

1 GAY C. GRUNFELD – 121944
VAN SWEARINGEN – 259809
2 MICHAEL FREEDMAN – 262850
ERIC MONEK ANDERSON – 320934
3 HANNAH M. CHARTOFF – 324529
BEN HOLSTON – 341439
4 ROSEN BIEN
GALVAN & GRUNFELD LLP
5 101 Mission Street, Sixth Floor
San Francisco, California 94105-1738
6 Telephone: (415) 433-6830
Facsimile: (415) 433-7104
7 ggrunfeld@rbgg.com
vswearingen@rbgg.com
8 mfreedman@rbgg.com
eanderson@rbgg.com
9 hchartoff@rbgg.com
bholston@rbgg.com

10 AARON J. FISCHER – 247391
11 LAW OFFICE OF
AARON J. FISCHER
12 1400 Shattuck Square Suite 12 - #344
Berkeley, California 94709
13 Telephone: (510) 806-7366
Facsimile: (510) 694-6314
14 ajf@aaronfischerlaw.com

15 Attorneys for Plaintiffs and the
16 Certified Class and Subclasses

17 UNITED STATES DISTRICT COURT
18 SOUTHERN DISTRICT OF CALIFORNIA

19 DARRYL DUNSMORE, ANDREE
ANDRADE, ERNEST ARCHULETA,
20 JAMES CLARK, ANTHONY EDWARDS,
REANNA LEVY, JOSUE LOPEZ,
21 CHRISTOPHER NORWOOD, JESSE
OLIVARES, GUSTAVO SEPULVEDA,
22 MICHAEL TAYLOR, and LAURA
ZOERNER, on behalf of themselves and all
23 others similarly situated,
24 Plaintiffs,
25 v.
26 SAN DIEGO COUNTY SHERIFF'S
DEPARTMENT, COUNTY OF SAN
DIEGO, SAN DIEGO COUNTY
27 PROBATION DEPARTMENT, and DOES
1 to 20, inclusive,
28 Defendants.

CHRISTOPHER M. YOUNG – 163319
ISABELLA NEAL – 328323
OLIVER KIEFER – 332830
DLA PIPER LLP (US)
4365 Executive Drive, Suite 1100
San Diego, California 92121-2133
Telephone: (858) 677-1400
Facsimile: (858) 677-1401
christopher.young@dlapiper.com
isabella.neal@dlapiper.com
oliver.kiefer@dlapiper.com

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

**REBUTTAL EXPERT REPORT
OF SYROUN SANOSSIAN**

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

Trial Date: None Set

1 **I. INTRODUCTION**

2 I, Syroun Sanossian, declare:

3 1. I have reviewed the two expert reports that Defendants served on
4 August 21, 2024 regarding disability access. Paul Joelson wrote a report on
5 physical disability access titled Report – Summary of Consulting and Inspection
6 Activities; Inspection of Seven (7) Detention Facilities (“Joelson Report”). Julian
7 Martinez wrote a report on the Sheriff’s Department’s ADA practices and policies
8 (“Martinez Report”).

9 2. The reports do not alter my overall opinions that Defendants’ jail
10 facilities are not accessible to people with disabilities and that Defendants’ policies,
11 procedures, and practices for accessibility remain inadequate. *See* Expert Report of
12 Syroun Sanossian, Aug. 21, 2024 (“Sanossian Report”), ¶¶ 53, 133, 186. In fact,
13 generally Mr. Joelson agrees with me that none of the facilities operated by the San
14 Diego Sheriff’s Department, now called the Sheriff’s Office, met accessibility
15 standards as identified during his inspections. What this means as a practical matter
16 is that every day, many people with disabilities are housed inaccessibly in the jail
17 facilities and some are at risk of injury. In addition, the Sheriff’s Office clusters
18 people with disabilities at Central Jail, which lacks programming provided at Vista
19 and East Mesa. In a system like this, with insufficient accessible housing and
20 clustering, policies and procedures are key to ensuring that incarcerated people with
21 disabilities have access to all programs, services and activities offered and are not
22 discriminated against. Unfortunately, Mr. Martinez’s report does not allay my
23 concerns that the current policies and procedures have significant gaps. My specific
24 responses to the Joelson Report and the Martinez Report follow.

25 3. An index of the additional documents I have reviewed for this rebuttal
26 report is attached hereto as **Exhibit A**.

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1 **II. MR. JOELSON AGREES WITH MY CONCLUSION THAT THESE**
2 **JAIL FACILITIES ARE NOT ACCESSIBLE TO PEOPLE WITH**
3 **DISABILITIES**

4 4. Mr. Joelson's report describes his opinions about the accessibility of
5 the seven Jail detention facilities based on his inspections of those facilities. Below,
6 I discuss where Mr. Joelson agrees with my specific opinions, where I disagree with
7 Mr. Joelson's opinions or have questions about his conclusions, and where
8 Mr. Joelson provides new information relevant to my opinions.

9 **A. Mr. Joelson Concludes That Each Jail Facility Requires**
10 **Modifications to Comply with Applicable Standards**

11 5. My primary takeaway from the Joelson Report is that he appears to
12 agree with my findings that the San Diego County Jail facilities are not accessible to
13 incarcerated people with disabilities under the applicable standards. As discussed
14 below, however, Mr. Joelson identified fewer barriers than I did in my reports, and
15 he also fails to recommend remediation of all barriers. In other instances, his
16 recommendations will not achieve compliance with applicable standards.

