

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLORADO

Civil Action No.

**G.G., E.A.C.W, A.K., T.M.,
G.C., F.P., E.V.
and all others similarly situated,**

Plaintiffs,

v.

John Hickenlooper, in his official capacity as
Governor of the State of Colorado,
Gretchen Hammer, in her official capacity as
**Executive Director of the Colorado
Department of Healthcare Policy and
Financing**, **Reggie Bicha**, in his official
capacity as **Executive Director of the
Colorado Department of Human Services**,
and **Irv Halter**, **Executive Director of the
Colorado Department of Local Affairs
(Division of Housing)**, in his official capacity,

Defendants.

COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. Plaintiffs are individuals with Mental Illness and/or in need of Addiction Care/Substance Use Services coming out of jails, prisons, nursing homes,

mental health institutes or currently homeless. This is an action for Declaratory Judgment based on claims on the Americans with Disabilities Act, specifically the US Supreme Courts Olmstead Decision finding that Title II of the ADA prevents unnecessary institutionalization of people with disabilities or putting them at great risk of institutionalization such as homelessness, the Rehabilitation Act, the Federal Mental Health and Addiction Equity Act, and the Affordable Care Act.

Further, it is very common for people with mental illness to have a co-occurring substance use disorder. In fact, according to the Federal Government's National Institute on Drug Abuse:

*To help explain this comorbidity [between drug addiction and “mental illness], we need to first recognize that **drug addiction is a mental illness.***

It is a complex brain disease characterized by compulsive, at times uncontrollable drug craving, seeking, and use despite devastating consequences—behaviors that stem from drug-induced changes in brain structure and function.

These changes occur in some of the same brain areas that are disrupted in other mental disorders, such as depression, anxiety, or schizophrenia. It is therefore not surprising that population surveys show

a high rate of co-occurrence, or comorbidity, between drug addiction and other mental illnesses.

While we cannot always prove a connection or causality, we do know that certain mental disorders are established risk factors for subsequent drug abuse—and vice versa.

---“Co-Morbidity: Addiction and Other Mental Illnesses,
National Institute on Drug Abuse (emphasis added)
<https://www.drugabuse.gov/sites/default/files/rcomorbidity.pdf>

2. Target populations/Sub-Classes for this Class Action are:

A. **ADULTS WITH MENTAL ILLNESS WHO WOULD MEET THE
LEVEL OF CARE FOR COLORADO MEDICAID’S HCBS-CMHS WAIVER:**

Colorado Adults with Mental Illness who would be able to meet the level of care for services under Defendants’ system of Medicaid Long Term Care Home and Community Based Services Programs for people with mental illness, currently HCBS-CMHS (Community Mental Health Service); or are

B. **ADULT PATIENTS AT COLORADO’S MENTAL HEALTH
INSTITUTES:** Any adult who is being released from the Colorado Mental Institutes upon a civil certification, or a criminal certification of Incompetent to Proceed or Not Guilty by Reason of Insanity back to the community who are in need of timely, comprehensive, person-centered, strengths-based discharge planning.

C. **ADULTS WHO ARE INSTITUTIONALIZED OR AT GREAT RISK
OF INSTITUTIONALIZATION SUCH AS HOMELESSNESS WHO ARE IN
NEED OF EVIDENCED-BASED ADDICTION CARE:** This sub-class includes

Adults who are being released from jails and prisons and/or who are homeless as well as Adults who are otherwise institutionalized.

3. Class members bring this action against the State and State officials who administer Colorado's Medicaid, Housing programs, & Mental Health Institutes for failing to provide:

WAITING LISTS MOVING AT A "REASONABLE PACE" FOR :

(See *Olmstead v. L.C.*, 527 U.S. 581, 585 (1999) :

"If, for example, the State were to demonstrate that it had a **comprehensive, effectively working plan** for placing qualified persons with mental disabilities in less restrictive settings, and a **waiting list that moved at a reasonable pace** not controlled by the State's endeavors to keep its institutions fully populated, the reasonable-modifications standard would be met."

(emphasis added).

