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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL DUNSMORE, ANDREE
ANDRADE, ERNEST ARCHULETA,
JAMES CLARK, ANTHONY EDWARDS,
REANNA LEVY, JOSUE LOPEZ,
CHRISTOPHER NORWOOD, JESSE
OLIVARES, GUSTAVO SEPULVEDA,
MICHAEL TAYLOR, and LAURA
ZOERNER, on behalf of themselves and all
others similarly situated,
Plaintiffs,

v.

SAN DIEGO COUNTY SHERIFF'S
DEPARTMENT, COUNTY OF SAN
DIEGO, SAN DIEGO COUNTY
PROBATION DEPARTMENT, and DOES
1 to 20, inclusive,

Defendants.

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Case No. 3:20-cv-00406-AJB-DDL

**JOINT MOTION AND ORDER
RE: MENTAL HEALTH ISSUES
AND RESOLVING SECOND
CLAIM FOR RELIEF**

Judge: Hon. Anthony J. Battaglia
Magistrate: Hon. David D. Leshner

1 *(counsel continued from preceding page)*

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1 1. Plaintiffs Darryl Dunsmore, Andree Andrade, Ernest Archuleta, James
2 Clark, Anthony Edwards, Reanna Levy, Josue Lopez, Christopher Norwood, Jesse
3 Olivares, Gustavo Sepulveda, Michael Taylor, and Laura Zoerner (collectively,
4 “Plaintiffs”), on behalf of themselves and the Certified Class and Disabilities
5 Subclass, and Defendants San Diego County and San Diego County Sheriff’s Office
6 (formerly known as “Sheriff’s Department”) (collectively, “the County”) jointly
7 seek entry of an Order approving the parties’ settlement of all mental health issues
8 regarding Plaintiffs’ Second Claim for Relief, as set forth in detail below.

9 **I. PROCEDURAL HISTORY**

10 2. On November 3, 2023, the District Court entered an Order Granting
11 Joint Motion for Class Certification and Approval of Proposed Class Action Notice
12 Plan, Dkt. No. 435, a copy of which is attached hereto as **Exhibit A** and
13 incorporated herein by reference. This Order certified a class of “All adults who are
14 now, or will be in the future, incarcerated in any of the San Diego County Jail
15 facilities (‘Incarcerated People Class’)” and a subclass of “All adults who have a
16 disability, as that term is defined in 42 U.S.C. § 12102, 29 U.S.C. § 705(9)(B), and
17 California Government Code § 12926(j) and (m), and who are now, or will be in the
18 future, incarcerated in any of the San Diego County Jail facilities (‘Incarcerated
19 People with Disabilities Subclass’).” Ex. A at 10. The Order approved Rosen Bien
20 Galvan & Grunfeld, Law Office of Aaron J. Fischer, and DLA Piper LLP (US) as
21 Class Counsel. *Id.* at 10-11.

22 3. On February 5, 2025, February 28, 2025, March 7, 2025, March 21,
23 2025, March 28, 2025, April 3, 2025, April 10, 2025, April 21, 2025, April 30,
24 2025, May 2, 2025, May 16, 2025, June 30, 2025, August 1, 2025, August 29, 2025,
25 September 17, 2025, September 26, 2025, October 10, 2025, November 10, 2025,
26 December 5, 2025, December 10, 2025, December 19, 2025, December 23, 2025,
27 and January 5, 2026, the parties conducted settlement conferences under the
28 supervision of the Honorable David Leshner, Magistrate Judge of the United States

1 District Court for the Southern District of California. Pursuant to the parties’
2 Mental Health – Settlement Neutral Appointment Agreement dated April 21, 2025,
3 the County hired Dr. Timothy Belavich, a psychologist, to serve as a Mental Health
4 Neutral Expert for the sole purpose of assisting in settlement negotiations. As part
5 of his engagement he conducted an independent assessment of the County’s jail
6 mental health system, and assisted the parties and Judge Leshner in settlement
7 negotiations on the mental health cause of action. Dr. Belavich conducted four full-
8 day tours of the County’s correctional facilities and has met regularly with the
9 parties and Judge Leshner. The parties also conducted settlement discussions
10 without the involvement of Judge Leshner. As a result of these discussions, the
11 parties have reached the following agreements regarding the mental health claim.

12 **II. DEFINITIONS**

13 4. “Jail” means any correctional facility operated by the County. As of
14 the effective date of this Agreement, there are seven correctional facilities operated
15 by the County: East Mesa Reentry Facility; George Bailey Detention Facility; Las
16 Colinas Detention and Reentry Facility; Rock Mountain Detention Facility; San
17 Diego Central Jail; South Bay Detention Facility; and Vista Detention Facility. As
18 of January 5, 2026, the daily population of the Jail is 4,111.

19 5. “Mental health care staff” means any person who provides mental
20 health care to incarcerated people in the custody of the Sheriff’s Office and includes,
21 but is not limited to, psychiatric physicians, nurse practitioners, psychologists,
22 nurses, licensed clinical social workers, marriage and family therapists, and
23 recreational therapists.

24 6. “Qualified Mental Health Professional” or QMHP means psychiatrists,
25 psychologists, clinical social workers, licensed professional counselors, psychiatric
26 nurse practitioners, psychiatric nurses, and others who by their education,
27 credentials, and experience are permitted by law to evaluate and care for the mental
28 health needs of patients.

1 7. "Qualified Health Care Professional" or QHCP means physicians,
2 physician assistants, nurses, nurse practitioners, dental professionals, licensed
3 mental health professionals, and others who by their education, credentials, and
4 experience are permitted by law to evaluate and care for patients.

5 8. "Out-of-Cell Clinical Encounter" means any confidential scheduled or
6 unscheduled appointment or interaction between a QMHP and patient for the
7 purpose of providing mental health care. It does not include rounding or medication
8 distribution.

9 9. "Rounding" means a QMHP conducts an in-person encounter with the
10 incarcerated individual to ascertain mental health status, providing an opportunity to
11 request mental health care, and monitor the effects of their current housing on the
12 incarcerated person. Rounding can be done through a door, including but not
13 limited to a cell or module door.

14 10. "Safety Checks" means direct, visual observation performed at random
15 intervals within established timeframes to provide for the health and welfare of
16 incarcerated persons.

17 **III. FINDINGS**

18 11. The parties agree that the Eighth and Fourteenth Amendments of the
19 United States Constitution, as well as Article 1, Sections 7 and 17 of the California
20 Constitution, require the County to provide adequate mental health care to
21 incarcerated people.

22 12. On March 2, 2020, Plaintiff Darryl Dunsmore filed this case as an
23 individual action. Dkt. 1. On February 9, 2022, Plaintiff Dunsmore, joined by
24 additional named plaintiffs, filed the Second Amended Complaint raising class
25 claims. Dkt. 81. Plaintiffs filed their Third Amended Complaint, Dkt. 231, on
26 November 18, 2022.

27 13. The parties started discussing the potential for settlement of issues
28 related to mental health issues described in the Second Claim for Relief of the Third

1 Amended Complaint in November 2024.

2 14. Discovery has taken place, including three on-site facility inspections
3 by Plaintiffs' qualified mental health expert, several Rule 30(b)(6) depositions,
4 document production, exchange of expert reports, and depositions of the parties'
5 respective experts. The parties are fully informed regarding the mental health issues
6 raised by Plaintiffs' Third Amended Complaint.

7 15. The County has taken significant and consequential steps over the last
8 three years to better serve incarcerated persons with mental health issues including
9 hiring additional mental health staff, implementing dedicated medication assisted
10 treatment ("MAT") clinicians, executing a contract for Early Access Stabilization
11 Services ("EASS"), developing the Case Manager position, recertifying the Las
12 Colinas Detention Facility ("LCDRF") and San Diego Central Jail Lanterman-
13 Petris-Short ("SDCJ LPS") facilities, and expanding Outpatient Step Down
14 ("OPSD") beds. Additionally, the San Diego County Sheriff's Office ("SDSO")
15 Detention Services Bureau has been in the process of revising its Manual of Policies
16 and Procedures for Medical and Health Care Services, M.1—48, its Medical
17 Services Division Operations Manual number A.1.1—W.2, and its Green Sheets
18 regarding provision of medical, mental health and dental care. The County has also
19 signed a contract with third-party provider Correctional Health Care Partners in
20 addition to the existing contract with NaphCare.¹

21 16. These changes represent important steps in the improvement of mental
22 health services for mentally ill incarcerated persons. The parties agree that
23 additional changes will be beneficial to the jail mental health delivery system,
24 including additional care for incarcerated persons with mental health issues and
25

26 ¹ "Maintain, develop, and implement" is used throughout this Agreement, including
27 but not limited to paragraphs 25, 26, 27, 30, 43, 58, and 106. The phrase is intended
28 to be neutral and shall not be interpreted to indicate that the County was or was not
maintaining and/or had or had not developed or implemented the process or
procedure being referenced, prior to negotiation of this Agreement.

1 more access to mental health services.

2 17. The Sheriff's Office and County have been and continue to be
3 committed to improving the mental health system and committing the maximum
4 amount of resources to more improvements rather than litigation.

5 **IV. MENTAL HEALTH CARE CHANGES.**

6 18. The Sheriff's Office and County agree to implement changes to the
7 mental health care system, as specified below in this Joint Motion and Order
8 (henceforth, "MH Settlement Agreement and Order"):

9 **A. Intake**

10 19. **Processing** – The County shall have Registered Nurses complete
11 Receiving Screening and make appropriate referrals to a Qualified Mental Health
12 Professional (QMHP). Referrals shall be made as follows:

13 a. Emergent: within 4 hours or sooner if clinically indicated, and
14 close or constant observation (as clinically indicated) is maintained until evaluation
15 occurs²

16 b. Priority: within 24 hours

17 c. Routine: within 7 calendar days to a QMHP who completes a
18 Mental Health Intake Evaluation and assigns the incarcerated person to an
19 appropriate Level-of-Care (LOC)

20 20. **Inability or Refusal to Complete Receiving Screening:** The County
21 shall ensure the process in place such that if an incarcerated person refuses or is
22 unable to complete the Receiving Screening, re-attempts shall be made daily.
23 Nursing staff shall also make appropriate referrals to Mental Health in these
24

25 ² The Sheriff's Office's EHR currently has "priority" and "routine" appointment
26 options. If a referral is "emergent", staff uses the "priority" option and notates that it
27 was an emergency and verbal notification was made to staff. The County will
28 continue this process until an "emergent" appointment option is created. An
"emergent" appointment option will be created in the EHR within 12 months of the
signing of this Agreement.

