

1 CARTER C. WHITE – 164149  
KING HALL CIVIL RIGHTS CLINIC  
2 U.C. Davis School of Law  
One Shields Avenue, Bldg. TB-30  
3 Davis, California 95616-8821  
Telephone: (530) 752-5440  
4 Facsimile: (530) 752-5788  
Email: ccwhite@ucdavis.edu

5 MICHAEL W. BIEN – 096891  
6 GAY CROSTHWAIT GRUNFELD – 121944  
JENNIFER L. STARK – 267062  
7 BENJAMIN BIEN-KAHN – 267933  
PABLO A. LASTRA – 287718  
8 ANDREW G. SPORE – 308756  
ROSEN BIEN GALVAN & GRUNFELD LLP  
9 50 Fremont Street, 19th Floor  
San Francisco, California 94105-2235  
10 Telephone: (415) 433-6830  
Facsimile: (415) 433-7104  
11 Email: mbien@rbgg.com  
ggrunfeld@rbgg.com  
12 jstark@rbgg.com

13 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT  
15 EASTERN DISTRICT OF CALIFORNIA  
16 SACRAMENTO DIVISION  
17

18 DERRIL HEDRICK, DALE ROBINSON,  
KATHY LINDSEY, MARTIN C. CANADA,  
19 DARRY TYRONE PARKER, individually and  
on behalf of all others similarly situated,

20 Plaintiffs,

21 v.

22 JAMES GRANT, as Sheriff of Yuba County;  
23 Lieutenant FRED J. ASBY, as Yuba County  
Jailer; JAMES PHARRIS, ROY LANDERMAN,  
24 DOUG WALTZ, HAROLD J. "SAM"  
SPERBEK, JAMES MARTIN, as members of  
25 the YUBA COUNTY BOARD OF  
SUPERVISORS,

26 Defendants.  
27

Case No. 2:76-CV-00162-GEB-EFB

**NOTICE OF MOTION AND  
MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL CIVIL CLASS  
ACTION COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF  
PURSUANT TO FED. R. CIV. P.  
15(d); MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Judge: Hon. Edmund F. Brennan  
Date: December 14, 2016  
Time: 10:00 a.m.  
Crtrm.: 8, 13th Floor

Trial Date: None Set

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1 that this Court issue an Order Granting Plaintiffs' Motion for Leave to File Supplemental  
2 Civil Class Action Complaint for Declaratory and Injunctive Relief.

3  
4 DATED: November 16, 2016

Respectfully submitted,

5 ROSEN BIEN GALVAN & GRUNFELD LLP

6 By: /s/ Gay Crosthwait Grunfeld

7 Gay Crosthwait Grunfeld

8 Attorneys for the Plaintiff Class  
9

10  
11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **INTRODUCTION**

13 Decades ago, when the Plaintiff Class originally filed their complaint, Congress had  
14 not yet enacted the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12102. Both in  
15 their complaint and in the Consent Decree they achieved, Plaintiffs raised issues now  
16 addressed by the ADA and related statutes, including failures of the Yuba County Jail (the  
17 "Jail") to provide assistive devices and an adequate grievance process.

18 Following the appointment of new class counsel and the denial of a motion to  
19 terminate the Consent Decree, Plaintiffs' counsel has investigated current conditions at the  
20 Jail, finding serious violations of the ADA rights of the prisoners<sup>1</sup> incarcerated there.  
21 These violations and the results of Defendants'<sup>2</sup> own accessibility report are pled in the

22 \_\_\_\_\_  
23 <sup>1</sup> All types of arrestees, detainees, and inmates held at the Jail are hereinafter referred to as  
24 "prisoners."

25 <sup>2</sup> Rule 25(d) of the Federal Rules of Civil Procedure provides that when a public officer  
26 being sued in his or her official capacity is replaced in his or her position, the officer's  
27 successor is automatically substituted as a Defendant in the case. *See* Fed. R. Civ. P.  
28 25(d). Steven Durfor has replaced James Grant as Sheriff of Yuba County and therefore is  
a Defendant in this case. Captain Brandon Barnes has replaced Lieutenant Fred J. Asby as  
(footnote continued)

1 Proposed Supplemental Complaint.

2 Plaintiffs' Supplemental Complaint should be allowed because the concern it  
3 addresses is the same one that the original complaint and Consent Decree seek to address.

