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17 UNITED STATES DISTRICT COURT  
18 SOUTHERN DISTRICT OF CALIFORNIA

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JAMES CLARK, ANTHONY EDWARDS,  
21 REANNA LEVY, JOSUE LOPEZ,  
CHRISTOPHER NORWOOD, JESSE  
22 OLIVARES, GUSTAVO SEPULVEDA,  
MICHAEL TAYLOR, and LAURA  
23 ZOERNER, on behalf of themselves and all  
others similarly situated,  
24 Plaintiffs,

25 v.

26 SAN DIEGO COUNTY SHERIFF'S  
DEPARTMENT, COUNTY OF SAN  
27 DIEGO, SAN DIEGO COUNTY  
PROBATION DEPARTMENT, and DOES  
1 to 20, inclusive,  
28 Defendants.

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

**JOINT MOTION AND ORDER  
RE: REMAINING ADA ISSUES  
AND RESOLVING THIRD  
CLAIM FOR RELIEF**

Judge: Hon. Anthony J. Battaglia

Magistrate: Hon. David D. Leshner

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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 Disabilities Subclass, and  
5 Defendants San Diego County and San Diego County Sheriff’s Office (formerly  
6 known as “Sheriff’s Department”) (collectively, “the County”) jointly seek entry of  
7 an Order approving the parties’ settlement of all remaining issues regarding  
8 Plaintiffs’ Third Claim for Relief, as set forth in detail below.

9 **I.       PROCEDURAL HISTORY**

10           2.       On June 21, 2023, the District Court entered the parties’ Joint Motion  
11 Re Accessibility at Central Jail, Effective Communication Policy and Practice, and  
12 Provisional Class Certification (“2023 ADA Order”), Dkt. No. 355, a copy of which  
13 is attached hereto as **Exhibit A** and incorporated herein by reference. The 2023  
14 ADA Order resolved portions of Plaintiffs’ Third Claim for Relief under the  
15 Americans with Disabilities Act, Rehabilitation Act, and California Government  
16 Code § 11135 (collectively, “ADA”).

17           3.       On November 3, 2023, the District Court entered an Order Granting  
18 Joint Motion for Class Certification and Approval of Proposed Class Action Notice  
19 Plan, Dkt. No. 435, a copy of which is attached hereto as **Exhibit B** and  
20 incorporated herein by reference. This Order certified a subclass of “All adults who  
21 have a disability, as that term is defined in 42 U.S.C. § 12102, 29 U.S.C.  
22 § 705(9)(B), and California Government Code § 12926(j) and (m), and who are  
23 now, or will be in the future, incarcerated in any of the San Diego County Jail  
24 facilities (‘Incarcerated People with Disabilities Subclass’).” Ex. B at 10. The  
25 Order approved Rosen Bien Galvan & Grunfeld LLP, Law Office of Aaron Fischer,  
26 and DLA Piper LLP (US) as Class Counsel. *Id.* at 10-11.

27           4.       On August 25, 2023, September 1, 2023, September 29, 2023,  
28 November 6, 2023, March 6, 2024, April 19, 2024, June 3, 2024, July 3, 2024,

1 July 10, 2024, July 29, 2024, October 9, 2024, October 18, 2024, October 28, 2024,  
2 November 4, 2024, November 6, 2024, November 13, 2024, and November 20,  
3 2024, the parties conducted settlement conferences under the supervision of the  
4 Honorable David Leshner, Magistrate Judge of the United States District Court for  
5 the Southern District of California. The parties also conducted settlement  
6 discussions without the involvement of Judge Leshner. As a result of these  
7 discussions, the parties have reached the following agreements regarding the  
8 remainder of the ADA claim.

9 **II. FINDINGS**

10 5. The parties agree that Title II of the Americans with Disabilities Act, as  
11 well as the Rehabilitation Act and California Government Code § 11135, require the  
12 County to provide reasonable accommodations and equal access to jail programs,  
13 services, and activities to incarcerated people with disabilities, and prohibit the  
14 County from discriminating against incarcerated people with disabilities.

15 6. On March 2, 2020, Plaintiff Darryl Dunsmore filed this case as an  
16 individual action, including claims for disability accommodations. Dkt. 1. On  
17 February 9, 2022, Plaintiff Dunsmore, joined by additional named plaintiffs, filed  
18 the Second Amended Complaint raising class claims. Dkt. 81. On May 2, 2022,  
19 Plaintiffs filed a motion for preliminary injunction seeking, among other things,  
20 changes to jail facilities and to ADA policies and procedures to remedy program  
21 access issues for people with mobility disabilities. Dkt. 119-1 at 16. The Court  
22 denied that motion. Dkt. 203. Plaintiffs filed their Third Amended Complaint, Dkt.  
23 231, on November 18, 2022.

24 7. The parties started discussing the potential for settlement of issues  
25 related to the ADA in January of 2023. On April 25, 2023, after obtaining expedited  
26 discovery specific to ADA issues, *see* Dkt. 258, Plaintiffs filed renewed motions for  
27 preliminary injunction and provisional class certification. Dkt. 281. The  
28 preliminary injunction motion sought to ensure the provision of sign language

1 interpretation to people with hearing disabilities and to ensure the provision of safe,  
2 accessible housing to people with mobility disabilities. *Id.* at 1. The County  
3 opposed the motion while the parties continued settlement discussions. Dkt. 311.  
4 After settlement discussions with the assistance of Judge Leshner, the parties  
5 reached the 2023 ADA Order discussed above. *See* Dkt. 355. Pursuant to that  
6 Order, the County filed a proposed ADA Plan on October 5, 2023. Dkt. 409.  
7 Plaintiffs filed objections to the ADA Plan, Dkt. 416, which the Court addressed on  
8 April 24, 2024. Dkt. 620. The parties resolved their disputes regarding the ADA  
9 Plan, filed a joint motion, and the Court approved the final Amended ADA Plan on  
10 August 23, 2024. Dkt. 696.

11       8.       Discovery has taken place, including six on-site facility inspections by  
12 Plaintiffs' qualified ADA expert, several Rule 30(b)(6) depositions, document  
13 production, and exchange of expert reports. The parties are fully informed  
14 regarding the ADA issues raised by Plaintiffs' Third Amended Complaint.

15       9.       The County has taken significant and consequential steps to better  
16 serve incarcerated persons with disabilities, including development of an ADA Unit,  
17 issuance of new ADA policies, and issuance of training on those new policies,  
18 procedures, and implementation thereof, with further training continuing to occur.  
19 *See* Defendants' Amended Court-Ordered Status Report, Dkt. 667 at 2. All jail  
20 staff, including custody staff, professional staff, health care staff, and contractors,  
21 are required to follow the new policies and procedures. The ADA Unit has  
22 developed a process for interviewing incarcerated persons with certain disabilities  
23 within seven days of them being identified as having a disability, and at particular  
24 intervals thereafter.

25       10.      These changes represent important steps toward full compliance with  
26 the ADA, but the parties agree that additional changes to the County's policies,  
27 procedures, and implementation thereof, are necessary to ensure that incarcerated  
28 persons with disabilities are accommodated at the jail facilities and have equal

1 access to programs, services, and activities at the jail facilities.

2 11. The Sheriff's Office and County are committed to improving the  
3 physical accessibility of their jail facilities and to ensuring meaningful access to jail  
4 facility programs, services, and activities for incarcerated people with disabilities.  
5 As part of the 2023 ADA Order, the County has made ADA modifications to San  
6 Diego Central Jail and continues to make further ADA modifications at that facility,  
7 which are scheduled to be complete in 2026.

8 12. The parties agree that it is necessary to provide additional accessible  
9 housing for incarcerated people with disabilities in the jail facilities. As part of this  
10 agreement, the County has agreed to make modifications to jail facilities to provide  
11 additional accessible housing in order to meet the disability-related needs of the  
12 incarcerated population.

13 **III. ADA REMEDIAL ACTIONS**

14 13. The Sheriff's Office and County agree to implement additional  
15 remedial measures, as specified below in this Joint Motion and Order (henceforth,  
16 "ADA Settlement Agreement and Order"):

17 **A. ADA Unit**

18 14. The County created an ADA Unit, effective June 2023. The County  
19 shall develop and implement policies, procedures, and training regarding the ADA  
20 Unit to ensure its effectiveness in facilitating the jail system's compliance with  
21 ADA requirements and the provisions set forth herein. The County shall ensure the  
22 ADA Unit has staffing, resources, and authority sufficient to carry out its duties,  
23 which include but are not limited to: coordinating and ensuring staff training related  
24 to ADA policies and requirements; ensuring provision of reasonable  
25 accommodations to incarcerated persons with identified disabilities; assisting staff,  
26 including facilities and health care staff, with identifying and accommodating  
27 incarcerated persons with disabilities; ensuring all complaints of alleged  
28 discrimination on the basis of disability in the San Diego County jail facilities that



1 are received by the County are investigated and properly resolved in a timely  
2 manner; reviewing ADA-related requests and ensuring they are properly resolved in  
3 a timely manner; and reviewing and responding to ADA-related grievances in a  
4 timely fashion.

5 15. The ADA Unit shall conduct face-to-face interviews of people with  
6 “ADA Mobility,” “ADA Hearing,” or “ADA Vision” flags within seven (7) days of  
7 the initial flag placement, sixty (60) days after the first ADA interview, and every  
8 six (6) months thereafter. The ADA Unit shall also conduct a face-to-face meeting  
9 with an incarcerated person with an identified disability upon the incarcerated  
10 person’s request. As part of the ADA Unit interview, the ADA Unit shall  
11 effectively communicate to the incarcerated person information about the auxiliary  
12 aids and accommodations at the jail facilities that may meet that person’s needs, as  
13 well as the process for requesting reasonable accommodations. The ADA Unit shall  
14 document this interview, including what was communicated and the provision of  
15 effective communication.

16 16. The ADA Unit currently consists of three deputies, one sergeant, one  
17 lieutenant, and one nurse. The Unit reports to a Captain, who reports to a  
18 Commander. Additionally, the Unit is supported by an attorney and a supervisory  
19 nurse. A designated mental health clinician supports the ADA Unit for individuals  
20 with mental health or intellectual disabilities to ensure that reasonable accommoda-  
21 tions and equal, meaningful program access are provided. The custody, medical,  
22 and mental health staff members within and supporting the ADA Unit shall have  
23 staffing, resources, and authority necessary to ensure that incarcerated people with  
24 disabilities timely receive reasonable accommodation and equal, meaningful access  
25 to programs, services, and activities. The designated ADA deputies currently  
26 function as liaisons for each facility with their primary office located with the ADA  
27 Unit. Each facility shall also have at least one staff member who is designated to  
28 liaison with the ADA Unit as needed along with their other assigned duties. The

1 County shall maintain an ADA Unit and ensure that the contact information for the  
2 ADA Unit and the name and contact information for the ADA Coordinator are  
3 clearly posted and accessible in the intake area, in every jail facility housing unit,  
4 and in the public lobby of each facility.

5 **B. ADA Notices and Orientation**

6 17. The Sheriff's Office shall ensure that people with disabilities are  
7 informed of their rights under the ADA via the ADA Notice, IP Handbook and/or  
8 ADA/Disability information brochures. This includes the process for requesting a  
9 reasonable accommodation and how and where to file grievances. This ADA  
10 Settlement Agreement and Order and the 2023 ADA Order shall be made available  
11 to incarcerated people through video kiosks and in hard copy upon request.

12 18. The County shall ensure that any orientation materials it provides  
13 (including written and video materials) are accessible to all people with disabilities,  
14 including but not limited to individuals with vision disabilities, intellectual or  
15 cognitive disabilities, hearing disabilities, or any other disabilities that may affect  
16 communication. The orientation materials shall include information on ADA rights;  
17 the process for requesting a reasonable accommodation; the ADA request and  
18 grievance processes, including the location of forms, how to submit them, and how  
19 to obtain assistance completing them; and information about the ADA Unit and how  
20 to contact them. The orientation video shall be available in closed captioning and  
21 Spanish. The video shall be provided in sign language consistent with effective  
22 communication requirements, including as set forth in the 2023 ADA Order.