17 6. Regarding the applicable standards, Mr. Joelson states in the overall
18 introduction that they are the 2010 ADA Design Standards (ADAS). Joelson Report
19 at 1. The header of Mr. Joelson's report also acknowledges that the 2022 California
20 Building Code (CBC) is an applicable standard. *Id.* At times Mr. Joelson fails to
21 apply the most stringent requirements between the ADAS and CBC, as is required.
22 For example, Mr. Joelson found issues with the showers throughout the facilities but
23 either claims they cannot be altered to comply or recommends the construction of
24 transfer showers that are prohibited for use in jails under the CBC. *See* Joelson
25 Report at 5-6, 65-66.

26 7. Below, I discuss Mr. Joelson's findings about each facility, in the order
27 he discusses them.

28 **1. Rock Mountain Detention Facility**

8. At Rock Mountain, I found during a February 2023 inspection that the

1 facility was under construction, not open to any incarcerated people, and not
2 compliant. Sanossian Report at ¶ 99. I noted in my report that Sheriff’s Office
3 testimony indicated the facility was open only to a limited number of incarcerated
4 people as of 2024, construction remained ongoing, and that at most five people
5 using wheelchairs were housed there. *Id.* at ¶ 100. I also noted that the “large
6 unused capacity” at Rock Mountain may be at least a partial solution for the
7 Sheriff’s Office’s insufficient accessible housing systemwide. *Id.* at ¶ 101.

8 9. Mr. Joelson inspected the facility during construction and similarly
9 found barriers throughout the facility. Joelson Report at 6-7. As I did in my site
10 report on Rock Mountain, Mr. Joelson states that he offered recommendations for
11 alterations. *Id.* at 7. Mr. Joelson claims that the Sheriff’s Office is making or has
12 made changes that “reflected the recommendations in my report.” *Id.* However,
13 Mr. Joelson does not appear to offer any 2024 Rock Mountain inspection findings to
14 support any conclusion that Rock Mountain as-built conditions are compliant with
15 the 2010 ADAS or the 2022 CBC. I have been unable to inspect Rock Mountain
16 since February 2023 to evaluate whether, as Mr. Joelson claims, the Sheriff’s
17 Office’s modifications to Rock Mountain do comply with the applicable standards.
18 In addition, Mr. Joelson fails to acknowledge that only a small percentage of Rock
19 Mountain has been opened for use.

20 10. I also note that Mr. Joelson’s report does not cover the full scope of
21 alterations I recommended in my Rock Mountain report. For example, the Joelson
22 Report does not mention alterations required to provide mobility features in medical
23 dormitory units 2058 and 2060, where no accessible dining tables, lavatories,
24 dispensers, mirrors, or showers were provided when I inspected. Rock Mountain
25 Report, Barrier Numbers 12A-12O, 14A-14N. He also does not call for alterations
26 to provide access in isolation cells 2014 or 2025, which lacked accessible showers,
27 toilets and lavatories. Rock Mountain Report, Barrier Numbers 17A-17K, 18A-
28 18M. It also appeared that Mr. Joelson did not consider that under both the ADAS

1 and CBC, accessible showers constructed in medical units cannot have a low, wall-
2 mounted spray head as an alternative to a shower spray unit on a hose. *See, e.g.,*
3 ADAS 605.6.

4 11. In addition, as noted above, although Mr. Joelson recommends
5 constructing alternate roll-in showers, his report contains sketches of transfer
6 showers, Joelson Report at 65-66, which is a serious concern. Transfer showers are
7 expressly prohibited under the CBC in detention and correctional facilities as
8 accessible showers. The next page of his report contains a sketch for a toilet room
9 that shows a 60” turning circle in the toilet room, but it lacks toilet maneuvering
10 clearance required by both the ADA and CBC, which is different from the turning
11 circle, and a common source of violations in alterations and new construction. It is
12 unclear where this toilet room sketch should apply in the Rock Mountain report. I
13 have concerns based on these recommendations whether Rock Mountain will be
14 fully compliant with the 2010 ADAS and the 2022 CBC.

15 2. San Diego Central Jail

16 12. As noted in my report, after my inspection of Central Jail and findings
17 of numerous barriers at a facility where the Sheriff’s Department was housing many
18 people with serious mobility disabilities, the parties agreed to a partial settlement
19 that requires the Sheriff’s Department to make ADA modifications throughout
20 Central Jail. Sanossian Report at ¶¶ 102-03. Mr. Joelson agrees that Central Jail,
21 for which construction began after the enforcement of the ADA, lacked accessible
22 housing, dining, toileting, showering facilities and program areas. Joelson Report at
23 8. Mr. Joelson does not acknowledge that the Sheriff’s Department only made the
24 modifications he discusses after a settlement with the Plaintiffs in this case. As
25 noted in my report, I have some concerns about the modifications being made at
26 Central Jail based on the plans I reviewed, including the compliance of the
27 maneuvering space between single bunks positioned to create alcoves, not niches,
28 in the 8C and 8D ADA dorms. Sanossian Report at ¶¶ 103-04. Mr. Joelson’s report

1 includes photos of a few modifications at Central Jail, Joelson Report at 9-12, but
2 not any photos of the beds in the 8C and 8D ADA dorms. I understand that under
3 the settlement, a neutral expert has been retained to inspect the facility and that I
4 will be allowed to inspect the work at some point, as well.

5 3. **Las Colinas Detention and Reentry Facility**

6 13. At Las Colinas, which is the newest facility constructed after the
7 enforcement of the ADA, I concluded that the facility was nonetheless not
8 accessible and identified 843 discrete barriers to access in a limited inspection.
9 Sanossian Report at ¶ 82. Similarly, Mr. Joelson “determined that installation of
10 accessible features, elements and components was not properly executed during the
11 original construction phase.” Joelson Report at 6.