- **ASSERTIVE COMMUNITY TREATMENT (ACT)**
- **HOUSING**
- **ADDICTION CARE/SUBSTANCE USE DISORDER**

SERVICES, (See Also the Federal Mental Health Parity &

Addiction Equity Act H.R. 1424, 110th Cong. (2008) (amending

29 U.S.C. 1185a, § 712 (ERISA); 42 U.S.C. 300gg-5, § 2705

(Public Health Service Act); and I.R.C. § 9812 (Internal

Revenue Code)); available at

<https://www.cms.gov/HealthInsReformforConsume/Downloads/MHPAEA.pdf> AND

Patient Protection & Affordable Care Act, 42 U.S.C. § 18001 (2010).

- **COMMUNITY TRANSITION SERVICES (SEE 10 Colo. Code of Regs. 2505-10 8.553 & Below)**

For adults with mental illness who meet the level of care for the Colorado Medicaid CMHS Waiver, and those being discharged from the Colorado Mental Institutes regardless of whether they meet the level of care for the waiver;

- Olmstead v. L.C., 527 U.S. 581, 600 (1999).

4. Class members bring this action against the State and State officials who administer Colorado's Medicaid, Housing programs, & Mental Institutes for failing to provide:

REASONABLE PLANS TO BRING TO SCALE TO MEET THE NEED:

- **HOUSING,**
- **ASSERTIVE COMMUNITY TREATMENT (ACT),**
- **ADDICTION CARE/SUBSTANCE USE DISORDER SERVICES,**

(See Also the Federal Mental Health Parity & Addiction Equity Act H.R. 1424, 110th Cong. (2008) (amending 29 U.S.C. 1185a, § 712

(ERISA); 42 U.S.C. 300gg–5, § 2705 (Public Health Service Act); and I.R.C. § 9812 (Internal Revenue Code)); available at

<https://www.cms.gov/HealthInsReformforConsume/Downloads/MHPAEA.pdf> AND

Patient Protection & Affordable Care Act, 42 U.S.C. § 18001 (2010).

- **COMMUNITY TRANSITION SERVICES (10 Colo. Code of Regs. 2505-10 8.553 & Below).**

A “reasonable” plan to bring Housing, ACT, Addiction Care Services, Transition Services to scale for adults with mental illness who qualify for HCBS-CMHS waiver, including people who are homeless and being released from jails and prisons and those who are released from nursing homes and mental health institutes.

- Olmstead v. L.C., 527 U.S. 581, 600 (1999).
- 2010 DOJ Findings Letter -- No Fundamental Alteration Of Delaware System Required Where Issue "Bringing To Scale" Supportive Housing & Assertive Community Treatment (ACT) **(U.S. v. Delaware – 11-CV-591 – (D. Del. 2010)** (http://www.ada.gov/olmstead/olmstead_cases_list2.htm#de);
- 2010 DOJ/Georgia Comprehensive Olmstead Settlement Agreement Involving 9,000 People With SPMI Including Those

Who Are Chronically Homeless Or Being Released From Jails
And Prisons. (**U.S. v. Georgia – 10-CV-249 – (N.D. Ga. 2010)**)
(http://www.ada.gov/olmstead/olmstead_cases_list2.htm#de)

5. Examples of Media Reports of Warehousing People with Mental Illness In
Colorado’s Criminal Justice System.

A. **See** “This (grant) has to do with the realization in Colorado that
state resources to deal with mentally ill people are really lacking,” [Don Bird,
Pitkin County Jail administrator] said. “It’s inexcusable. It’s a realization that’s
way past due.”

<http://www.aspentimes.com/news/19366244-113/pitkin-county-jail-gets-grant-to-provide-inmates>

Unfortunately, the grant the Pitkin County Jail received was not near
enough to make up for a Mental Health System that is woefully underfunded and
Housing and intensive Community Mental Health Services are greatly insufficient
to satisfy legal standards.