4 Defendants' inadequate policies and practices and ongoing failures in the provision  
5 of mental and medical care affect all members of the certified class, but this impact falls  
6 disproportionately on prisoners with disabilities. Similarly, Defendants' dysfunctional  
7 grievance procedures, inadequate staffing and exercise opportunities, and outdated  
8 facilities create a harmful environment for all prisoners, but prisoners with disabilities  
9 suffer the most. Because this Court has retained jurisdiction to address the rights of the  
10 Plaintiff class, it serves the ends of justice and judicial economy to allow the filing of a  
11 Supplemental Complaint on behalf of a subclass of prisoners with disabilities. Defendants  
12 cannot claim prejudice by having to comply with the ADA and related laws.

13 **FACTS**

14 The Yuba County Jail (the "Jail") is located in Marysville, California. According to  
15 the California Board of State and Community Corrections ("BSCC"), for December 2015,  
16 the most recent period available, the Jail's highest count that month was 408 prisoners.  
17 The average daily population that month was 391 prisoners, of which only 64 were  
18 sentenced and 327 had not been sentenced. Declaration of Gay Crosthwait Grunfeld in  
19 Support of Plaintiffs' Motion for Leave to File Supplemental Civil Class Action Complaint  
20 for Declaratory and Injunctive Relief ("Grunfeld Decl."), ¶ 2. According to data regarding  
21 the incidence of disabilities among the general population, at least 30% of the prisoners in  
22 the Jail are qualified individuals with disabilities as that term is defined by the ADA, 42

23

24

25 Yuba County Jailer and therefore is a Defendant in this case. Andy Vasquez, Jr., John  
26 Nicoletti, Mary Jane Griego, Roger Abe, and Randy Fletcher have replaced James Pharris,  
27 Roy Landerman, Doug Waltz, Harold J. "Sam" Sperbek, and James Martin as members of  
the Yuba County Board of Supervisors and therefore are Defendants in this case.

28

1 U.S.C. § 12102, the Rehabilitation Act, 29 U.S.C. § 705(9)(B), and California Government  
2 Code § 12926(j) and (m).

3 On March 24, 1976, Plaintiffs filed this action against the Sheriff of Yuba County,  
4 the Yuba County Jailer, and members of the Yuba County Board of Supervisors  
5 (“Defendants”), alleging that the Jail subjected prisoners to cruel and unusual punishment  
6 and violated rights secured by the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth  
7 Amendments to the Constitution of the United States. Among the violations identified by  
8 Plaintiffs were lack of exercise and recreation, inadequate staffing within the Jail, and  
9 inadequate medical and health care, including lack of mental health care.

10 In May 1979, this Court approved and entered the Consent Decree resulting from  
11 the original action against Yuba County Jail. Dkt. No. 77; *see also* Grunfeld Decl., ¶ 6 &  
12 Exhibit C. The Consent Decree established “minimum legally permissible conditions of  
13 confinement within the Yuba County Jail.” Dkt. No. 120-1. at 3.

14 From the beginning of the case, the Consent Decree has addressed issues affecting  
15 prisoners with disabilities. For example, all examining rooms are required to include a  
16 wheelchair (*id.* at 20, line 3); prisoners with “prosthetic devices, eyeglasses, contacts,  
17 hearings aids, or other physical health aids shall be permitted to retain and use the devices  
18 while incarcerated.” (*id.* at p. 24, lines 17-19); such devices are also required by the  
19 Consent Decree to be “repaired or restored” (*id.*, line 21); “[i]f medically indicated,  
20 indigent inmates must be provided devices under the same criteria as other indigent  
21 persons in the community would receive such devices ....” (*id.*, lines 25-27); prisoners  
22 must receive effective communication in healthcare settings (*id.* at 26, lines 25-28); and  
23 the Jail must provide an effective prisoner grievance process (*id.* at 35-38).

24 The Consent Decree also addresses due process in discipline, with major  
25 implications for prisoners with disabilities that affect their ability to see, hear, and  
26 understand, including prisoners with learning and developmental disabilities. (*Id.* at 28-  
27 35.) Recognizing the importance of effective communication in due process settings, the  
28 Consent Decree allows prisoners to “select another inmate or member of staff as a counsel



1 substitute to represent the inmate at the [disciplinary] hearing.” (*Id.* at 31, lines 20-22.)