12 14. Mr. Joelson states that the Sheriff’s Department has engaged a third-
13 party architect to perform an independent assessment, develop a list of deficiencies
14 (punchlist), and bid documents to achieve compliance at Las Colinas. This is
15 somewhat different than the process described by Mr. Bennett in his deposition, as
16 Mr. Bennett said there was already a “plan” for renovations at Las Colinas and that
17 the Board of Supervisors had allocated \$5 million. *See* Sanossian Report at ¶¶ 86-
18 88. Based on my inspection, I expressed uncertainty that \$5 million was enough to
19 address all the barriers at Las Colinas. *Id.* at ¶ 87. The Joelson Report suggests that
20 the Sheriff’s Office has no idea whether that \$5 million is enough to address all of
21 the barriers, as they have engaged an architect to identify the deficiencies and then
22 will solicit bids to remediate. Joelson Report at 13. This only reinforces my
23 conclusion that the \$5 million estimate is insufficient.

24 15. In addition, these renovations to Las Colinas, while commendable if
25 implemented, only begin to approach the actual needs of incarcerated people with
26 disabilities. They will not provide an accessible reentry program for men currently
27 provided at East Mesa or address the remaining jail facilities that must be altered so
28 that the Sheriff’s Office can provide enough housing and associated sanitary

1 facilities to house at least the current number of incarcerated people with mobility
2 disabilities in a way that allows them to eat toilet, shower, and sleep safely at the
3 correct classification levels. *See* Sanossian Report at ¶¶ 107-115.

4 16. Mr. Joelson provides a vague statement about the reasons that Las
5 Colinas is not compliant. Mr. Joelson reports that Scott Bennett, the Sheriff's Office
6 facilities manager, attributed the ADA and CBC violations identified at Las Colinas
7 to contractor or subcontractor error. Joelson Report at 13. However, County
8 officials should have ensured that the contractors and subcontractors performed their
9 duties according to approved construction documents. In addition, the Sheriff's
10 Office is the common denominator, as my inspection at East Mesa found significant
11 noncompliance in post-ADA additions at East Mesa. As discussed in my report, the
12 Sheriff's Office's practice of self-permitting may be the source of these recurring
13 failures to achieve compliance. Sanossian Report at ¶ 54.

14 17. Finally, I think that Mr. Joelson identified fewer violations than there
15 are at Las Colinas, even though he inspected some areas I did not. In fact, my
16 reporting identifies 843 separate violations over 442 pages, yet his report identifies
17 only 63 over 7 pages, from my count. While Mr. Joelson and I agree that Las
18 Colinas (and the other Jail facilities) are not accessible to incarcerated people with
19 disabilities, our reporting is vastly different. Firstly, Mr. Joelson reports on barriers
20 to access, but more often than not, does not recommend any remediation. My count
21 indicates that while we recommend remediation for each of the 843 barriers we
22 reported, Mr. Joelson recommended remediation for only 24 of the 63 barriers he
23 reported. In one such instance, where he reports that the control height for a soap
24 dispenser accessory in a toilet room is not compliant, at times, he only reports the
25 barrier. *See* Joelson Report, Las Colinas Assessment, Item 1.2. At other times, he
26 recommends remediation to locate the dispenser control within compliant reach
27 range per the CBC 11B-603.5. *See* Joelson Report, Las Colinas Assessment, Item
28 13.3. His reporting is rife with this type of inconsistency. It is also noteworthy that

1 his recommendations seldom include alterations even where that is likely to be the
2 only option. For example, in a toilet at intake, he recommends moving a dispenser
3 and mirror to compliant locations but does not recommend altering the toilet room
4 by removing a privacy wall to provide both an accessible lavatory (hand wash basin)
5 or toilet. *See* Joelson Report, Las Colinas Assessment, Item 13. The remediation he
6 appears to recommend is merely window-dressing.

7 18. Mr. Joelson’s reporting was also comprised of barrier items numbered
8 by “Lines” that are not consecutive (2, 3, 5 12 per Joelson Report, Las Colinas
9 Assessment, Page 4), which is puzzling. Did we get a partial version of the report or
10 is there another plausible reason that Mr. Joelson issues reporting with gaps in
11 barrier numbering?

12 19. Mr. Joelson also calls for differing recommended solutions for the same
13 barrier without explanation as to the differences, particularly for shower seats. For
14 instance, in the shower at the intake area at Las Colinas, a dressing bench is pro-
15 vided, but it was installed so close to the shower entry that a person in a wheelchair
16 cannot position adjacent to a shower seat to transfer into the shower. Mr. Joelson
17 claims that the dressing bench at the intake shower is too small, which is correct, but
18 he does not identify the fact that a wheelchair cannot fit in the narrow space left
19 between the dressing bench and shower in which a person using a wheelchair must
20 fit to transfer to a shower seat, which is required in an accessible shower.¹ He goes
21 on to describe at least 4 different scenarios for whether a shower seat is required,
22 although the applicable standards have only one. In the Central Jail report, he
23 describes the installation of shower seats near the entry as a “design premise” rather
24 than a requirement, and goes on within the same barrier items to state “reasonable
25 interpretation is shower seats are not required.” In the same barrier item he goes on
26

27 _____
28 ¹ *See* CBC 11B-608.4 Seats. A folding seat shall be provided in roll-in type showers
and transfer type shower compartments. Seats shall comply with Section 11B-610.