23 19. At all stages of the booking and orientation process, the County shall  
24 continue to provide reasonable accommodations and support to incarcerated persons  
25 with disabilities affecting communication, such as those who have developmental or  
26 intellectual disabilities, are blind, low-vision, or hard of hearing, as necessary to  
27 ensure effective communication of booking or orientation information that is being  
28 shared. Incarcerated persons with hearing disabilities who use sign language are

1 covered in the 2023 ADA Order and shall receive effective communication as  
2 previously agreed to and as required by current Detentions Services Bureau Policy  
3 P.11.

4 **C. ADA Policies, Procedures, and Training**

5 20. The County shall revise and implement systemwide Detention Services  
6 Bureau policies and procedures and facility specific-policies and procedures, and  
7 training as necessary to ensure compliance with the ADA, related federal and state  
8 disability laws, the ADA's implementing regulations, and the requirements set forth  
9 herein.

10 21. The County shall revise and implement Medical Services Division  
11 policies as necessary to ensure compliance with the ADA, related federal and state  
12 disability laws, the ADA's implementing regulations, and the requirements set forth  
13 herein.

14 22. The County shall ensure that all current and future jail staff receive  
15 annual ADA training appropriate to their position. This requirement includes  
16 County and contracted staff (custody, health care, programs, administrative, etc.),  
17 who must follow the Sheriff's Office's Detention Services Bureau's and/or Medical  
18 Services Division's policies and procedures. The ADA training may include, but is  
19 not limited to, training bulletin, in-classroom, real-time virtual, and/or interactive  
20 virtual training for staff. Trainers will have subject matter expertise or be provided  
21 training-for-trainers instruction by the ADA Unit. All new jail staff shall also  
22 receive ADA training appropriate to their position. The initial training provided to  
23 staff and contractors will cover all topics addressed in section III, ADA Remedial  
24 Actions, of this ADA Settlement Agreement and Order, as relevant to their  
25 respective positions and job duties.

26 23. The County shall provide draft revisions of the aforementioned  
27 policies, procedures, and trainings to the neutral expert for prompt review and  
28 comment. Any documents, including draft revisions of the aforementioned policies,

1 procedures, and trainings, that either side provides to the neutral expert shall be  
2 shared with counsel for the other side as noted in paragraph 137 of this ADA  
3 Settlement Agreement and Order.

4 **D. Identification and Tracking of Incarcerated Persons with**  
5 **Disabilities**

6 24. The County shall develop and implement policies, procedures, and  
7 training to ensure that the jail system, including all relevant custody, health care,  
8 administrative, and program staff, identifies and tracks all incarcerated persons with  
9 disabilities who report and/or have been identified to require accommodations  
10 throughout a person's time in custody.

11 25. The County shall ensure that the jail facility ADA screening process  
12 includes, at minimum, consideration of the individual's own claim to have a  
13 disability, documentation of a disability in the County's health record, staff  
14 observation that the person may have a disability, communications regarding a  
15 person's disabilities provided by the California Department of Corrections and  
16 Rehabilitation or other law enforcement agencies, and any information from a third  
17 party, such as a friend or family, about a person's disability-related conditions and  
18 needs.

19 26. All incarcerated persons shall be screened by health care staff who have  
20 received the training specified in Paragraph 22 during the intake process to identify  
21 disabilities and reasonable accommodations. If an incarcerated person is identified  
22 to have a disability that requires accommodation, health care staff will update the  
23 person's health record and collaborate with sworn staff as needed to ensure the  
24 person is appropriately accommodated through the booking and classification  
25 process. For incarcerated persons who health care staff have preliminarily screened  
26 and identified to have a disability, health care staff shall conduct an effective ADA  
27 Functional Performance assessment during the booking process. Health care staff  
28 shall document any housing accessibility features and accommodations required by

1 an incarcerated person during their time in custody in the person's health record, and  
2 that information will be reflected in the disability tracking system. Health care staff  
3 conducting the intake shall be responsible for documenting the person's disability  
4 and any accommodations the person requires in the person's health record, and that  
5 information will be reflected in the disability tracking system.

6 27. The intake screening shall assess all incarcerated persons for whether  
7 they have a disability that affects communication. Health care staff shall identify  
8 the accommodations necessary to achieve effective communication with an  
9 incarcerated person determined to have a communication-related disability, and  
10 document them in the person's health record. That information will be reflected in  
11 the disability tracking system. Health care staff shall give primary consideration to  
12 the preference of the person with a disability as to the method of communication and  
13 accommodation.

14 28. "Disability tracking system" refers to the manner by which ADA  
15 disability and accommodation needs information is maintained and utilized across  
16 disciplines (custody, health care, reentry services, etc.). The County shall track  
17 individuals who have disabilities that require accommodations, other than medical  
18 or mental health treatment only, using 6 medical flags: ADA Vision, ADA Hearing,  
19 ADA Medical, ADA Mobility, ADA Cognitive/Learning, and ADA Speech. If  
20 health care staff add one of these flags into a person's health record, that flag and  
21 the accompanying accommodation notes populate into other systems and reports  
22 that can be accessed without seeing the rest of the health record. The information  
23 cannot be modified outside of the health system.

24 29. The County shall maintain a process for conducting disability  
25 evaluations for persons after the medical intake screening, when warranted by  
26 individual circumstances. The identification of disabilities or requests for  
27 reasonable accommodations may occur at any time during an individual's  
28 incarceration (e.g., staff observation, incarcerated person request, reported by third

1 parties such as family, etc.). Health care staff shall then conduct an ADA  
2 Functional Performance assessment. Health care staff conducting the assessment  
3 shall be responsible for documenting the person’s disability and any new or  
4 modified accommodation needs in the person’s health record, and that information  
5 will be reflected in the disability tracking system. Health care staff shall notify the  
6 Jail Population Management Unit (“JPMU”) immediately of any impact to the  
7 person’s housing needs.

8       30. During the booking and intake process, persons with mobility  
9 disabilities who require accessible accommodations, including but not limited to  
10 those who use a wheelchair in housing, shall be placed in accessible holding cells.  
11 Such persons shall be permitted to retain and have access to the assistive device(s)  
12 they need to accommodate their disability unless there is a specific safety risk (see  
13 Assistive Devices section, below).

14       31. The County shall maintain an electronic disability tracking system to  
15 identify, based on an individualized assessment, all incarcerated persons with  
16 disabilities who require accommodations and the accommodations they require.

17       32. The disability tracking system shall identify any barriers to  
18 communication, including but not limited to whether the person has a speech,  
19 hearing, vision, learning, intellectual, or developmental disability. The disability  
20 tracking system shall adequately identify, based on an individualized assessment,  
21 the specific accommodations required to achieve effective communication with that  
22 person.

23       33. The disability tracking system shall identify any other accommodations  
24 a person needs, including but not limited to housing, classification, transportation,  
25 health care appliances, durable medical equipment, and assistive devices. Staff shall  
26 utilize the disability tracking system as necessary to ensure timely provision of  
27 accommodations.

28

1           **E.     Housing Assignments for People with Disabilities**

2           34.     The County shall ensure that incarcerated persons with disabilities are  
3 properly placed in housing that is safe and appropriate for their disability, and  
4 consistent with their security classification and the requirements set forth in 28  
5 C.F.R. § 35.152. Such housing must also allow for an incarcerated person’s ADA  
6 reasonable accommodations to be provided/accessible, e.g., auxiliary aids/services,  
7 effective communication as otherwise required by this ADA Settlement Agreement  
8 and Order or the 2023 ADA Order, and required adaptive supports.

9           35.     The County shall not house incarcerated persons with identified  
10 disabilities in different security classifications simply because no ADA-accessible  
11 placements are available. The County shall not place incarcerated persons with  
12 identified disabilities in medical cells or medical dorms unless the person is  
13 currently receiving medical care or treatment that necessitates housing in a medical  
14 setting. The parties acknowledge that full compliance with the previous sentence  
15 will not be achieved until completion of ADA-related construction. The County  
16 shall inform the neutral expert and copy Class Counsel on the communication when  
17 ADA-related construction is occurring, what housing units are affected, and what  
18 interim accommodations are being provided.

19           36.     Any health-related or disability-related housing requirements shall be  
20 determined by health care staff based on individualized assessment and notated in  
21 the person’s health record. Disability-related housing accommodations shall also be  
22 notated in the disability tracking system.

23           37.     Incarcerated people who are assigned wheelchairs in housing shall in  
24 all cases be assigned to a lower tier and an accessible lower bunk. The parties  
25 acknowledge that full compliance with an accessible lower bunk will not be  
26 achieved until completion of ADA-related construction.

27           38.     No incarcerated person with a mobility disability shall be assigned to  
28 the top of a triple bunk. Health staff shall specifically evaluate an incarcerated

1 person with an identified mobility disability to determine if they require a lower  
2 bunk and/or lower tier and whether the person can access the bottom or middle bunk  
3 of a triple bunk. In addition, health staff shall specifically evaluate such persons to  
4 determine if they require access to an accessible shower, including a fold-down  
5 shower seat, shower chair, reduced shower curb or lip, high/low shower heads, and  
6 grab bars in the shower.

7           a.       The County agrees that any provided shower chair will have at  
8 least 350 pounds of weight capacity and non-slip feet.

9           b.       The County agrees that ADA Showers will comply with 2010  
10 ADA Standards and California Building Code, including high/low shower heads  
11 with horizontal and vertical swivel adjustments, as long as the shower heads also  
12 meet BSCC anti-ligature requirements.

13       39.       Sworn staff shall document incidents where disability-related housing  
14 accessibility accommodations cannot be provided, and shall promptly notify an  
15 appropriate supervisor about the issue. The Sheriff's Office shall expeditiously  
16 move people who are inappropriately housed in an inaccessible placement to an  
17 accessible placement. The ADA Unit shall conduct a quality assurance audit  
18 process to assess whether incarcerated persons with documented reasonable  
19 accommodations are appropriately housed. The ADA Unit shall assess, as part of  
20 the audit process, whether additional training and/or policy changes are necessary.

21       40.       The Sheriff's Office shall conduct a check during night hard count to  
22 ensure that incarcerated persons with mobility disabilities are occupying their  
23 assigned beds in accordance with Detentions Services Bureau Policy I.43.

24       41.       The Sheriff's Office shall train sworn staff to address incarcerated  
25 persons with mobility disabilities who are found sleeping on the floor, and confirm  
26 that they have an assigned bed and are aware of their assignment.

27       42.       At each facility, during ADA-related construction at the facilities as  
28 described below, the County shall maintain interim measures to ensure that



1 incarcerated persons with mobility disabilities are accommodated to the greatest  
2 extent possible during the booking and intake process, and to the greatest extent  
3 possible placed in safe and accessible housing locations throughout the process.

4 **F. Facility Alterations**

5 43. The 2023 ADA Order requires modifications to San Diego Central Jail,  
6 some of which have been completed and some of which are ongoing.

7 44. The County agrees to the following to remedy physical plant features  
8 and ensure ADA accessibility elsewhere in the jail system. As part of these  
9 modifications, the County shall ensure sufficient accessible bed space for  
10 individuals in different housing classifications (e.g., mainline, protective custody,  
11 and administrative separation).

12 45. Within four years of the signing of this ADA Settlement Agreement  
13 and Order, the County shall ensure that every person with a mobility disability who  
14 uses a wheelchair in housing is housed in a bed that accommodates their  
15 accommodation needs and that every person with a disability is housed with access  
16 to any appropriate accessibility features related to their bed, toilet, and shower, as  
17 individually determined by health care staff. A person's disability-related housing  
18 accommodation needs shall be documented in their health record and the disability  
19 tracking system.