2         The Consent Decree set requirements to ensure minimal adequate medical and  
3 mental health care of prisoners. It also established a formal grievance procedure, required  
4 Defendants to “comply with all provisions of Title 15 of the California Administrative  
5 Code” (*id.* at 48) which specifies minimum state-mandated jail standards, and established a  
6 monitoring regime carried out by Plaintiffs’ counsel. *Id.* at 48-49.

7         Defendants moved to terminate the Consent Decree in May 2013. Dkt. Nos. 95 &  
8 96. Plaintiffs’ original counsel, California Rural Legal Assistance (“CRLA”), moved to  
9 withdraw due to the enactment of a federal law that had prohibited it from participating in  
10 class actions and litigating on behalf of incarcerated persons since 1996. Request for  
11 Leave to Withdraw as Counsel, Dkt. 98; Declaration of Ilene J. Jacobs, Dkt. 99. The Court  
12 allowed CRLA to withdraw and appointed Plaintiffs’ current counsel in the summer of  
13 2013. Order Granting Motion to Withdraw as Counsel, Dkt. 111; Grunfeld Decl., ¶ 12.  
14 On April 2, 2014, the Court denied Defendants’ motion to terminate, holding that it was  
15 “evident that Defendants ... failed to carry their ‘burden...to demonstrate that there are no  
16 ongoing constitutional violations, that the relief ordered exceeds what is necessary to  
17 correct an ongoing constitutional violation, or both.’” Dkt. 135. Defendants appealed, and  
18 on April 19, 2016, the Ninth Circuit affirmed this Court’s ruling, noting that “the Decree  
19 incorporates the Court’s earlier constitutional findings by citing the decision which  
20 concluded that Defendants had violated Plaintiffs’ Fifth, Sixth, Eighth, and Fourteenth  
21 Amendment rights.” *Hedrick v. Grant*, 648 F. App’x. 715, 716 (9th Cir. 2016).  
22 Accordingly, the Consent Decree remains in effect.

23         Since being appointed to represent the class, Plaintiffs’ counsel have engaged in  
24 extensive monitoring of current conditions at the Jail, interviewing and corresponding with  
25 over two hundred class members, touring the Jail, and reviewing thousands of pages of Jail  
26 records, third party inspection reports, and responses to Public Records Acts requests. *See*  
27 Grunfeld Decl., ¶ 14. This monitoring revealed many violations of the ADA and related  
28 disability rights laws and numerous policies and practices in effect at the Jail that

1 discriminate against prisoners with disabilities. *Id.* Defendants routinely segregate  
2 prisoners with physical, mental, and developmental disabilities in isolated cells, and  
3 confiscate or fail to provide needed assistive devices to prisoners who require them. The  
4 lack of adequate mental health care at the Jail means that prisoners with mental disabilities  
5 do not receive adequate treatment, exacerbating disabilities like depression and bipolar  
6 disorder and often leading to suicidal behavior. *See* Motion to Enforce Consent Decree  
7 and for Further Remedial Orders, Docket No. 163 at 8-43.

8         The physical layout of the Jail is inaccessible to persons with mobility impairments.  
9 In August 2015, Defendants commissioned the CalCasp Report that found dozens of  
10 architectural barriers, which it urged fixing as soon as possible, and determined that not a  
11 single cell, much less the legally required number of cells, met ADA accessibility  
12 requirements, concluding that the Jail “is out of substantial compliance with current  
13 standards.” *See* Grunfeld Decl. ¶ 24, Exhibit K at 5. The Jail does not adequately identify  
14 prisoners with disabilities or track the accommodations they need, nor does it have a  
15 functional disability grievance process as required by the ADA through which prisoners  
16 can request accommodations. *See* Grunfeld Decl. ¶ 14, 28 C.F.R. § 35.107(b). The result  
17 of this is that prisoners can go without the accommodations they need for the entirety of  
18 their time at the Jail. *Id.*

19         Plaintiffs in the Proposed Supplemental Complaint include a man who for weeks  
20 was not allowed to have the cane he needed and who could only hobble in pain in the area  
21 immediately near his bed, a woman suffering from major depression who skips meals and  
22 services because of her untreated despondent state, and a man in a wheelchair who faced  
23 numerous architectural barriers while detained at the jail whose wheelchair sustained  
24 damage and who fell repeatedly in the shower. *See* Grunfeld Decl., Exhibit M. The  
25 Supplemental Complaint alleges other instances of custody officers taking away  
26 wheelchairs and canes for flimsy reasons, as well as prisoners with mental disabilities  
27 forced to go without medication and becoming suicidal as a result. *Id.* Collectively,  
28 Defendants’ violations of the Consent Decree, the ADA, the Rehabilitation Act, and

1 California disability rights laws add up to a miserable, dangerous, and unlawful experience  
2 for those unfortunate enough to be incarcerated in the Jail.