1 to state “standards allow for facilities to offer options, such as shower chairs, mobile
2 seats, a fixed seat, etc.” *See* Joelson Report, Central Jail Assessment, Items 236-
3 243. In the Las Colinas report, he states that a shower footprint “would be large
4 enough if a shower seat is not installed,” rather than stating that the shower seat is
5 required. *See* Joelson Report, Las Colinas Assessment, Item 41. He fails to mention
6 that folding seats do not affect the size of a shower footprint, which is why they are
7 required. He goes on to state in the same report, when reporting on another shower
8 that “if the plan is to install a fixed shower seat,” as though shower seats are not
9 required. *See* Joelson Report, Las Colinas Assessment, Item 55. In his report on
10 George Bailey, he reports on housing unit 3B, Item 7 and the medical unit, Item 16,
11 where he states that no shower seat is provided and marks this statement in red,
12 signifying that this barrier must be remediated, yet he provides no recommendation
13 for remediation. This is concerning as his recommendations for remediation
14 vacillate between providing shower chairs, mobile seats, or fixed seats when the
15 only compliant shower seat is a folding shower seat which, from a structural
16 standpoint, is fixed to a wall. No explanation is provided for these differing claims.

17 20. Ultimately, I disagree with Mr. Joelson’s frequent suggestion that
18 shower seats are not required. Although the ADAS does not require a shower seat,
19 the CBC requires one: “a folding seat **shall be provided** in roll-in type showers and
20 transfer type shower compartments. Seats shall comply with Section 11B-610.”
21 CBC 608.4 (emphasis added). Indeed, Defendants have installed folding shower
22 seats in housing units at Rock Mountain as part of the alterations project and in what
23 Mr. Joelson states are photos from the recent alterations in Central Jail, yet
24 Mr. Joelson fails to call for these same folding seats to be installed consistently from
25 facility to facility.

26 **4. George Bailey Detention Facility**

27 21. In my report, I found that George Bailey has no accessible housing for
28 people with disabilities. Sanossian Report at ¶ 57. Mr. Joelson only very briefly

1 discusses George Bailey in his report but appears to agree, as he states in his
2 summary that the facility gives “limited consideration” to accessibility features for
3 people with disabilities. Joelson Report at 14. He identifies no accessible housing
4 at George Bailey and admits that the facility lacks sanitary facilities (such as toilets,
5 showers, and lavatories) that are accessible. *Id.* This is unacceptable, as I have
6 reviewed rosters showing that people with mobility and vision disabilities are
7 housed at George Bailey.

8 **5. East Mesa Reentry Facility**

9 22. In my report, I describe findings that indicate that East Mesa does not
10 have accessible dining, showering, or toileting facilities for people with disabilities
11 at East Mesa, but that it may be one of the easier facilities to alter to provide
12 mobility features that comply. Sanossian Report at ¶ 89. Mr. Joelson gives nearly a
13 verbatim opinion about East Mesa as he does about George Bailey, stating in his
14 summary that the facility gives “limited consideration” to accessibility features for
15 people with disabilities. Joelson Report at 14. Mr. Joelson refers to celled housing
16 at East Mesa, but we observed no such housing there – only dormitories. *Id.* In
17 addition, Mr. Joelson surprisingly claims that the East Mesa facility lacks accessible
18 mobility features even though the pre-ADA dormitories had obvious alterations to
19 sleeping areas where double bunks are in place, not triple bunks common in other
20 facilities. It appears that at some point, beds were removed to provide required
21 maneuvering clearance between beds that create an alcove.² The associated showers
22 had no curbs and were configured as open gang showers, much the same as the
23 toileting areas, in conditions similar to the areas at Central Jail that Mr. Joelson
24 states made it possible to alter the housing units to comply with the ADAS and CCR
25

26 ² ADAS and CBC 11B define an alcove as a space confined on all or part of three
27 sides per ADAS 305.7.1 & 305.7.2 and CBC 11B-305.7.1 & 11B-305.7.2 requiring
28 additional maneuvering clearance. In East Mesa dormitory sleeping areas, a
minimum 60” turning circle is provided in these alcoves between two beds to enable
parallel transfer required per 305.7.2.

1 Title 24. *See* Joelson Report at 8. This makes me question why Mr. Joelson does
2 not discuss the feasibility of modifying East Mesa dormitories to provide accessible
3 housing.

4 23. Finally, although Mr. Joelson discusses East Mesa under the header of
5 facilities that “represent pre-ADA design and construction,” he fails to acknowledge
6 that multiple buildings at East Mesa—including a processing and release building,
7 as well as two dormitories, one of which he assessed, were constructed in 2014.
8 Mr. Joelson lumps East Mesa in with other facilities like Vista that are obviously
9 antiquated and non-compliant. But East Mesa is quite a different facility, both in
10 terms of the range of programming offered, and the fact that large portions of the
11 facility should have been constructed to comply with the 2010 ADA Standards.
12 Prohibiting incarcerated people with mobility disabilities from being housed at East
13 Mesa denies these people access to the most significant programming I have seen
14 provided by the Sheriff’s Office.

15 **6. South Bay Detention Facility**

16 24. We did not visit the South Bay facility (located underneath a
17 courthouse) as the Defendants admitted that the facility was not accessible to
18 incarcerated people with disabilities. Sanossian Report at ¶ 19. Mr. Joelson
19 confirms that the Sheriff’s Department constructed the facility “with minimal or no
20 consideration to provide accessibility features for persons with disabilities.” Joelson
21 Report at 14. Mr. Joelson states that he recommended the Sheriff’s Office modify
22 one holding cell to accommodate a person with a mobility disability who uses a
23 wheelchair, *id.*, which will not provide any accessible housing for people with
24 disabilities. It is unclear when this much needed construction will occur; until then,
25 people with disabilities sent to the South Bay for court are denied their rights under
26 the ADA and potentially placed in harm’s way.