1 instances, based on the information they gather from collateral sources and
2 observation of the incarcerated person.

3 21. **Records Availability** – Available outside records shall be reviewed by
4 an intake nurse and QMHP to include available previous jail records and community
5 records (i.e., County health care resources/record systems).

6 22. **Medication Continuity** – The County shall have health care staff
7 verify and bridge medications at intake. If the person is on psychiatric medication,
8 health care staff shall schedule the incarcerated person with a psychiatric provider,
9 via in-person or telehealth, within 4 hours of intake (or sooner if clinically indicated)
10 if deemed “Emergent”, within 24 hours of intake if deemed “Priority”, or within 7
11 calendar days if deemed “Routine”. All incarcerated persons receiving bridged
12 medication shall also be referred to a QMHP for evaluation by a QMHP for
13 placement in a LOC.

14 23. **Placement and Referral** – A QMHP shall assign the Level of Care
15 (“LOC”) at intake, via in-person or telehealth. JPMU or designee shall determine
16 and assign the appropriate housing consistent with the LOC designation.

17 24. **Mental Health Staffing** – SDO shall provide at least one QMHP staff
18 at all intake facilities to cover intake, available 24/7 onsite or via telecare.
19 Psychiatry shall be available 24/7 at all intake facilities, via telecare or onsite
20 methods.

21 25. **Outside Hospital/Facility** – Returnees identified on behavioral health
22 caseload before leaving custody shall come through Intake for medication continuity
23 and placement, as clinically indicated and determined by the QMHP.

24 **B. Levels of Care**

25 26. **Criteria for Levels of Care (“LOC”)** – The County shall maintain,
26 develop, and implement clinically appropriate criteria for each LOC identified
27 below (Safety Cell, EOH, PSU, OPSD, OP) and implement clinically indicated
28 mental health programming for each LOC. The County shall deliver appropriate

1 LOC programming and treatment, consistent with clinically developed
2 individualized treatment plans, regardless of security classification, housing
3 placement, sex, or any other jail designation.

4 27. The County shall maintain, develop, and implement policies,
5 procedures, and training to ensure that incarcerated people who meet criteria for a
6 level of mental health care are housed in a clinically appropriate housing unit and
7 receive clinically adequate treatment based on their individual treatment needs.

8 28. The County shall maintain, develop, and implement policies,
9 procedures, and training to ensure that incarcerated people who return or transfer to
10 the Jail from a setting outside the Jail—including from a local hospital, from another
11 jail or prison system, from a state psychiatric hospital, or from a state developmental
12 treatment center (for people with intellectual disabilities)—receive adequate and
13 timely mental health care consistent with LOC need, with appropriate treatment
14 continuity.

15 29. The County shall ensure that health care staff review an individual's
16 available mental health records and incorporate relevant diagnostic and treatment
17 information into the individual's individualized jail treatment plan.

18 30. The County shall provide clinically appropriate care consistent with the
19 provisions set forth below and on the timelines as set forth below.

20 **C. Safety Cell & Enhanced Observation Housing**

21 31. The County shall maintain, develop, and implement policies that ensure
22 the following standards in safety cells and Enhanced Observation Housing (EOH).

23 32. **Psychiatry** – An initial psychiatry out-of-cell clinical encounter shall
24 take place (in-person whenever possible, but via telehealth if needed) within 24
25 hours of placement. Additional psychiatric out-of-cell clinical encounters shall
26 occur as necessary, and follow up upon provider determination, but no less than
27 once every 5 days while in safety cell or EOH. Psychiatry out-of-cell clinical
28 encounters shall be done by a psychiatrist or psychiatric nurse practitioner via in

1 person or telehealth.

2 33. **Clinician (QMHP)** – Daily out-of-cell clinical encounters shall be
3 performed by QMHP in safety cell and EOH. If the QMHP determines that a
4 psychiatry out-of-cell clinical encounter is clinically indicated, such encounter shall
5 occur within the clinically indicated timeline, and in all cases within 24 hours, via in
6 person or telehealth.

7 34. **Confidentiality** – Out-of-cell clinical encounters shall be held in
8 confidential out-of-cell settings unless individualized clinical or security factors
9 prevent it. This is individually evaluated for each encounter and included in the
10 clinical note. This applies to safety cell and EOH. The County shall continue to
11 work on confidentiality, with current interim steps ongoing and full implementation
12 within 24 months of the signing of this Agreement.³

13 35. **Out-of-cell Structured** – At least 1 hour structured treatment shall be
14 offered 1 x per day (5 days/week) in EOH unless clinically contraindicated or
15 current security factors prevent it based on an individualized evaluation that is
16 documented. Structured out-of-cell treatment activities include out-of-cell
17 therapeutic treatment provided individually or in a clinically appropriate group
18 setting, as clinically indicated. This treatment occurs out-of-cell and occurs in a size
19 appropriate to the group.

20 36. **Out-of-cell Unstructured** – At least 2 hours unstructured shall be
21 offered daily (7 days/week) in EOH for showers, phone, recreation, and
22 individual/small group recreation as appropriate for clinical and security level,
23 unless individualized clinically contraindicated or current security factors prevent it
24 based on an individualized evaluation that is documented. Unstructured out-of-cell

25 _____
26 ³ The County shall maintain, develop and implement a policy requiring that all
27 individual mental health Out-of-Cell Clinical Encounters take place in a confidential
28 setting. The policy shall require that mental health Out-of-Cell Clinical Encounters
are either designated as “confidential” or “non-confidential” and the policy may be a
standalone policy or incorporated into another policy.

1 time includes time in the dayroom or recreation yard, and includes activities that
2 promote socialization and physical activities (i.e., phone, puzzles/games,
3 paper/writing/art supplies).

4 **37. Admission/Discharge** – The County shall utilize Suicide Risk
5 Assessment, Safety Planning, and clinical evaluation to determine placement into
6 appropriate LOC. Once a patient is found appropriate for discharge from DSP, they
7 shall be promptly moved to a placement providing the identified LOC. The County
8 shall remove the requirement for two “low” risk evaluations before release. This
9 applies to safety cell and EOH.

10 **38. Safety Cell Time Limit** – Within 4 hours of safety cell placement, an
11 evaluation shall be completed to determine LOC, with appropriate placement within
12 2 hours of the evaluation. Placement in a safety cell shall be limited to no more than
13 12 hours, absent exigent circumstances that are documented in each case and with
14 notification to supervisory custody and clinical staff for review and any indicated
15 follow up.

16 **39. Safety Cell Conditions** – Because Safety Cells are dry cells, water or
17 other liquid nourishment shall be offered at least every 2 hours and upon reasonable
18 request of the individual. Upon reasonable request, individuals shall also be brought
19 out of a Safety Cell to utilize a toilet (including a portable toilet), while under
20 constant supervision. However, the County is not required to escort an individual if
21 they are actively assaultive.

22 **40. Safety Cell and EOH Conditions** – Custody shall ensure cleaning of
23 cells and that Healthcare staff assist with hygiene for patients in this LOC who are
24 unable to perform cell cleaning or personal hygiene activities without assistance.
25 Access to showers is available in EOH and shall be included as a consideration by
26 QMHP on the Allowable Property/Privileges Form.

27 **41. Safety Cell and EOH Observation** – Close observation (every 15
28 minutes) shall be performed in EOH by staff. Close observation (every 15 minutes)

1 or Constant observation shall be performed in safety cells by staff, as clinically
2 indicated.

3 a. MH rounding for Safety Cells shall take place at least every 4
4 hours. MH rounding for EOH shall take place at least every 12 hours.

5 b. The QMHP out-of-cell clinical encounter set forth in paragraph
6 30 may stand in for one of the rounding contacts pursuant to this provision.

7 42. **Safety Checks** – Shall be performed in safety cells by custody staff
8 according to then current policy. Shall be performed in EOH by custody staff
9 according to then current policy.⁴

10 43. **Allowable Property/Privileges Form** – A form shall be completed by
11 QMHP for EOH cells and updated at least daily to inform treatment team of
12 allowable property and privileges. The form shall be fully implemented within 12
13 months of the signing of this agreement.

14 **D. PSU – Psychiatric Stabilization Unit – Inpatient**

15 44. The County shall maintain, develop, and implement policies that ensure
16 the following standards in the Psychiatric Stabilization Unit (PSU).

17 45. **Psychiatry** – Initial psychiatry out-of-cell clinical encounter shall take
18 place (in-person whenever possible, but via telehealth if needed) within 24 hours of
19 placement. Additional psychiatry out-of-cell clinical encounters shall be timely,
20

21 _____
22 ⁴ The inclusion of Safety Checks and any reference thereto, including but not limited
23 to, Paragraphs 10, 42, 55, 71 and 85, is deemed to be a full and final settlement of
24 the issue of any aspect of Safety Checks for any and every remaining cause of action
25 in Plaintiffs' Third Amended Complaint (Dkt.231). Plaintiffs may not challenge or
26 in any way try the adequacy of Safety Checks in any regard, whether related to
27 Mental Health or otherwise, except to enforce the MH Settlement Agreement and
28 Order. The issue of Safety Checks is fully and finally resolved for all purposes in
this litigation in including every remaining cause of action in the Third Amended
Complaint (Dkt.231). The neutral appointed pursuant to this Mental Health
Settlement Agreement shall not have any responsibility for enforcement of the
above-referenced paragraphs. A separate neutral shall be appointed within six
months of the signing of this Agreement who is responsible for enforcement of
Safety Checks in EOH, Safety Cells, PSU, OPSD, Administrative Separation,
Protective Custody, and Holding/Booking, consistent with then current policy.

1 consistent with individual patient need, at least every 3 days. Psychiatry out-of-cell
2 clinical encounters shall be done by a psychiatrist or psychiatric nurse practitioner
3 via in person or telehealth. A psychiatrist shall be the primary medical provider
4 assigned to PSU.

5 46. **Clinician (QMHP)** – Confidential out-of-cell clinical encounters by
6 QMHP 5 days/week (with reasonable efforts to avoid two consecutive days without
7 individual contacts).