3 For more than two years, Plaintiffs’ counsel repeatedly urged Defendants to take  
4 measures to remedy the violations of disability rights laws at the Jail, including through  
5 several letters outlining concerns regarding the Jail’s failure to meet its obligations under  
6 disability rights laws. Grunfeld Decl. ¶¶ 14-25, Exhibits D-L. Despite extensive  
7 correspondence and meetings, and Defendants’ own CalCasp Report outlining the Jail’s  
8 inaccessibility, Defendants have taken no steps to comply with the ADA.

9 On September 20, 2016, Plaintiffs’ counsel wrote to Deputy County Counsel  
10 Courtney Abril outlining the serious violations Plaintiffs’ counsel uncovered at the Jail,  
11 including the serious concerns about conditions faced by prisoners with disabilities, and  
12 enclosed a Proposed Stipulated Order aimed at cooperating to remedy problems at the Jail,  
13 asking that the parties meet within 30 days to discuss entering into the Order. Grunfeld  
14 Decl. ¶ 25, Exhibit L. Defendants declined, sought additional time, and retained outside  
15 counsel. Grunfeld Decl. ¶ 26. Plaintiffs’ counsel then wrote to Defendants’ outside  
16 counsel seeking a stipulation to the filing of a Proposed Supplemental Civil Class Action  
17 Complaint, which was again declined. *Id.*

18 **ARGUMENT**

19 **I. THIS COURT SHOULD GRANT PLAINTIFFS’ MOTION TO**  
20 **SUPPLEMENT BECAUSE RULE 15(d) ESTABLISHES A LIBERAL**  
21 **STANDARD FOR SUPPLEMENTING, THIS COURT IS IDEALLY**  
22 **POSITIONED TO RULE ON THE CLOSELY RELATED CLAIMS IN THE**  
23 **ORIGINAL AND SUPPLEMENTAL COMPLAINTS, AND DEFENDANTS**  
24 **WOULD SUFFER NO UNDUE PREJUDICE.**

25 “On motion and reasonable notice, the court may, on just terms, permit a party to  
26 serve a supplemental pleading setting out any transaction, occurrence, or event that  
27 happened after the date of the pleading to be supplemented.” Fed. R. Civ. P. 15(d). A  
28 Supplemental Complaint like the one proposed by Plaintiffs would update the pleadings  
with claims under the ADA and related statutes “that happened after the date of the  
pleading to be supplemented.” *Id.* Courts grant Rule 15(d) motions when the original and

1 supplemental pleadings are closely related and there is no undue prejudice to the opposing  
 2 party. Because Plaintiffs' Proposed Supplemental Complaint meets those requirements,  
 3 this Court, which is the ideal forum to address the claims of the Supplemental Complaint,  
 4 should allow its filing under Rule 15(d).

5 **II. RULE 15 ESTABLISHES A LIBERAL STANDARD FOR**  
 6 **SUPPLEMENTING PLEADINGS WHEN JUSTICE REQUIRES IT.**

7 Motions to supplement pleadings that bring an action up to date under Rule 15(d)  
 8 are to be granted under the same standards for leave to amend under Rule 15(a): "freely  
 9 given when justice requires it." *See, e.g., Glatt v. Chicago Park Dist.*, 87 F.3d 190, 194  
 10 (7th Cir. 1996). Courts routinely apply this policy with "extreme liberality." *Eminence*  
 11 *Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (citations omitted).

12 The use of Rule 15(d) to file supplemental pleadings is "favored" and "permits the  
 13 bringing of new claims...to promote the economical and speedy disposition" of a case.  
 14 *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir. 1988). Courts have long favored allowing  
 15 parties to amend and supplement their pleadings to set forth new facts and update earlier  
 16 pleadings, change the nature of the relief requested, and add new parties when events make  
 17 it necessary. *See Griffin v. County School Board*, 377 U.S. 218, 226-227 (1964). New  
 18 causes of action may be added that were not alleged in the original complaint and that did  
 19 not exist at the time the original complaint was filed. *See, e.g., United States ex. rel. Atkins*  
 20 *v. Reiten*, 313 F.2d 673, 675 (9th Cir. 1975).