27 **7. Vista Detention Facility**

28 25. In my report, I found that the facility lacks any accessible housing for

1 people with disabilities. Sanossian Report at ¶ 73. Mr. Joelson’s report, as with the
2 previous facilities listed here, indicates that he agrees that the facility was
3 constructed “without consideration to provide accessibility features for persons with
4 disabilities.” Joelson Report at 13. However, he omits some barriers despite
5 inspecting the elements. In Mr. Joelson’s deficiency report for Vista, he begins by
6 identifying a curb ramp in the sallyport as present but not deficient. *See* Joelson
7 Vista Report, Page 1 (page 110 overall). My report indicated multiple deficiencies
8 in that curb ramp, but Mr. Joelson’s report does not state that the curb ramp requires
9 remediation. His report also ignores the non-compliant main entry door to the
10 facility in the sallyport that all people housed in this facility use. We identified the
11 door clear width as too narrow to provide wheelchair access required under the
12 ADAS or CBC. Other discrepancies exist in his report on the Vista facility similar
13 to what was identified in his Las Colinas Assessment. At Vista, he identified 98
14 separate barriers to access but failed to recommend remediation for any of those
15 barriers. Even in cases where he clearly noted that an element was not “wheelchair
16 accessible,” he failed to recommend remediation. *See* Joelson Vista Report, Items 1,
17 2, 4, 5, 6, 8, 9, 10, 14, 15 and 17. In Item 13, he actually states that the location of a
18 bench is “not conducive for a transfer from wheelchair” rather than stating that the
19 bench lacked clear space adjacent to one of the short ends and was required to be
20 relocated. Conversely, my report for Vista identified 809 barriers and
21 recommendations for remediation were provided for each.

22 **B. Mr. Joelson Fails to Consider Any Evidence About Whether**
23 **Defendants Have Sufficient Accessible Housing**

24 26. When discussing George Bailey, Vista, and East Mesa, which
25 Mr. Joelson agrees are not accessible, Mr. Joelson does not suggest that the facilities
26 should be altered to comply. Instead, Mr. Joelson states that all incarcerated people
27 who use wheelchairs should be housed “within recently upgraded areas” at Central
28 Jail or Rock Mountain. Joelson Report at 14. I agree that Rock Mountain was

1 observed to have housing cells that were the closest to fully compliant when
2 compared with all other jail facilities we visited. And I agree that Defendants
3 appear to be making modifications at Central Jail to comply with the settlement
4 agreement and provide more accessible housing there. However, Mr. Joelson does
5 not take the important step of evaluating whether Central Jail and Rock Mountain
6 have *sufficient* housing for all people with disabilities in the system at all
7 classification levels even once alterations are complete at Central given that Rock
8 Mountain is only partially open. Nor does Mr. Joelson consider whether clustering
9 people with disabilities at those facilities deprives them of access to programs, like
10 those offered only at East Mesa.

11 27. Left unsaid by Mr. Joelson is that the Rock Mountain facility is not
12 fully open and thus unable to house more than a few incarcerated people who use
13 wheelchairs. *See* Sanossian Report at ¶ 100. In addition, celled housing units at
14 Central clearly do not have the capacity to house people with mobility disabilities
15 presently incarcerated, as multiple units included several people with wheelchairs
16 despite having only one cell designated as accessible. *Id.* at ¶ 112. As noted in my
17 report, the Sheriff's Department needs to provide more compliant beds – including
18 for people who use wheelchairs as well as others with different mobility disabilities
19 – throughout the system. *Id.* at ¶ 114. Mr. Joelson does not ever consider the
20 Sheriff's Department's *own information* about whether Rock Mountain and Central
21 Jail are sufficient solutions for people with disabilities who need accessible housing,
22 when Mr. Joelson as the County's expert would surely have access to more
23 information than I. As noted in my report, it seems it is impossible to house all
24 current, and potentially future, incarcerated people with mobility disabilities in cells
25 or dormitories with mobility features without altering housing to comply at facilities
26 other than Central and Rock Mountain to accommodate incarcerated people with
27 mobility disabilities at all classification levels. *See* Sanossian Report at ¶ 114.

28 ///

1 **C. Mr. Joelson’s Discussion of Modifications at George Bailey, Vista,**
2 **and East Mesa**

3 28. Instead of recommending compliance at George Bailey, East Mesa, or
4 Vista, Mr. Joelson states that modifications should be made at a new facility where
5 modifications are more “readily achievable.” Joelson Report at 6. That is the wrong
6 standard. The standard of “readily achievable barrier removal” applies to ADA
7 Title III entities, which are privately owned and operated. 28 C.F.R. Part 36,
8 Section § 36.304 The standard that applies to existing facilities of ADA Title II
9 entities like the Defendants in this case is 28 C.F.R. § 35.150, which requires a
10 facility to ensure that each service, program, or activity is “readily accessible to and
11 usable by individuals with disabilities.” This means that alterations to existing
12 buildings must be designed and constructed, or altered, to be readily accessible to
13 and usable by individuals with disabilities. The question is not whether removing
14 the barriers are readily achievable. A Title II entity need not remedy a barrier only
15 if it would be a fundamental alteration or undue burden, as determined by the head
16 of the public entity through a well-defined process. I have seen no such
17 determination for the existing pre-ADA facilities.

18 29. In my report, to achieve program access in existing facilities, I
19 recommended the Sheriff’s Department consider ways to alter East Mesa to provide
20 compliant housing, given that many of the dormitories are partially compliant and
21 that facility provides programs not offered elsewhere in the Jail system. Sanossian
22 Report at ¶¶ 97-98, 114. At George Bailey and Vista, which are older facilities, I
23 suggested some minor remedies to provide accessibility for people with mobility
24 disabilities, especially for Vista which has a program for veterans not offered
25 anywhere else. *Id.* at ¶¶ 72, 81.