20 46. Within 18 months of this Order, the County will complete a  
21 comprehensive assessment of the accessible housing needs of the disability subclass  
22 member population (the "Accessibility Bed Needs Assessment") in consultation  
23 with both neutral experts, as appropriate. The Accessibility Bed Needs Assessment  
24 will be informed by relevant jail population data regarding incarcerated people with  
25 a disability requiring housing accessibility accommodation needs and if the  
26 assessment determines that additional housing or other measures are necessary, it  
27 will include identification of the additional construction or other measures that will  
28 occur and a reasonable timeline for implementation. The Accessibility Bed Needs

1 Assessment will consider population data based on sex and classification levels,  
2 including at a minimum security level and health/mental health care housing needs.  
3 The neutral experts will review and approve the Accessibility Bed Needs  
4 Assessment.

5 **1. Las Colinas Detention and Reentry Facility (“Las Colinas”)**

6 47. Las Colinas is the primary booking and housing facility for women  
7 incarcerated in the County. The Sheriff’s Office shall make the following changes  
8 at Las Colinas to bring the facility into compliance with the 2010 ADA Standards  
9 and California Building Code (“CBC”):

10 48. *Intake/Booking:*

- 11 • Incarcerated person bathroom in Pre-Screening Processing: modify  
12 bathroom to 2010 ADA Standards and CBC requirements.
- 13 • Counter in Open Booking (1 of 5 windows): provide forward  
14 approach, including 19" deep countertop free of obstructions.
- 15 • Incarcerated person bathroom in Open Booking: remove privacy wall;  
16 add window film; lower soap dispenser to 40" AFF to push button.
- 17 • Holding Cell 1: remove current bench and add 48"x24" bench; relocate  
18 grab bar; modify toilet to 2010 ADA Standards requirements; lower  
19 soap dispenser to 40" AFF to push button.
- 20 • Sobering Cell 2: modify toilet and sink to 2010 ADA Standards  
21 requirements. Modify threshold to comply.
- 22 • Holding Cell 5: modify grab bar to 2010 ADA Standards requirements;  
23 relocate privacy wall; lower soap dispenser to 40" AFF to push button.
- 24 • Change out/Search room shower: modify shower to 2010 ADA  
25 Standards and CBC requirements.
- 26 • Add accessible bench to change out/search room.
- 27 • Add wheelchair-accessible weighing scale.

28 49. *Housing:* The County currently houses incarcerated persons in housing  
modules 1A-B, 3B-H, 4A-B, 5A-B, PSU, and Medical. The County agrees to alter  
3% of beds in these modules to comply with the 2010 ADA Standards. This  
includes modifying the bed and the bed’s associated toilet, sink, desk, drinking  
fountain, and shower. The County will modify additional housing modules if

1 additional housing modules are repopulated. The specific changes to the existing  
2 housing units are as follows:

- 3 • 1A-B (IP workers) (dormitory)
  - 4 • A: 48 beds
  - 5 • B: 48 beds
  - 6 • Will modify 3 beds (A1, A15, B15)
- 7 • 3A (currently unoccupied) (cells with 2 beds)
  - 8 • 28 cells, 56 beds
  - 9 • Will modify 2 beds (A14)
  - 10 • Dayroom: provide dayroom table that complies with 2010 ADA  
11 Standards and provides minimum two wheelchair-accessible seats.  
12 Provide detectable warning for drop boxes, utility sink counter, and  
13 medical (Narcan) cabinet.
- 14 • 3B (PC Level 1-5; no ADSEP or Green band) (cells with 2 beds)
  - 15 • 28 cells, 56 beds
  - 16 • Will modify 2 beds (B14)
  - 17 • Dayroom: provide dayroom table that complies with 2010 ADA  
18 Standards and provides minimum two wheelchair-accessible seats.  
19 Provide detectable warning for drop boxes, utility sink counter, and  
20 medical (Narcan) cabinet.
- 21 • 3C-D (mainline low level 1-3) (cells with 2 beds)
  - 22 • C: 28 cells, 56 beds
  - 23 • D: 28 cells, 56 beds
  - 24 • Will modify 4 beds (C14, D14)
  - 25 • Dayroom: provide dayroom table that complies with 2010 ADA  
26 Standards and provides minimum two wheelchair-accessible seats.  
27 Provide detectable warning for drop boxes, utility sink counter, and  
28 medical (Narcan) cabinet.
- 3E-F (mainline high level 4) (cells with 2 beds)
  - E: 28 cells, 56 beds
  - F: 28 cells, 56 beds
  - Will modify 4 beds (E14, F14)

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- Dayroom: provide dayroom table that complies with 2010 ADA Standards and provides minimum two wheelchair-accessible seats. Provide detectable warning for drop boxes, utility sink counter, and medical (Narcan) cabinet.
- 3G (mainline low level 1-3; can't roam) (cells with 2 beds)
  - 28 cells, 56 beds
  - Will modify 2 beds (G14)
  - Dayroom: provide dayroom table that complies with 2010 ADA Standards and provides minimum two wheelchair-accessible seats. Provide detectable warning for drop boxes, utility sink counter, and medical (Narcan) cabinet.
- 3H (mainline low level 1-3; can't roam; COWS/CIWA) (cells with 2 beds)
  - 28 cells, 56 beds
  - Will modify 2 beds (H14)
  - Dayroom: provide dayroom table that complies with 2010 ADA Standards and provides minimum two wheelchair-accessible seats. Provide detectable warning for drop boxes, utility sink counter, and medical (Narcan) cabinet.
- 4A-B (mainline high levels 4-5; can't roam) (cells with 1 bed)
  - A: 64 cells
  - B: 64 cells
  - Will modify 4 beds (A1, A30, B1, B30)
  - Dayroom (4B): remove and replace minimum four seats for wheelchair clear floor space and knee clearance. Provide detectable warning for drop boxes and medical (Narcan) cabinet.
- 5A (Administrative Separation) (cells with 1 bed)
  - 32 cells
  - Will modify 1 bed (A32)
  - Dayroom: remove and replace one seat for wheelchair clear floor space and knee clearance. Provide detectable warning for drop boxes and medical (Narcan) cabinet.
- 5B (OP Stepdown) (cells with 1 bed)
  - 32 cells
  - Will modify 1 bed (B32)

- 1 • Dayroom: remove one seat for wheelchair clear floor space and
- 2 knee clearance. Provide detectable warning for drop boxes and
- 3 medical (Narcan) cabinet.
- 4 • PSU
- 5 • A: 11 cells, single beds
- 6 • B: 11 cells, single beds
- 7 • Close Watch: 2 cells with single beds, 2 cells with double beds
- 8 • Will modify 3 beds (11, 14, 23)
- 9 • Dayroom: remove at least three seats. Provide detectable warning
- 10 for drop boxes and medical (Narcan) cabinet.
- 11 • Video phone: remove fixed stool to comply with 2010 ADA
- 12 Standards for wheelchair clear floor space and knee clearance.
- 13 • Medical
- 14 • 3 Wards with 6 beds each (Ward 1 is EOH)
- 15 • 10 cells with 1 bed each (1 positive pressure, 5 negative pressure)
- 16 • Will modify 4 beds (1 bed in Ward 1, 1 bed in Ward 3, 1 positive
- 17 pressure cell (Cell 1), and 1 negative pressure cell (Cell 2)
- 18 50. *Medical Clinics:*
- 19 • Clinic waiting area bathroom: modify bathroom to 2010 ADA
- 20 Standards
- 21 • Clinic bathroom: modify bathroom to 2010 ADA Standards
- 22 • Add adjustable exam table to one medical exam room.
- 23 51. *Visitation:*
- 24 • Visits Search: modify privacy partitions to 86.5" from wall; modify
- 25 floor slope to ¼" max slope
- 26 • Non-Contact Visit: modify 1 of the 6 non-contact visitation rooms to
- 27 have a 19" deep countertop and 40" phone.
- 28 52. *Release:*
- 53. *Classrooms:*
- At least one compliant work space in each classroom.

1           • Modify classroom bathroom to 2010 ADA Standards and CBC.

2           54. The foregoing housing alterations shall occur no later than three years  
3 from the signing of this ADA Settlement Agreement and Order.

4           **2. George Bailey Detention Facility (“George Bailey”)**

5           55. George Bailey is the largest jail facility in the County by population. It  
6 houses only men and is not a booking facility. The County houses people with  
7 mobility disabilities at George Bailey, although the County does not currently house  
8 any individuals who use wheelchairs in housing at George Bailey. George Bailey is  
9 currently undergoing construction to remove all triple bunks.

10          56. The County shall make the following changes at George Bailey to  
11 provide access to individuals with disabilities housed there:

12          57. The County shall modify one holding cell to have toilet grab bars. The  
13 side grab bar will be as close to 42 inches long and 33-36 inches above the floor as  
14 possible based on wall length. The rear grab bar will be as close to 36 inches long  
15 and 33-36 inches above the floor as possible based on wall length and toilet height.

16          58. As part of the County’s obligation to provide accessible housing to all  
17 individuals requiring such housing, the County shall modify at least 3 dormitory  
18 bathrooms (in three different dormitories) to have a toilet with grab bars and a  
19 shower with grab bars. The toilet side grab bar will be as close to 42 inches long  
20 and 33-36 inches above the floor as possible based on wall length. The toilet rear  
21 grab bar will be as close to 36 inches long and 33-36 inches above the floor as  
22 possible based on wall length and toilet height. The accompanying shower for these  
23 beds will have grab bars. The shower grab bars will be as close to 16 inches long  
24 and 48 inches long as possible based on wall length. The County will provide  
25 portable shower chairs in these units.

26          59. The County will prioritize, subject to classification and security needs,  
27 housing people with mobility disabilities who require lower bunk and lower tier  
28 housing in the dormitory units that have been modified.

1           60. Dayrooms: detectable warnings at drop boxes, counters, drinking  
2 fountains, stairways, and video phones.

3           61. Medical Unit:

4           a. Adjustable exam table.

5           b. Remove saloon-style shower door and provide curtain for shower  
6 serving medical observation dorms.

7           62. These modifications shall be complete within 2 years of all counsel  
8 signing this ADA Settlement Agreement and Order.

9           **3. East Mesa Reentry Facility**

10          63. East Mesa is a jail facility that consists of dorm housing for men. East  
11 Mesa is currently home to vocational programming not available to incarcerated  
12 men at any other facilities. The County does not currently house any individuals  
13 who use wheelchairs in housing at East Mesa.

14          **4. Vista Detention Facility (“Vista”)**

15          64. Vista serves North County and is the oldest jail facility in the County.  
16 Vista is a booking facility for men and women and houses only men.

17          65. No individual requiring a wheelchair in a housing module will be  
18 booked or housed at Vista.

19          66. The County are studying whether to renovate Vista or to replace it with  
20 a new jail facility. Any new facility to replace Vista shall be constructed in  
21 accordance with all applicable construction requirements under the ADA,  
22 Rehabilitation Act, and California Government Code 11135 in effect at the time of  
23 construction.

24          67. In the interim, the County shall modify one holding cell to have toilet  
25 grab bars. The side grab bar will be as close to 42 inches long and 33-36 inches  
26 above the floor as possible based on wall length. The rear grab bar will be as close  
27 to 36 inches long and 33-36 inches above the floor as possible based on wall length  
28 and toilet height.

1           68.    These modifications shall be complete within 1 year of all counsel  
2 signing this ADA Settlement Agreement and Order.

3                   **5.     Rock Mountain Detention Facility (“Rock Mountain”)**

4           69.    Rock Mountain is a jail facility adjacent to George Bailey. It houses  
5 only men and is not a booking facility. The County has been altering Rock  
6 Mountain to comply with the 2010 ADA Standards. Any additional housing  
7 brought online shall provide for at least 3% of housing beds complying with the  
8 2010 ADA Standards for physical accessibility.

9           70.    For any additional housing brought online, the County shall make  
10 renovations to comply with the 2010 ADA Standards to any new housing (including  
11 beds, toilets, and showers) brought online. The County shall also modify other  
12 spaces for programs, services, and activities, including holding areas, program  
13 spaces, dayrooms, exercise yards, and medical areas.

