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

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

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

Case No. 15-cv-05903

**NOTICE OF MOTION AND MOTION
TO INTERVENE AS PLAINTIFFS BY
TERESA POWERS, ET AL AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

**Filed concurrently with
INDEX OF EVIDENCE IN SUPPORT
OF MOTION TO INTERVENE**

**And concurrently lodged
[PROPOSED] COMPLAINT IN
INTERVENTION**

Judge: Hon. Dean D. Pregerson

Date: October 26, 2015
Time: 10:00 am

1 **NOTICE OF MOTION AND MOTION TO INTERVENE**

2 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on October 26, 2015, at 10:00 am or as soon
4 thereafter as may be heard in Courtroom 4 of the above-entitled court, located at 312
5 North Spring Street, Los Angeles, California 90012, Teresa Powers, David Penn,
6 and Timothy Polk, Mark Sarni, Derrick Thomas, Darsel Whitfield, Royal Williams,
7 Lepriest Valentine (collectively “Plaintiff-Intervenors”) will and hereby do move
8 this Court for entry of an order permitting Plaintiff-Intervenors to intervene as a
9 matter of right in the above-captioned matter for the purpose of seeking amendment
10 of the Joint Settlement Agreement Regarding the Los Angeles County Jails and
11 Stipulated Proposed Order of Resolution. Alternatively, in the event the Court finds
12 that Plaintiff-Intervenors are not entitled to intervention as a matter of right,
13 Plaintiff-Intervenors seek permissive intervention.

14 This motion is made pursuant to Federal Rules of Civil Procedure Rule
15 24(a)(2) for mandatory intervention on the grounds that 1) this motion is timely, 2)
16 Plaintiff-Intervenors claim a significant protectable interest relating to the subject of
17 the action, 3) disposition of the action may impair or impede Plaintiff-Intervenors’
18 ability to protect their interests, and 4) the existing parties do not adequately
19 represent the Plaintiff-Intervenors’ interests.

20 Alternatively, this motion is made pursuant to Federal Rules of Civil
21 Procedure Rule 24(b)(1)(B) for permissive intervention on the grounds that 1)
22 Plaintiff-Intervenors have a claim or defense that shares with the main action a
23 common question of law or fact, 2) there exist independent grounds for jurisdiction,
24 and 3) this motion is timely.

25 This motion is based upon this Notice of Motion; the supporting
26 Memorandum of Points and Authorities; the supporting declarations of Plaintiff-
27 Intervenors Teresa Powers, David Penn, and Timothy Polk, Mark Sarni, Derrick
28 Thomas, Darsel Whitfield, Royal Williams, Lepriest Valentine, the supporting

1 expert declarations of Dr. Suzanne Wenzel, Dr. James Rosenberg, and Julie DeRose,
2 the supporting declarations of Pete White, Darrell Steinberg, Alisa Hartz, and Jenee
3 Barnes; the concurrently-lodged Complaint in Intervention setting out the claim for
4 which intervention is sought as required by Federal Rule of Civil Procedure 24(c);
5 all documents and pleadings on file in this action; and on such other oral and
6 documentary evidence as may be presented at the hearing on this motion. This
7 motion is made following the conference of counsel pursuant to Local Rule 7-3
8 which took place seven or more days prior to the date of filing of this motion.
9

10 DATED: September 28, 2015

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1 Settlement allows the County to refer seriously mentally ill individuals to services
2 without requiring that the County confirm that such services are available. The
3 Settlement therefore contravenes the ADA’s prohibition on “failure[s] to make
4 reasonable modifications in ... procedures ... necessary to afford ... services ... to
5 individuals with disabilities.” 42 U.S.C. § 12182(b)(2)(A).

6 *Third*, the Settlement violates the integration mandate of the ADA to deliver
7 “services, programs, and activities in the most integrated setting appropriate to the
8 needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). Paragraph
9 34(b)(iii) of the Settlement contemplates that the County will provide “direct
10 linkage” to restrictive institutional settings for persons with “intense need for
11 assistance” (a category that is undefined within the Settlement). This provision, if
12 implemented, would lead to the placement of certain disabled individuals in non-
13 integrated environments in violation of the ADA’s integration mandate.

14 As a result, under the terms of the Settlement, the County will be able to continue its
15 current practices of discharging mentally disabled individuals from the County jails
16 without their medication and without ensuring that they obtain desperately needed
17 medical and psychiatric services to ameliorate their mental illnesses. Severely
18 mentally disabled people will continue to be left to wander and attempt to survive
19 our community's meanest streets in no state to do so. The mentally disabled can still
20 be handed referral lists to services that they may be incapable of deciphering, with
21 no resources to access them even if they could. However well-intentioned the
22 decree, it does not reflect the daily lives of the mentally disabled who lives on our
23 streets for lack of anywhere else to reside, or the service providers and community
24 advocates who work heroically to try to make the lives of the mentally disabled
25 more tolerable.

26 The narratives of the Intervenors illustrate the harsh consequences of no or
27 inadequate discharge planning. Each is severely mentally disabled: schizophrenic,
28 bipolar, manic depressive, addicted, often with co-occurring disabilities. They have

1 at best minimal financial or family resources to draw upon and, as a result, get by as
2 they must on the streets. In the past, they have been discharged many times with, as
3 under the Settlement, no or functionally no access to the care and services their
4 conditions require. Their conditions only deteriorate further, their chances for
5 survival diminished with each discharge, unless they have a lucky break of getting
6 connected with a caring individual who will navigate them through the complex web
7 of existing services and benefits. Making it back to mental health and a stable living
8 situation becomes all but impossible without individualized assistance.

9 In short, as individuals whose rights under the ADA will be impaired by
10 Paragraph 34 of the Settlement, Plaintiff-Intervenors have significant interests
11 related to the subject of this case, which they have timely asserted less than two
12 months after this action was filed. And Plaintiff-Intervenors cannot rely on the
13 parties, which are contractually committed to defending Paragraph 34's unlawful
14 discharge provisions, to assert Plaintiff-Intervenors' rights under the ADA. Plaintiff-
15 Intervenors thus satisfy the standard for intervention as a matter of right.
16 Alternatively, the Court should grant Plaintiff-Intervenors' motion under the
17 standard for permissive intervention.