26 30. Mr. Joelson does not suggest alterations to comply at these facilities,
27 but instead suggests other alterations where facilities lack wall space required to
28 install compliant grab bars. Specifically, in those areas, he suggests that the best

1 approach is to install a shorter horizontal grab bar on whatever wall space exists
2 near the toilet which should be augmented with the installation of a vertical grab bar
3 above the short horizontal grab bar. Joelson Report at 6. However, these
4 recommendations could actually reduce usability for those with ambulatory
5 disabilities and create unsafe conditions. Nor does Mr. Joelson identify any specific
6 locations where the Sheriff's Department could install these non-compliant grab
7 bars, or what the dimensions between the grab bars and toilet would be, which
8 would help me evaluate the practicality of this vague suggestion.

9 31. Still, safe, usable grab bars must be horizontal and within accessible
10 reach range of the toilet, which is a fact that Mr. Joelson omits. Vertical grab bars
11 are primarily installed in residences where an individual user can specify a location
12 for installation of the vertical bar, and for whom the use of a horizontal grab bar is
13 less important or is omitted. Jail settings are locations where housing assignments
14 can change daily, making the installation of vertical grab bars at toilets problematic
15 for many because if installed within the 12 inches above the horizontal grab bar,
16 they block one of the most important intended uses of horizontal grab bars for those
17 with ambulatory disabilities. Access to an unobstructed wall surface above the grab
18 bars is essential to those with ambulatory disabilities who are typically standing
19 when grabbing the bars, rather than a wheelchair user who is using the bar
20 horizontally to pull themselves to the seat when transferring. If installed more than
21 12 inches above the horizontal grab bar, the vertical grab bar would be outside of
22 accessible reach range and too high to be useful.

23 32. In addition, the proximity of grab bars to the toilet matters; if the grab
24 bars are too far from the toilet seat, the user cannot reach the bar to firmly grasp for
25 support and physically ease themselves onto the toilet seat in a safe manner. Cells
26 in George Bailey have combo units with angled toilets so far from the closest wall
27 that installing a vertical grab bar on that distant wall would not be an improvement
28 for the reasons described above. *See* Barrier Records 42M, 54N, 61M or 64N. In

1 some instances, addressing this issue may involve furring out the wall, as
2 Mr. Joelson recommends for only one of these instances. *See* Joelson Report, Las
3 Colinas Assessment, Item 23.2. In my view, it could be performed at many
4 additional locations to achieve compliance and drastically increase safety for those
5 with ambulatory disabilities when toileting. The same issues were present at George
6 Bailey and Vista. *See, e.g.*, George Bailey Report Barrier Numbers 6H, 8J, 12G,
7 15F, 16E, 23T, 26T, 29S, 34R, 42M, 49M, 54N, 57J, 61M and 64N. In medical
8 housing and exercise yards at George Bailey, no grab bars are installed, yet the
9 installation of one side grab bar that is no more than 17 to 18 inches from the toilet
10 centerline would make a significant difference for those with ambulatory disabilities
11 who could more safely toilet (*see* Barrier Records 16E and 29S respectively).

12 33. In addition, the toileting areas we observed in Vista and George Bailey,
13 many of the cells were designed toilet/lavatory/drinking fountain combo units
14 installed on an angled wall. This creates an unused space between the toilet and
15 adjacent wall which, at present, means there is no wall on which a grab bar can be
16 installed for safe use; a fact which Mr. Joelson does not address. I agree with
17 Mr. Joelson that the grab bars he suggests are noncompliant; what he does not
18 disclose is that in many locations, they are also not safe.

19 34. As an alternative, as I noted in my report, the Sheriff's Department
20 could consider free-standing grab bars. Sanossian Report at ¶ 72. Other solutions
21 include minor construction to allow the side grab bar and toilet centerline to be
22 parallel, and the toilet centerline and wall to be no further apart than 18 inches. The
23 length of these added horizontal side grab bars would not be at least 48-inches long,
24 as required, but would provide a safe, usable alternative to any vertical grab bar for
25 people who are standing when they reach the toilet and attempt to safely seat
26 themselves. I strongly advocate for the installation of shorter horizontal bars where
27 this new wall space is not long enough to accommodate a compliant side grab bar. I
28 disagree with the installation of a vertical grab bar above a horizontal side or rear

1 grab bar at a toilet, especially without any specifics of where Mr. Joelson proposes
2 to add these.

3 35. Showers present different conditions. I agree with Mr. Joelson's
4 recommendation to install a vertical bar at a curb at a shower to assist those with
5 ambulatory disabilities to get over the curb with added stability at modular showers
6 as observed at modular showers in George Bailey and Vista. In other instances,
7 such as in dormitories in George Bailey (*see* Barrier Records 23V, 26V, 34U) and
8 celled housing units (*see* Barrier Number 41E, 44E, 48E, 52E 56D, 60E 63E) or in
9 dormitory housing at Vista (*see* Barrier Number 39C) it appears possible to remove
10 the existing shower curb, so a vertical bar should be only a temporary solution.