14           71.    The County shall bring online 10 additional beds that comply with the  
15 2010 ADA Standards within three years of all counsel signing this ADA Settlement  
16 Agreement and Order.

17           72.    The County shall ensure that the sallyport ramp at Rock Mountain is  
18 accessible.

19                   **6.     South Bay Detention Facility (“South Bay”)**

20           73.    South Bay is a jail facility in Chula Vista. It houses only men and is  
21 not a booking facility. The facility is not and will not be used to house individuals  
22 who use wheelchairs in housing.

23           74.    The County shall make the following changes: Alteration of Holding  
24 Cell LD 1 to meet the 2010 ADA Standards. This cell will only be used to hold 2  
25 incarcerated persons in wheelchairs for Court appearances. This alteration will be  
26 complete by June 1, 2026.

27                   **G.     Transition Plan**

28           75.    If the County creates an ADA transition plan, it will reflect the relevant



1 portions of this ADA Settlement Agreement and Order.

2 **H. Program Access**

3 76. The County shall ensure that no qualified incarcerated person with a  
4 disability, who meets all essential eligibility requirements, shall be excluded from  
5 participation in or denied the benefits of any in-custody program, service, or activity  
6 based upon their disability. The County shall provide the reasonable  
7 accommodations needed for incarcerated persons with an identified disability to  
8 have an equal opportunity to participate in and benefit from the County's programs,  
9 services, and activities.

10 77. The programs, services, and activities at the facilities, which must be  
11 provided on an equivalent basis to incarcerated persons with identified disabilities to  
12 the extent they meet all essential eligibility requirements, include dayroom, out-of-  
13 cell time, outdoor recreation and exercise equipment, showers, telephones,  
14 videophones, television, tablets (when available), reading materials, library, writing  
15 materials, religious services, substance use programs, reentry services, clinical  
16 services, family and public visiting, and attorney visiting.

17 78. Incarcerated persons with an identified disability shall have equal,  
18 meaningful access to educational programs, vocational programs, and job  
19 assignments at the jail facilities. The County shall provide reasonable  
20 accommodations as necessary for qualified individuals with an identified disability  
21 to participate in and have meaningful access to educational programs. For  
22 vocational programs and job assignments, the County will provide equal  
23 opportunities and reasonable accommodations to qualified individuals with an  
24 identified disability who can perform the essential functions with or without  
25 reasonable accommodations.

26 79. All incarcerated persons with disabilities shall be housed in a manner  
27 which allows for access to programs, services, and activities that they are qualified  
28 to participate in, with or without reasonable accommodation, in accordance with

1 their security/custody level.

2 80. Within six months of the signing of this ADA Settlement Agreement  
3 and Order, the County shall ensure that any otherwise qualified individual with a  
4 mobility disability who cannot be housed at Vista due to housing accommodations  
5 for their disability is able to access the programs and services available in the  
6 Veterans Moving Forward module, through individual and/or virtual means. The  
7 County is committed to providing access to the Veterans Moving Forward module  
8 to ensure full participation of qualified individuals with mobility disabilities in this  
9 program in the future, including housing in the program, to the extent possible based  
10 upon future construction, other than as identified in Paragraphs 45 and 46 above,  
11 and programmatic constraints.

12 81. Within six months of the signing of this ADA Settlement Agreement  
13 and Order, the County shall develop a plan to provide access to the vocational  
14 programs available at East Mesa to all qualified individuals with mobility  
15 disabilities who can perform the essential functions with or without accommodation  
16 and who must be housed at other facilities due to their disabilities.

17 **I. Requests for Disability Accommodations and Grievances**

18 82. The County shall maintain policies, procedures, and training regarding  
19 incarcerated person requests for disability accommodations and grievances  
20 regarding disability accommodations.

21 83. Incarcerated persons can submit requests for new reasonable  
22 accommodations via the Healthcare Request form and process. The County shall  
23 timely respond to Healthcare Request forms requesting reasonable accommodations  
24 and shall track all such Healthcare Request forms and their resolutions.

25 84. An incarcerated person with a disability may contact the ADA Unit  
26 regarding the provision of their reasonable accommodations to access programs,  
27 services, and activities by using the Incarcerated Person Request form. The ADA  
28 Unit shall timely respond to Incarcerated Person Requests regarding reasonable

1 accommodations and shall track all such Incarcerated Person Requests and their  
2 resolutions.

3 85. An incarcerated person with a disability may grieve alleged  
4 discrimination due to a disability or dispute decisions related to accommodations by  
5 using the Incarcerated Person Grievance form.

6 86. Within 6 months of all counsel signing this ADA Settlement  
7 Agreement and Order, the County will amend the Grievance form to include a clear  
8 means for a person to identify that their grievance is an “ADA” grievance. The  
9 County shall track all such “ADA” grievances and their resolutions.

10 87. Blank grievance forms shall be available in every housing unit and in  
11 health care areas, and shall be provided to incarcerated persons upon request at any  
12 time.

13 88. The County shall provide assistance completing grievances,  
14 Incarcerated Person Requests, and Healthcare Request forms to those incarcerated  
15 persons with disabilities who require reasonable accommodations to complete the  
16 forms.

17 89. ADA grievances shall receive a response to the grievance within seven  
18 (7) calendar days or sooner based upon the nature of the request and well-being of  
19 the grievant. In response to an ADA grievance alleging the incarcerated person’s  
20 health or safety is being threatened by a condition of their confinement or that the  
21 conditions of confinement prevent their effective communication or participation in  
22 a court or administrative proceeding, the ADA Unit will respond within four (4)  
23 calendar days. The ADA Unit or their designee in collaboration with health staff  
24 will provide an interim accommodation when warranted, pending a final response to  
25 the grievance.

26 90. As part of the ADA Unit’s quality assurance processes, the ADA Unit  
27 shall track all ADA grievances for quality assurance and take corrective action as  
28 necessary to address issues.

1           **J.     Effective Communication**

2           91.    The County shall ensure that incarcerated persons with identified  
3 disabilities receive accommodations and services necessary for effective  
4 communication, and are able to equally and fully access jail facility programs,  
5 services, and activities, including as part of the 2023 ADA Order. Staff shall give  
6 primary consideration to a person’s preferred method of communication.

7           92.    Staff shall use the incarcerated person’s documented preferred method  
8 of communication for all due process events, health care encounters, and structured  
9 programming. The provision of effective communication shall be documented for  
10 health care encounters and structured programming. The provision of effective  
11 communication shall be documented for due process events when an auxiliary aid or  
12 contracted service is used. The neutral expert for policies, procedures, and  
13 implementation thereof shall conduct audits of compliance with the effective  
14 communication requirements in this section, including through documentation  
15 review, body worn camera footage review, and in-person observations, as the  
16 neutral deems appropriate, and include their findings in their twice-yearly reports.

17           93.    “Due process” refers to requirements for judicial, non-judicial, and  
18 administrative proceedings that protect an incarcerated person’s life, liberty, or  
19 property interests. This includes, but is not limited to, notices of new charges,  
20 notice to appear, booking, discipline, grievance, classification, investigative,  
21 probation, and release processes.

22           94.    “Health care encounter” refers to an interaction between a patient and  
23 health care staff (to include medical, mental health, dental, and vision care) that  
24 involves an assessment, examination, treatment, counseling, and/or exchange of  
25 protected health information. This includes, but is not limited to, health screenings,  
26 sick calls, informed consent or refusal of health care, explanation of medication,  
27 treatment, or discharge instructions.

28           95.    “Structured programming” refers to in-custody and reentry programs

1 and services that are managed by the Sheriff’s Office Reentry Services Division  
2 (“RSD”) (e.g., education, self-help, AA/NA, vocational, work positions, or religious  
3 programs, discharge planning, services, or activities). This includes  
4 communications between incarcerated workers and their supervisors that are outside  
5 general day-to-day communication (e.g., training, performance evaluations,  
6 discipline).

7 96. Providing effective communication may require the use of auxiliary  
8 aids and services, such as qualified sign language interpreters, certified deaf  
9 interpreters, sound amplification devices, hearing aids, captioned telephones,  
10 captioned televisions, video relay services (“VRS”), video relay interpretation  
11 (“VRI”), electronic and other magnifiers, Braille materials, screen reading software,  
12 large-print materials, audio recordings, writing materials, and written notes.

13 97. For individuals who use sign language to communicate, they shall not  
14 be cuffed or shackled by their hands while signing or when using any auxiliary aid  
15 (such as VRI or VRS) to communicate with their hands, unless there is a safety and  
16 security concern. If this occurs, staff will document the specific individualized  
17 safety and security concern, which will be reviewed by a supervisor to ensure it  
18 meets criteria for the action.

19 98. For individuals who use sign language to communicate and/or who are  
20 Deaf, the County shall ensure that deputies promptly respond in-person when those  
21 individuals push the intercom button in their cell and/or housing unit.

22 **K. Assistive Devices, Health Care Appliances, and Durable Medical**  
23 **Equipment**

24 99. The County shall ensure that incarcerated persons with a disability  
25 requiring an assistive device, health care appliance, or durable medical equipment  
26 (including prosthetics) (henceforth, “HCA/AD/DME”) will have access to such a  
27 reasonable accommodation(s). Incarcerated persons with personal assistive devices  
28 shall be permitted to keep their devices during the booking process and throughout

1 their time in custody unless the device poses a direct threat or safety and security  
2 risk, as determined based on an individualized assessment with supervisory review  
3 and approval. If such a risk is identified, an equivalent County device will be issued  
4 instead of the personal assistive device if there is an alternative that does not pose a  
5 direct threat or safety and security risk. Any HCA/AD/DME provided by the  
6 County to replace an individual's personal HCA/AD/DME shall be sufficient to  
7 provide the person with safe access to the jail facility's programs, services, and  
8 activities. The County will store the personal HCA/AD/DME and return it upon  
9 release from custody.

10       100. If an incarcerated person with a disability needs a reasonable  
11 accommodation in the form of an assistive device but does not have one, the County  
12 will provide it. An incarcerated person's insurance if applicable may be billed for  
13 personal devices; billing will not delay the provision of the assistive device. The  
14 County shall maintain a sufficient supply, as determined by the County health staff,  
15 of all HCA/AD/DME that is regularly used to assist persons with disabilities at each  
16 jail facility, in working order, to ensure timely provision of such items to  
17 incarcerated persons with disabilities.

18       101. If an assistive device is removed for safety or security reasons, after  
19 supervisory review, the decision and reasons for removal shall be documented,  
20 receive supervisory review, and be reviewed with medical staff within 24 hours to  
21 determine an appropriate alternative device and/or accommodation. The ADA Unit  
22 will be promptly notified and shall assist as necessary to appropriately resolve the  
23 issue.

24       102. If an individual's personal HCA/AD/DME becomes unusable, the  
25 County will provide the person with a replacement HCA/AD/DME. An  
26 incarcerated person's insurance if applicable may be billed for personal devices;  
27 billing will not delay the provision of the assistive device.

28       103. The County shall not automatically remove HCA/AD/DME when

1 incarcerated persons are placed in temporary holding, sobering, or observation cells,  
2 and shall remove HCA/AD/DME only based on individualized security factors and  
3 for the minimum time necessary.

4 104. Upon release, if an incarcerated person does not have personal  
5 HCA/AD/DME or came to the jail with HCA/AD/DME that is not adequate for the  
6 person's needs, the County shall permit the person to retain any HCA/AD/DME  
7 provided to the person while in custody, or the County shall provide a comparable  
8 device. An incarcerated person's insurance if applicable may be billed for personal  
9 devices; billing will not delay the provision of the assistive device upon release from  
10 the jail. The County may alternatively coordinate with the incarcerated person, the  
11 person's family or friends, and/or other County agencies to secure HCA/AD/DME  
12 for the person prior to release so long as the incarcerated person has the device at the  
13 time of release. The provision of HCA/AD/DME, return of personal devices, and/or  
14 coordination with external parties shall be documented in a manner that can be  
15 audited for quality assurance.