8 47. **Confidentiality** – Out-of-cell clinical encounters shall be held in
9 confidential out-of-cell settings unless individualized clinical or security factors
10 prevent it. This is individually evaluated for each encounter and included in the
11 clinical note. Full implementation of this provision shall be achieved within 24
12 months of the signing of this Agreement.

13 48. **Out-of-cell Structured** – Shall be offered at least 2 hrs. x 5 days/week,
14 and consistent with individualized treatment plan, unless clinically contraindicated
15 or current security factors prevent it based on an individualized evaluation that is
16 documented.

17 49. **Out-of-cell Unstructured** – Shall be offered at least 2 hrs. x 7
18 days/week, unless clinically contraindicated or current security factors prevent it
19 based on an individualized evaluation that is documented. May provide additional
20 in-cell unstructured activities (tablets, workbooks, journals).

21 50. **Treatment Team** – The treatment team meets weekly. The treatment
22 team shall meet with patient present at least once per month and document this fact.
23 Initial treatment team meeting with patient present shall occur within 7 days of
24 patient's admission. The treatment team shall consist of QMHP, psychiatric
25 provider, nurse, recreation therapist, and PSU deputy and/or sergeant.

26 51. If mental health staff determine that a patient's current condition
27 prevents them from participating in certain PSU level of care treatment or
28 congregate activities, an alternative individualized treatment plan shall be developed

1 and updated weekly (including modifications to medication or other treatment, as
2 clinically indicated).

3 52. Unit infractions shall generally be addressed through the available
4 clinician and custody staff. This provision does not prevent jail staff from taking
5 appropriate action to protect against actual or threatened violence. Patients shall not
6 be subjected to discipline in any manner that prevents the delivery of mental health
7 treatment or adaptive supports. Patients shall not be subject to discipline for
8 refusing treatment or medication, or for engaging in self-injurious behavior or
9 threats of self-injurious behavior.

10 53. **Admission/Discharge** – Daily huddle of available PSU psychiatrist,
11 QMHP, and custody staff shall occur 5 days per week for referral and discharge
12 review either in person or via telehealth.

13 54. **Referrals** – The PSU shall utilize a centralized referral and triage
14 system that is available for taking referrals 24/7. Those referred and who are
15 accepted for admission shall be placed⁵ in the PSU within 24 hours from acceptance
16 for admission. Time between referral and acceptance shall be no more than 48
17 hours. Patients shall be placed in an Observation Cell prior to receiving a bed in
18 PSU, as clinically indicated.

19 55. **Safety Checks**– Shall be performed by custody staff according to then
20 current policy.

21 56. **PSU Observation** - Patients in PSU shall receive Close or Constant
22 observation by appropriate staff in cases where such observation is clinically
23 indicated. This observation can occur in any appropriate location.

24

25 ⁵ The County will work to meet housing placement timelines, including but not
26 limited to the timelines identified in paragraphs 51, 66, and 79, on an ongoing basis,
27 with full implementation to occur with completion of the Needs Assessment and
28 Implementation process set forth in Section I, below, subject to the County's right to
apply to the Court for modification of the implementation schedule if the needs
assessment requirements cannot be met within two (2) years of completion of the
needs assessment.

1 57. **Designated Custody Staff** – Staff assigned to the PSU are expected to
2 be generally dedicated to that unit so that they are available to facilitate
3 programming in the unit, and will not be diverted to other Sheriff's Office duties
4 unless operational needs or emergency security incidents so require.

5 58. **Restraints** – The County shall utilize a clinical restraint policy with
6 clinical safeguards, which includes the required elements of Title 15 of the C.C.R.
7 and California Welfare & Institutions Code § 5150.

8 **E. OPSD – Outpatient Step Down**

9 59. The County shall maintain, develop, and implement policies that ensure
10 the following standards in the Outpatient Step Down Unit (OPSD).

11 60. **Psychiatry** – Monthly psychiatry out-of-cell clinical encounter. A
12 follow-up psychiatry out-of-cell clinical encounter shall occur within one (1) week
13 after a significant change in psychiatric medication or dose adjustment. Psychiatry
14 out-of-cell clinical encounters shall be done by a psychiatrist or psychiatric nurse
15 practitioner via in person or telehealth.

16 61. **Clinician (QMHP)**– Weekly out-of-cell clinical encounters with a
17 QMHP.

18 62. **Confidentiality** –Out-of-cell clinical encounters shall be held in
19 confidential out-of-cell settings unless individualized clinical or security factors
20 prevent it. This is individually evaluated for each encounter and included in the
21 clinical note. This applies to OPSD and shall be fully implemented within 24
22 months of signing this Agreement.

23 63. **Out-of-cell Structured** – Shall offer at least 2 hrs. x 5 days/week and
24 consistent with individualized treatment plan, unless clinically contraindicated or
25 current security factors prevent it based on an individualized evaluation that is
26 documented. Structured activity and needs to take into consideration the ability for
27 patients to have jobs within the facility or on the unit. These opportunities should be
28 incorporated into individualized treatment plans.

1 64. **Out-of-cell Unstructured** – Shall offer at least 3 hrs. x 7 days/week
2 unless clinically contraindicated or current security factors prevent it based on an
3 individualized evaluation that is documented. May provide additional in-cell
4 unstructured (tablets, workbooks, journals, chalkboards/chalk). The County will
5 make best efforts to offer 4 hrs. x 7 days/week in non-high level OPSD.

6 65. **Treatment Team** – The treatment team meets weekly. The treatment
7 team shall meet to discuss each patient at least once every 45 days, the patient shall
8 be present for their scheduled meeting. Initial treatment team meeting with patient
9 present shall occur within 7 days of patient's admission. The treatment team shall
10 consist of at least a QMHP, psychiatric provider, classification, nurse, and OPSD
11 deputy and/or sergeant; attending participants, including the patient, shall be
12 documented in the meeting notes.

13 66. If mental health staff determine that a patient's current condition
14 prevents them from participating in certain OPSD level of care treatment or
15 congregate activities, an alternative individualized treatment plan shall be developed
16 and updated weekly (including modifications to medication or other treatment, as
17 clinically indicated).

18 67. Unit infractions shall generally be addressed through the available
19 clinician and custody staff. This provision does not prevent jail staff from taking
20 appropriate action to protect against actual or threatened violence. Patients shall not
21 be subjected to discipline in any manner that prevents the delivery of mental health
22 treatment or adaptive supports. Patients shall not be subject to discipline for
23 refusing treatment or medication, or for engaging in self-injurious behavior or
24 threats of self-injurious behavior.

25 68. **Daily Huddle** – At least five days a week, there shall be a daily huddle
26 of mental health and custody staff for interdisciplinary review of patient issues,
27 recent incidents, and interventions for the upcoming shift.

28 69. **Admission/Discharge** – Daily huddle of available OPSD clinician and

1 custody staff shall occur 5 days/week for referral and discharge review.

2 70. **Referrals** – OPSD shall utilize a centralized referral and triage system
3 that is available for accepting and triaging referrals 5 days/week. Those referred and
4 accepted for admission shall be placed in OPSD within 6 calendar days from the
5 date of acceptance. Time between referral and acceptance shall be no more than 72
6 hours. This section shall be fully implemented no later than 24 months from the
7 signing of this Agreement.

8 71. **Safety Checks** – Shall be performed by custody staff according to
9 current policy.

10 **F. OP – Outpatient**

11 72. **Psychiatry** – After initial psychiatry out-of-cell clinical encounter, the
12 patient shall be seen again by a prescriber, including but not limited to a psychiatrist
13 or psychiatric nurse practitioner within 21 days, based on clinical judgment of the
14 prescriber, and at least every 90 days subsequently or more often as clinically
15 indicated. A follow-up psychiatry out-of-cell clinical encounter shall occur within
16 14 days after a significant change in psychiatric medication or dose adjustment, and
17 sooner if clinically indicated. Psychiatry out-of-cell clinical encounters shall be
18 done by a psychiatrist or psychiatric nurse practitioner via in person or telehealth.
19 This section shall be implemented within 24 months of the signing of this
20 Agreement.

21 73. **Clinician (QMHP)** – Out-of-cell clinical encounter at least every 60
22 days, and more often if clinically indicated.

23 74. **Confidentiality** – Out-of-cell clinical encounters shall be held in
24 confidential out-of-cell settings unless individualized clinical or security factors
25 prevent it. This is individually evaluated for each encounter and included in the
26 clinical note. This section shall be fully implemented within 24 months of the
27 signing of this Agreement.

28 75. **Out-of-cell Structured** – Programming needs to be available and

1 directed by the individual treatment plan.

2 76. **Treatment Plan** – Review and update with patient present, at least
3 every 6 months, and sooner if clinically indicated based on patient's condition, and
4 include recommended frequency of clinical and psychiatry sessions.

5 77. **Admission/Discharge** – Referrals to higher levels of care made
6 through staff or self-referral as well as other sources.

7 78. **Safety Checks** – Shall be performed by custody staff according to then
8 current policy in Protective Custody and Holding/Booking.

9 **G. Medical Isolation**

10 79. Daily Mental Health rounding as clinically appropriate.

11 **H. Administrative Separation**

12 80. The County shall track incarcerated people who have serious mental
13 illness.

14 81. The County shall not place incarcerated people with mental illness in
15 more restrictive settings, including Administrative Separation, based solely on their
16 diagnosis of a mental illness. Incarcerated people diagnosed with mental illness
17 shall be housed in the most integrated setting appropriate to their individual
18 treatment needs.

19 82. **Clearance Procedure** – The procedures in the next paragraph apply in
20 cases where:

21 (1) the incarcerated person:

22 (a) meets criteria for any mental health Level of Care in the
23 County's Level of Care system; or

24 (b) is observed as exhibiting unusual or bizarre behavior that may be
25 related to serious mental illness such as head banging, smearing
26 human excrement, extreme uncleanliness or severe lack of
27 personal hygiene;

28 and

(2) the incarcerated person is being considered for placement in Administrative Separation.

83. A QMHP shall review the incarcerated person's mental health needs and history and shall conduct a clinical evaluation of the individual for contraindications for placement prior to being placed in Administrative Separation. The evaluation occurs in a confidential setting and the QMHP relays their findings to custody staff. If the QMHP indicates that placement in Administrative Separation is contraindicated, an alternative placement is provided based on the QMHP recommendation, absent exigent circumstances. If custody staff do not follow the mental health input, custody staff shall document why it was not followed and shall be timely reviewed by supervisory mental health and custody staff to ensure the patient is in an appropriate placement.