18 **II. FACTS**

19 **A. The Settlement Provisions At Issue**

20 On August 5, 2015, the United States filed a Complaint against the County of
21 Los Angeles and Sheriff Jim McDonnell in his official capacity (collectively, "the
22 County") for violations of 42 U.S.C. §§ 1997-1997j (the Civil Rights of
23 Institutionalized Persons Act or "CRIPA") and 42 U.S.C. § 14141 (the Violent
24 Crime Control and Law Enforcement Act of 1994). ECF Doc. 1. At the same time,
25 the United States and the County filed the Settlement, ECF Doc. 4-1, and a Joint
26 Stipulation and Proposed Order seeking the Court's approval of the Settlement. ECF
27 Doc 4. While the undersigned were diligently investigating, collecting evidence, and
28

1 preparing intervention papers, the Court approved the Settlement on September 3,
2 2015. ECF Docs. 13, 14.

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

10 The Settlement purports to address the County’s inadequate discharge
11 planning in Paragraph 34, which provides in full:

12 34. The County and the Sheriff will conduct discharge planning and linkage to
13 community mental health providers and aftercare services for all prisoners
with serious mental illness as follows:

- 14 a. For prisoners who are in Jail seven days or less, a preliminary treatment
15 plan, including discharge information, will be developed.
- 16 b. For prisoners who are in Jail more than seven days, a QMHP [Qualified
17 Mental Health Professional] will also make available:
- 18 i. For prisoners who are receiving psychotropic medications, a 30-
19 day prescription for those medications will be offered either
20 through the release planning process, through referral to a re-
21 entry resource center, or through referral to an appropriate
22 community provider, unless clinically contraindicated;
- 23 ii. In person consultation to address housing, mental
24 health/medical/substance abuse treatment, income/benefits
25 establishment, and family/community/social supports. This
26 consultation will also identify specific action to be taken and
identify individuals responsible for each action;
- 27 iii. If the prisoner has an intense need for assistance, as described in
28 [County Department of Mental Health] policies, the prisoner will
further be provided direct linkage to an Institution for Mental
Disease (“IMD”),¹ IMD-Step-down facility, or appropriately
licensed hospital;

27 ¹ IMDs are “long term care psychiatric facilities which may be locked, similar to
28 hospital beds.” See concurrently lodged Complaint in Intervention ¶ 71.

- 1 iv. If the prisoner has a moderate need for assistance, as described in
- 2 [County Department of Mental Health] policies, and as clinically
- 3 appropriate to the needs of the prisoner, the prisoner will be
- 4 offered enrollment in Full Service Partnership or similar
- 5 program, placement in an Adult Residential Facility (“Board and
- 6 Care”) or other residential treatment facility, and direct
- 7 assistance accessing community resources;
- 8
- 9 v. If the prisoner has minimal needs for assistance, as described in
- 10 [County Department of Mental Health] policies, the prisoner will
- 11 be offered referrals to routine services as appropriate, such as
- 12 General Relief, Social Security, community mental health
- 13 clinics, substance abuse programs, and/or outpatient care/support
- 14 groups.
- 15
- 16 c. The County will provide a re-entry resource center with QMHPs
- 17 available to all prisoners where they may obtain information about
- 18 available mental health services and other community resources.

11 Settlement ¶ 34.

12 **B. Plaintiff-Intervenors**

13 Plaintiff-Intervenors are six men and two women with mental illnesses and

14 disabilities and/or serious, chronic, or disabling physical conditions who share a

15 common story.² Plaintiff-Intervenors’ shared experience involves being cycled

16 between the County’s jails and streets. As an experienced community care provider

17 succinctly describes the problem:

18 I see the same scenario over and over: a mentally ill homeless person is

19 arrested for a quality of life offense such as drinking in public or

20 disorderly conduct, behaviors which are often linked to mental illness.

21 That person is incarcerated, and may or may not receive mental health

 treatment in jail. . . . [After release], [w]hen they have not been

 engaged by supportive services staff, individuals often find themselves

 in cycle of going in an out of jail, a cycle that in itself can increase

22 ² Powers ¶¶ 3, 5 (paranoid schizophrenia, bipolar disorder, manic depressive

23 disorder, cancer and heart problems); Williams ¶ 5 (“bipolar schizophrenia,”

24 depression, asthma, sleep disorder); Valentine ¶¶ 4, 8 (depression, schizophrenia,

25 bipolar disorder); Sarni ¶¶ 3, 4, 16 (bipolar disorder, paranoid schizophrenia,

26 depression, anxiety, kidney failure); Thomas ¶¶ 6, 7, 9 (paranoid schizophrenia,

27 post-traumatic stress disorder, traumatic brain injury); Whitfield ¶ 4 (manic

28 depression, bipolar disorder, anxiety, schizoaffective disorder); Penn ¶¶ 7, 15

 (bipolar disorder, depression, schizoaffective disorder); Polk ¶¶ 5, 6 (traumatic brain

 injury, epilepsy, bipolar disorder, schizoaffective disorder).

1 symptoms and exacerbate trauma. These individuals become marked as
2 high utilizers of police and jail services when they should actually be
individuals utilizing mental health and housing services.

3 DeRose ¶ 6. Plaintiff-Intervenors know this cycle well. They have cycled in and out
4 of jail for years or even decades.³

5 This jail-to-streets-to-jail cycle is fueled by the County’s denial of reasonable
6 access to psychiatric care, substance abuse programs, and other social services when
7 it releases the mentally ill from its jails.

8 Substance abuse, for example, is often a symptom of untreated mental illness,
9 as individuals attempt to cope with the circumstances that often accompany life
10 lived partly on Skid Row and partly in the County jails. *See* Wenzel ¶ 14 (“[M]ental
11 illness and addiction disease are for many different reasons frequently co-occurring
12 disorders.”); DeRose ¶ 8 (“Drinking, in particular, is often a mode of self-
13 medication to help manage symptoms related to mental health disorders, including
14 anxiety, depression, post-traumatic stress disorder and psychotic disorders.”). This
15 substance abuse feeds the jail-to-streets-to-jail cycle because it frequently results in
16 arrest and re-incarceration in County jails.⁴

17
18
19 ³ Powers ¶¶ 6-8 (incarcerated at least four times, most recently in the Century
20 Regional Detention Center; arrested four times in the past year); Williams ¶¶ 7-10
21 (five to seven arrests in the last 20 years, released from County jails at least twice,
22 including in 2015); Valentine ¶¶ 2, 11, 14, 15 (three sentences served in County
23 facilities, at least two other arrests in Los Angeles County); Sarni ¶¶ 6-12 (hundreds
24 of arrests over a period of 35 years, three sentences served in County facilities since
25 2013); Thomas ¶¶ 4, 10-12 (approximately 20 arrests, served four sentences in
26 County facilities since 2010); Whitfield ¶¶ 4, 6, 9 (approximately seven sentences
served in County facilities since 1987); Penn ¶ 9 (five jail term and four prison
terms, most recently released from a County facility in February 2015); Polk ¶¶ 4, 7,
8 (first incarcerated as a teenager, seven prison terms and “dozens and dozens” of
County jail terms, most recently in June 2015).