11 **D. Contrary to the Implications in the Joelson Report, the Sheriff's**
12 **Department Must Provide an Accessible Route**

13 36. The Joelson Report implies that my inspection reports improperly
14 include barriers such as protruding hazards or door operating force in areas where
15 incarcerated people are escorted through hallways. *See* Joelson Report at 5. This is
16 incorrect or a misinterpretation of our findings. Our reporting cited barriers in
17 accessible routes, which are barriers whether or not the incarcerated people traveling
18 through them are escorted or not. Mr. Joelson appears to claim that paths of travel
19 used by incarcerated people who are escorted can have non-compliant slopes, abrupt
20 changes in level or non-compliant surface conditions in violation of ADA and CBC
21 requirements. This is incorrect. Under the ADA and CBC, no distinction exists
22 between escorted and unescorted paths of travel.

23 37. In addition, Mr. Joelson states as a factual matter that by policy, no
24 incarcerated persons are allowed to travel through hallways or outside of housing
25 units unescorted. Joelson Report at 5. This is incorrect. During our limited site
26 visits, I observed many incarcerated people in the East Mesa facility traveling to and
27 from housing or programming with no escort and without apparent restraints. The
28 same was true at Las Colinas, and in Central Jail I observed an incarcerated person

1 using the Purple VRS device located in processing on his own, with no escort within
2 sight and with no visible restraints. Even if an incarcerated person is in restraints
3 and escorted, if they have a mobility or vision disability, they are at risk of falling if
4 the path of travel is inaccessible.

5 38. In terms of remedying these barriers, Mr. Joelson's report discusses
6 only path of travel barriers at Rock Mountain. His findings confirmed our findings,
7 although Mr. Joelson provides no recommendations for remediation even where he
8 admits that a ramp running slope exceeded 9.0%, which is dangerously steep and is
9 prohibited under the ADAS and CBC. Joelson Report at Slope Study, Page 2
10 (overall page 69). It is concerning that he addressed running and cross slopes in
11 exterior walkways with no mention of assessing barriers that constitute abrupt
12 changes in level (trip hazards) or horizontal openings, which are often the reason
13 that people with and without disabilities trip, fall and potentially become injured.
14 He asserts further than his "slope study" addresses the surface conditions of interior
15 hallways but does not indicate whether his assessment included running and cross
16 slope in interior walking surfaces.

17 **E. The Joelson Report Does Not Explain What He Means By "Critical**
18 **Locations"**

19 39. Mr. Joelson claims that his assessment included only "critical
20 locations," which is a term that does not exist under the ADA or CBC to my
21 knowledge. As noted, Mr. Joelson did not assess paths of travel at many jails, even
22 though these are, in fact, critical locations.

23 40. In my report, I cited barriers within housing units including required
24 signs and door hardware operated by incarcerated people in housing units, and hand
25 wash basins in medical examination rooms. Mr. Joelson appears to suggest
26 assessing these areas are not required to be accessible to housed people, but the
27 CBC requires accessible hand washing stations in these areas. *See* CBC 11B-805.
28 Ultimately, too, these were only a few of the thousands of barriers we found at the

1 Jail facilities, including barriers throughout housing, toileting, and showering
2 facilities – which Mr. Joelson himself confirmed.

3 **III. RESPONSE TO THE MARTINEZ REPORT**

4 41. Second, Mr. Martinez’s report discusses his opinions on the Sheriff’s
5 Department’s accessibility policies, procedures, practices, and training. In my
6 report, I noted how although the Sheriff’s Office has revised five ADA policies,
7 those policies and procedures contain shortcomings, and the Sheriff’s Department
8 needs to revise numerous additional policies and procedures. *See Sanossian Report*
9 *at ¶¶ 131-183.* Mr. Martinez at least agrees with me that the Green Sheets (facility
10 specific policies) must be overhauled. *Martinez Report at 90-91.* In addition,
11 Mr. Martinez agrees that the Sheriff’s Office lacks and needs to develop policies and
12 practices for clinicians to be consulted with an incarcerated person with a mental
13 health or intellectual disability is in the disciplinary process. *Id. at 75.*

14 Mr. Martinez also admits that the Sheriff’s Office lacks and needs to “develop and
15 incorporate a comprehensive ADA training component for custody and non-custody
16 staff.”

17 42. In general, I have questions about how Mr. Martinez can reach his
18 conclusions without looking at actual documentation of practice, which his report
19 almost entirely omits. Mr. Martinez states that he visited only one of the 7 Sheriff’s
20 Department jail facilities back on May 23, 2023, to “familiarize myself with the
21 intake screening process, including the medical intake screening and the housing
22 placement process.” *Martinez Report at 9.* This visit occurred about a year before
23 the Sheriff’s Department revised the five ADA policies in May 2024. This means
24 that Mr. Martinez was unable to discuss with staff or the ADA Unit how the changes
25 to these policies and procedures may have affected their work and interactions with
26 incarcerated people with disabilities. Mr. Martinez has apparently not visited a Jail
27 or spoken to any Jail staff since the new policies and practices were implemented, or
28 reviewed documentation showing whether staff are following them.

1 43. Instead, Mr. Martinez poses 19 questions and relies largely on
2 deposition testimony (including deposition testimony from spring 2023, long
3 predating the new policies and procedures) and the language of policy to answer
4 them. For example, Mr. Martinez asks “Does SDCSO identify disabled incarcerated
5 persons and their accommodation needs during the intake screening process and
6 while housed in the custody of the SDCSO?” Martinez Report at 10. To answer
7 that question (which notably does not ask whether SDCSO adequately or effectively
8 identifies people with disabilities), Mr. Martinez relies on policy statements about
9 the process for identifying people with disabilities, *id.* at 11-16, and various claims
10 from Sheriff’s Department deposition testimony. *Id.* at 17-21. Mr. Martinez also
11 looked at a list of “flags” identifying categories of people with disabilities in the
12 system. Those show that yes, the Sheriff’s Department identifies some people with
13 disabilities during the screening process. But to actually assess whether the
14 Sheriff’s Department is effectively identifying people with disabilities, one would
15 need to observe intake screening, review intake questionnaires, and review
16 information about people later identified as having a disability, to figure out why
17 those disabilities were or were not identified at screening. Identifying some people
18 with disabilities is hardly evidence of an effective system.