84. If, after placement in Administrative Separation, an individual is identified who is suspected to be decompensating in the unit a referral shall be made to Mental Health. A QMHP shall respond to it as an Emergent or Priority referral, consistent with the patient's condition. If a clinical recommendation is made for removal from Administrative Separation, the individual shall promptly be placed in the appropriate LOC unless custody staff disagree for current, individualized safety and security reasons. If custody staff do not follow the mental health recommendation, custody staff shall document why it was not followed, which shall be timely reviewed by supervisory mental health and custody staff to ensure proper LOC and placement within 24 hours.

85. **Mental Health Rounding** – Rounding shall occur weekly by a QMHP, and daily by a QHCP. Rounding shall be documented by individual chart notes summarizing interaction, cell status, and whether an offer of out-of-cell clinical encounter was accepted. Out-of-cell clinical encounter shall occur within a

1 reasonable amount of time (i.e., Emergent, Priority, Routine).⁶

2 86. **Safety Checks** – Shall be performed by custody staff according to
3 current policy.

4 87. **Programming and Services** – In accordance with paragraph 26, the
5 County shall deliver appropriate LOC programming and treatment including for
6 incarcerated persons in Administrative Separation, consistent with clinically
7 indicated individualized treatment plans, regardless of security classification,
8 housing placement, sex, or any other jail designation.

9 **I. Needs Assessment, Benchmarks For Implementation**

10 88. **Needs Assessment** – Within 1 year of the signing of this Agreement,
11 the County shall, with the input of the neutral expert, complete a systemwide needs
12 assessment based on the defined LOC, to include data reflecting the system's
13 classification designations, security levels, male/female, and any other identified
14 factors including mental health and custody staffing. The finding of the systemwide
15 needs assessment shall be used to develop a bed plan and staffing plan to meet the
16 needs of the mental health population through the defined LOC, and shall be
17 implemented within two years of completion of the needs assessment.

18 89. The Parties recognize that the Jail Mental Health system may require
19 increased functional capacity at the PSU and OPSD levels of care. Accordingly, the
20 County shall proceed with Mental Health Program development consistent with the
21 benchmarks set forth below.

22 90. **OPSD Benchmarks Pending Needs Assessment:** The County
23 implemented a plan prior to the signing of this Agreement that individuals in OPSD
24 shall be moved from OPSD currently at George Bailey, to OPSD at Rock Mountain
25 by January 31, 2026. The available beds at Rock Mountain shall be as follows:

26

27 _____
28 ⁶ Plaintiffs agree that they will not seek rounding in Administrative Separation in
pursuing resolution to the First Claim for Relief in their Third Amended Complaint.

1 Housing Module 4A- 68 beds

2 Housing Module 4B- 32 beds - High Security 16 IPs

3 Housing Module 4C- 32 beds - High Security 16 IPs

4 Housing Module 4D - 68 bed

5 With this OPSD program expansion, the County shall continue to integrate
6 individuals designated as Protective Custody into OPSD treatment and OPSD
7 housing placement. The Sheriff's Office shall notify Plaintiffs' counsel if the
8 January 31, 2026 date is delayed due to construction or other circumstances, and
9 shall make best efforts to address those circumstances promptly.

10 91. Additionally, the County implemented a plan prior to the signing of this
11 Agreement that by March 2027, one additional OPSD module shall be opened at
12 Rock Mountain and it shall have up to 68 beds depending upon patient need. These
13 beds shall be for high-security IPs unless they are needed for a different level of IPs
14 at the time of implementation.

15 92. In September 2025, prior to this Agreement, the County moved
16 LCDRF OPSD patients from House 5B to House 3B. House 5B has 32 beds.
17 House 3B has 56 beds, increasing the effective LCDRF OPSD population.

18 93. In November 2025, prior to this Agreement, the County converted
19 GBDF module 4C into an OPSD module that houses half protective custody
20 incarcerated persons (up to 34 incarcerated persons) and half Administrative
21 Separation incarcerated persons (up to 17 incarcerated persons), for an effective
22 population of up to 51 incarcerated persons.

23 **J. Suicide Prevention**

24 94. **Suicide Risk Assessment** – The County shall use a suicide risk
25 assessment tool. It may be utilized at multiple times, as needed (e.g., changing
26 LOC), to direct treatment planning.

27 95. **Treatment Plan** – Identify signs and triggers for recurrence of suicidal
28 thoughts and ways to address them completed upon discharge from DSP or LOC

1 change to include Suicide Risk Assessment administration. The Treatment Plan also
2 includes at least 24-hour and 7-day follow-up as part of protocol and patients remain
3 on caseload.

4 **96. Property and Privileges** – In EOH and PSU observation cells, QMHP
5 determines clothing, property and privileges at least every 24 hours, or more
6 frequently if appropriate, and a document communicates this to unit custody staff.
7 The clinical goal is to step patients down to fewer restrictions as soon as clinically
8 appropriate.

9 **97. Clinical decisions for suicidal IPs** – QMHPs determine LOC
10 appropriate housing to include contraindications for Ad-Sep placement. This is
11 addressed in the Administrative Separation clearance procedure, referral system, and
12 rounding protocols above.

13 **98. Observation** – Constant (1:1) and close (15 minute). Video
14 monitoring is not a substitute for observation. QMHP orders the level of
15 observation. Higher levels of Observation should be available in PSU Observation
16 Cells, Safety Cells, and EOH.

17 **99. Suicide Prevention Training** – Custody and all healthcare staff
18 receive at least 3 hours of pre-service suicide prevention training. Mental health
19 staff shall receive an additional hour for suicide risk evaluation. Custody and all
20 healthcare staff receive at least 2 hours of annual suicide prevention training. The
21 training should include Jail suicide research, guiding principles of suicide
22 prevention, staff attitudes about suicide, pre-disposing factors to suicide, warning
23 signs and symptoms, identification of suicide risk despite denial, high risk times,
24 review of County suicide prevention policy, and roles of staff when responding to
25 suicide attempts.

26 **K. Continuity of Care**

27 **100. Referral Triage system** – A sick-call system shall include triage of
28 self or staff referrals for care as Emergent, Priority, or Routine. Triage shall occur

1 by a registered nurse within 24-hours of the referral being received. There is a
2 system in place for sick-call slips to be obtained in all housing units and upon
3 request during rounding activities. There is a protocol for them to be submitted
4 confidentially. The registered nurse shall address and triage the referral as follows:

- 5 a. Emergent: within 4 hours or sooner if clinically indicated
- 6 b. Priority: within 24-hours
- 7 c. Routine: within 7 calendar days for provision of care

8 101. **Refusals** – The County shall refer incarcerated persons refusing
9 consecutive doses of any psychiatric medication or required psychiatric treatment
10 during a specified time period and increase the referral frequency as follows:
11 incarcerated persons refusing 3 consecutive doses of any psychiatric medication or
12 required psychiatric treatment 50% or greater times in a 7-day period shall be
13 referred for follow-up with a psychiatric provider to receive counseling and
14 determine issues impacting medication compliance. If an incarcerated individual
15 refuses medications, they shall remain on the Mental Health caseload and receive
16 clinical visits in compliance with their assigned LOC.

17 102. **Grievances** – The County shall maintain its grievance process by
18 having all mental health grievances forwarded to a healthcare staff. An RN (or
19 higher) shall triage all healthcare grievances within one business day of receipt to
20 determine whether the healthcare grievance requires clinical intervention, to
21 determine if the grievance warrants expedited processing (within 5 days), and to
22 determine whether the grievance is administrative or clinical. Mental health clinical
23 staff shall review all mental health grievances and conduct an interview if necessary
24 and requested by the patient. All non-expedited mental health grievances shall be
25 responded to in writing within 14 days of receipt. Healthcare staff shall resolve
26 incarcerated person grievances in compliance with CCR Title 15, section 1073 and
27 the Prison Rape Elimination Act of 2003, Section 115-52.

28 103. **Medication Administration** – There are set times for medication

1 distribution at therapeutically appropriate times (e.g., morning, midday, at bedtime).
2 Compliance with medication administration shall be monitored on a continuous
3 basis. A system is in place to administer medications for those who are leaving the
4 facility (e.g., going to court, outside appointments, transfers) and will not be
5 available during traditional medication administration times.

6 104. The County shall have a system in place to alert psychiatric providers
7 to expiring medications with enough lead-time to arrange for the scheduling of the
8 patient for a psychiatric out-of-cell clinical encounter. The scheduling system needs
9 to ensure that those receiving significant medication changes or new medications
10 receive follow-up within one week to evaluate issues or concerns around the
11 medication change or new medication.

12 105. **Release Planning** – All incarcerated individuals in OPSD, PSU, EOH
13 and safety cell LOC at the time of release from jail shall receive Release Planning
14 services consistent with the individual's needs, including proper linkages with
15 community providers. The Release Plan shall be shared with the incarcerated
16 individual.

17 106. All incarcerated persons receiving psychotropic medications shall
18 receive a supply for at least 30 days.

19 **L. Continuous Quality Improvement**

20 107. **Structure of CQI** – The County shall develop a robust Continuous
21 Quality Improvement system that collects and analyzes data on multiple jail
22 processes and procedures for mental health care services. Based on regular review
23 of this data corrective action plans shall be developed and monitored internally to
24 ensure compliance with the identified issue. These mental health processes include
25 but are not limited to Intake, LOC programming, Medication practices,
26 Administrative Separation, suicide prevention, clinical treatment, adherence to
27 timelines, mortality and morbidity, confidentiality, and release planning.

28 108. **Sentinel Events** – The County shall review mental health related

1 sentinel events (in custody mental health related deaths, serious self-harm events,
2 and events requiring emergency mental healthcare response).

3 **M. Training**

4 109. **MH staff training** – All MH staff, regardless of employer, shall
5 receive the same orientation, initial training, and annual training. Orientation and
6 initial training on suicide prevention and de-escalation skills and protocol shall be in
7 real time and facilitated by an instructor. Training should include all County Mental
8 Health policies, suicide prevention, signs and symptoms of mental illness, and de-
9 escalation skills and protocol. There should be no distinction between a County
10 employee and non-County employee in terms of orientation or training expectations.
11 The County is responsible for maintaining the training records of all staff, including
12 contractors, working in the jails. A method shall be implemented to ensure
13 supervisors are made aware of staff who are non-compliant with training and timely
14 remediation occurs. Real time training can be in person or virtual. Implementation
15 of real time training, as required by this section, shall be achieved within 12 months
16 of the signing of this Agreement.