B. Grand Junction Daily Sentinel, “Recent study finds 2/3 of Mesa
County Jail inmates struggle with Mental Health,”

<http://www.gjsentinel.com/news/articles/locking-up-the-mentally-ill#>

C. “Coloradans with Mental Illnesses Warehoused in Jails & Prisons,”
---Rocky Mountain PBS I-News Network, *“Jails and prisons have become the
warehouses for people who aren’t getting treated elsewhere,” says Attila Denes,
a captain at the Douglas County jail. “It’s among the most expensive and least
humane” ways to provide care.*

[http://inewsnetwork.org/2014/05/23/coloradans-with-mental-illnesses-
warehoused-in-jails-prisons/](http://inewsnetwork.org/2014/05/23/coloradans-with-mental-illnesses-warehoused-in-jails-prisons/)

D. Boulder Sheriff maintains “System is Broken” and Boulder Jail is
over-crowded with female inmates with mental illness,

<https://www.youtube.com/watch?v=kSScljkjF-w>

E. In Colorado where approximately 5700 Colorado inmates are
incarcerated with mental illness,

<http://extras.denverpost.com/mentalillness/#court> [See Prisons: Treatment
Centers of Last Resort from the Denver Post’s award-winning series
“Breakdown: Mental Health in Colorado].

Plaintiffs seek to enforce their legal rights to housing, services, significant benefit
assistance, person centered/strength-based discharged planning, etc.

II. JURISDICTION AND VENUE

6. **DECLARATORY & INJUNCTIVE RELIEF:** This is an action for
declaratory and injunctive relief to enforce the rights of the Plaintiffs and the class they
seek to represent under the Americans with Disabilities Act, 42 U.S.C. § 12132, Section

504 of the Rehabilitation Act, 29 U.S.C. § 794(a), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, 1396a-1396v, and 42 U.S.C. § 1983.

7. **JURISDICTION & VENUE:** Jurisdiction is proper pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b).

8. **AUTHORIZATION FOR DECLARATORY & INJUNCTIVE RELIEF:** Declaratory relief is authorized by 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure. Injunctive relief is authorized by 28 U.S.C. § 2202 and Rule 65 of the Federal Rules of Civil Procedure.

III. THE PARTIES

A. Defendants

9. **DEFENDANTS SUED IN THEIR OFFICIAL CAPACITIES:** Defendants are sued in their official capacities. They are: the Governor of the State of Colorado, John Hickenlooper, or his successor, the Executive Director of the Colorado Department of Healthcare Policy and Financing, Gretchen Hammer, or her duly appointed successor, and the Executive Director of the of the Colorado Department of Human Services, Reggie Bicha or his duly appointed successor.

10. **DEFENDANT GOVERNOR OF THE STATE OF COLORADO:**

Defendant John Hickenlooper is Governor of the State of Colorado. He is responsible for directing, supervising and controlling the executive departments of State Government. Governor Hickenlooper is ultimately responsible for ensuring that

Colorado operates in conformance with federal disabilities laws meant to protect among others people with mental illness. He is sued in his official capacity.

11. **DEFENDANT EXECUTIVE DIRECTOR OF THE COLORADO**

DEPARTMENT OF HEALTHCARE POLICY & FINANCING (HCPF):

Gretchen Hammer is the Director of the Colorado Department of Healthcare Policy and Financing (“HCPF”), which is the single state Medicaid agency for Colorado, responsible for the oversight and administration of the Medicaid program under Title XIX of the Social Security Act, including programs for persons with mental illness. See 42 U.S.C. § 1396a(a)(5). In this capacity, Ms. Hammer administers and funds services provided under the Medicaid Home and Community-Based Services Program 42 C.F.R. § 430.25(c)(2). Ms. Hammer is responsible for ensuring that the Home and Community Based Services Programs as administered in the State of Colorado comply with federal law. She is sued in her official capacity.

12. **DEFENDANT EXECUTIVE DIRECTOR OF THE COLORADO**

DEPARTMENT OF HUMAN SERVICES: Reggie Bicha is the Executive Director of the Colorado Department of Human Services (“DHS”), which is responsible for providing discharge planning services to people with mental illness in Colorado mental health institutes, to help them achieve self-sufficiency, independence and health to the maximum extent possible. He is sued in his official capacity.