16 **L. Emergency Situations and Use of Force**

17 105. The County shall develop and implement policies, procedures, and  
18 training to ensure that incarcerated persons with disabilities are accommodated  
19 during evacuations and other emergencies at the jail. The Sheriff's Office's "green  
20 sheets" (facility-specific policies and procedures) for each facility shall include  
21 specific information about evacuation procedures for incarcerated persons with  
22 disabilities to be accommodated during an emergency, identifying the devices on  
23 hand to carry people with mobility disabilities downstairs when necessary, and  
24 identifying the specific ways that staff at that facility must accommodate people  
25 with disabilities in a facility emergency, given the unique characteristics of each jail  
26 facility. The County shall revise these green sheets by no later than six months from  
27 the date of the signing of this ADA Settlement Agreement and Order by all counsel.  
28 The County shall provide drafts of the green sheets to the neutral expert for review

1 and prompt comment. The County shall ensure that they have sufficient devices to  
2 carry people with mobility disabilities downstairs for emergencies when elevators  
3 do not work or cannot be used.

4 106. The County shall conduct training on disability awareness and de-  
5 escalation related to use of force on incarcerated persons with identified disabilities.  
6 The County shall comply with its use of force policies and take into account an  
7 incarcerated person's documented physical disability, mental health disability, or  
8 intellectual disability (including relevant accommodation and adaptive support  
9 needs), before pre-planned cell extractions and coordinated tactical responses to  
10 incidents involving multiple incarcerated persons and incarcerated persons not  
11 participating in the incident.

12 **M. People with Learning, Intellectual, and Developmental Disabilities**

13 107. The County shall ensure that health care staff who have received the  
14 training specified in Paragraph 22 conduct a screening of incarcerated persons for  
15 intellectual, learning, and developmental disabilities. For any person suspected of  
16 having a learning, intellectual, or developmental disability, the County shall provide  
17 a secondary screening by a qualified mental health professional ("QMHP") within  
18 seven (7) business days. The QMHP shall be responsible for documenting any  
19 identified learning, intellectual, or developmental disabilities and necessary  
20 accommodations in the person's health record. This includes identifying and  
21 documenting 1) adaptive support needs, 2) safety, vulnerability, and victimization  
22 concerns; and 3) programming, housing, and accommodation needs.

23 108. If the person has been a client of a Regional Center through the  
24 California Office of Developmental Services, the County shall contact the Regional  
25 Center to obtain the person's Individualized Program Plan, subject to the person's  
26 authorization.

27 109. The County shall ensure provision of adequate supports for any person  
28 with a learning, intellectual, or developmental disability as determined by medical



1 and mental health care staff as appropriate. Incarcerated persons with a learning,  
2 intellectual, or developmental disability may not be housed in Administrative  
3 Separation or any similarly restrictive setting (which does not include protective  
4 custody) based on victimization or safety concerns arising from their disabilities.

5 110. The County shall provide identified accommodations and adaptive  
6 supports to people with learning, intellectual, or developmental disabilities,  
7 including but not limited to effective communication, such as providing more time  
8 to respond to and act in accordance with directions (except when there is an  
9 immediate safety and security issue), assistance completing forms, and supports as  
10 necessary with activities of daily living.

11 111. Mental Health Services will take appropriate steps to ensure  
12 implementation of each person's individualized plan, in coordination with the ADA  
13 Unit as appropriate.

14 112. The County shall implement training for staff, including contractors, on  
15 learning, intellectual, and developmental disabilities, including on the needs of  
16 incarcerated persons with such disabilities and staff's responsibilities to provide for  
17 such needs and to monitor for and address any safety, vulnerability, or victimization  
18 concerns.

19 113. People with learning, intellectual, and developmental disabilities shall  
20 have equal access to books, magazines, and any future electronic tablet programs,  
21 consistent with their reading and cognitive abilities.

22 114. The County shall provide discharge planning tailored to the needs of  
23 people with learning, intellectual, or developmental disabilities, including  
24 appropriate and effective linkages to housing assistance and community-based  
25 service providers.

26 **N. Searches and Restraints**

27 115. The County shall ensure that incarcerated persons with disabilities  
28 receive reasonable accommodations with respect to searches and during counts.

1 (For example, search procedures may require modification for a person with a  
2 mobility disability affecting their ability to stand or maintain a certain body  
3 position.)

4 116. The County shall ensure that incarcerated persons with disabilities  
5 receive appropriate reasonable accommodations with respect to application of  
6 restraint equipment.

7 **O. Transportation**

8 117. The County shall ensure that incarcerated persons with disabilities are  
9 reasonably accommodated when in transit, such as between facilities, out to court,  
10 or to and from outside health care services. The County shall ensure that they  
11 maintain an adequate fleet of functional wheelchair accessible vehicles and shall  
12 ensure appropriate compliance for safe transport of wheelchair riders.

13 118. The County shall ensure that whether a person requires accessible  
14 transportation is documented in the disability tracking system, and that staff have  
15 access to this information as necessary to ensure provision of appropriate  
16 accommodations during transportation.

17 119. The County shall ensure that prescribed assistive devices for people  
18 with disabilities are available to them at all times during the transport process, when  
19 the incarcerated person is moving, boarding on and off the vehicle and moving to  
20 their seat within the vehicle, absent a safety concern. If this occurs, staff will  
21 document the specific individualized safety and security concern which will be  
22 reviewed by a supervisor to ensure it meets criteria for the action. This includes in  
23 temporary holding cells.

24 120. The County shall ensure that staff provide assistance to people with  
25 mobility or other disabilities where necessary to ensure safe access on and off of  
26 transport vehicles. The County shall provide restraint-related accommodations to  
27 ensure that people with mobility disabilities are restrained in ways that maintain  
28 their safety during transport.

1            121. The County shall develop and implement processes to inspect the  
2 accessible transportation vehicles on a regular basis to ensure that they are in safe  
3 working condition, and take prompt steps to address vehicle maintenance issues.

4            **P. Accommodations for People with Substance Use Disorder**

5            122. The County shall ensure that people with substance use disorders are  
6 not subject to discrimination on the basis of disability.

7            123. Plaintiffs do not waive any claims regarding the provision of medical  
8 care, including medication assisted treatment, for incarcerated people with substance  
9 use disorders, as set forth in the first claim for relief of the Third Amended  
10 Complaint, and those claims are explicitly reserved.

11            **Q. People with Mental Health Disabilities**

12            124. The Sheriff's Office shall ensure that people with mental health  
13 disabilities are not subject to discrimination on the basis of disability and have equal  
14 and meaningful access to programs, services, and activities while incarcerated,  
15 unless there is a specific clinical or valid safety reason based on individualized  
16 assessment. This provision covers access to, for example, worker opportunities,  
17 classes, vocations and rehabilitation programs, and religious programs.

18            125. The County shall ensure that incarcerated persons with (a) mental  
19 health disabilities or (b) intellectual disabilities (as identified through the process set  
20 forth in Section III.M) will not face discrimination in the use of disciplinary  
21 procedures or sanctions. The procedures set forth in Paragraph 126 will apply in  
22 cases where:

23            (1) the incarcerated person:

24            (a) has been identified as having an intellectual disability through the  
25 process set forth in Section III.M; or

26            (b) meets clinical criteria for placement in PSU, OPSD, EASS, or  
27 JBCT; or

28            (c) is housed in OPSD, PSU, JBCT, EASS, or is PC 1368/1370, or is

1 conserved;

2 and

3 (2) the incarcerated person faces placement in restrictive housing or lockdown  
4 or a denial of property or privileges as a potential disciplinary sanction.

5 126. A Qualified Mental Health Professional shall assess the person and  
6 provide written findings as to (a) whether or not the reported behavior was related to  
7 mental illness, adaptive functioning deficits, or other mental health or intellectual  
8 disability; and (b) whether certain sanctions should be avoided in light of the  
9 person's mental health or intellectual disability, treatment plan, or adaptive support  
10 needs. Custody staff shall meaningfully consider the Qualified Mental Health  
11 Professional's findings when deciding what, if any, disciplinary action should be  
12 imposed. If custody staff do not follow the mental health input, staff shall document  
13 why it was not followed.

14 127. Incarcerated persons shall not be subjected to discipline in any manner  
15 that prevents the delivery of mental health treatment or adaptive support needs.

16 128. Incarcerated persons shall not be subject to discipline for refusing  
17 treatment or medications, or for engaging in self-injurious behavior or threats of  
18 self-injurious behavior.

19 129. The County shall provide the individual's reasonable accommodations  
20 during the disciplinary process.

21 **R. Quality Assurance and Auditing**

22 130. The Sheriff's Office's ADA Unit shall develop a quality assurance and  
23 auditing program to ensure ADA compliance within one year of all counsel signing  
24 this ADA Settlement Agreement and Order.

25 **S. Non-Retaliation and Non-Interference**

26 131. The County shall not retaliate, discriminate against, coerce, intimidate,  
27 threaten, or interfere with any incarcerated person in the exercise or enjoyment of,  
28 or an account of his or her having exercised or enjoyed, or on account of his or her

1 having aided or encouraged any other incarcerated person in the exercise or  
2 enjoyment of any ADA right while incarcerated.

3 **IV. COMPLIANCE**

4 **A. Neutral Experts**

5 132. The parties agree that there will be a CASp neutral expert retained to  
6 ensure compliance with this ADA Settlement Agreement and Order who shall be the  
7 same individual agreed upon regarding the 2023 ADA Order. The parties agree that  
8 there will be an additional neutral expert retained regarding policies, practices,  
9 procedures, and training relating to this ADA Settlement Agreement and Order.

10 133. The parties shall meet and confer on the process for selecting the ADA  
11 neutral expert for policies, procedures and practices relating to this ADA Settlement  
12 Agreement and Order. If the expert is not selected within 30 days of Court approval  
13 of this ADA Settlement Agreement and Order, the parties shall submit names to the  
14 Magistrate Judge for selection. The County shall sign a contract with the chosen  
15 neutral expert within 30 days of their selection.

16 134. If any of the neutral experts become unavailable, the parties will meet  
17 and confer, and assign a new expert. The parties may agree at any time to remove  
18 and replace a neutral expert. If the parties do not agree on removal, either party may  
19 refer the matter to the Magistrate Judge, and, if necessary, to the Court to determine  
20 whether the neutral expert should be retained or removed.

21 135. The neutral experts will work with the County to ensure timely and  
22 appropriate implementation of this ADA Settlement Agreement and Order.

23 136. Plaintiffs' expert accompanied by Class Counsel may inspect each  
24 altered facility (other than San Diego Central Jail, which shall be inspected  
25 according to the 2023 ADA Order) one time within two months of completion of all  
26 the alterations at the specific facility. No more than one class counsel shall join  
27 Plaintiffs' expert on their inspections. One month prior to such inspections, Class  
28 Counsel shall receive copies of any architectural plans and specifications for the

1 alterations.

2 137. The neutral experts may engage in *ex parte* communications with the  
3 parties. All of the neutral experts' findings and recommendations shall be set forth  
4 in writing in their reports.

5 138. The neutral experts, accompanied by Class Counsel and the County's  
6 counsel, shall have access to all jail facilities upon reasonable notice. All site visits  
7 shall take place on consecutive days. There shall be two (2) site visits, per expert, in  
8 each year that the ADA Settlement Agreement and Order is in effect, unless  
9 otherwise agreed by the parties. No more than one class counsel shall join the  
10 neutral expert on their site visits.

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

14 b. The neutral experts shall have a reasonable opportunity to  
15 conduct interviews of incarcerated persons to assess whether the County is in  
16 compliance with the terms of this ADA Settlement Agreement and Order. Class  
17 Counsel shall be able to advise these class members at the time of the proposed  
18 interviews to ensure informed consent to participate.

19 c. With the informed consent of class members, the neutral experts  
20 shall have reasonable access to observe the evaluation and assessment of ADA  
21 needs and services, including at ADA verifications and functional assessment  
22 meetings.