17 110. **De-escalation** – Mental health and custody staff shall receive training
18 in de-escalation for pre-planned use-of-force incidents. The County shall maintain,
19 develop, and implement a protocol for QMHP participation in pre-planned use-of-
20 force with SMI and ID/DD incarcerated persons, which includes de-escalatory
21 verbal persuasion, avoiding cell extractions, utilization of “cool down” periods,
22 audio and videotaping and review, and clinical engagement with the incarcerated
23 person.

24 111. **Custody training** – Custody staff assigned fulltime to PSU and OPSD
25 units shall receive 8 hours of training in Mental Health First Aid or coursework
26 similar and additional refresher training of at least 2 hours annually. Training
27 should be offered jointly for MH staff working on those units when possible. The
28 initial 8 hours of training shall be real time and facilitated by an instructor. Real

1 time training can be in person or virtual. Implementation of real time training, as
2 required by this section, shall be achieved within 12 months of the signing of this
3 Agreement.

4 **N. Oversight**

5 112. **Clinical Oversight** – A licensed psychiatrist shall be employed by the
6 County with relevant clinical experience who has oversight of all MH staff (County
7 and Contractor) working in the jail with authority to direct the activities of all staff
8 within 18 months. This person ensures that all licensed mental health staff,
9 including non-psychiatric QMHPs, are required to participate in peer review.

10 113. **Administrative Oversight** – A County employee or department shall
11 have administrative authority over all healthcare related staff working in the jails,
12 regardless of employer. This oversight includes gathering regular reports on
13 scheduling, vacancies, hours worked, and staff productivity. Oversight and data
14 analysis should be presented at regular meetings that include leadership, to ensure
15 effective oversight of contractors and effective contractor-county staff coordination.

16 114. **Clinical staff supervision** – All mental health clinical staff, regardless
17 of employer, receive the same amount and type of clinical supervision, attend
18 required meetings, and trainings.

19 115. **Policy and Procedure** – All mental healthcare staff shall follow
20 County policies and procedures. All employees (contractor and county) should sign
21 acknowledgements they have been trained on and are aware of the policies
22 governing healthcare in the jails.

23 116. **Contract Oversight** – The County shall develop metrics around their
24 healthcare contracts and carry out quarterly audits of their healthcare contracts.

25 **V. COMPLIANCE**

26 **A. Neutral Expert**

27 117. The parties agree that there shall be a neutral expert retained to ensure
28 compliance with this MH Settlement Agreement and Order, including regarding

1 policies, practices, procedures, and training relating to this MH Settlement
2 Agreement and Order.

3 118. The parties shall meet and confer on the process for selecting the MH
4 neutral expert. If the expert is not selected within 30 days of Court approval of this
5 MH Settlement Agreement and Order, the parties shall submit names to the
6 Magistrate Judge for selection. The County shall sign a contract with the chosen
7 neutral expert within 30 days of their selection.

8 119. If the neutral expert becomes unavailable, the parties shall meet and
9 confer, and assign a new expert. The parties may agree at any time to remove and
10 replace a neutral expert. If the parties do not agree on removal, either party may
11 refer the matter to the Magistrate Judge, and, if necessary, to the Court to determine
12 whether the neutral expert should be retained or removed.

13 120. The neutral expert shall work with the County to ensure timely and
14 appropriate implementation of this MH Settlement Agreement and Order.

15 121. The neutral expert may engage in *ex parte* communications with the
16 parties. All of the neutral expert findings and recommendations shall be set forth in
17 writing in reports.

18 122. The neutral expert, accompanied by one Class Counsel representative
19 and the County's counsel, shall have access to all Jail facilities upon reasonable
20 notice. All site visits shall take place on consecutive days. There shall be two (2)
21 site visits per year that this Agreement is in effect, unless otherwise agreed by the
22 parties.

23 a. The neutral expert shall have reasonable access to meet and
24 interview personnel whose duties pertain to the provision of services and/or who
25 work with incarcerated persons in the area of the expert's expertise.

26 b. The neutral expert shall have a reasonable opportunity to conduct
27 interviews of incarcerated persons to assess whether the County is in compliance
28 with the terms of this MH Settlement Agreement and Order. Class Counsel shall be

1 able to advise these class members at the time of the proposed interviews to ensure
2 informed consent to participate. Class Counsel may remain with the expert while
3 he/she is conducting interviews of class members if Defense Counsel, limited to one
4 lawyer, is also permitted to be present for the interview. Whether Counsel may be
5 present is subject to final decision by the neutral however any such decision to
6 include Counsel shall include both Class and Defense Counsel.

7 123. The neutral expert may request to review County documents, except
8 those documents protected by attorney-client or work product privileges, or by state
9 or federal law, to assess the County's compliance with the terms of this MH
10 Settlement Agreement and Order as the neutral deems appropriate. If these
11 documents are requested in conjunction with a site visit, the County shall provide
12 these documents to the extent feasible within ten (10) days prior to the visit. All
13 materials produced to the neutral expert(s) must be shared with counsel for
14 Plaintiffs. The County must, on a monthly basis, produce to the neutral expert(s)
15 and Class Counsel a housing roster from the first day of the month, for each
16 incarcerated person identified as being on the mental health caseload, and shall
17 include identification of LOC and the person's cell or housing unit. These rosters
18 shall be provided monthly for the twelve months following all counsel signing this
19 MH Settlement Agreement and Order, and quarterly thereafter until Substantial
20 Compliance with this MH Settlement Agreement and Order is achieved. All rosters
21 and all documents provided to the neutral by either party are deemed to be
22 confidential as follows: A document is not deemed confidential because it was
23 provided to the neutral unless a party otherwise designates or previously designated
24 it confidential pursuant to the Protective Order; The fact that any particular
25 document(s) were provided to the neutral shall remain confidential unless the
26 neutral refers to a document in a report. All communications with the neutral shall
27 remain confidential and may only be disclosed in Court filings as necessary to any
28 motion practice to enforcement the terms of this Agreement and including with

1 respect to any reports issued by the neutral pursuant to Paragraph 123.

2 124. The neutral expert shall issue a report following the inspection(s) which
3 take place as provided in Paragraph 122 addressing the County's progress toward
4 implementation of the requirements set forth in this MH Settlement Agreement and
5 Order. Draft reports shall be provided to the Parties within 30 days of the later of
6 the expert's site inspection and the expert(s)' receipt of all requested documents and
7 information, and in no case later than 45 days after the inspection. Each report shall
8 contain a determination of whether the County is "substantially complying" with
9 each provision of the MH Settlement Agreement and Order required at the time of
10 the report. If the neutral expert concludes that the County is not substantially in
11 compliance with the terms of any provision or provisions of this MH Settlement
12 Agreement and Order required as of the time of the report, the neutral expert shall
13 make recommendations as to actions the County should take to comply with the
14 terms of the provision or provisions or that additional time is warranted to achieve
15 substantial compliance. Either party may submit comments within 15 days for
16 review by the neutral expert(s), who shall thereafter issue the report in final form.
17 The neutral expert shall ensure that individual incarcerated person or staff names are
18 not included in the reports. Counsel for both sides shall review to determine and
19 implement any additional necessary redactions, including for safety and security
20 reasons. With such proper redactions, the final reports shall be public documents.
21 Reports shall not be filed with the district court unless attached to a motion seeking
22 relief under this MH Settlement Agreement and Order, or by order of the Court.
23 The County shall pay reasonable fees for work performed by the neutral expert to
24 fulfill her/his obligations under this Agreement. If the County believes that Class
25 Counsel is requiring the neutral expert(s) to expend excessive and unwarranted time
26 on the matter, the parties shall first meet and confer; if there remain disputes, the
27 issue may be brought to Judge Leshner pursuant to the Dispute Resolution process
28 below.

1 125. The neutral expert shall also issue reports in each instance where the
2 neutral has determined that the County has achieved substantial compliance with
3 specific provisions of this MH Settlement Agreement and Order for 12 consecutive
4 months, thereby terminating the neutral's work as to said area of substantial
5 compliance.

6 126. The neutral expert shall be permitted to attend trainings as the neutral
7 expert deems appropriate. If the neutral expert attends, the training shall be
8 videotaped and made available to Class Counsel. The faces and/or names of
9 attendees shall be redacted as necessary to protect employee anonymity.

10 127. The neutral expert shall be provided with and agree to be bound by any
11 protective or Court orders entered in this case to protect the confidentiality of
12 incarcerated persons' records and security-sensitive information.

13 128. To facilitate Class Counsel's ability to communicate with their clients,
14 the County agrees to facilitate one day (8 hours) of confidential interviews virtually
15 at a single facility every four months between Class Counsel and the class members.
16 Class Counsel shall, at least 10 days before the interview, identify the facility and
17 provide the County a list of no more than 20 class members housed at that facility to
18 interview so that the County can facilitate the interviews. The County shall provide
19 a confidential room at the requested jail facility where the virtual interviews can
20 take place. The County shall produce the previously identified class members who
21 are housed at the facility in an expeditious manner, as reasonably possible. This
22 provision shall terminate upon substantial compliance as determined by the neutral
23 expert. Nothing in this provision shall prevent Class Counsel from interviewing
24 their clients through the usual professional visit process.

25 **B. Dispute Resolution**

26 129. Any disputes between the parties about a matter governed by this MH
27 Settlement Agreement and Order shall be subject to these dispute resolution
28 procedures and those set forth above regarding neutral experts. This provision along

1 with Paragraphs 129-131 are the sole and exclusive means to address disputes, and
2 shall cover any dispute prior to issuance of a Substantial Compliance report, and any
3 dispute regarding alleged failure of the County to maintain compliance with the
4 terms of this MH Settlement Agreement and Order following a finding of
5 Substantial Compliance, other than seeking relief from the District Court. A party
6 may initiate the dispute resolution process with respect to any matter covered by this
7 MH Settlement Agreement and Order by providing written notice of a dispute
8 (“Dispute Notice”) to the other party within 10 days of becoming aware of any such
9 dispute. Following service of the Dispute Notice, the parties shall undertake good
10 faith negotiations in person or via video conference at such times and places as they
11 deem sufficient in an effort to resolve the dispute informally between them.