27 ⁴ Powers ¶ 6; Williams ¶ 7; Sarni ¶¶ 5, 7; Thomas ¶ 10 (at least four sentences for
28 drug-related offenses); Whitfield ¶ 9.

1 Another facet of the County’s cycling approach is its pattern of arresting
 2 Plaintiff-Intervenors and others for probation violations,⁵ notwithstanding the fact
 3 that, left untreated, mental illness will often make navigating the County’s probation
 4 requirements significantly more difficult. Royal Williams, for example, was sitting
 5 in front of a tent on Skid Row when a police officer pulled up and asked if he was
 6 on probation. Williams ¶ 9. He was then arrested for having failed to report to his
 7 probation officer. *Id.* ¶ 8. This practice is common in the Skid Row area. White ¶ 7.

8 Two other frequent consequences of untreated mental illness—homelessness
 9 and lack of resources—factor into the jail-to-streets-to-jail cycle. All Plaintiff-
 10 Intervenors are homeless, an unsurprising fact given that at least one-third of the
 11 homeless suffer from mental illnesses. Steinberg ¶ 3.⁶ An unfortunate reality of life
 12 for many mentally ill homeless persons is a lack of access to basic necessities that
 13 most take for granted. And desperation sometimes leads to petty theft. David Penn,
 14 for example, was recently arrested and incarcerated for stealing toiletries for her
 15 personal use. Penn ¶ 9.⁷

16
 17
 18 ⁵ Powers ¶ 8 (recently released from prison and re-incarcerated a month later for
 19 failing to report to her parole officer); Sarni ¶¶ 7, 8 (three sentences for probation
 20 violations since 2013); Thomas ¶¶ 10-12 (four three-month sentences in County
 21 facilities for parole violations since 2012); Polk ¶ 8 (arrested in 2015 for a probation
 22 violation).

23 ⁶ *See also* Powers ¶¶ 6, 11 (living on the streets); Williams ¶¶ 9, 12, 15 (living in a
 24 tent prior to last arrest, slept under cardboard after release from jail, has a shelter
 25 bed); Valentine ¶¶ 7, 8, 16 (slept on street, “bounc[ed] between shelters,” has a
 26 shelter bed); Sarni ¶ 18 (has shelter bed); Thomas ¶ 21; Whitfield ¶ 15; Penn ¶ 14;
 27 Polk ¶ 13.

28 ⁷ *See also* Valentine ¶ 10 (arrested four times for stealing small items such as
 batteries and shampoo, which he intended to sell in order to obtain money for food);
 Valentine ¶ 19 (outstanding warrant for riding the Metro with no fare); *see also*
 White ¶ 8 (noting frequent arrests on Skid Row for collecting recyclable materials
 from trash cans or littering).

1 Plaintiff-Intervenors' untreated mental illnesses, of course, also directly limit
2 their major life activities. They are or have been prevented from working,⁸
3 experience or exhibit anti-social behaviors,⁹ and are unable to care for or maintain
4 relationships with their families.¹⁰ Due to the County's frequent interactions with
5 Plaintiff-Intervenors, the County is and has been on notice that Plaintiff-Intervenors
6 suffer from mental disabilities.¹¹

7 **III. ARGUMENT**

8 The Court should grant Plaintiff-Intervenors leave to intervene in this action
9 for the limited purpose of correcting the ADA violations in Paragraph 34 of the
10 Settlement.

11 **A. Plaintiff-Intervenors Are Entitled to Intervene As A Matter
12 of Right**

13 Federal Rule 24(a) of the Federal Rules of Civil Procedure is construed
14 liberally in favor of intervenors, and the Court's decision is guided primarily by

15 ⁸ Valentine ¶ 4 (depression and anxiety caused him to lose his job and prevented
16 him from obtaining a new job); Whitfield ¶ 7 (a 25-year career in healthcare ended
17 by inability to be around other people, depression and inability to control her
18 emotional responses).

19 ⁹ Powers ¶ 3 (constantly hears voices, talks to trees, voices make it hard for her to
20 communicate with people); Williams ¶ 13 (without medication his mental illness
21 causes him to abuse drugs, fight and steal), Thomas ¶ 7 (cannot be in crowds,
22 potentially violent reactions to perceived threats).

23 ¹⁰ Powers ¶ 2 (has not spoken to her children in 13 years); Williams ¶¶ 3, 6 (mother
24 has custody of his son; his family does not trust him); Valentine ¶ 4 (onset of mental
25 illness when withdrawing from his family).

26 ¹¹ Powers ¶¶ 4, 7, 8, 10 (approximately 15 involuntary psychiatric holds; mental
27 health treatment in County facilities); Williams ¶¶ 6, 10 (involuntary psychiatric
28 hold, housed in mental health unit at a County facility); Valentine ¶¶ 8, 10 (mental
illness diagnosed by the DMH, housed in mental health unit at a County facility);
Sarni ¶¶ 9-11 (housed in mental health unit at a County facility); Thomas ¶¶ 13, 15,
16 (notified County officials of psychiatric needs); Whitfield ¶¶ 4, 9 (mental illness
diagnosed in jail); Penn ¶ 9 (spoke to County mental health physician while in
custody); Polk ¶¶ 6, 9 (housed in mental health unit at a County facility).