23 d. The neutral experts shall have access to the County's disability  
24 tracking system during site visits.

25 139. The neutral experts may request to review County documents, except  
26 those documents protected by attorney-client or work product privileges, or by state  
27 or federal law, to assess the County's compliance with the terms of this ADA  
28 Settlement Agreement and Order as the neutral deems appropriate. If these

1 documents are requested in conjunction with a site visit, the County will provide  
2 these documents to the extent feasible within ten (10) days prior to the visit. All  
3 materials produced to the neutral expert must be shared with counsel for Plaintiffs  
4 and the County. At a minimum, the County must, on a monthly basis, produce to  
5 the neutral expert and Class Counsel a housing roster from the first day of the  
6 month, identifying and reflecting the disability needs of every person incarcerated in  
7 a County jail facility who has been identified as having a mobility, hearing, vision,  
8 speech, or developmental disability, including information regarding the category or  
9 categories of disabilities, any disability-related housing restrictions, and whether the  
10 person's cell or housing unit has 2010 ADA Standards-compliant bed, toilet, or  
11 shower, or non-compliant shower or toilet grab bars. Housing does not include  
12 intake and holding. These rosters will be provided monthly for the twelve months  
13 following all counsel signing this ADA Settlement Agreement and Order, and  
14 quarterly thereafter until Substantial Compliance with this ADA Settlement  
15 Agreement and Order is achieved.

16       140. The neutral experts shall each issue a report following the  
17 inspection(s) which take place as provided in Paragraph 136 addressing the  
18 County's progress toward implementation of the requirements set forth in this ADA  
19 Settlement Agreement and Order. Draft reports shall be provided to the Parties  
20 within 30 days of the later of the expert's site inspection and the expert's receipt of  
21 all requested documents and information, and in no case later than 45 days after the  
22 inspection. Each report shall contain a determination of whether the County is  
23 "substantially complying" with each provision of the ADA Settlement Agreement  
24 and Order. If a neutral expert concludes that the County is not substantially in  
25 compliance with the terms of any provision or provisions of this ADA Settlement  
26 Agreement and Order, the neutral expert shall make recommendations as to actions  
27 the County should take to comply with the terms of the provision or provisions.  
28 Either party may submit comments within 15 days for review by the neutral expert,

1 who shall thereafter issue the report in final form. The neutral experts shall ensure  
2 that individual incarcerated person or staff names are not included (or are properly  
3 redacted) in the reports. Counsel for both sides will review to determine and  
4 implement any additional necessary redactions, including for safety and security  
5 reasons. With such proper redactions, the final reports will be public documents.  
6 Reports will not be filed with the district court unless attached to a motion seeking  
7 relief under this Settlement Agreement and Order or the 2023 ADA Order, or by  
8 order of the court. The County will pay reasonable fees for work performed by the  
9 neutral experts to fulfill his or her obligations under this agreement. If the County  
10 believes that Class Counsel is requiring the neutral experts to expend excessive and  
11 unwarranted time on the matter, the parties shall first meet and confer; if there  
12 remain disputes, the issue may be brought to Judge Leshner pursuant to the Dispute  
13 Resolution process below.

14       141. The neutral experts shall also issue respective reports upon determining  
15 the County has achieved substantial compliance with the terms of this ADA  
16 Settlement Agreement and Order as substantial compliance with respect to each  
17 provision of this ADA Settlement Agreement and Order is achieved.

18       142. The neutral expert for policies, procedures, and implementation  
19 therefor shall be permitted to attend trainings as the neutral expert deems  
20 appropriate. If the neutral expert attends, the training will be videotaped and made  
21 available to Class Counsel. The faces and/or names of attendees will be redacted as  
22 necessary to protect employee anonymity.

23       143. The neutral experts shall be provided with and agree to be bound by  
24 any protective or Court orders entered in this case to protect the confidentiality of  
25 incarcerated persons' records and security-sensitive information.

26       144. To facilitate Class Counsel's ability to communicate with their clients,  
27 the County agrees to facilitate one day of interviews at a single facility every four  
28 months between Class Counsel and the disability subclass members. Class Counsel



1 shall, at least 10 days before the interview, identify the facility and provide the  
2 County a list of no more than 20 subclass members housed at that facility to  
3 interview so that the County can facilitate the interviews. The County shall provide  
4 a confidential room at the requested jail facility where Class Counsel can interview  
5 the subclass members. The County will produce the previously identified subclass  
6 members who are housed at the facility in an expeditious manner, as reasonably  
7 possible. The County also agrees to explore options to facilitate the above  
8 interviews over Microsoft Teams or a similar platform. This provision terminates  
9 once the County has achieved Substantial Compliance.

10 **B. Dispute Resolution**

11 145. Any disputes between the parties about a matter governed by this ADA  
12 Settlement Agreement and Order shall be subject to these dispute resolution  
13 procedures and those set forth above regarding neutral experts. This provision along  
14 with Paragraphs 147-148 are the sole and exclusive means to address disputes, and  
15 shall cover any dispute prior to issuance of a Substantial Compliance report, and any  
16 dispute regarding alleged failure of the County to maintain compliance with the  
17 terms of this ADA Settlement Agreement and Order following a finding of  
18 Substantial Compliance, other than seeking relief from the District Court. A party  
19 may initiate the dispute resolution process with respect to any matter covered by this  
20 ADA Settlement Agreement and Order by providing written notice of a dispute  
21 (“Dispute Notice”) to the other party within 10 days of becoming aware of any such  
22 dispute. Following service of the Dispute Notice, the parties shall undertake good  
23 faith negotiations in person or via video conference at such times and places as they  
24 deem sufficient in an effort to resolve the dispute informally between them.

25 146. If, within 30 days after service of the Dispute Notice, the parties have  
26 failed to resolve the dispute, the parties shall next seek the assistance of Magistrate  
27 Judge David Leshner. Any party may request that a settlement conference be  
28 scheduled within 30 days of requesting the Magistrate Judge’s assistance, unless the

1 parties mutually agree upon an alternative schedule or the Court schedule does not  
2 allow for presentation of the issue to Magistrate Judge Leshner within 30 days. The  
3 content of the settlement conference discussions shall not be offered in evidence in  
4 any subsequent judicial proceeding in this case.

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

8 148. In cases of particular urgency or irreparable harm related to provisions  
9 in this ADA Settlement Agreement and Order, a party may opt to bring disputes  
10 directly to the District Court, or both parties may consent to bypass the Magistrate  
11 Judge if the parties agree the issue should be briefed to the Court, with prior notice  
12 to the Magistrate Judge.

### 13 **V. MISCELLANEOUS RELIEF**

14 149. Class counsel may bring concerns in writing about individual  
15 incarcerated persons with disability accommodation or access concerns to the  
16 attention of the ADA Unit. The ADA Unit will investigate and respond to Class  
17 counsel within 10 business days of receipt. This process is not meant to replace or  
18 circumvent the existing processes for requesting disability-related accommodations  
19 or assistance, or following the existing request and grievance processes in the Jail.  
20 Incarcerated persons in the Jail will be encouraged to make use of those processes.

21 150. Before contacting the ADA Unit, Class Counsel will attempt to verify  
22 that the concerns of individual class members are accurate, substantive, and not  
23 frivolous.

### 24 **VI. DURATION AND TERMINATION**

25 151. The duration of this ADA Settlement Agreement and Order is until  
26 such time that the County have achieved Substantial Compliance as to any Facility  
27 Alterations provisions set forth herein (Section F) and have demonstrated  
28 Substantial Compliance for a period of at least twelve months for any other

1 provision set forth herein.

2       152. Consistent with the foregoing paragraph, the County may move for  
3 termination of any portion of this ADA Settlement Agreement and Order pursuant to  
4 18 U.S.C. section 3626(b)(1)(A)(i) after a finding of Substantial Compliance at any  
5 point after the Court's approval of this ADA Settlement Agreement and Order, after  
6 conferring with Plaintiffs' counsel to attempt to reach agreement on whether  
7 substantial compliance has been achieved up to and including full and complete  
8 compliance of the entire Settlement Agreement and Order. Unless otherwise  
9 ordered by the Court, such a finding will result in a termination of the relevant  
10 neutral's work as to the particular area of Substantial Compliance or, upon full  
11 compliance, as to the entire scope of the relevant neutral's work and retention of that  
12 neutral.

13       153. If Plaintiffs form the good faith belief prior to final termination of the  
14 entire Settlement Agreement and Order, that the County is no longer in substantial  
15 compliance with any component(s) of this ADA Settlement Agreement and Order  
16 previously found to be in substantial compliance and as to which the neutral's work  
17 has concluded as set forth in Paragraph 150, Plaintiffs shall promptly so notify the  
18 County in writing. Within 30 days, the County shall serve a written response stating  
19 whether they agree or disagree. In the event the County disagrees, the parties will  
20 proceed with the Dispute Resolution process set forth in Section IV.B.

21       154. Nothing in this ADA Settlement Agreement and Order shall limit the  
22 parties' rights to challenge or appeal any finding as to whether the County is or is  
23 not in substantial compliance with this ADA Settlement Agreement and Order or  
24 consequent orders entered by the District Court.

25 **VII. AMENDMENTS**

26       155. By mutual agreement, the parties may change the terms of this ADA  
27 Settlement Agreement and Order, including, but not limited to, the timetables for  
28 taking specific actions, provided that such mutual agreement is memorialized in

1 writing, signed by the parties, and approved by the Court.

2 **VIII. JURISDICTION AND ENFORCEMENT**

3 **A. Court Approval**

4 156. This Joint Motion will be subject to approval by the District Court,  
5 pursuant to Federal Rule of Civil Procedure 23, with notice to the Disability  
6 Subclass and a Fairness Hearing; the parties shall file a joint motion for preliminary  
7 approval within 30 days of all counsel signing this ADA Settlement Agreement and  
8 Order.

9 **B. Court Jurisdiction**

10 157. For the purposes of jurisdiction and enforcement of this ADA  
11 Settlement Agreement and Order only, the parties jointly request that the Court find  
12 this ADA Settlement Agreement and Order satisfies the requirements of 18 U.S.C.  
13 § 3626(a)(1)(A) in that it is narrowly drawn, extends no further than necessary to  
14 correct the violation of the Federal right, and is the least intrusive means to correct  
15 the violation of the Federal right of the Plaintiffs and the Disability Subclass. In the  
16 event the Court finds that the County has not substantially complied with the ADA  
17 Settlement Agreement and Order, it shall in the first instance require the County to  
18 submit a plan for approval by the Court to remedy the deficiencies identified by the  
19 Court. In the event the Court subsequently determines that the County's plan did  
20 not remedy the deficiencies, the Court shall retain the power to enforce this ADA  
21 Settlement Agreement and Order through all remedies provided by law and equity.

22 158. The Court retains jurisdiction to enforce the terms of this ADA  
23 Settlement Agreement and Order during the duration of the ADA Settlement  
24 Agreement and Order, as set forth in Paragraphs 151-154.

25 159. The Court shall be the sole forum for enforcement of this ADA  
26 Settlement Agreement and Order. Any order to achieve substantial compliance with  
27 the provisions of this ADA Settlement Agreement and Order shall be subject to the  
28 applicable provisions of the Prison Litigation Reform Act, 18 U.S.C. Section 3626.

1 **IX. ATTORNEYS' FEES AND COSTS**

2 160. The parties agree that Plaintiffs and the disability subclass are entitled  
3 to reasonable attorneys' fees and costs on all issues covered by the Third Claim for  
4 Relief in Plaintiffs' Third Amended Complaint, including the 2023 ADA Order and  
5 this ADA Settlement and Order. Class Counsel may move for an award of  
6 reasonable attorneys' fees, litigation expenses, and costs for obtaining relief for the  
7 Plaintiff subclass pursuant to the ADA, 42 U.S.C. § 12205, the Rehabilitation Act,  
8 Gov't Code § 11135, Cal. Code. Civ. Proc. § 1021.5 or any other applicable law.

