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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES AMERICA,)	Case No. CV 15-05903 DDP (JEMx)
)	
Plaintiff,)	
)	ORDER GRANTING MOTION TO
v.)	INTERVENE
)	
COUNTY OF LOS ANGELES et)	[DOCKET NUMBER 17]
al.,)	
)	
Defendants.)	
)	
_____)	

Presently before the court is a Motion to Intervene filed by Teresa Powers, David Penn, Timothy Polk, Mark Sarni, Derrick Thomas, Darsel Whitfield, Royal Williams, and Lepriest Valentine (collectively, "Intervenors"). Intervenors assert that one paragraph of the executed settlement agreement between Plaintiff ("the government") and Defendant ("the County") violates the Americans with Disabilities Act ("ADA") and Intervenors' Fourth and Eighth Amendment rights. Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following Order.

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1 **I. Background**

2 On August 5, 2015, the government filed a Complaint against
3 the County under the Civil Rights of Institutionalized Persons Act
4 ("CRIPA"), 42 U.S.C. §§ 1997-1997j, and the Violent Crime Control
5 and Law Enforcement Act of 1994, 42 U.S.C. § 14141.¹ The Complaint
6 alleged repeated and systemic violations of prisoners' constitutional
7 rights in the Los Angeles County jail system. The alleged
8 violations included constitutionally deficient mental health care
9 and related services, such as suicide prevention, psychological and
10 psychiatric services, and discharge planning, as well as inadequate
11 housing and sanitation practices and a pattern of excessive force
12 against prisoners. (Complaint ¶¶ 22-26.)

13 The same day the Complaint was filed, the government and the
14 County filed a stipulated settlement of this matter. The
15 stipulated Settlement Agreement ("Agreement"), which spans 125
16 paragraphs and nearly sixty pages, provides for a series of new or
17 enhanced policies and practices across nineteen subject areas
18 intended to ensure that the County will provide "prisoners at the
19 Jails with safe and secure conditions and ensure their reasonable
20 safety from harm, including serious risk from self-harm and
21 excessive force, and ensure adequate treatment for their serious
22 mental health needs." (Agreement ¶ 16.) Among the stipulated
23 terms is a provision regarding discharge planning ("Paragraph
24 34."). That provision states:

25 34. The County and the Sheriff will conduct discharge
26 planning and linkage to community mental health

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28 ¹ The Complaint also named Los Angeles County Sheriff Jim
McDonnell as a Defendant, in his official capacity.

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providers and aftercare services for all prisoners with serious mental illness as follows:

- (a) For prisoners who are in Jail seven days or less, a preliminary treatment plan, including discharge information, will be developed.
- (b) For prisoners who are in Jail more than seven days, a [Qualified Mental Health Professional] will also make available:
 - (i) for prisoners who are receiving psychotropic medications, a 30-day prescription for those medications will be offered either through the release planning process, through referral to a re-entry resource center, or through referral to an appropriate community provider, unless clinically contraindicated;
 - (ii) in-person consultation to address housing, mental health/medical/substance abuse treatment, income/benefits establishment, and family/community/social supports. This consultation will also identify specific action to be taken and identify individuals responsible for each action;
 - (iii) if the prisoner has an intense need for assistance, as described in [County Mental Health] policies, the prisoner will further be provided direct linkage to an Institution for Mental Disease ("IMD"), IMD-Step-down facility, or appropriately licensed hospital;
 - (iv) if the prisoner has a moderate need for assistance, as described in [County Mental Health] policies, and as clinically appropriate to the needs of the prisoner, the prisoner will be offered enrollment in Full Service Partnership or similar program, placement in an Adult Residential Facility ("Board and Care") or other residential treatment facility, and direct assistance accessing community resources;

1 (v) if the prisoner has minimal needs for
2 assistance, as described in [County
3 Mental Health] policies, the prisoner
4 will be offered referrals to routine
5 services as appropriate, such as
6 General Relief, Social Security,
7 community mental health clinics,
8 substance abuse programs, and/or
9 outpatient care/support groups.

6 (c) The County will provide a re-entry resource
7 center with QMHPs available to all prisoners
8 where they may obtain information about
9 available mental health services and other
10 community resources.

9 (Agreement ¶ 34.)

10 This court approved the Agreement on September 3, 2015. On
11 September 28, 2015, Intervenors first sought to intervene in this
12 matter. Intervenors later filed a First Amended Complaint in
13 Intervention, which alleges that Paragraph 34 violates the
14 Americans with Disabilities Act ("ADA") and the Fourth and Eighth
15 Amendments to the Constitution. Intervenors allege, for example,
16 that Paragraph 34 facially discriminates against disabled prisoners
17 whose disability stems from personality disorders, substance abuse
18 and dependence disorders, dementia, or developmental disabilities,
19 as well as all disabled prisoners who spend seven days or fewer in
20 jail.² (Agreement ¶ 34, 34(a).) Intervenors further allege, in
21 essence, that Paragraph 34's discharge procedures are inadequate,
22 as many disabled prisoners will be unable to obtain needed
23 medication or services if provided with nothing more than a
24 prescription or list of referrals upon discharge.