13. **DEFENDANT EXECUTIVE DIRECTOR OF THE COLORADO**

DEPARTMENT OF LOCAL AFFAIRS: Irv Halter is the Executive Director of the Colorado Department of Local Affairs which includes the Division of Housing. The Division Housing administers State and Federal funds for affordable housing, Housing Choice Voucher Program, and Homeless programs for the State among other things. Colorado Housing for people with disabilities, specifically people with mental illness and related needs does not meet the legal requirements of the Americans with Disabilities Act of waitlists moving at a reasonable pace and a reasonable plan to bring to scale to meet the need. He is sued in his official capacity.

B. PLAINTIFFS & CLASS ACTION ALLEGATIONS

14. **Named Plaintiffs G.G., E.A.C.W. T.M., G.C., F.P., E.V.** bring this action as a class action pursuant to Rule 23, sections (a) and (b)(2), of the Federal Rules of Civil Procedure.

15. **G.G.**
- A. Disability:** Depression among other diagnoses, hospitalizations, and physical problems including chronic pain
 - B. Major Life Activity/Activities Affected:** work
 - C. Living Situation:** Living with Friend (Has been Homeless for Over a Year)
 - D. Age:** 41
 - E. Sex:** Male
 - F. Race:** White
 - G. County:** Yuma
 - H. Services:**
 - i. Housing
 - ii. Transition Services

16. **E.A.C.W.:**
- A. **Disability:** Currently in the Denver Detention Center with diagnoses of Bipolar Disorder and Schizo-Affective Disorder, long history of mental illness.
 - B. **Major Life Activity/Activities Affected:** work (on SSI – Supplemental Security Income)
 - C. **Living Situation:** Denver Detention Center
 - D. **Jail/Homeless Cycle:** Last released from Jail in 2014 to Homelessness.
 - E. **Age:** 53
 - F. **Sex:** Male
 - G. **Race:** Black
 - H. **County:** Denver
 - I. **Services:**
 - i. Housing
 - ii. Transition Services
 - iii. Evidenced-Based Addiction Care Appropriate to the Level of Need
 - iv. Evidenced-Based, Personalized Goal-Focused Non-Coercive Assertive Community Treatment (ACT) Services
17. **A.K.**
- A. **Disability:** Considered by the State to have a mental illness.
 - B. **Major Life Activity/Activities Affected:** work, A.K. is on SSI.
 - C. **Living Situation:** Homeless
 - D. **Age:** 62
 - E. **Sex:** Male
 - F. **Race:** White
 - G. **County:** Denver
 - H. **Services:**
 - i. Housing
 - ii. Transition Services
 - iii. Person-Centered & Strengths-Based Discharge Planning from the Mental Health Institutes.

iv. Evidenced-based, Personalized Goal-Focused Non-Coercive Assertive Community Treatment (ACT) Services, largely in the nature of social worker services beyond what is available under Colorado Medicaid's Intensive Case Management

I. **History:** A.K. had spent several years at the Colorado Mental Health Institute at Pueblo. During that time, adequate plans for his discharge were not made. It takes a lot of staff time to find housing if it's in short supply. When the legal date for his discharge arrived, AK demanded a placement. CMHIP didn't have it. AK wrongly assumed that if he keep up his demands they would find a placement for him.

On the other hand, CMHIP didn't know where to find a placement and so interpreted AK's protests as a desire to be discharged to homelessness. AK denies this. In any case, there is no dispute that at the end of March 2014 AK was discharged to the "Homeless District" of Denver.

Subsequently, counsel did make arrangements for AK to go To the Mental Health Institute at Ft. Logan and housing was once again a huge problem. After staying there for two or three weeks, AK left.

Since that time accessing adequate services has been Practically impossible and AK is also is desperate need of the Community Transition Services that are reserved only for nursing home residents.

Additionally, despite AK staying at CMHIP for approximately 7 years, staff appeared to have no idea that AK had a Degree in Computer Science from the University of Texas and had done contract work for major entities.

Person-centered/Strengths Based Discharge Planning and Treatment is essential for recovery and is referenced in ADA actions (see above).