9 161. The parties further agree that Class Counsel are entitled to reasonable  
10 attorneys' fees, litigation expenses, and costs for post-settlement date work  
11 performed in conjunction with the Third Claim for Relief in Plaintiffs' Third  
12 Amended Complaint including the 2023 ADA Order and this ADA Settlement and  
13 Order. Class Counsel's bills shall be reviewed and approved by the County on a  
14 quarterly basis.

15 162. Class Counsel agrees to reduce their hourly rates by 10% for all post-  
16 settlement date work. The benchmark for Class Counsel's post-settlement date  
17 work (other than work preparing for and filing enforcement motions or otherwise  
18 engaging in litigation) shall be \$75,000.00 per quarter (including fees and costs).  
19 For any quarter in which attorneys' fees and costs exceed the benchmark, either  
20 party may request a settlement conference before Magistrate Judge Leshner. If the  
21 parties are unable to resolve any such dispute before Judge Leshner, Class Counsel  
22 may apply to the Court for the additional reasonable attorneys' fees, litigation  
23 expenses, and the County may oppose such a request. Class Counsel's work  
24 preparing for and filing enforcement motions or otherwise engaging in litigation  
25 shall not be subject to the above-referenced benchmark, nor to the rate reduction in  
26 the paragraph above.

27 163. For all travel costs in connection with post-settlement date work, Class  
28 Counsel shall be limited to the California State travel reimbursement rates in effect

1 on the date of travel. The current rates are described here:  
2 <https://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx>.

3  
4 IT IS SO STIPULATED.

5  
6 Respectfully submitted,  
7 DATED: November 22, 2024 ROSEN BIEN GALVAN & GRUNFELD LLP  
8  
9 By: /s/ Gay Crosthwait Grunfeld  
10 Gay Crosthwait Grunfeld  
11 Attorneys for Plaintiffs and the  
12 Certified Subclass

13 DATED: December 11, 2024 BURKE, WILLIAMS & SORENSEN, LLP  
14  
15 By: /s/ Susan E. Coleman  
16 Susan E. Coleman  
17 Elizabeth M. Pappy  
18 Attorneys for Defendants

19  
20 **[PROPOSED] ORDER**

21 The Court, having reviewed the above Joint Motion of the parties, as well as  
22 the record in this case, and good cause appearing, hereby issues the following order:

23 1. The remedies and actions described above are all consistent with the  
24 Prison Litigation Reform Act’s requirement that the Court’s orders be narrowly  
25 drawn, extend no further than necessary to correct the violation of a federal right,  
26 and be the least intrusive means necessary to correct the violation. *See* 18 U.S.C.  
27 § 3626(a)(1)(A).

28 2. The Court certified a Subclass of all qualified individuals with

1 disabilities, as that term is defined in 42 U.S.C. § 12102, 29 U.S.C. § 705(9)(B), and  
2 California Government Code § 12926(j) and (i), and who are now, or will be in the  
3 future, incarcerated in all San Diego County Jail facilities. The Court appointed  
4 Plaintiffs as the class representatives for the Subclass. The Court appointed  
5 Plaintiffs’ counsel—Gay Crosthwait Grunfeld and Van Swearingen of Rosen Bien  
6 Galvan & Grunfeld LLP, Aaron J. Fischer of the Law Office of Aaron J. Fischer,  
7 and Christopher M. Young of DLA Piper LLP (US)—as class counsel. Fed. R. Civ.  
8 P. 23(g)(1) and (4). *See* Order, Dkt. No. 435.

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

13       4. The bond requirement is waived.

14       5. The Court shall retain jurisdiction to enforce the terms of this ADA  
15 Settlement Agreement and Order, including through specific performance and all  
16 other remedies permitted by law or equity.

17       6. Within 30 days of entry of this order, the parties shall jointly move for  
18 preliminary approval of the ADA Settlement Agreement and Order and Notice to  
19 the Subclass. A fairness hearing shall occur within 30 days of the Subclass being  
20 notified of the terms of the ADA Settlement Agreement and Order.

21  
22 DATED: \_\_\_\_\_, 2024

\_\_\_\_\_  
23 Honorable Anthony J. Battaglia

# **EXHIBIT A**



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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. 3:20-cv-00406-AJB-DDL

**JOINT MOTION AND ORDER  
RE ACCESSIBILITY AT  
CENTRAL JAIL, EFFECTIVE  
COMMUNICATION POLICY  
AND PRACTICE, AND  
PROVISIONAL CLASS  
CERTIFICATION**

(Doc. No. 349)

1 On April 25, 2023, Plaintiffs filed Motions for Preliminary Injunction and  
2 Provisional Class Certification (“the Motions”) seeking to ensure that Defendants  
3 County of San Diego and the San Diego County Sheriff’s Department  
4 (“Defendants”): (1) provide incarcerated people with hearing disabilities effective  
5 communication through sign language interpretation; and (2) house incarcerated  
6 people with mobility disabilities in accessible locations, where they can safely  
7 access sleeping, toileting, and showering facilities, in compliance with the  
8 Americans with Disabilities Act, the Rehabilitation Act, and California Government  
9 Code Section 11135 (“ADA”). On May 17, 2023, the County of San Diego opposed  
10 the motions, on the grounds that many of the factual allegations were incorrect and  
11 because the County was already in the process of renovating its policies and  
12 facilities.

13 On May 22, 2023, the parties and their experts (hereinafter the “Parties’  
14 Experts”) met and conferred via Zoom for two hours. On May 24, 2023, the parties  
15 and their experts conducted an Early Neutral Evaluation before the Honorable David  
16 Leshner at the United States District Court for the Southern District of California in  
17 San Diego. On June 5, 8, 15, and 16, 2023, the parties conducted further settlement  
18 discussions via Zoom with Judge Leshner.

19 As a result of these discussions, the parties have reached the following  
20 agreements:

21 1. Plaintiffs’ motion for provisional class certification should be granted for  
22 settlement purposes only, per the terms of this Stipulation and [Proposed] Order, with  
23 certification of the Incarcerated People with Hearing and/or Mobility Disabilities  
24 subclass defined as “all qualified individuals with a hearing and/or mobility disability,  
25 as that term is defined in 42 U.S.C. § 12102, 29 U.S.C. § 705(9)(B), and California  
26 Government Code § 12926(j) and (m), and who are now, or will be in the future,  
27 incarcerated in the Jail.”

28 2. Showers: The parties agree that some of the showers at Central Jail need

1 to be modified to comply with the ADA. The Parties' Experts agree that compliant  
2 showers must be constructed within some of the housing modules. Defendants have  
3 agreed to continue to explore an interim solution of portable accessible showers, but  
4 Plaintiffs acknowledge there may be no viable portable shower solution and that  
5 shower chairs may be the best interim solution.

6 3. Toilets: The Parties' Experts agree that some of the existing cells in  
7 *celled* housing units at Central Jail are too small to accommodate the required clear  
8 floor spaces required for turning, bed transfer and/or toilet transfer required by the  
9 ADA. The Parties' Experts agree that the toilets in the *dormitory* housing units  
10 require relatively minor modifications to comply with the ADA.

11 4. Beds: The Parties' Experts agree that triple bunks should not be used  
12 for housing of individuals with mobility disabilities. Plaintiffs acknowledge that  
13 Defendants' policy for bed assignments for people with mobility disabilities will be  
14 amended such that an existing middle bunk does not qualify as a lower bunk and  
15 clarifying that lower bunk/lower tier placement is required rather than recommended  
16 in certain situations. The parties have agreed that more information from the  
17 Sheriff's Department about the population of incarcerated people will be needed to  
18 determine the correct number of accessible cells and dorm beds needed for the  
19 population with mobility disabilities.

20 5. Intake: The parties agree that remedial measures are necessary to ensure  
21 accessibility for incarcerated people with mobility disabilities during intake screening  
22 and other intake processes, consistent with the ADA. The parties have agreed that  
23 more information from the Sheriff's Department about the use of holding cells, intake  
24 and Jail population data, and intake/housing procedures would inform consideration  
25 of appropriate remedial measures for intake.

26 6. Sign Language Interpreters: The Parties' Experts agree that Defendants  
27 must revise and are in the process of revising their disability policies, and develop  
28 and implement processes to evaluate, document, and track incarcerated people with

1 disabilities' primary method of communication as well as to provide effective  
2 communication to incarcerated people whose primary method of communication is  
3 Sign Language, consistent with the requirements of the ADA.

4 7. Within sixty days of the Court approving this Stipulation and [Proposed]  
5 Order, Defendants shall develop and provide to Plaintiffs a plan to remedy the  
6 accessibility and effective communication issues identified in Plaintiffs' Motions,  
7 which shall include, at a minimum, the following elements:

8 a. For incarcerated people with hearing disabilities at San Diego  
9 County jail facilities:

10 i. Defendants will provide Sign Language Interpretation via  
11 in person (or remote technology as appropriate) to all incarcerated people with  
12 hearing disabilities who use Sign Language Interpretation as their primary means of  
13 communication for all medical and mental health encounters, booking, classification  
14 proceedings, available structured programming (e.g., classes, religious services,  
15 etc.), investigative purposes, and disciplinary proceedings.

16 ii. During booking, Defendants will evaluate every person to  
17 determine whether they have a hearing or speaking disability and, if so, the person's  
18 primary method of communication (e.g., sign language, written notes, hearing aids,  
19 etc.). In determining a person's primary method of communication, Defendants  
20 must ensure that the incarcerated person is assessed by a nurse and must give  
21 deference to the preference of the incarcerated person. Defendants will then  
22 document that method of communication and require that their staff and contractors  
23 use that method as appropriate when interacting with the incarcerated person during  
24 all medical and mental health encounters, booking, classification proceedings,  
25 available structured programming (e.g., classes, religious services, etc.),  
26 investigative processes, and disciplinary proceedings.

27 iii. Defendants will provide access to Sign Language  
28 Interpretation services at all San Diego County jail facilities that house people with

1 hearing disabilities who use Sign Language Interpretation as their primary means of  
2 communication, including with a telecommunication service provider, videophones,  
3 VRS technology, and in-person Sign Language Interpretation, as appropriate to  
4 ensure effective communication;

5           iv. Defendants will track disability-related effective  
6 communication needs, including as to Sign Language Interpretation, through its San  
7 Diego County jail management systems; and

8           v. These changes will be incorporated into policy and  
9 Defendants will train all deputies, health care staff, and other relevant staff to follow  
10 the policy.

11           b. For incarcerated people with mobility disabilities at San Diego  
12 Central Jail:

13           i. Defendants will ensure that incarcerated people with  
14 mobility disabilities are housed in accessible facilities, based on their accessibility  
15 needs, including:

- 16           (1) No person with a mobility disability using a wheelchair  
17           will be assigned to any bed in a triple bunk;
- 18           (2) No person with a mobility disability will be assigned to  
19           the top bed of a triple bunk;
- 20           (3) Anyone assigned by medical to a lower bunk/lower tier  
21           will be assigned to a single or bottom bunk;
- 22           (4) People with mobility disabilities will be assigned to  
23           accessible housing, based on their accessibility needs,  
24           which may include accessible beds and clearance space;
- 25           (5) People with mobility disabilities will be provided  
26           accessible toileting, based on their accessibility needs,  
27           which if appropriate shall have 2010 ADAS-compliant  
28           grab bars and other features; and

1 (6) People with mobility disabilities will be provided  
2 accessible showers, based on their accessibility needs  
3 which if appropriate shall have 2010 ADAS-compliant  
4 grab bars and shower chairs.