1 practical considerations rather than technical distinctions. *Sw. Ctr. for Biological*
2 *Diversity v. Berg*, 268 F.3d 810, 817 (9th Cir. 2001). “A liberal policy in favor of
3 intervention serves both efficient resolution of issues and broadened access to the
4 courts. By allowing parties with a *practical* interest in the outcome of a particular
5 case to intervene, we often prevent or simplify future litigation involving related
6 issues; at the same time, we allow an additional interested party to express its views
7 before the court.” *United States v. City of Los Angeles*, 288 F.3d 391, 397-98 (9th
8 Cir. 2002) (quoting *Greene v. United States*, 996 F.2d 973, 979-80 (9th Cir. 1993)
9 (Reinhardt, J., dissenting)). A district court is required to accept as true the non-
10 conclusory allegations made in support of an intervention motion, particularly where
11 the propriety of intervention must be determined before discovery. *Berg*, 268 F.3d at
12 819-20.

13 Federal Rule 24(a)(1) provides for intervention as of right when intervenors
14 satisfy a four-part test: (1) the application for intervention is timely; (2) the applicant
15 has a “significantly protectable” interest relating to the property or transaction that is
16 the subject of the action; (3) the applicant is so situated that the disposition of the
17 action may, as a practical matter, impair or impede the applicant's ability to protect
18 that interest; and (4) the applicant's interest is not adequately represented by the
19 existing parties in the lawsuit. *Id.*

20 **1. The Motion Is Timely**

21 Courts consider three factors in determining whether a motion to intervene is
22 timely: (1) the stage of the proceeding, (2) the prejudice to other parties, and (3) the
23 reason for and length of the delay. *League of United Latin Am. Citizens v. Wilson*,
24 131 F.3d 1297, 1302 (9th Cir. 1997).

25 All three factors here weigh heavily in favor of the timeliness of this motion.
26 Plaintiff-Intervenors are moving to intervene *less than two months* after the action
27 was filed and Plaintiff-Intervenors first learned of the unlawful Settlement
28 provisions. Unsurprisingly, motions to intervene filed later in the life of a suit than

1 this one have been deemed timely. *See, e.g., Citizens for Balanced Use v. Montana*
2 *Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011) (motion to intervene filed three
3 months after suit filed and two weeks after answer).

4 Notably, Plaintiff-Intervenors had no prior notice of the negotiations leading
5 up to the Settlement. Hartz ¶ 7; *see also Wilson*, 131 F.3d at 1304 (noting that the
6 “crucial date in assessing the timeliness of an intervention motion” is the date that
7 the intervenor should have been aware of the inadequacy of the parties’
8 representation of its interests). Although the undersigned diligently investigated and
9 prepared to intervene to address the illegality of Paragraph 34, the Court approved
10 the Settlement less than a month after the undersigned first learned of its existence.
11 Hartz ¶ 8. Just two weeks later, Plaintiff-Intervenors notified the parties of their
12 intention to bring this motion to intervene, and they have since engaged in
13 correspondence and discussions in a good faith attempt to resolve their request for
14 intervention. *Id.* ¶ 9. In short, Plaintiff-Intervenors have intervened expeditiously
15 and without delay at the earliest practicable stage of the proceedings.

16 Moreover, the DOJ and County cannot in fairness claim prejudice from the
17 timing of this targeted motion to intervene, filed so soon after the unlawful terms of
18 their agreement became public. The DOJ and County of course have no legitimate
19 interest in pursuing a course of conduct that violates the terms of the ADA, and
20 cannot be prejudiced by litigation that remedies such conduct before its
21 implementation commences. Moreover, Plaintiff-Intervenors only seek to intervene
22 for the limited purpose of addressing the unlawful provisions of Paragraph 34 of the
23 Settlement. Implementation of the remainder of the Settlement can proceed apace.
24 While Plaintiff-Intervenors intend to work with the parties and the Court to bring
25 Paragraph 34 in line with the ADA if intervention is granted, even Paragraph 34 will
26 not be immediately affected by a mere grant of intervention.

27
28

1 (a) *Paragraph 34 Facially Discriminates Against*
2 *Persons With Certain Mental Disabilities And*
3 *Persons In Jail Seven Days Or Fewer*

4 A public entity can violate the ADA’s “meaningful access” requirement by
5 adopting facially discriminatory policies that categorically exclude disabled persons
6 from a public program. *Lovell v. Chandler*, 303 F.3d 1039, 1057 (9th Cir. 2002). A
7 public entity may not “[d]eny a qualified individual with a disability the opportunity
8 to participate in or benefit from the aid, benefit, or service” or “[p]rovide different or
9 separate aids, benefits, or services to individuals with disabilities or to any class of
10 individuals with disabilities than is provided to others unless such action is
11 necessary to provide qualified individuals with disabilities with aids, benefits, or
12 services that are as effective as those provided to others.” 28 C.F.R.

13 § 35.130(b)(1)(i), (iv).¹² Here, the Settlement directly violates the ADA by
14 impermissibly discriminating among categories of disabled individuals.

15 (i) *The Settlement Excludes Certain Disabled*
16 *Persons Who Also Need Discharge Planning*
17 *Services*

18 One way that a public entity may facially discriminate is by excluding people
19 with disabilities of a specific type or origin. An individual is disabled within the
20 meaning of the ADA if he or she has a “physical or mental impairment that
21 substantially limits one or more major life activities.” 42 U.S.C. § 12102(1). The
22 statute goes on to enumerate a non-exhaustive list of “major life activities” that
23 includes concentrating, thinking, and communicating. *Id.* § 12102(2). The etiology
24 or causal origin of an individual’s impairment is irrelevant to the question of
25 whether that individual is disabled within the meaning of the statute. An individual

26 ¹² See also 28 C.F.R. § 35.130: “A public entity shall not impose or apply eligibility
27 criteria that screen out or tend to screen out an individual with a disability or any
28 class of individuals with disabilities from fully and equally enjoying any service,
program, or activity, unless such criteria can be shown to be necessary for the
provision of the service, program, or activity being offered.”

1 who is substantially limited in the ability to concentrate, think, or communicate is
 2 thus protected by the ADA regardless of whether the impairment is caused by a
 3 psychotic disorder, dementia, or a developmental disability.