12 130. If, within 30 days after service of the Dispute Notice, the parties have
13 failed to resolve the dispute, the parties shall next seek the assistance of Magistrate
14 Judge David Leshner. Any party may request that a settlement conference be
15 scheduled within 30 days of requesting the Magistrate Judge’s assistance, unless the
16 parties mutually agree upon an alternative schedule or the Court schedule does not
17 allow for presentation of the issue to Magistrate Judge Leshner within 30 days. The
18 content of the settlement conference discussions shall not be offered in evidence in
19 any subsequent judicial proceeding in this case.

20 131. If a dispute cannot be resolved after conducting a settlement conference
21 with Magistrate Judge Leshner or his designee, either party may seek the assistance
22 of the District Court through the filing of a motion for relief.

23 132. In cases of particular urgency or irreparable harm related to provisions
24 in this MH Settlement Agreement and Order, a party may opt to bring disputes
25 directly to the District Court, or both parties may consent to bypass the Magistrate
26 Judge if the parties agree the issue should be briefed to the Court, with prior notice
27 to the Magistrate Judge.

28 ///

VI. MISCELLANEOUS RELIEF

133. Class counsel may bring concerns in writing about individual incarcerated persons with mental health concerns exclusively to the attention of the Mental Health Staff Liaison and/or Unit. Any contacts made by Class Counsel to in house or outside attorneys for the County with individual incarcerated person's grievances and/or concerns may not be included in any request for attorney fees related to post-settlement date work. The Mental Health Staff Liaison and/or Unit shall investigate and respond to Class counsel within 10 business days of receipt. This process is not meant to replace or circumvent the existing processes for requesting mental health assistance, or following the existing request and grievance processes in the Jail. Incarcerated persons in the Jail shall be encouraged by Plaintiffs' counsel to make use of those processes.

134. Before contacting the Mental Health Staff Liaison and/or Unit, Class Counsel shall attempt to verify that the concerns of individual class members are accurate, substantive, and not frivolous through questioning of class members.

VII. DURATION AND TERMINATION

135. The duration of this MH Settlement Agreement and Order is until such time that the County has demonstrated Substantial Compliance for a period of at least twelve months for the provisions set forth herein.

136. Consistent with the foregoing paragraph, the County may move for termination of any portion of this MH Settlement Agreement and Order pursuant to 18 U.S.C. section 3626(b)(1)(A)(i) after a finding of Substantial Compliance at any point after the Court's approval of this MH Settlement Agreement and Order, after conferring with Plaintiffs' counsel to attempt to reach agreement on whether substantial compliance has been achieved up to and including full and complete compliance of the entire Settlement Agreement and Order. Unless otherwise ordered by the Court, such a finding shall result in a termination of the relevant neutral's work as to the particular area of Substantial Compliance or, upon full

1 compliance, as to the entire scope of the neutral's work and retention of that neutral.

2 137. If Plaintiffs form the good faith belief prior to final termination of the
3 entire Settlement Agreement and Order, that the County is no longer in substantial
4 compliance with any component(s) of this MH Settlement Agreement and Order
5 previously found to be in substantial compliance and as to which the neutral's work
6 has concluded as set forth in Paragraph 124, Plaintiffs shall promptly so notify the
7 County in writing. Within 30 days, the County shall serve a written response stating
8 whether they agree or disagree. In the event the County disagrees, the parties shall
9 proceed with the Dispute Resolution process set forth in Section V.B.

10 138. Nothing in this MH Settlement Agreement and Order shall limit the
11 parties' rights to challenge or appeal any finding as to whether the County is or is
12 not in substantial compliance with this MH Settlement Agreement and Order or
13 consequent orders entered by the District Court.

14 **VIII. AMENDMENTS**

15 139. By mutual agreement, the parties may change the terms of this MH
16 Settlement Agreement and Order, including, but not limited to, the timetables for
17 taking specific actions, provided that such mutual agreement is memorialized in
18 writing, signed by the parties, and approved by the Court.

19 **IX. JURISDICTION AND ENFORCEMENT**

20 **A. Court Approval**

21 140. This Joint Motion will be subject to approval by the District Court,
22 pursuant to Federal Rule of Civil Procedure 23, with notice to the Class and a
23 Fairness Hearing; the parties shall file a joint motion for preliminary approval within
24 30 days of all counsel signing this MH Settlement Agreement and Order.

25 **B. Court Jurisdiction**

26 141. For the purposes of jurisdiction and enforcement of this MH Settlement
27 Agreement and Order only, the parties jointly request that the Court find this MH
28 Settlement Agreement and Order satisfies the requirements of 18 U.S.C.

1 § 3626(a)(1)(A) in that it is narrowly drawn, extends no further than necessary to
2 correct the violation of the Federal right, and is the least intrusive means to correct
3 the violation of the Federal right of the Plaintiffs and the Class. In the event the
4 Court finds that the County has not substantially complied with the MH Settlement
5 Agreement and Order, it shall in the first instance require the County to submit a
6 plan for approval by the Court to remedy the deficiencies identified by the Court. In
7 the event the Court subsequently determines that the County's plan did not remedy
8 the deficiencies, the Court shall retain the power to enforce this MH Settlement
9 Agreement and Order through all remedies provided by law and equity.

10 142. The Court retains jurisdiction to enforce the terms of this MH
11 Settlement Agreement and Order during the duration of the MH Settlement
12 Agreement and Order, as set forth in Paragraphs 134-137.

13 143. The Court shall be the sole forum for enforcement of this MH
14 Settlement Agreement and Order. Any order to achieve substantial compliance with
15 the provisions of this MH Settlement Agreement and Order shall be subject to the
16 applicable provisions of the Prison Litigation Reform Act, 18 U.S.C. Section 3626.

17 **X. ATTORNEYS' FEES AND COSTS**

18 144. The parties agree that Plaintiffs and the Class are entitled to reasonable
19 attorneys' fees and costs on all issues covered by the Second Claim for Relief in
20 Plaintiffs' Third Amended Complaint. Class Counsel may move for an award of
21 reasonable attorneys' fees, litigation expenses, and costs for obtaining relief for the
22 Plaintiff subclass pursuant to the Eighth Amendment of the U.S. Constitution, the
23 Fourteenth Amendment of the U.S. Constitution, Article I, Sections 7 and 17 of the
24 California Constitution, 42 U.S.C. § 1988, Cal. Code. Civ. Proc. § 1021.5 or any
25 other applicable law. Plaintiffs will seek reasonable attorneys' fees, litigation
26 expenses, and costs after the Court issues final approval of the MH Settlement
27 Agreement and Order, or later in the ongoing case, at Class Counsel's discretion.

28 145. The parties further agree that Class Counsel are entitled to reasonable

1 attorneys' fees, litigation expenses, and costs for post-settlement date work
2 performed in conjunction with the Second Claim for Relief in Plaintiffs' Third
3 Amended Complaint including the MH Settlement and Order. Class Counsel's bills
4 shall be reviewed and approved by the County on a quarterly basis.

5 146. Class Counsel agrees to reduce their hourly rates by 10% for all post-
6 settlement date work and apply the rates set forth in Dkt. 959. The benchmark for
7 Class Counsel's post-settlement date work (other than work preparing for and filing
8 enforcement motions or otherwise engaging in litigation) shall be \$65,000.00 per
9 quarter (including fees and costs). For any quarter in which attorneys' fees and
10 costs exceed the benchmark, either party may request a settlement conference before
11 Magistrate Judge Leshner. If the parties are unable to resolve any such dispute
12 before Judge Leshner, Class Counsel may apply to the Court for the additional
13 reasonable attorneys' fees, litigation expenses, and costs, and the County may
14 oppose such a request. Class Counsel's work preparing for and filing enforcement
15 motions or otherwise engaging in litigation shall not be subject to the above-
16 referenced benchmark, nor to the 10% rate reduction referenced above.

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1 147. For all travel costs in connection with post-settlement date work, Class
2 Counsel shall be limited to the California State travel reimbursement rates in effect
3 on the date of travel. The current rates are described here:

4 [https://www.calhr.ca.gov/about-calhr/divisions-programs/benefits/travel-](https://www.calhr.ca.gov/about-calhr/divisions-programs/benefits/travel-reimbursements/)
5 [reimbursements/](https://www.calhr.ca.gov/about-calhr/divisions-programs/benefits/travel-reimbursements/).

6 IT IS SO STIPULATED.

8 Respectfully submitted,

9 DATED: January 29, 2026

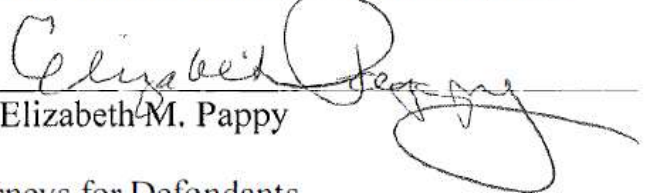
ROSEN BIEN GALVAN & GRUNFELD LLP

10 By: 
11 Gay Crosthwait Grunfeld

12 Attorneys for Plaintiffs and the Certified Class

14 DATED: February 12, 2026

BURKE, WILLIAMS & SORENSEN, LLP

15 By: 
16 Elizabeth M. Pappy

17 Attorneys for Defendants

19 **SIGNATURE CERTIFICATION**

20 Pursuant to the Court's Electronic Case Filing Procedures Manual Section
21 2(f)(4), I certify that I have obtained the consent of all signatories to the electronic
22 filing of the foregoing document.

24 DATED: February 12, 2026

ROSEN BIEN GALVAN & GRUNFELD LLP

25 By: /s/ Gay Crosthwait Grunfeld
26 Gay Crosthwait Grunfeld

27 Attorneys for Plaintiffs and the Certified Class

[PROPOSED] ORDER

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3 1. The remedies and actions described above are all consistent with the
4 Prison Litigation Reform Act's requirement that the Court's orders be narrowly
5 drawn, extend no further than necessary to correct the violation of a federal right,
6 and be the least intrusive means necessary to correct the violation. *See* 18 U.S.C.
7 § 3626(a)(1)(A).