5 ii. Defendants’ remedial plan will identify each element in  
6 each housing unit that they will renovate and any other remedial measures to be  
7 taken, as well as the maximum number of incarcerated people with disabilities that  
8 can be safely housed in each unit. This portion of Defendants’ plan will include  
9 staged deadlines for completion of renovations, with at least 25 accessible beds and  
10 toileting, which may be located in dormitory housing, becoming available as soon as  
11 possible and no later than 90 days from the date of this Stipulation and [Proposed]  
12 Order. As noted above, shower chairs will be provided as an interim solution. All  
13 renovations and changes required to make accessible housing available to all  
14 incarcerated people with mobility disabilities that require ADA compliant housing  
15 shall be completed within eighteen (18) months of the date of this Stipulation and  
16 [Proposed] Order. This does not include modifications to MOB, PSU, OP Step  
17 Down and JBCT as identified below.

18 iii. Defendants’ plan must include accessible and safe housing  
19 for people with mobility disabilities throughout their incarceration, including  
20 accessible cells during the intake and booking process within eighteen (18) months  
21 of the date of this Stipulation and [Proposed] Order. The plan to achieve  
22 compliance in PSU, OP Step Down and JBCT must include sufficient accessible and  
23 safe housing for people with mobility disabilities throughout their incarceration as  
24 soon as possible and not later than three years of the date of this Stipulation and  
25 [Proposed] Order. Defendants’ plan must include interim accommodations made as  
26 accessible as feasible for those in these specialized units. The 3% Defendants plan to  
27 provide will be determined at the time that construction begins on this second phase.

28 iv. Defendants’ plan will ensure that during booking, and at

1 the request of any incarcerated person, Defendants will evaluate every person to  
2 determine whether they have a mobility disability and, if so, what accessibility  
3 features and accommodations each person requires. Defendants must then  
4 document those accommodations and ensure that the incarcerated person is housed  
5 accessibly with their accommodations.

6 v. These changes will be incorporated into policy and  
7 Defendants will train all deputies, health care staff, and other relevant staff to follow  
8 the policy.

9 c. To the extent that any necessary remedial measures regarding  
10 physical plant changes will require an extended period of time (e.g., more than 6  
11 months), Defendants' plan will include interim measures that mitigate significant  
12 safety issues for incarcerated people with disabilities as related to beds, showers,  
13 and toilets/lavatories, along with the plan for achieving full compliance.

14 8. Within fifteen (15) days of Plaintiffs' receipt of Defendants' proposed  
15 plan, Plaintiffs will provide feedback (if any) to the proposed plan as to necessary  
16 modifications. Within fifteen (15) days of Defendants' receipt of Plaintiffs'  
17 feedback, the parties and the Parties' Experts will confer to address any concerns or  
18 disputes.

19 9. Within fifteen (15) days of the above-mentioned meet and confer,  
20 Defendants will submit their plan (with any modifications) to the Court. Plaintiffs  
21 will submit to the Court objections (if any) to the proposed plan as to necessary  
22 modifications within fifteen (15) days of Defendants' submission.

23 10. The Court thereafter shall enter an Order adopting the plan, as revised  
24 (if at all) by the Court, in consideration of Plaintiffs' objections.

25 11. Within fifteen (15) days after the Court issues the Order adopting the  
26 plan, the parties will agree on a qualified independent expert (or experts). The  
27 independent expert(s) will work with Defendants to ensure timely and appropriate  
28 implementation of the plan. The independent expert(s) will issue a quarterly report

1 to counsel for Plaintiffs and Defendants addressing Defendants' progress toward  
2 implementation of the plan. Defendants will pay reasonable fees for work  
3 performed by the independent expert(s) at Defendants' request and as required to  
4 confirm compliance. If Plaintiffs expect to require the independent expert to expend  
5 time that would be in excess of \$1000 per quarter they shall first meet and confer  
6 with defendants and the issue may be brought to Judge Leshner.

7 12. After the Court issues the Order adopting the plan, Plaintiffs shall be  
8 allowed access to relevant documents and records in Defendants' custody and  
9 control relevant to the provision of Sign Language Interpretation to incarcerated  
10 people with hearing disabilities.

11 13. Within ninety (90) days of this Order, and for the twelve months  
12 following entry of the Order adopting Defendants' plan, Defendants must, on a  
13 monthly basis, provide daily housing rosters for the preceding month to the Court  
14 and Plaintiffs and marked as Attorney's Eyes Only, reflecting the disability needs of  
15 every person incarcerated at Central Jail who have been identified as having a  
16 mobility or hearing disability, including information sufficient to describe their  
17 mobility disability (if any), hearing disability (if any), effective communication  
18 needs (if any), housing unit, bed assignment (including top, middle, or lower bunk),  
19 and whether the person's cell or housing unit has 2010 ADAS-compliant toilet grab  
20 bars, shower grab bars, and shower seat. Housing does not include intake and  
21 holding.

22 14. Four months after the Court issues the Order adopting the plan,  
23 Plaintiffs shall be allowed to inspect with their experts any renovations completed  
24 by Defendants at the Central Jail to ascertain whether Defendants have adequately  
25 modified their housing for people with mobility disabilities per this order. Plaintiffs  
26 may conduct a second inspection of the Central Jail eighteen (18) months after the  
27 Court issues the Order adopting the plan.

28 15. Eighteen (18) months after the Court issues the Order adopting the



1 plan, the independent expert(s) will assess whether Defendants have implemented  
2 their plan adequately to address the deficiencies identified by the Parties' Experts as  
3 part of the eighteen (18) month plan. All components of Defendants' plan  
4 determined to be adequately implemented will not be subject to further inspection  
5 by Plaintiffs or the independent expert(s). Inspections may, however, continue if  
6 and as necessary for determining whether Defendants have adequately implemented  
7 any other components of this or any other Court-ordered remedial plan.

8 16. If, following a finding by the independent expert(s) that one or more  
9 components of Defendants' plan has been adequately implemented, Plaintiffs form  
10 the good faith belief that Defendants are no longer adequately implementing the  
11 component(s) of the plan, Plaintiffs will promptly so notify Defendants in writing  
12 and present a summary of the evidence upon which such a belief is based. Within  
13 30 days thereafter, Defendants shall serve a written response stating whether they  
14 agree or disagree with Plaintiffs' position. In the event that Defendants agree,  
15 monitoring by the qualified independent expert(s) and Plaintiffs shall resume until  
16 adequate implementation is again established. In the event Defendants disagree, the  
17 parties shall present their positions in writing to the qualified independent expert(s).  
18 The qualified independent expert(s) will, within 30 days, issue a written decision  
19 regarding whether to resume monitoring of the remedial plan component(s) at issue.

### 20 **Dispute Resolution**

21 17. Any party may initiate the dispute resolution process with respect to  
22 any matter covered by this Stipulation and [Proposed] Order by providing written  
23 notice of a dispute ("Dispute Notice").

24 18. Following service of the Dispute Notice, the parties shall undertake  
25 good faith negotiations at such times and places as they deem sufficient in an effort  
26 to resolve the dispute informally between them. If, within 30 days after service of  
27 the Dispute Notice, the parties have failed to resolve the dispute, either party may  
28 request that the qualified independent expert(s) most knowledgeable in the subject

1 matter of the dispute be permitted to evaluate the issue in dispute and prepare a  
2 report. The qualified independent expert(s) must provide the report regarding the  
3 area of disagreement to the parties within 30 days of the request.

4 19. In the event the parties’ good faith attempt to resolve the dispute  
5 informally proves unsuccessful, the parties shall next seek the assistance, advice,  
6 and/or guidance of Magistrate Judge David Leshner. Any party may request that a  
7 settlement conference be scheduled within 30 days of the Dispute Notice, unless the  
8 parties mutually agree upon an alternative schedule.

9 20. With the exception of any report prepared by the expert(s), as described  
10 above, and any notice that negotiations are concluded, nothing said and no  
11 document prepared in connection with the Dispute Resolution proceedings shall be  
12 offered in evidence in any subsequent judicial proceeding in this case.

13 21. This Stipulation and [Proposed] Order will resolve only the issues  
14 raised in Plaintiffs’ Motions. Plaintiffs expressly reserve all rights to pursue the  
15 legal claims and any necessary relief as to all other issues in the operative  
16 complaint.

17 IT IS SO STIPULATED.

18 Respectfully submitted,

19 DATED: June 20, 2023

ROSEN BIEN GALVAN & GRUNFELD LLP

20 By: /s/ Gay C. Grunfeld

21 Gay C. Grunfeld

22 Attorneys for Plaintiffs

23  
24 DATED: June 20, 2023

BURKE, WILLIAMS & SORENSEN, LLP

25 By: /s/ Elizabeth M. Pappy

26 Elizabeth M. Pappy

27 Attorneys for Defendants

28

1 The Court, having reviewed the above Stipulation of the parties, as well as the  
2 pleadings in support and opposition to Plaintiffs’ Motions, and good cause  
3 appearing, hereby issues the following Order:

4 1. Defendants shall take the actions described above in the timeframes  
5 listed above. The Court further adopts the findings above and directs the parties to  
6 follow the procedures and timelines set forth above.

7 2. These remedies are all consistent with the Prison Litigation Reform  
8 Act’s requirement that the Court’s orders be narrowly drawn, extend no further than  
9 necessary to correct the violation of a federal right, and be the least intrusive means  
10 necessary to correct the violation. *See* 18 U.S.C. § 3626(a)(1)(A).

11 3. The Court provisionally certifies a Subclass of all qualified individuals  
12 with a hearing and/or mobility disability, as that term is defined in 42 U.S.C.  
13 § 12102, 29 U.S.C. § 705(9)(B), and California Government Code § 12926(j) and  
14 (i), and who are now, or will be in the future, incarcerated in all San Diego County  
15 Jail facilities. The Court appoints Plaintiffs as the provisional class representatives  
16 for the Subclass. The Court appoints Plaintiffs’ counsel—Gay Grunfeld and Van  
17 Swearingen of Rosen Bien Galvan & Grunfeld LLP, Aaron Fischer of Law Office of  
18 Aaron J. Fischer, and Christopher Young of DLA Piper LLP—as provisional class  
19 counsel. Fed. R. Civ. P. 23(g)(1) and (4).

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

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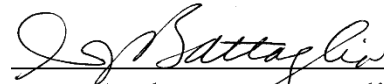
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- 5. The bond requirement is waived.
  - 6. The Court shall retain jurisdiction to enforce the terms of this Order.
- IT IS SO ORDERED.

Dated: June 21, 2023

  
\_\_\_\_\_  
Hon. Anthony J. Battaglia  
United States District Judge

# **EXHIBIT B**

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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,

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

6 **I. BACKGROUND**

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

18 The Parties now jointly seek class certification pursuant to Rule 23(a) and (b)(2) of  
19 the Federal Rules of Civil Procedure. (Doc. No. 423.) In particular, the parties seek to  
20 certify the following class of individuals pursuant to Federal Rule of Civil Procedure  
21 23(b)(2):

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

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

26 All adults who have a disability, as that term is defined in 42 U.S.C. § 12102,  
27 29 U.S.C. § 705(9)(B), and California Government Code § 12926(j) and (m),  
28 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).



1 Under Rule 23(a), a case is appropriate for certification as a class action if: “(1) the  
2 class is so numerous that joinder of all members is impracticable; (2) there are questions  
3 of law or fact common to the class; (3) the claims or defenses of the representative parties  
4 are typical of the claims or defenses of the class; and (4) the representative parties will  
5 fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). These  
6 requirements are commonly referred to as numerosity, commonality, typicality, and  
7 adequacy. “If the court finds the action meets the requirements of Rule 23(a), the court then  
8 considers whether the class is maintainable under Rule 23(b).” *Algarin v. Maybelline, LLC*,  
9 300 F.R.D. 444, 451 (S.D. Cal. 2014).

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

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

### 27 **III. DISCUSSION**

#### 28 **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  
19 County Jail facilities ("Incarcerated People with Disabilities Subclass");

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

24 All Black and Latinx adults who are now, or will be in the future, incarcerated  
25 in any of the San Diego County Jail facilities ("Incarcerated Black and Latinx  
26 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


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

3 The Court **ORDERS** the following:

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

9  
10 **IT IS SO ORDERED.**

11 Dated: November 3, 2023

12   
13 Hon. Anthony J. Battaglia  
14 United States District Judge