21 Rule 15(d) is intended to promote "as complete an adjudication of the dispute  
 22 between the parties as possible by allowing the addition of claims which arise after the  
 23 initial pleadings are filed." *William Inglis & Sons Baking Co. v. ITT Continental Baking*  
 24 *Co., Inc.*, 668 F.2d 1014, 1057 (9th Cir. 1981). To promote a completed resolution of  
 25 parties' claims, supplemental pleadings are allowed even years after the filing of an initial  
 26 complaint and entry of a final judgment or consent decree, especially when a court retains  
 27 jurisdiction over a case's disposition. *See, e.g., Griffin*, 377 U.S. at 222-27 (plaintiffs  
 28 allowed to file a supplemental pleading years after a permanent injunction because court

1 retained an interest in ensuring desegregation of school district); *Keith*, 858 F.2d at 470,  
2 474-476 (allowing filing of supplemental complaint adding a party and civil rights cause of  
3 action in case where the district court retained jurisdiction over consent decree requiring  
4 authorities to provide housing for displaced residents). In such cases, supplemental  
5 pleadings allow a court to provide more complete relief in one action and avoid separate  
6 actions addressing the same central concerns. *Id.* at 473 (quoting *New Amsterdam*  
7 *Casualty Co. v. Waller*, 323 F.2d 20, 28-29 (4th Cir. 1963), *cert. denied*, 376 U.S. 963  
8 (1964)).

9 In considering whether to allow a supplemental complaint, courts look to whether a  
10 relationship exists between the new allegations and the claims in the original complaint.  
11 *Id.* at 474. If a supplemental pleading meets this minimal requirement, it will be allowed  
12 absent a showing of prejudice to Defendants. *Id.* at 475.

13 **III. THERE IS A CLOSE AND CLEAR RELATIONSHIP BETWEEN THE**  
14 **CLAIMS IN THE SUPPLEMENTAL AND ORIGINAL COMPLAINTS, AND**  
15 **THIS COURT IS IDEALLY POSITIONED TO RULE ON THE RIGHTS IN**  
16 **QUESTION BECAUSE IT RETAINED JURISDICTION AND NO**  
17 **PREJUDICE WILL FALL ON DEFENDANTS.**

18 In this case, there are three reasons the filing of Plaintiffs' Proposed Supplemental  
19 Complaint seeking to validate the rights of prisoners with disabilities should be allowed.  
20 First, the Supplemental Complaint shares the same concern as the original complaint:  
21 correcting ongoing deprivations of prisoners' federal rights at the Jail. Second, given the  
22 ongoing proceedings to enforce the consent decree and remedy constitutional violations,  
23 adjudication of the Proposed Supplemental Complaint by this Court promotes judicial  
24 efficiency. Finally, Defendants will not suffer prejudice and in fact will benefit from  
25 efficient and consistent rulings by one court.

26 **A. The Supplemental Complaint Is Closely Related to the Original**  
27 **Pleading.**

28 In *Griffin*, the Supreme Court upheld the district court's decision to allow a  
supplemental pleading in a case where a Virginia school district closed public schools and  
opened private schools for whites in order to circumvent the court's ruling ordering

1 desegregation. The Supreme Court noted that “[t]he supplemental pleading did add new  
2 parties and rely in good part on transactions, occurrences, and events which happened  
3 since the action had begun.” *Griffin*, 377 U.S. at 226. The Court allowed the  
4 supplemental complaint, stating that “Rule 15(d) of the Federal Rules of Civil Procedure  
5 plainly permits supplemental amendments to cover events happening after suit ....” *Id.* at  
6 227 (footnote omitted). The Ninth Circuit has allowed a supplemental pleading upon a  
7 finding of “some relationship” between newly alleged matters and the subject of the  
8 original action, not necessarily arising from the same transaction. *Keith*, 858 F.2d. at 474.