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27 ² The Agreement's definition of "serious mental illness"
28 expressly excludes these substantive categories, with the exception
of personality disorders that are "associated with serious or
recurrent significant self-harm." (Agreement ¶ 15(aa).)

1 **II. Legal Standard**

2 Federal Rule of Civil Procedure 24 governs motions to
3 intervene. An applicant may intervene as of right if (1)
4 the motion is timely; (2) the applicant has a "significantly
5 protectable" interest relating to the action; (3) disposition of
6 the action may, as a practical matter, impair or impede the
7 applicant's ability to protect that interest; and (4) the
8 applicant's interest is inadequately represented by the parties to
9 the action. California ex rel. Lockyer v. United States, 450 F.3d
10 436, 440 (9th Cir. 2006); Fed. R. Civ. P. 24(a)(2). Courts
11 construe rule 24(a) liberally in favor of intervention. Id.

12 **III. Discussion**

13 A. Timeliness

14 In determining whether a motion to intervene is timely, courts
15 weigh (1) the stage of the proceedings; (2) the prejudice to the
16 parties; and (3) the length of and reason for any delay. United
17 States v. Alisal Water Corp., 370 F.3d 915, 921 (9th Cir. 2004).
18 Here, Intervenors did not seek to intervene until after the
19 Agreement was reached and entered as a court order, closing the
20 case. That fact, however, carries less weight under the unusual
21 circumstances here, where the Complaint and Settlement Agreement
22 were filed more or less concurrently. The court is not persuaded
23 by the government's contention that the fact that the CRIPA
24 investigation was covered in the media somehow obligated
25 Intervenors to "take steps" during the investigatory process or
26 some other, earlier stage. Intervenors did not delay in any
27 significant degree by filing their motion approximately three weeks
28 after the approval of the Settlement Agreement.

1 Further, it does not appear to the court that intervention
2 would prejudice the parties. The court gives little weight to the
3 parties' assertion that they would be prejudiced by intervention
4 because their collective ability to implement the remaining
5 provisions of the Agreement will be compromised if they are forced
6 to divert any attention to the issues raised by Intervenors.
7 First, Intervenors challenge but a single paragraph of the 125-
8 paragraph Agreement. Second, the provisions of Paragraph 34 are
9 not yet being implemented, and as even the parties acknowledge,
10 need not necessarily comprise the entirety of whatever discharge
11 policy the County ultimately adopts. Further, as the parties also
12 recognize, other provisions of the Agreement are already being
13 implemented. Indeed, Intervenors themselves have expressed strong
14 support for the remainder of the Agreement. There appears,
15 therefore, to be little threat to the settlement in its entirety.
16 See Alisal, 370 F.3d at 922. The court is satisfied that
17 Intervenors' motion is timely.

18 B. "Significantly Protectable" Interest

19 A proposed intervenor's interest is sufficient for purposes of
20 Rule 24(a)(2) if "the interest is protectable under some law, and
21 [] there is a relationship between the legally protected interest
22 and the claims at issue." Wilderness Society v. United States
23 Forest Service, 630 F.3d 1173, 1179 (9th Cir. 2011) (quotation
24 marks and citation omitted). Neither party appears to dispute that
25 Intervenors have a legally protectable interest. Although The
26 government expressly concedes that Intervenors have a significant,
27 protectable interest, it argues that such ADA-related interests are
28 unrelated to the subject matter of this action. The crux of the

1 government's contention is that this case is, and the government's
2 investigation was, limited to CRIPA and Section 14141 violations.
3 This court is mindful that CRIPA and Section 14141 were the driving
4 force behind the investigation, and that the government did not
5 necessarily intend to give its imprimatur to a discharge or ADA
6 policy comprised entirely of the terms of Paragraph 34. Rule 24,
7 however, does not require that Intervenor's protectable interest be
8 the same as that implicated in the existing action, only that there
9 be some relationship between the issues. Wilderness Society 630
10 F.3d at 1179. Where, as here, the stipulated solution to the
11 problems underlying the government's Complaint allegedly violate
12 Plaintiff's ADA and constitutional rights, a sufficient
13 relationship exists for purposes of intervention.³

14 C. Intervenor's Ability to Protect Their Interests

15 The parties argues that Intervenor's interests would not be
16 impaired by the denial of this motion because Intervenor can file
17 a separate, freestanding lawsuit. Although Intervenor could so
18 proceed, intervention as of right is not limited to instances in
19 which applicants have no other recourse. Rather, review under Rule
20 24(a) "is guided primarily by practical considerations"
21 Southwest Center for Biological Diversity v. Berg, 268 F.3d 810,
22 818 (9th Cir. 2001) (internal quotation and citation omitted).
23 This focus on practical and equitable concerns "serves both
24 efficient resolution of issues and broadened access to the courts."