8 2. The Court certified a Class of all adults who are now, or will be in the
9 future, incarcerated in any of the San Diego County Jail facilities; and a Subclass of
10 all qualified individuals with disabilities, as that term is defined in 42 U.S.C.
11 § 12102, 29 U.S.C. § 705(9)(B), and California Government Code § 12926(j)
12 and (i), and who are now, or will be in the future, incarcerated in all San Diego
13 County Jail facilities. The Court appointed Plaintiffs as the class representatives for
14 the Class and Subclass. The Court appointed Plaintiffs' counsel—Gay Crosthwait
15 Grunfeld and Van Swearingen of Rosen Bien Galvan & Grunfeld LLP, Aaron J.
16 Fischer of the Law Office of Aaron J. Fischer, and Christopher M. Young of DLA
17 Piper LLP (US)—as class counsel. Fed. R. Civ. P. 23(g)(1) and (4). *See* Order,
18 Dkt. No. 435.

19 3. This Order shall apply to the County, their agents, contractors,
20 employees, successors in office, and all persons with knowledge of it. No person
21 who has notice of this order shall fail to comply with it, nor shall any person subvert
22 the order by any sham, indirection, or other artifice.

23 4. The bond requirement is waived.

24 5. The Court shall retain jurisdiction to enforce the terms of this MH
25 Settlement Agreement and Order, including through specific performance and all
26 other remedies permitted by law or equity.

27 6. Within 30 days of entry of this order, the parties shall jointly move for
28 preliminary approval of the MH Settlement Agreement and Order and Notice to the

1 Class. A fairness hearing shall occur within 30 days of the Class being notified of
2 the terms of the MH Settlement Agreement and Order.

3
4 DATED: _____, 2026

Honorable Anthony J. Battaglia

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL DUNSMORE, ANDREE
ANDRADE, ERNEST
ARCHULETA, JAMES CLARK,
ANTHONY EDWARDS, LISA
LANDERS, REANNA LEVY, JOSUE
LOPEZ, CHRISTOPHER NELSON,
CHRISTOPHER NORWOOD, JESSE
OLIVARES, GUSTAVO SEPULVEDA,
MICHAEL TAYLOR, and LAURA
ZOERNER, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

SAN DIEGO COUNTY SHERIFF'S
DEPARTMENT, COUNTY OF SAN
DIEGO, SAN DIEGO COUNTY
PROBATION DEPARTMENT, and
DOES 1 to 20, inclusive,

Defendants.

Case No.: 20-cv-00406-AJB-DDL

**ORDER GRANTING JOINT MOTION
FOR CLASS CERTIFICATION AND
APPROVAL OF PROPOSED CLASS
ACTION NOTICE PLAN**

(Doc. No. 423)

Presently pending before the Court is Plaintiffs Darryl Dunsmore, Andree Andrade, Ernest Archuleta, James Clark, Anthony Edwards, Lisa Landers, Reanna Levy, Josue Lopez, Christopher Nelson, Christopher Norwood, Jesse Olivares, Gustavo Sepulveda,

Michael Taylor, and Laura Zoerner (collectively, “Plaintiffs”) and Defendants San Diego County Sheriff’s Department, County of San Diego, and San Diego County Probation Department (collectively, “Defendants”) joint motion for class certification and for approval of their proposed class notice plan. (Doc. No. 423.) For the reasons set forth below, the motion is **GRANTED**.

I. BACKGROUND

The facts of this case have been recited in previous orders. (*See* Doc. No. 219.) Plaintiffs are current or former inmates of San Diego County Jail facilities (the “Jail”), operated by Defendants San Diego County Sheriff’s Department and the County of San Diego. Plaintiffs bring this action on behalf of “themselves and the approximately 4,000 incarcerated people who are similarly situated on any given day” to “remedy the dangerous, discriminatory, and unconstitutional conditions in the Jail.” (Third Amended Complaint (“TAC”), Doc. No. 231, ¶ 4.) Specifically, Plaintiffs contend Defendants’ policies and practices contribute to the high death rates in the Jail, which “has for years exceeded the rates nationally and in other large California jails, [and] it reached chilling heights in 2021 when 18 people died, amounting to a death rate of 458 incarcerated people per 100,000.” (*Id.* ¶ 1.)

The Parties now jointly seek class certification pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. (Doc. No. 423.) In particular, the parties seek to certify the following class of individuals pursuant to Federal Rule of Civil Procedure 23(b)(2):

All adults who are now, or will be in the future, incarcerated in any of the San Diego County Jail facilities (“Incarcerated People Class”).

(*Id.* at 9.) The Parties also seek certification of three subclasses under Federal Rule of Civil Procedure 23(b)(2), specifically:

All adults who have a disability, as that term is defined in 42 U.S.C. § 12102, 29 U.S.C. § 705(9)(B), and California Government Code § 12926(j) and (m), and who are now, or will be in the future, incarcerated in any of the San Diego County Jail facilities (“Incarcerated People with Disabilities Subclass”);

1
2 All adults who are now, or will be in the future, incarcerated in any of the San
3 Diego County Jail facilities and have private counsel or are pursuing state or
4 federal claims on a pro per basis (“Incarcerated People with Private Counsel
or Pro Per Claims Subclass”); and

5 All Black and Latinx adults who are now, or will be in the future, incarcerated
6 in any of the San Diego County Jail facilities (“Incarcerated Black and Latinx
7 Persons Subclass”).

8 (*Id.*)

9 The Parties also propose a class notice plan to ensure that all members of the class
10 and subclasses are individually identified. (*Id.* at 24.) The Parties have agreed to the form
11 and substance of the notice, and request the Court to order copies of the notice to be posted
12 throughout the Jails in English and Spanish, and that Defendant Sheriff’s Department read
13 the Class Notice to individuals who are illiterate or have a disability that may affect their
14 ability to read the Notice. (*Id.*) In addition, the Parties stipulate and ask the Court to order
15 that copies of the TAC be provided by Defendant Sheriff’s Department to class members
16 upon request. (*Id.*)

17 **II. LEGAL STANDARD**

18 Class actions are the “exception to the usual rule that litigation is conducted by and
19 on behalf of the individual named parties only.” *Comcast Corp. v. Behrend*, 569 U.S. 27, 33
20 (2013) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979)). To depart from this
21 rule, the “class representative must be part of the class and possess the same interest and
22 suffer the same injury as the class members.” *E. Tex. Motor Freight Sys., Inc. v. Rodriguez*,
23 431 U.S. 395, 403 (1977) (citation and internal quotation marks omitted). The proponent
24 of class treatment, usually the plaintiff, bears the burden of demonstrating the propriety of
25 class certification. *Berger v. Home Depot USA, Inc.*, 741 F.3d 1061, 1067 (9th Cir. 2014).
26 This burden requires the plaintiff to provide sufficient facts to satisfy the four requirements
27 of Rule 23(a) and at least one subsection of Rule 23(b) of the Federal Rules of Civil
28 Procedure. *Zinser v. Accufix Res. Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001).

Under Rule 23(a), a case is appropriate for certification as a class action if: “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). These requirements are commonly referred to as numerosity, commonality, typicality, and adequacy. “If the court finds the action meets the requirements of Rule 23(a), the court then considers whether the class is maintainable under Rule 23(b).” *Algarin v. Maybelline, LLC*, 300 F.R.D. 444, 451 (S.D. Cal. 2014).

In the instant matter, Plaintiffs seek certification pursuant to Rule 23(b)(2) for injunctive and declaratory relief classes. Rule 23(b)(2) permits certification where “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2).

When entertaining a class certification motion, the court is obligated to conduct a rigorous analysis of whether the requirements of Rule 23 are satisfied. *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 161 (1982). While the court must not go on a freewheeling inquiry into the merits of the plaintiff’s claims, “[t]he class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff’s cause of action.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011) (quoting *Falcon*, 457 U.S. at 160). Accordingly, “[m]erits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied.” *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 466 (2013). The court must therefore limit its inquiry “to those aspects relevant to making the certification decision on an informed basis.” *Astiana v. Kashi Co.*, 291 F.R.D. 493, 499 (S.D. Cal. 2013).

III. DISCUSSION

A. Rule 23(a) Requirements

1 The Court will first start with an analysis of whether the Parties have satisfied the
2 Rule 23(a) elements of numerosity, commonality, typicality, and adequacy.

3 **1. Numerosity**

4 Under Rule 23(a)(1), a lawsuit may only proceed via a class if the “class is so
5 numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Here, the
6 Parties stipulate that between October 1, 2022 and September 30, 2023, the average daily
7 population of the Jails was 3,946 individuals. (Joint Stipulation of Facts (“Stip.”), Doc. No.
8 423-1, ¶ 1.) During this timeframe, an average of 1,363 of those individuals received
9 psychotropic medication for mental health disabilities. (*Id.*) Additionally, over 60% of the
10 incarcerated individuals at the Jails were Black or Latinx. (*Id.*) Accordingly, the Court finds
11 this requirement has been satisfied. *See Knutson v. Schwan’s Home Serv., Inc.*, No. 3:12-
12 cv-0964-GPC-DHB, 2013 WL 4774763, at *6 (S.D. Cal. Sept. 5, 2013) (finding the
13 numerosity requirement satisfied where the class was “indisputably in the thousands” and
14 the defendants stipulated to the numerosity requirement).

15 **2. Commonality**

16 The commonality factor “requires the plaintiff to demonstrate that the class members
17 ‘have suffered the same injury,’” which “does not mean merely that they have all suffered
18 a violation of the same provision of law.” *Dukes*, 564 U.S. at 350 (quoting *Falcon*, 457
19 U.S. at 157). The “claims must depend upon a common contention” and “[t]hat common
20 contention . . . must be of such a nature that it is capable of classwide resolution” *Id.*
21 For purposes of Rule 23(a)(2), even a single common question will suffice. *Id.* at 359.