4 Here, Paragraph 34 only offers discharge planning to persons with mental
 5 disabilities of some specified origins but expressly excludes others protected by the
 6 ADA. It provides these government services only to persons with “serious mental
 7 illness,” while denying discharge planning to those with “substance abuse and
 8 dependence disorders,¹³ dementia, and developmental disability.” Settlement
 9 ¶¶ 15(aa), 34. Under the Settlement, it is not clear that persons with “substance
 10 abuse and dependence disorders, dementia, and developmental disabilit[ies]” would
 11 receive any discharge planning services at all.¹⁴

12 Significant numbers of disabled individuals will be impacted by the
 13 Settlement’s arbitrary discrimination among classes of disabled persons. Suzanne
 14 Wenzel, Ph.D., the Chair of the Department of Adults and Healthy Aging at the
 15 University of Southern California, explains that “[t]he limited scope of the

16
 17 ¹³ The exclusion of those with substance abuse disorders is unlawful under the
 18 ADA. “Physical and mental impairment” specifically includes drug addiction and
 19 alcoholism. 28 C.F.R. § 35.104(1)(ii). Although the term “disability” does not
 20 include “[p]sychoactive substance use disorders resulting from current illegal use of
 21 drugs,” *id.* at § 35.104(5)(iii) and while a public entity may withhold services from
 22 someone currently engaging in illegal drug use, the Ninth Circuit recognizes that
 23 both alcoholism and drug addiction may qualify as a disability by virtue of
 24 substantially limiting a person’s major life activities. *Thompson v. Davis*, 295 F.3d
 25 890, 896 (9th Cir. 2002) (holding that pro se prisoner plaintiffs had adequately pled
 26 that they were disabled within the meaning of the ADA by alleging that they were
 27 rehabilitated drug addicts whose past drug addiction substantially limited major life
 28 activities including their ability to learn and work).

25 ¹⁴ Indeed, Paragraph 34(c)’s provision of a “re-entry resource center ... available to
 26 *all* prisoners where they may obtain information about available mental health
 27 services and community resources” (emphasis added) strongly suggests that
 28 Paragraph 34 represents the sum total of discharge planning services to be available
 in County jails.

1 Settlement Agreement’s category of ‘serious mental illness’ will exclude a large
2 number of quite seriously disabled persons.... The fact that a prisoner with a
3 developmental disability might require a different type of discharge plan and
4 different housing than a prisoner diagnosed with schizophrenia does not mean that a
5 discharge plan is not just as critical for that individual.” Wenzel ¶ 14.

6 This exclusion of a significant number of disabled individuals from the
7 benefits of Paragraph 34’s discharge planning services plainly violates the ADA.
8 “The [public entity’s] appropriate treatment of some disabled persons does not
9 permit it to discriminate against other disabled people under any definition of
10 ‘meaningful access.’” *Lovell*, 303 F.3d at 1054.¹⁵

11 (ii) The Settlement Excludes Disabled Persons
12 Who Have Been In Jail for Seven Days or
Fewer

13 Relatedly, the Settlement facially discriminates against certain persons with
14 mental disabilities by virtue of the length of time they are incarcerated. Settlement
15 ¶ 34(a). Prisoners who are in jail for seven days or fewer are excluded from most of
16
17

18 ¹⁵ In other matters, the DOJ has not sanctioned such discrimination and has pursued
19 CRIPA enforcement efforts on behalf of prisoners and institutionalized persons who
20 serious mental illness *and* on behalf of those who have intellectual disabilities. *See*
21 Hartz Exh. A, Findings Letter Re: Investigation of the Pennsylvania Department of
22 Corrections’ Use of Solitary Confinement on Prisoners with Serious Mental Illness
23 and/or Intellectual Disabilities, February 24, 2014. The letter concluded that the
24 Pennsylvania Department of Corrections was violating the rights of prisoners under
25 the Eights Amendment and the ADA. *See also* Hartz Exh. B, Findings Letter, Re:
26 United States’ Investigation of the State of Mississippi’s Service System for Persons
27 with Mental Illness and Developmental Disabilities, December 22, 2011. The DOJ
28 investigation in Mississippi under CRIPA and the ADA also concluded that the
Mississippi had failed to meet its ADA obligations by “unnecessarily
institutionalizing persons with mental illness or [developmental disabilities] ... and
failing to ensure that they are offered a meaningful opportunity to live in integrated
community settings consistent with their needs.”

1 the discharge planning services, and are entitled only to a “preliminary treatment
2 plan, including discharge information.” *Id.*

3 This line-drawing is arbitrary and will exclude from services many mentally
4 disabled persons. Dr. Wenzel states that “[t]he length of the stay in jail has no
5 bearing on the prisoner’s treatment requirements.” Wenzel ¶ 15. Moreover, this
6 arbitrary exclusion may harm the most vulnerable individuals. “[I]t is possible,”
7 writes Dr. Wenzel, “that prisoners in jail for seven days or less will be less stable
8 upon release because they will have received less treatment while in jail.” *Id.* ¶ 16.

9 This exclusion, moreover, is not mandated by any apparent practical
10 necessities. The Settlement requires prisoners to be screened for mental health needs
11 within 12 hours after their arrival, and to receive a mental health assessment within
12 24 hours, or 72 hours on weekends and legal holidays, if not sooner.¹⁶ *Id.* ¶¶ 27, 29.
13 That is, 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 time they are incarcerated.

18 (b) *The Settlement Violates The ADA’s Mandate To*
19 *Provide Meaningful Access To Programs And*
Services

20 Paragraph 34 also infringes upon Plaintiff-Intervenors’ interests under the
21 ADA by denying them reasonable accommodations that would, if not unlawfully
22 withheld, provide disabled persons with meaningful access to government services
23 upon their release from the County’s jails.

24 Congress identified as a form of discrimination prohibited by the ADA those
25 “failure[s] to make reasonable modifications in policies, practices, or procedures,

26 ¹⁶ Prisoners with “emergent or urgent mental health needs” must be evaluated “as
27 soon as possible but no later than four hours from the time of identification.”
28 Settlement ¶ 26.

1 when such modifications are necessary to afford such goods, services, facilities,
 2 privileges, advantages or accommodations to individuals with disabilities, unless the
 3 entity can demonstrate that making such modifications would fundamentally alter
 4 the nature of such goods, services, facilities, privileges, advantages, or
 5 accommodations.” 42 U.S.C. § 12182(b)(2)(A).