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26 ³ Nothing in this Order shall be read to suggest that this
27 court takes any position on either the merits of Intervenor's
28 claims or the government's arguments on the merits, including the
argument that Paragraph 34 does not violate the ADA because it
comprises only a portion of County ADA and discharge planning
policy.

1 United States v. City of Los Angeles, 288 F.3d 391, 397-398 (9th
2 Cir. 2002) (quotation marks and citation omitted). The parties'
3 approach would not "prevent or simplify future litigation involving
4 related issues," but rather multiply it.⁴ ⁵ Id. at 398.

5 D. Adequacy of Representation

6 "Normally, a presumption of adequate representation generally
7 arises when the representative is a governmental body or officer
8 charged by law with representing the interests of the absentee."
9 City of Los Angeles, 288 F.3d at 401 (internal quotations omitted).
10 Inquiries into adequate representation, however, look to
11 (1) whether a party will "undoubtedly make all of a proposed
12 intervenor's arguments; (2) whether the present party is capable
13

14 ⁴ The County focuses the majority of its opposition on the
15 argument that Intervenor's lack standing. In the Ninth Circuit,
16 however, "[i]n general, an applicant for intervention need not
17 establish Article III standing to intervene." Perry v.
18 Schwarzenegger, 630 F.3d 898, 906 (9th Cir. 2011) (per curiam);
19 Vivid Entm't, LLC v. Fielding, No. CV-13-190 DDP, 2013 WL 1628704
20 at *2 (C.D. Cal. Apr. 16, 2013). Even if standing were required,
21 Intervenor's have demonstrated at least a "credible threat of future
22 injury." See City of Los Angeles v. Lyons, 461 U.S. 95, 106
23 (1983). Intervenor's have presented evidence that they are caught
24 up in a tragic cycle of homelessness and incarceration perpetuated
25 and punctuated by manifestations of mental illness and unbroken by
26 any adequate treatment.

27 ⁵ Alisal is not to the contrary. Although the court did
28 conclude that the applicant's interest was not impaired because
alternate process was available, that alternate process only
required the applicant to obtain court approval to seek to enforce
a judgment lien. Alisal, 370 F.3d at 921. Intervenor's task would
be far more complicated here, as they would have to litigate
freestanding ADA and constitutional claims from scratch, and then
only after Paragraph 34 had already gone into effect. And although
the City of Los Angeles court did find the possibility of
independent suits sufficient with respect to a proposed intervenor
that did not contest a consent decree, it reversed the district
court's denial of intervention to an applicant that sought to
enjoin a consent decree that, like the Agreement here, was filed
the same day as the complaint. City of Los Angeles, 288 F.3d at
396-397, 400-402.

1 and willing to make such arguments; and (3) whether a proposed
2 intervenor would offer any necessary elements to the proceeding
3 that other parties would neglect." Arakaki v. Cayetano, 324 F.3d
4 1078, 1086 (9th Cir. 2003). Here, the presumption of adequate
5 representation is rebutted where the government has not only
6 declined to make some of the arguments Intervenor would make, but
7 has in fact taken a contrary position. The government cannot,
8 therefore, be said to adequately represent Intervenor's significant
9 protectable interest.

10 **IV. Conclusion**

11 For the reasons stated above, the Motion to Intervene is
12 GRANTED.⁶ The court emphasizes, however, that nothing in this
13 Order shall be read as a commentary on the merits of Intervenor's
14 claims or on the sincerity of the parties' attempts to address the
15 issues raised in either the Complaint or the First Amended
16 Complaint in Intervention. Indeed, in the court's experience, both
17 parties, as well as Intervenor's counsel, have proven to be deeply
18 committed, well-intentioned, and effective collaborators, even in
19 the face of difficult financial and political realities. The
20 mental health issues around which this matter revolves are public
21 safety issues as well as legal ones, and concern the well-being of
22 not only the prisoners and public servants directly involved, but
23 of the larger community as well. Mental health issues have
24 unfortunately, and self-evidently, risen to crisis levels, and the
25 Sheriff has been forced to assume a prominent role in the absence

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27 ⁶ Having concluded that Intervenor's must be permitted to
28 intervene as of right, the court need not address permissive
intervention.

1 of sufficient mental health resources. The court encourages all
2 parties to continue to work together to formulate and implement
3 policies that are not only constitutionally and legally adequate,
4 but efficacious and empathetic as well.

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6 IT IS SO ORDERED.

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9 Dated: December 15, 2015



DEAN D. PREGERSON
United States District Judge

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