19 44. It is all the more problematic for Mr. Martinez to rely only on policy
20 statements or statements from depositions about what should or has happened
21 because documentation of practice exists. For example, the Sheriff’s Department
22 produces ADA rosters to Plaintiffs each month as part of the existing ADA Plan.
23 Mr. Martinez does not appear to have ever reviewed those (or any other ADA roster
24 that the Sheriff’s Department surely could pull for him), even though they appear
25 critical to his fourth and fifth questions about whether people receive housing
26 accommodations and have equal access to programs, services, and activities. *See*
27 Martinez Report at 9. As another example, Lieutenant Cole testified in her 30(b)(6)
28 deposition that she regularly reviews a Power BI report checking whether

1 incarcerated people with certain disabilities are housed appropriately. Cole Depo.
2 61:13-62:1. She also testified about a list that housing deputies are supposed to
3 review (and that she has reviewed) to assess whether people with disabilities are not
4 housed on a lower bunk. *Id.* at 114. To answer whether the Sheriff’s Department
5 provides housing accommodations to people with disabilities, Mr. Martinez did not
6 review either report, even though he cited Lieutenant Cole’s testimony about the
7 latter report. *See* Martinez Report at 39. Instead, Mr. Martinez appeared to assume
8 that practice is happening according to policy, while ignoring the need to observe
9 and document actual practice himself.

10 45. Whether written policy is adequate is one question. Whether policies
11 as written are being implemented adequately is another, more critical question when
12 assessing a system’s compliance. This is true for any work. I do not simply take a
13 person’s word when they tell me their facility is compliant with the ADA Standards;
14 I still must assess it. Based on my experience, I do not think that Mr. Martinez
15 reviewed adequate evidence to assess the questions he posed. As the Defendants’
16 expert, he should have had access to readily perform these tasks and describe his
17 experiences.

18 46. In addition, Mr. Martinez fails to note when his opinions conflict with
19 even the policy as written. For example, Mr. Martinez agrees that the provision of
20 equally effective communication should be documented for clinical encounters, due
21 process events, education programs, re-entry programs, and religious activities.
22 Martinez Report at 52. This documentation includes documenting “the method used
23 to achieve EC, and how the staff person determined that the incarcerated person
24 understood the encounter, process, or proceeding.” *Id.* He therefore agrees with my
25 opinion that staff must be documenting all methods of effective communication
26 during those encounters. *See* Sanossian Report at ¶¶ 158-59. However, in his
27 conclusion, Mr. Martinez fails to note that the Sheriff’s Department’s effective
28 communication policy requires documentation for those events only when the

1 Sheriff's Department uses an auxiliary device or service. *See id.* at ¶ 159
2 (discussing revised P.11 policy). Nor did Mr. Martinez review any records showing
3 that staff in fact are documenting effective communication even in those limited
4 circumstances. No such documentation has been provided for Plaintiffs' or my
5 review. In addition, Mr. Martinez acknowledges that the orientation video does not
6 include sign language, Martinez Report at 51, even though rosters show numerous
7 Deaf signers at the Jail facilities. SD_1579789.

8 47. I also note that Mr. Martinez refers to a "Facility Handbook," which we
9 understand the Sheriff's Department provides to incarcerated persons at intake.
10 Defendants did not provide this Handbook until September 5, 2024, after I
11 completed my initial report. SD_1579793. Mr. Martinez's report does not address
12 whether the Handbook is provided in accessible formats (such as Braille, large print,
13 or an audible version for those with vision disabilities). I have not seen any
14 indication that such accessible formats exist of the handbook or other essential
15 forms used by incarcerated people. Regarding the discussion of ADA rights in the
16 Handbook, the Handbook contains no discussion of additional, and in some cases,
17 more protective civil rights protections under state statutes.

18 48. Mr. Martinez's failure to review rosters, lists, ADA intake
19 questionnaires, functional assessments, and grievances, or observe ADA training, or
20 tour housing units where the County clusters people with disabilities like 8C and 8D
21 at Central, or interview incarcerated people with disabilities or interview staff,
22 especially those in the ADA Unit, or observe intake is inconsistent with how I
23 would approach a compliance review were this my client. It is also inconsistent
24 with Mr. Martinez's approach in other cases, where I understand he has been
25 appointed to serve as a neutral ADA monitor. For example, I reviewed
26 Mr. Martinez's June 6, 2024 139-page Expert Monitor's Report (Fourth Round)
27 regarding Rights of People with Disabilities, issued in connection with a Remedial
28 Plan adopted by Orange County to address ADA violations at that county's jail.

1 From the report, it appears that Mr. Martinez reviewed and observed practices,
2 including grievances procedures, interviewed staff and incarcerated people and
3 reviewed training materials and documents to determine if the practices of the Jail
4 comply with the ADA. No such inquiry is evident from Mr. Martinez's report in
5 this case, notwithstanding his ability to obtain this kind of information from the
6 County.

7 **IV. CONCLUSION**

8 49. The information and opinions contained in this report are based on
9 evidence, documentation, and/or observations available to me. I reserve the right to
10 modify or expand these opinions should additional information become available to
11 me. The information contained in this report and the accompanying exhibits are a
12 fair and accurate representation of the subject of my anticipated testimony in this
13 case.

14
15 Dated: October 2, 2024


16 Syroun Sanossian

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