6 As described above, the touchstone in evaluating whether or not a
 7 discrimination, exclusion, or denial has occurred on the basis of disability is whether
 8 under the Settlement the County provides Plaintiff-Intervenors with “meaningful
 9 access” to its otherwise available benefits, services, and programs. *Crowder*, 81 F.3d
 10 at 1484. A “reasonable accommodation” is one that gives the otherwise qualified
 11 plaintiff with disabilities “meaningful access” to the program or services sought.
 12 *Alexander v. Choate*, 469 U.S. 287, 301 (1985).¹⁷ That is, reasonable
 13 accommodations are the means to the end of meaningful access to benefits and
 14 services. Importantly, in order to raise a reasonable accommodation claim, “[a]
 15 plaintiff need not allege either disparate treatment or disparate impact.” *McGary v.*
 16 *City of Portland*, 386 F.3d 1259, 1266 (9th Cir. 2004). The ADA prohibits actions
 17 that deny “meaningful access” to benefits and services, or deny “reasonable
 18 accommodations” for disabilities. *Mark H. v. Lemahieu*, 513 F.3d 922, 938 (9th Cir.
 19 2008).

20 Paragraph 34 violates these ADA requirements by denying meaningful access
 21 to medication and services that disabled persons with mental health issues depend
 22

23 ¹⁷ Of course, a public entity’s obligation under the ADA “is not boundless.”
 24 *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 603 (1999). If such an entity can
 25 show that the accommodation at issue would “fundamentally alter” the services
 26 provided—i.e., “that, in the allocation of available resources, immediate relief for
 27 the plaintiffs would be inequitable, given the responsibility the state has undertaken
 28 for the care and treatment of a large and diverse population of persons with mental
 disabilities,” *id.* at 604—then the entity has not discriminated by failing to offer
 such an accommodation.

1 on for the basic necessities of life. Paragraph 34(b)(i), for example, denies the
2 mentally ill who the County releases from its jails meaningful access to
3 psychotropic medication. Under this provision, the County need provide no more
4 than a slip of paper with a prescription for short-term medication or a referral to
5 “reentry resource center.” For the seriously mentally ill, this is inadequate.

6 First, the prescription-only approach simply ignores the basic realities of life
7 for many of the seriously mentally ill who cycle through the County’s jails. As Dr.
8 Wenzel describes in her declaration, “To fill a prescription, the released prisoner
9 must keep track of the paper in the chaos of the release process, find the location of
10 a free pharmacy, find a bus or other transportation to the pharmacy, and find the
11 time to do this while also taking care of other needs such as finding food or a shelter
12 bed, which can require hours of standing in lines.” Wenzel ¶ 18.

13 Paragraph 34’s alternative attempt to address the seriously mentally ill’s
14 medication needs—a “referral to a re-entry resource center, or ... to an appropriate
15 community provider,” Settlement ¶ 34(b)(i)—will be even less likely to succeed, for
16 it, as Dr. Wenzel describes,

17 poses all the challenges of filling the prescription described above, and
18 adds the additional hurdles of having to find a phone to make an
19 appointment with a provider, waiting days or often weeks for the
20 appointment, remembering the appointment, finding transportation to
21 the appointment, having the appropriate insurance for the provider, and
22 obtaining a diagnosis that results in the appropriate medication being
prescribed. Each of these steps can be extremely challenging for an
individual whose illness—the very illness for which he requires the
medication—disrupts his ability to follow through on a logical thought
process.

23 Wenzel ¶ 19.

24 Dr. Wenzel’s concern about the inability of many mentally disabled
25 individuals to obtain medication through the procedures outlined in the Settlement
26 are borne out in the experience of Plaintiffs-Intervenors. For example, Plaintiff-
27 Intervenor Royal Williams was given a prescription for Risperdal but did not fill it
28

1 because his MediCal had been suspended and he did not know that he could fill the
2 prescription at a free pharmacy. Williams ¶ 13.

3 The Settlement’s approach puts people in danger. Leaving prison without
4 needed medications subjects released prisoners to a greater risk of suicide or of
5 experiencing symptoms including “auditory hallucinations telling them to hurt
6 themselves, or paranoid delusions that convince them they need to stand in the
7 middle of a busy street or at the edge of a bridge over a freeway.” Wenzel ¶ 17. As
8 Plaintiff-Intervenor Royal Williams describes it, “Without my medication I was
9 doing things I wasn’t supposed to be doing: substance abuse, fighting and stealing. I
10 felt really lonely without my medication, and unworthy. That’s when the suicidal
11 thoughts come...” Williams ¶ 13. *See also* Polk ¶ 10 (lack of medication causes
12 “unnecessary anxiety and depression”); ; Thomas ¶¶ 14,16-17 (denied medication in
13 jail and experienced “heightened paranoia” and “got to the point where I wanted to
14 kill myself”); Valentine ¶ 11 (“Without my medications, I hear voices, I can’t sleep,
15 I have no appetite, my anxiety kicks in.”); Whitfield ¶¶ 9-10 (without medication,
16 she was “scared and frantic, pacing and crying”).

17 In short, Paragraph 34 denies the seriously mentally ill meaningful access to
18 needed psychotropic medications, in violation of the ADA.

19 Similar problems undermine Paragraph 34’s approach to accessing
20 government services. The Settlement requires no more than that the County “make
21 available” a “consultation,” “linkage,” *or* “referral” to various services. These vague
22 terms, which lack any substantive requirements, would appear to allow the County
23 to simply hand a person suffering from disorganized thinking or hallucinations a
24 pamphlet with a list of service providers (or worse yet, to “make available” such
25 pamphlets by leaving a stack near the jail’s exit door).

26 The distribution of pamphlets does not qualify as providing meaningful
27 access to government services. For people with serious mental illnesses that impede
28 organized thinking, such a list of referrals is “of no value” because “those persons

1 who can take full advantage of a referral may have demonstrated that they did not
2 need it in the first place.” Wenzel ¶ 11. As psychiatrist Dr. James Rosenberg
3 explains in his declaration, mere referrals offer no “realistic hope” to most with
4 serious mental illnesses due to multiple factors, including:

- 5 1. cognitive impairments, such as reduced executive function, memory, and
6 information processing capabilities;
- 7 2. “negative” symptoms of mental illness, such as a lack of motivation,
8 which psychotropic medication generally cannot treat; and
- 9 3. co-occurring conditions, such as substance abuse, homelessness, and lack
10 of adherence to medication. Rosenberg ¶ 18.