9 Plaintiffs’ Proposed Supplemental Complaint is related to the original complaint  
10 and the Consent Decree this Court approved. The original complaint and the Proposed  
11 Supplemental Complaint share the same animating concern: ending the unlawful practices  
12 at the Jail that deprive prisoners of rights secured by the U.S. Constitution and federal and  
13 state laws. While the ADA had not been enacted at the time of the filing of the original  
14 complaint, it sought to address issues now governed by the ADA, including provision of  
15 assistive devices, an adequate grievance system, and equal access to programs and  
16 services. The Consent Decree arising from the original complaint requires the Jail to  
17 establish a functional grievance system, provide, repair, and allow prisoners to keep  
18 needed devices, including prosthetics, hearing aids, and other “health aids,” mandates  
19 certain standards for the provision of medical and mental care for the Jail, and demands  
20 full compliance with California regulations for detention facilities. *See* Grunfeld Decl.,  
21 Exhibit C. The Proposed Supplemental Complaint brings the original complaint up to date  
22 by specifically alleging Defendants’ failure to comply with these provisions in the Consent  
23 Decree and to accommodate prisoners with disabilities violates federal and state law.  
24 Given the closely-shared concerns of the original complaint, the Consent Decree, and the  
25 Proposed Supplemental Complaint, the requirements of Rule 15(d) are met.

1           **B.     Because This Court Has Retained Jurisdiction Over the Consent Decree**  
2           **Guaranteeing Constitutional Rights at the Jail, It Is Positioned to**  
3           **Efficiently Adjudicate the ADA and Other Disability Claims of**  
4           **Prisoners in the Jail.**

4           Supplemental pleadings are especially favored in cases where a district court retains  
5 jurisdiction or an interest in seeing a case’s disposition. *See Griffin*, 377 U.S. at 226-227  
6 (allowing supplemental pleading alleging efforts to circumvent district court’s ruling);  
7 *Keith*, 858 F.2d at 474 (noting that “[s]ince the [district] court expressly reserved  
8 jurisdiction over later developments, an even stronger case is presented here for permitting  
9 a supplemental complaint”); *Poindexter v. Louisiana Fin. Assistance Comm’n*, 296 F.  
10 Supp. 686 (E.D. La. 1968) (allowing supplemental complaint alleging state’s  
11 discrimination in education where court had entered decree); *Habitat Educ. Center, Inc. v.*  
12 *Kimbell*, 250 F.R.D. 397 (E.D. Wis. 2008) (allowing supplemental pleading where court  
13 retained jurisdiction to enforce provisions of injunction).

14           When this Court entered the Consent Decree, it specifically stated that “[t]he Court  
15 shall retain jurisdiciton [sic] of this case for at least the period of time necessary to resolve  
16 the issues specifically reserved in the Consent Decree.” Dkt. No. 77. More recently, this  
17 Court denied Defendants’ motion to terminate the Consent Decree, a decision that the  
18 Ninth Circuit has affirmed. The Consent Decree remains in effect and the Court retains  
19 jurisdiction to enforce it.

20           Plaintiffs recently filed a Motion to Enforce the Consent Decree and for Further  
21 Remedial Orders (“Motion”), Dkt. No. 163, in which Plaintiffs allege serious concerns  
22 regarding the Jail’s provision of medical and mental health care and exercise. Many of the  
23 issues raised in the Motion relate to Plaintiffs’ Proposed Supplemental Complaint, which  
24 alleges violations of specific portions of the Consent Decree, the ADA, and related laws at  
25 the Jail. The Court’s exercise of continuing jurisdiction over the Consent Decree and its  
26 expertise in the conditions addressed in the Motion and the Proposed Supplemental  
27 Complaint favor allowing the Supplemental Complaint. Efficiency will be achieved  
28 through the Supplemental Complaint because “the entire controversy between the parties

1 could be settled in one action ....” 6A Charles Allen Wright, Arthur R. Miller & Mary  
 2 Kay Kane, *Federal Practice and Procedure: Civil 2D* § 1506 (1990).

3 **C. Because No Factors Exist That Militate Against Supplementation, This**  
 4 **Court Should Grant Leave.**

