 denied the benefit of discharge planning and services by Defendants, which impairs
6 their meaningful access to post-discharge benefits and services.

7 101. Defendants' entry into and implementation of the Settlement violate the
8 rights of Plaintiff-Intervenors under Title II of the ADA, 42, U.S.C. § 12132, and its
9 implementing regulations, 28 U.S.C. § 35.130, in a number of ways, including but
10 not limited to the following:

11 a. providing different or separate services to a certain class of
12 individuals with disabilities than are provided to others (28 C.F.R. § 35.130(b)(1));

13 b. utilizing criteria or methods of administration that subject
14 qualified individuals with disabilities to discrimination (28 C.F.R. § 35.130(b)(3));

15 c. failing to make reasonable modifications to its policies, practice,
16 and procedures to connect released prisoners with medication and services (28
17 C.F.R. § 35.130(b)(7)); and/or

18 d. placing certain disabled individuals in non-integrated
19 environments (28 C.F.R. § 35.130(d)).

20 102. There are effective reasonable accommodations that Defendants could
21 implement by modifying the Settlement and that would provide Plaintiff-Intervenors
22 meaningful access to post-discharge benefits and services, including but not limited
23 to the following:

24 a. providing discharge planning to all prisoners with mental
25 disabilities, without regard to the length of time they are incarcerated;

26 b. providing discharge planning to all prisoners with a mental
27 disability, regardless of the type of disability;

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- 1 c. providing a reasonable supply of psychotropic medication where
- 2 clinically appropriate;
- 3 d. providing the released prisoner with the types of services or
- 4 programs described in paragraphs 84-86 of this Complaint that are reasonably
- 5 calculated to give them meaningful access to essential medical and mental health
- 6 services;
- 7 e. ensuring that released prisoners with mental disabilities are
- 8 offered placement in the most integrated post-release environment that is clinically
- 9 appropriate; and
- 10 f. ensuring that released prisoners with mental disabilities are
- 11 connected with post-discharge services that are not oversubscribed and are actually
- 12 available in a timely fashion.

13 103. Defendants have failed to implement any reasonable accommodations
14 that would allow the Plaintiff-Intervenors to enjoy the benefits of the jail's discharge
15 plan and access to post-discharge benefits and services.

16 104. Because of this failure, Plaintiff-Intervenors have been denied benefits
17 and services solely on the basis of their disability.

18 **SECOND CLAIM FOR RELIEF**

19 **(Violation of Section 504 of the Rehabilitation Act)**

20 105. Plaintiff-Intervenors hereby re-allege and incorporate by reference
21 Paragraphs 1 through 104 as if fully set forth herein.

22 106. Defendants receive federal funding.

23 107. Plaintiff-Intervenors each suffer from mental illnesses or disabilities
24 that substantially impair major life functions such as thinking, communicating, and
25 concentrating.

26 108. Plaintiff-Intervenors were and are qualified to participate in and receive
27 the benefit of discharge-planning services upon release from a County jail facility

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1 that would link them to critical benefits and services such as mental and medical
2 health treatment, housing assistance, and substance abuse treatment.

3 109. Defendants are or were on actual or constructive notice that Plaintiff-
4 Intervenor are disabled.

5 110. Plaintiff-Intervenors' mental disabilities cause impairments that can
6 limit their abilities to access post-discharge benefits and services under the
7 discharge-planning services offered by Defendants under the Settlement to prisoners
8 being released from jail.

9 111. Solely by reason of their mental disabilities, each of the Plaintiff-
10 Intervenor has been denied and under the Settlement terms will continue to be
11 denied the benefit of discharge planning and services, which impairs their
12 meaningful access to post-discharge benefits and services.

13 112. Defendants' entry into and implementation of the Settlement violate the
14 rights of Plaintiff-Intervenors under 29 U.S.C. §§ 794 in a number of ways,
15 including but not limited to the following:

16 a. providing different or separate services to a certain class of
17 individuals with disabilities than are provided to others (28 C.F.R. § 35.130(b)(1));

18 b. utilizing criteria or methods of administration that subject
19 qualified individuals with disabilities to discrimination (28 C.F.R. § 35.130(b)(3));

20 c. failing to make reasonable modifications to its policies, practice,
21 and procedures to connect released prisoners with medication and services (28
22 C.F.R. § 35.130(b)(7)); and/or

23 d. placing certain disabled individuals in non-integrated
24 environments (28 C.F.R. § 35.130(d)).