11 The result is that people with mental disabilities often cannot arrange and
12 remember an appointment, determine the location, arrange transportation, and
13 tolerate the long waits and paperwork requirements to finally have the appointment.
14 Wenzel ¶ 11. As experienced community services provider Julie DeRose puts it, “A
15 homeless clinically disorganized person is typically unable to take a referral and
16 follow through without the assistance of a caseworker or advocate to help ensure
17 that the person becomes linked.” DeRose ¶ 16; *see also id.* ¶ 13; White ¶ 6;
18 Rosenberg ¶ 18.

19 The experiences of Plaintiff-Intervenors bear out the insufficiency of the
20 referral model. Royal Williams was given a list of resources, but could not make any
21 use of it: “There were maybe fifty places on the list, and I didn’t know which ones
22 would be good for me. Mentally, I wasn’t in a place where I could figure out who to
23 call or where to go. I threw the lists away.” Williams ¶ 11. Lepriest Valentine’s
24 explanation of why he missed a court date echoes the same problem: “I didn’t go
25 because I was depressed and caught up in the voices I was hearing. Between my
26 mental health and worrying about where to eat and sleep, going to court was not a
27 priority for me.” Valentine ¶ 14.

28

1 Relying on mere referrals can have dangerous consequences. A County
2 employee informed Mark Sarni—who has been diagnosed with bipolar disorder,
3 paranoid schizophrenia, severe depression, anxiety, and substance abuse— just prior
4 to his release that there was “something seriously wrong” with his blood. But the
5 County failed to connect Mr. Sarni to immediate medical care. Sarni ¶¶ 3, 13. Ten
6 hours later, his heart stopped. *Id.* ¶¶ 14-15.

7 Paragraph 34, moreover, does not even require the County to confirm that the
8 particular services it chooses to refer the mentally ill to—which the County has
9 complete discretion to select under the Settlement—have services available for the
10 person being released. The risk that the County’s chosen referrals will be
11 oversubscribed is significant. As Dr. Wenzel explains, “There are very few service
12 providers that assist indigent persons with mental disabilities that do not operate at
13 close to 100% capacity on a consistent basis. An adequate process that reasonably
14 accommodated the needs of these individuals would insure that discharged prisoners
15 are connected to actually available services.” Wenzel ¶ 13; *see also* DeRose ¶ 13
16 (often “if they do go to the referring agency, the agency does not have the capacity
17 to provide them with services.”).

18 Paragraph 34’s approach of allowing the County to refer Plaintiff-Intervenors
19 and others with disabilities to services that are not available is a harm over and
20 above the harm caused by the lack of services. As Suzanne Wenzel puts it, “giving
21 someone a referral to a place that turns him away is a net negative because he uses
22 his scarce psychological and physical reserves in search of something that does not
23 exist.” Wenzel ¶ 25.

24 In short, Paragraph 34’s prescription and service-access provisions fall
25 woefully short of providing the *meaningful* access that Title II of the ADA requires.
26 Plaintiff-Intervenors have an obvious protectable interest in ensuring that their right
27 to access government services is not denied by Paragraph 34, and therefore should
28 be granted leave to intervene.

(c) *The Settlement Violates The ADA's Integration Mandate.*

The ADA's integration mandate provides that: "A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified persons with disabilities." 28 C.F.R. § 35.130(d). "Integrated" means in a setting that "enables individuals with disabilities to interact with nondisabled persons to [the] fullest extent possible." *Id.* § Pt. 35, App. B; *see also Olmstead*, 527 U.S. at 597 (applying the ADA's integration mandate and noting that the "Department of Justice has consistently advocated" that "undue institutionalization qualifies as discrimination 'by reason of disability'"). The integration mandate serves at least two critical purposes: (1) it avoids "perpetuat[ing] unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life"; and (2) it allows for the mentally disabled to participate in "the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment." *Id.* at 600-01.

The post-release institutionalizations contemplated in Paragraph 34 of the Settlement are not the most integrated setting appropriate to Plaintiff-Intervenors' needs. Specifically, Paragraph 34(b)(iii) contemplates providing prisoners with an "intense need for assistance" with "direct linkage to an Institutional for Mental Disease ('IMD'), IMD-Step-down facility, or appropriately licensed hospital." Dr. Suzanne Wenzel explains that

this paragraph may result in mentally ill individuals not being placed in an integrated environment. While IMDs and other residential treatment programs are sometimes appropriate short-term placements, individuals with intense need for assistance can often flourish in a community placement with intensive community services.... There are many gradations of need that should be evaluated on a case-by-case basis to ensure that each person is placed in the most integrated environment."

Wenzel ¶ 28.

1 The IMDs or “similarly restrictive facilities” contemplated in Paragraph
2 34(b)(iii) of the Settlement would unnecessarily segregate and isolate Plaintiff-
3 Intervenors when reasonable alternatives, such as permanent supportive housing, are
4 available and are required to be provided to those for whom they are clinically
5 appropriate. 28 C.F.R. § 35.130(d).¹⁸ Even with respect to the alternative
6 community-based placements contemplated by Paragraph 34 (such as Full Service
7 Partnership or placement in Adult Residential Facilities), the County bears the
8 burden of specifying how such services satisfy its obligations under the integration
9 mandate, and it “certainly bear[s] the burden of ensuring more than a ‘theoretical’
10 availability of such services,” particularly where the Plaintiff-Intervenors face a risk
11 of institutionalization if their condition worsens due to a lack of adequate care.
12 *Brantley v. Maxwell-Jolly*, 656 F. Supp. 2d 1161, 1174 (N.D. Cal. 2009).

13 Indeed, the Civil Rights Division of the U.S. Department of Justice has
14 investigated state mental health care systems across the country and concluded that
15 some of those states violated Title II’s integration mandate by unnecessarily
16 segregating persons with mental disabilities and failing to provide them with more
17 integrated and community-based support and services, including housing. For
18 instance, in *Kenneth R. ex rel. Tri-County CAP, Inc./GS v. Hassan*, the United States
19 intervened in a putative class action brought by people with serious mental illnesses
20 in New Hampshire who alleged that their institutionalization violated, *inter alia*, the
21 ADA’s integration mandate. 293 F.R.D. 254, 258-60 (D. N.H. 2013). In that case,
22

23 ¹⁸ *Disability Advocates, Inc. v. Patterson*, 653 F. Supp. 2d 184 (E.D.N.Y. 2009), is
24 an instructive case. There, the district court concluded that state institutions in New
25 York City for adults with mental disabilities were “not the most integrated setting
26 appropriate to the needs of [individuals with mental illness], especially compared to
27 supported housing, in which individuals with mental illness live in apartments and
28 receive flexible support services as needed.” *Id.* at 314, *vacated for lack of
associational standing, Disability Advocates, Inc. v. New York Coal. for Quality
Assisted Living, Inc.*, 675 F.3d 149, 162 (2d Cir. 2012)).