5 The Supreme Court has articulated the Rule 15 standard: “In the absence of ...  
 6 undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure  
 7 deficiencies by amendments previously allowed, undue prejudice to the opposing party by  
 8 virtue of allowance of the amendment, [or] futility of amendment...the leave sought  
 9 should, as the rules require, be ‘freely given.’” *Foman v. Davis*, 371 U.S. 178, 182 (1962).  
 10 The Ninth Circuit has held that “Federal Rule of Civil Procedure 15(d) allows the addition  
 11 of post-complaint allegations. Motions to amend pursuant to Rule 15(d) should be granted  
 12 ‘[u]nless undue prejudice to the opposing party will result.’” *LaSalvia v. United Dairymen*  
 13 *of Arizona*, 804 F.2d 1113, 1119 (9th Cir. 1986) (quoting *Howey v. U.S.*, 481 F.2d 1187,  
 14 1190 (9th Cir. 1973)). Not all of the factors carry the same weight, with prejudice to the  
 15 opposing party being the crucial factor. *Eminence Capital*, 316 F.3d at 1052. Absent a  
 16 showing of the above factors, “there exists a **presumption** under Rule 15(a) in favor of  
 17 granting leave to amend.” *Id.* (emphasis in original). The party opposing amendment  
 18 bears the burden of showing prejudice. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183,  
 19 187 (9th Cir. 1987). Further, “any prejudice to the nonmovant must be weighed against  
 20 the prejudice to the moving party by not allowing the amendment.” *Bell v. Allstate Life*  
 21 *Ins. Co.*, 160 F.3d 452, 454 (8th Cir. 1998).

22 In this case, Defendants will not be able to show any of the factors weighing against  
 23 granting leave to file the Supplemental Complaint. There has been no undue delay by  
 24 Plaintiffs. It is only in the last three years that monitoring of the Consent Decree has  
 25 resumed with the substitution of new counsel for Plaintiffs. Grunfeld Decl. ¶¶ 12-14.  
 26 Plaintiffs’ original counsel in the case, California Rural Legal Assistance, moved to  
 27 withdraw from this case in 2013 when Defendants’ Motion to Terminate was filed. At that  
 28 time, CRLA had been prohibited by federal law since 1996 from participating in class



1 action suits or any civil litigation involving persons incarcerated in any setting, and had  
2 carried out no monitoring of the Consent Decree since at least August 1, 1996. Dkt. 99. In  
3 effect, this meant that in the almost-seventeen years between CRLA's legally-mandated  
4 retreat from the case and the Court's appointment of current Plaintiffs' counsel on June 21,  
5 2013, the Jail was under no supervision to ensure compliance with the Consent Decree. *Id.*

6 Plaintiffs' current counsel resumed monitoring of the Consent Decree after being  
7 appointed, conducting numerous interviews with Jail staff and prisoners and reviewing  
8 thousands of pages of documents, and finding that conditions for prisoners at the Jail,  
9 especially those with disabilities, remain unlawful. Only three years have passed since the  
10 appointment of Plaintiffs' new counsel, two years since the Court's denial of Defendants'  
11 Motion to Terminate, and less than six months since the Ninth Circuit affirmed this  
12 Court's decision. During that time period, Plaintiffs' counsel have repeatedly informed  
13 Defendants of their violations of the ADA and related laws and attempted to work on  
14 remedies without the Court's intervention. These efforts have failed. Grunfeld Decl. ¶ 15-  
15 26.

16 Defendants cannot claim "undue prejudice" from the Supplemental Complaint. It  
17 seeks only injunctive relief, not monetary damages, and names Defendants in their official  
18 capacities only. Regardless of when Plaintiffs file their Supplemental Complaint and  
19 whether it is filed in this action or on its own, Defendants are required to comply with the  
20 ADA, the Rehabilitation Act, and the California Government Code in operating their Jail  
21 system. Defendants have acknowledged as much by commissioning the CalCasp Report,  
22 which found the Jail out of compliance with current accessibility standards.

23 Seeking to avoid this motion, Plaintiffs' counsel approached Defendants with a  
24 stipulation to file the Proposed Supplemental Complaint without prejudice to Defendants'  
25 defenses. Defendants rebuffed this effort (*id.*, ¶ 26), leaving Plaintiffs no choice but to ask  
26 the Court for leave to file a Proposed Supplemental Complaint to protect the rights of  
27 prisoners with disabilities at the Jail.

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1 ///

2 **CONCLUSION**

3 For all the foregoing reasons, Plaintiffs respectfully request leave to file the  
4 Proposed Supplemental Complaint and ask the Court to enter the Proposed Order filed  
5 herewith.

6  
7 DATED: November 16, 2016

Respectfully submitted,

8 ROSEN BIEN GALVAN & GRUNFELD LLP

9 By: /s/ Gay Crosthwait Grunfeld

10 Gay Crosthwait Grunfeld

11 Attorneys for Plaintiffs  
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