25 113. There are effective reasonable accommodations that Defendants could
26 implement by modifying the Settlement that would provide Plaintiff-Intervenors
27 meaningful access to post-discharge benefits and services, including but not limited
28 to the following:

- 1 a. providing discharge planning to all prisoners with mental
- 2 disabilities, without regard to the length of time they are incarcerated;
- 3 b. providing discharge planning to all prisoners with a mental
- 4 disability, regardless of the type of disability;
- 5 c. providing a reasonable supply of psychotropic medication where
- 6 clinically appropriate;
- 7 d. providing the released prisoner with the types of services or
- 8 programs described in paragraphs 84-86 of this Complaint that are reasonably
- 9 calculated to give them meaningful access to essential medical and mental health
- 10 services;
- 11 e. ensuring that released prisoners with mental disabilities are
- 12 offered placement in the most integrated post-release environment that is clinically
- 13 appropriate; and
- 14 f. ensuring that released prisoners with mental disabilities are
- 15 connected with post-discharge services that are not oversubscribed and are actually
- 16 available in a timely fashion.

17 114. Defendants have failed to implement reasonable accommodations that
18 would allow the Plaintiff-Intervenors to enjoy the benefits of the jail's discharge
19 plan and access to post-discharge benefits and services.

20 115. Because of this failure, Plaintiff-Intervenors have been denied benefits
21 and services solely on the basis of their disability.

22 THIRD CLAIM FOR RELIEF

23 (Violation of the Eighth and Fourteenth Amendments to the United States
24 Constitution)

25 116. Plaintiff-Intervenors hereby re-allege and incorporate Paragraphs 1
26 through 115 as if fully set forth herein.

27 117. Plaintiff-Intervenors have a known and obvious need for ongoing
28 medical care after release from custody. Without adequate discharge planning

1 during their incarceration, Plaintiff-Intervenors likely will have, post-release, no
2 immediate access to needed prescribed medication and other essential medical
3 and/or psychiatric services that they have received while incarcerated. Absent
4 medication and treatment, Plaintiff-Intervenors are likely upon release to suffer
5 significant and irreparable injury.

6 118. Through Paragraph 34 of the Settlement Agreement, Defendants have
7 adopted a policy and practice of failing to provide adequate discharge planning, and
8 thereby Defendants act with deliberate indifference to the serious medical needs of
9 Plaintiff-Intervenors, in violation of their rights under the Eighth and Fourteenth
10 Amendments of the United States Constitution.

11 119. Defendants act with a culpable state of mind in that they know of and
12 disregard the excessive risks to inmate health and safety caused by the failure to
13 provide adequate discharge planning, including immediate access to needed
14 medication and ongoing medical care.

15 120. Defendants' systemic failure to provide adequate discharge planning
16 through the adoption of Paragraph 34 of the Settlement constitutes a substantial
17 departure from accepted professional standards for mental health and medical care.

18 121. The harm to Plaintiff-Intervenors resulting from the lack of discharge
19 planning significantly outweighs any government interest in denying them these
20 services.

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REQUEST FOR RELIEF

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WHEREFORE, Plaintiffs-Intervenors request the following relief:

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122. A declaration that Defendants' actions and omissions and their policies
and procedures complained of violate the Americans with Disabilities Act and/or
Section 504 of the Rehabilitation Act; and

1 123. A declaration that Defendants’ actions and omissions and their policies
2 and procedures complained of violate the Eighth and Fourteenth Amendments of the
3 United States Constitution.

4 124. Appropriate injunctive relief requiring Defendants, among other things:

5 a. to implement reasonable accommodations in the form of policies
6 and procedures that will ensure that Plaintiff-Intervenors receive adequate discharge
7 planning, including but not limited to providing meaningful discharge planning to
8 all prisoners with mental disabilities;

9 b. to provide mentally disabled prisoners with a discharge plan that
10 is reasonably calculated to give them meaningful access to essential medical and
11 mental health services upon their release; and

12 c. to ensure that released prisoners with mental disabilities are
13 offered placement in the most integrated post-release environment that is clinically
14 appropriate.

15 125. Modification of the Settlement in accordance with the Americans with
16 Disabilities Act, Section 504 of the Rehabilitation Act, and the Eighth and
17 Fourteenth Amendments of the United States Constitution.

18 126. An award of costs and attorney’s fees and expenses pursuant to 29
19 U.S.C. § 794a and any other applicable provisions of law; and

20 127. Such other relief as this Court deems just and proper.

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1 DATED: January 14, 2016

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