1 the United States supported the plaintiffs’ motion for class certification, *id.* at 258,
 2 which the district court granted and which eventually led to a settlement with the
 3 State of New Hampshire.¹⁹

4 Moreover, the Settlement does not describe whether or how mental health
 5 professionals or public health professionals will determine whether community
 6 placement is appropriate. *Olmstead*, 527 U.S. at 607. The Settlement refers to
 7 institutionalizing prisoners who have an “intense need for assistance” or a
 8 “moderate need for assistance, as described in DMH policies.” Settlement
 9 ¶¶ 34(b)(iii)-(iv). These categories of need are not defined in the Settlement or in
 10 DMH policies or glossaries that are accessible to the public.²⁰ Nor are they known
 11 by subject matter experts who are familiar with DMH policies. Wenzel ¶ 27 (noting
 12 that the terms are not terms she recognizes and that the Settlement does not indicate
 13 who will make the critical determination, what credentials that person will have, and
 14 what evaluative instrument will be used). This, together with the institutionalization
 15 provisions themselves, violates the ADA’s integration mandate.

16 3. The Proposed Settlement Will Practically Impair 17 Plaintiff-Intervenors’ Ability To Protect Their 18 Interests

18 The relevant inquiry for the third prong of the test for intervention as of right
 19 is whether a “consent decree ‘may’ impair rights ‘as a practical matter’ rather than
 20 whether the decree will ‘necessarily’ impair them.” *City of Los Angeles*, 288 F.3d at

21 ¹⁹ *See, e.g.*, Hartz Exh. C, Findings Letter, Re: United States’ Investigation of the
 22 New Hampshire Mental Health System Pursuant to the Americans with Disabilities
 23 Act, April 7, 2011. The letter concludes that the State of New Hampshire “fails to
 24 provide services to qualified individuals with mental illness in the most integrated
 25 setting appropriate to their needs, in violation of the ADA. This has led to the
 26 needless and prolonged institutionalization of individuals with disabilities who
 could be served in more integrated settings in the community with adequate services
 and supports.” *Id.* at 2.

27 ²⁰ Putative intervenors requested those documents from the parties but to date have
 28 not received them. Hartz ¶ 10.

1 401; *see also Berg*, 268 F.3d at 822 (“We follow the guidance of Rule 24 advisory
 2 committee notes that state that “[i]f an absentee would be substantially affected in a
 3 practical sense by the determination made in an action, he should, as a general rule,
 4 be entitled to intervene.”).

5 Regardless, any distinction here between consent decrees that “may impair”
 6 and those that “necessarily impair” is academic. For the reasons explained in the
 7 prior section, Paragraph 34 will in fact impair Plaintiff-Intervenors’ right to be free
 8 from Paragraph 34’s numerous ADA violations.

9 **4. The Parties Do Not Adequately Represent The**
 10 **Intervenors’ Interests**

11 There are three factors determining the adequacy of representation:
 12 “(1) whether the interest of a present party is such that it will undoubtedly make all
 13 of a proposed intervenor's arguments; (2) whether the present party is capable and
 14 willing to make such arguments; and (3) whether a proposed intervenor would offer
 15 any necessary elements to the proceeding that other parties would neglect.” *Arakaki*
 16 *v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). “The burden of showing
 17 inadequacy of representation is ‘minimal’ and satisfied if the applicant can
 18 demonstrate that representation of its interests ‘may be’ inadequate.” *Citizens for*
 19 *Balanced Use*, 647 F.3d at 898.

20 Plaintiff-Intervenors easily satisfy this prong of the intervention-as-of-right
 21 test. Both the United States and the County have signed on to a Settlement that itself
 22 violates Plaintiff-Intervenors’ rights under Title II of the ADA. Neither can even
 23 arguably be deemed an adequate representative of those whose rights the parties
 24 have chosen to ignore. More specifically, the parties will not “undoubtedly make”
 25 the ADA challenge to their own Settlement that Plaintiff-Intervenors seek to raise;
 26 they will are not “capable and willing to make such arguments.” To the contrary, the
 27 parties have mutually agreed to “defend the provisions” of the Settlement.
 28 Settlement ¶ 120. Consequently, Plaintiff-Intervenors will “offer ... necessary

1 elements to the proceeding that the other parties would neglect.” *See Arakaki*, 324
2 F.3d at 1086.

3 **B. Plaintiff-Intervenors Should Be Permitted to Intervene**

4 Alternatively, Plaintiff-Intervenors move for permissive intervention under
5 Federal Rule of Civil Procedure Rule 24(b)(1)(B). The Ninth Circuit applies three
6 threshold requirements to a motion for permissive intervention: (1) the intervenor’s
7 claim must share a common question of law or fact with the main action; (2) the
8 motion must be timely; and (3) the court must have an independent basis for
9 jurisdiction over the applicant's claims. *Donnelly v. Glickman*, 159 F.3d 405, 412
10 (9th Cir. 1998). The district court also considers whether intervention will “unduly
11 delay the main action or will unfairly prejudice the existing parties.” *Id.*

12 All of these requirements are satisfied here, as described above in Section
13 III.A. Plaintiff-Intervenors raise cognizable ADA claims, as described above in
14 Section III.A.2 and in the accompanying Complaint in Intervention. The motion is
15 timely as explained above in Section III.A.1, and permitting intervention at this
16 early stage of the lawsuit, less than two months after the Complaint and Settlement
17 papers were filed and as soon as possible after Plaintiff-Intervenors learned of the
18 action, would work no prejudice against the parties that is not outweighed by
19 Plaintiff-Intervenors’ interests. Finally, the Court has an independent basis for
20 jurisdiction over the Plaintiff-Intervenors’ ADA claims under 28 U.S.C. § 1331.

21 **IV. CONCLUSION**

22 Plaintiff-Intervenors respectfully request that this Court grant Plaintiff-
23 Intervenors’ Motion to Intervene as a matter of right or, alternatively, permissively.
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1 DATED: September 28, 2015

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