22 In a civil-rights suit, “commonality is satisfied where the lawsuit challenges a
23 system-wide practice or policy that affects all of the putative class members.” *Armstrong*
24 *v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other grounds by Johnson v.*
25 *California*, 543 U.S. 499 (2005). “In such circumstance, individual factual differences
26 among the individual litigants or groups of litigants will not preclude a finding of
27 commonality.” *Id.*

28 The Parties assert commonality is satisfied because all putative class members are

1 subject to the same policies and practices and suffered the same injuries. (Doc. No. 423 at
2 17–18.) Specifically, the Parties contend the proposed class and subclasses share, at
3 minimum, the following common questions:

- 4 • Whether Defendants fail to provide minimally adequate medical care to incarcerated
5 people in violation of the Eighth and Fourteenth Amendments to the U.S.
6 Constitution and Article 1, Sections 7 and 17, of the California Constitution;
- 7 • Whether Defendants fail to provide minimally adequate mental health care to
8 incarcerated people in violation of the Eighth and Fourteenth Amendments to the
9 U.S. Constitution and Article 1, Sections 7 and 17, of the California Constitution;
- 10 • Whether Defendants fail to make their programs, services, and activities available to
11 persons with disabilities, and otherwise discriminating against persons with
12 disabilities, in violation of the ADA, 42 U.S.C. § 12101 *et seq.*, Section 504 of the
13 Rehabilitation Act, 29 U.S.C. § 794 *et seq.*, and California Government Code
14 Section 11135;
- 15 • Whether Defendants impose filthy, unhealthy, and dangerous conditions of
16 confinement on incarcerated people in violation of the Article 1, Sections 7 and 17,
17 of the California Constitution;
- 18 • Whether Defendants fail to protect incarcerated people from violence and injury in
19 violation of the Eighth and Fourteenth Amendments to the U.S. Constitution and
20 Article 1, Sections 7 and 17, of the California Constitution;
- 21 • Whether Defendants fail to provide minimally adequate dental care to incarcerated
22 people in violation of the Eighth and Fourteenth Amendments to the U.S.
23 Constitution and Article 1, Sections 7 and 17, of the California Constitution;
- 24 • Whether Defendants fail to ensure incarcerated people have access to counsel and
25 the courts in violation of the Sixth and Fourteenth Amendments to the U.S.
26 Constitution and Article 1, Sections 7 and 15 of the California Constitution; and
- 27 • Whether Defendants disproportionately incarcerate people based on race, ethnicity,
28

1 and/or national original in violation of California Government Code Section 11135.
2 (*Id.*)

3 The Court agrees with the Parties that there are questions of law and fact common
4 to the proposed class members. Accordingly, the Court finds Rule 23(a)(2) satisfied.

5 3. Typicality

6 Rule 23(a)(3)'s typicality requirement provides that "a class representative must be
7 part of the class and possess the same interest and suffer the same injury as the class
8 members." *Falcon*, 457 U.S. at 156 (quoting *E. Tex. Motor Freight Sys.*, 431 U.S. at 403)
9 (internal quotation marks omitted). The purpose of the requirement is "to assure that the
10 interest of the named representative aligns with the interests of the class." *Hanon v.*
11 *Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). "[T]he typicality requirement is
12 'permissive' and requires only that the representative's claims are 'reasonably co-extensive
13 with those of absent class members; they need not be substantially identical.'" *Rodriguez*
14 *v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (internal citations omitted). However, a court
15 should not certify a class if "there is a danger that absent class members will suffer if their
16 representative is preoccupied with defenses unique to it." *Hanon*, 976 F.2d at 508 (internal
17 quotation marks and citation omitted).

18 The Court finds that Plaintiffs' claims are typical of the class and subclasses.
19 Plaintiffs each allege they have experienced the same or similar harm, rely on the same
20 legal theories, and seek the same injunctive relief that is broadly applicable to all members
21 of the proposed class and subclasses. (*See* Doc. No. 423 at 19–21.) All of the Named
22 Plaintiffs have been or are currently incarcerated in the Jails. As to the Plaintiffs who have
23 been transferred or released from the Jails, the record contains compelling evidence they
24 likely will be reincarcerated at the Jails, particularly through being rearrested, or, if they
25 are currently incarcerated in state prison, housed at the Jails while out-to-court from prison
26 for resentencing, habeas petitions, or to testify in another case. (*Id.* at 19.) Accordingly, the
27 Court finds the Parties have satisfied typicality.

28 4. Adequacy

1 Rule 23(a)(4) requires the class representative to “fairly and adequately protect the
2 interests of the class.” Fed. R. Civ. P. 23(a)(4). In assessing this requirement, courts within
3 the Ninth Circuit apply a two-part test, asking the following questions: (1) do the named
4 plaintiffs and their counsel have any conflicts of interest with other class members? and
5 (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of
6 the class? *See Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003).

7 The Parties assert Plaintiffs and their counsel do not have any conflicts with the class
8 or subclasses, and agree to protect the rights of all proposed class members. (Doc. No. 423
9 at 22.) Additionally, Plaintiffs’ counsel ensure they will fairly and adequately protect the
10 interests of the class and subclasses, as they have performed extensive work investigating
11 the claims in this action and are well-versed in prisoners’ rights, disability law, and class
12 actions. (*Id.* at 22–23.) Based on the foregoing, the Court finds Plaintiffs and their counsel
13 are adequate class representatives.

14 **B. Rule 23(b)(2) Requirements**

15 If a proposed class satisfies Rule 23(a)’s requirements, then the proposed class must
16 also qualify as one of the types of class actions Rule 23(b) identifies. Fed. R. Civ. P. 23(b);
17 *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 979–80 (9th Cir. 2011). Plaintiffs seek
18 certification of the class and subclasses pursuant to Rule 23(b)(2). (Doc. No. 423 at 23.)

19 Rule 23(b)(2) permits class certification when “the party opposing the class has acted
20 or refused to act on grounds that apply generally to the class, so that final injunctive relief
21 or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R.
22 Civ. P. 23(b)(2). The Ninth Circuit has held that “‘it is sufficient’ to meet the requirements
23 of Rule 23(b)(2) [when] ‘class members complain of a pattern or practice that is generally
24 applicable to the class as a whole.’” *Rodriguez*, 591 F.3d at 1125 (quoting *Walters v. Reno*,
25 145 F.3d 1032, 1047 (9th Cir. 1998)). “The rule does not require [the Court] to examine
26 the viability or bases of class members’ claims for declaratory and injunctive relief, but
27 only to look at whether class members seek uniform relief from a practice applicable to all
28 of them.” *Id.*; *see also Dukes*, 564 U.S. at 360 (“The key to the (b)(2) class is the indivisible

1 nature of the injunctive or declaratory remedy warranted—the notion that the conduct is
2 such that it can be enjoined or declared unlawful only as to all of the class members or as
3 to none of them.”) (internal quotation marks omitted).

4 The Court finds that Rule 23(b)(2)’s requirements are plainly met. Plaintiffs seek
5 broad declaratory and injunctive relief—system-wide improvements in Defendants’
6 policies, procedures, and programs in the Jails—on behalf of a large class and subclasses
7 of incarcerated individuals. (TAC ¶¶ 425, 433.) All members of the classes are allegedly
8 exposed to a substantial risk of harm due to Defendants’ alleged policies and practices. The
9 requested relief would benefit the Named Plaintiffs as well as all members of the proposed
10 class and subclasses in the same manner in a single stroke. *See Parsons v. Ryan*, 754 F.3d
11 657, 689 (9th Cir. 2014) (“[E]very inmate in the proposed class is allegedly suffering the
12 same (or at least a similar) injury and that injury can be alleviated for every class member
13 by uniform changes in . . . policy and practice.”).

14 C. Approval of Proposed Class Notice Plan

15 “[I]n a Rule 23(b)(2) class action, notice may be given but is not required, and there
16 is no requirement that a class member be given an opportunity to exclude himself or herself
17 from the lawsuit.” *Lyon v. U.S. Immigr. & Customs Enf’t*, 300 F.R.D. 628, 635 (N.D. Cal.
18 2014). When certifying a class under Rule 23(b)(2), “the court may direct appropriate
19 notice to the class.” Fed. R. Civ. P. 23(c)(2)(A). Notice should be given to class members
20 in the “best” form “that is practicable under the circumstances, including individual notice
21 to all members who can be identified through reasonable effort.” Fed. R. Civ. P.
22 23(c)(2)(B).

23 Here, the Parties have agreed to the form and substance of the notice to all members
24 of the class and subclass, attached as Exhibit F to the Grunfeld Declaration, (Doc. No. 423-
25 2 at 41–42). To ensure that all members of the class be individually identified, the Parties
26 ask the Court to order that copies of the notice be posted throughout the Jails in English
27 and Spanish, and that Defendant Sheriff’s Department shall read the Class Notice to
28 individuals who are illiterate or have a disability that may affect their ability to read the

1 Notice. In addition, the Parties ask the Court to order that copies of the TAC shall be
2 provided by Defendant Sheriff's Department to class members upon request.

3 Because 23(b)(2) classes are being certified, notice to the classes are not required
4 but is appropriate here. *See* Fed. R. Civ. P. 23(c)(2) (providing that, "[f]or any class
5 certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the
6 class"). The Parties have reached an agreement that notice should be given, what the terms
7 of that notice should be, and how the notice should be distributed to the classes. As such,
8 the Parties' request for approval of proposed class notice plan is **GRANTED**.

9 **IV. CONCLUSION**

10 For the reasons set forth above, the Court hereby:

11 1. **GRANTS** the Parties' joint motion for class certification. The Court certifies
12 a class consisting of:

13 All adults who are now, or will be in the future, incarcerated in any of the San
14 Diego County Jail facilities ("Incarcerated People Class").

15 The Court also certifies the following three subclasses:

16 All adults who have a disability, as that term is defined in 42 U.S.C. § 12102,
17 29 U.S.C. § 705(9)(B), and California Government Code § 12926(j) and (m),
18 and who are now, or will be in the future, incarcerated in any of the San Diego
County Jail facilities ("Incarcerated People with Disabilities Subclass");

19 All adults who are now, or will be in the future, incarcerated in any of the San
20 Diego County Jail facilities and have private counsel or are pursuing state or
21 federal claims on a pro per basis ("Incarcerated People with Private Counsel
22 or Pro Per Claims Subclass"); and

23 All Black and Latinx adults who are now, or will be in the future, incarcerated
24 in any of the San Diego County Jail facilities ("Incarcerated Black and Latinx
25 Persons Subclass").

26 2. **GRANTS** the Parties' request to appoint Named Plaintiffs as class
27 representatives;

28 3. **GRANTS** the Parties' request to appoint Rosen Bien Galvan & Grunfeld


LLP, the Law Office of Aaron J. Fischer, and DLA Piper LLP (US) as class counsel; and
4. **GRANTS** the Parties' request for approval of the proposed class notice plan.

The Court **ORDERS** the following:

- Copies of the notice shall be posted throughout the Jails in English and Spanish;
- Defendant Sheriff's Department shall read the Class Notice to individuals who are illiterate or have a disability that may affect their ability to read the Notice
- Copies of the Third Amended Complaint shall be provided by Defendant Sheriff's Department to class members upon request.

IT IS SO ORDERED.

Dated: November 3, 2023


Hon. Anthony J. Battaglia
United States District Judge