J. **Reject Mootness:** Plaintiffs don't believe AK's situation/claims are moot. Specifically, it is critical these issues not escape review since they are capable of repetition given the nature of CMHIP, the staff's complex clientele, the paucity of housing and intensive services in the community, and the need for timely comprehensive person-centered/ strengths-based discharge planning from Colorado's Mental Health Institutes.

18. **T.M.**
A. Disability: Depression,
B. Major Life Activity/Activities Affected: work
C. Living Situation: Denver Detention Center
D. Jail/Homeless Cycle: Last released from jail March 2014 to Homelessness
E. Age: 28
F. Sex: Male
G. Race: Black
H. County: Denver
I. Services:
i. Housing
ii. Transition Services
iii. Evidenced-based Addiction Care Appropriate to the Level of Need
iv. Evidenced-Based, Personalized Goal-Focused Non-Coercive Assertive Community Treatment (ACT) Services
19. **G.C.**
A. Disability: mental illness, diagnoses of bipolar disorder and Post-traumatic stress disorder.
B. Major Life Activity/Activities Affected: work
C. Living Situation: Denver Detention Center
D. Jail/Homeless Cycle: Last released from jail Sept. 2015 to Homelessness.
E. Age: 33
F. Sex: Male
G. Race: Black
H. County: Denver
I. Services:
i. Housing
ii. Transition Services
iii. Evidenced-Based Addiction Care appropriate to the level of need.
iv. Evidenced-Based, Personalized Goal-Focused Non-Coercive Assertive Community Treatment (ACT) Services
20. **F.P.**
A. Disability: Post-Traumatic Stress Disorder, Schizophrenia

- B. Major Life Activity/Activities Affected:** work
- C. Living Situation:** Denver Detention Center
- D. Jail/Prison/Homeless Cycle:** Last released from jail and prison in 2012 to Homelessness.
- E. Age:** 55
- F. Sex:** Male
- G. Race:** Black
- H. County:** Denver
- I. Services:**
 - i. Housing
 - ii. Transition Services
 - iii. Evidenced-Based, Personalized Goal-Focused Non-Coercive Assertive Community Treatment (ACT) Services

21. **E.V.**

- A. Disability:** mental illness, diagnoses of bipolar disorder, schizophrenia, ADHD, and Post-traumatic stress disorder.
- B. Major Life Activity/Activities Affected:** work
- C. Living Situation:** Denver Detention Center
- D. Jail/Homeless Cycle:** Last released from incarceration May 2013 to Homelessness.
- E. Age:** 42
- F. Sex:** Male
- G. Race:** Hispanic
- H. County:** Denver
- I. Services:**
 - i. Housing
 - ii. Transition Services
 - iii. Evidenced-Based Addiction Care appropriate to the level of need.
 - iv. Evidenced-Based, Personalized Goal-Focused Non-Coercive Assertive Community Treatment (ACT) Services

22. The Class is so numerous that joinder of all plaintiffs is impracticable.

The exact number of individuals in the Class is not known to the Plaintiffs, but is believed to number in the thousands.

23. The named Plaintiffs seek to represent three sub-classes of individuals (collectively, the “Class”):

(1) **ADULTS WITH MENTAL ILLNESS WHO WOULD MEET THE LEVEL OF CARE FOR COLORADO MEDICAID’S HCBS-CMHS**

WAIVER: Colorado Adults with Mental Illness who would be able to meet the level of care for services under Defendants’ system of Medicaid Long Term Care Home and Community Based Services Programs for people with mental illness, currently HCBS-CMHS (Community Mental Health Service); and/or

(2) **ADULT PATIENTS AT COLORADO’S MENTAL HEALTH**

INSTITUTES: Any adult who is being released from the Colorado Mental Institutes upon a civil certification, or a criminal certification of Incompetent to Proceed or Not Guilty by Reason of Insanity back to the community who are in need of timely, comprehensive, person-centered, strengths-based discharge planning.

(3) **ADULTS WHO ARE INSTITUTIONALIZED OR AT GREAT RISK OF INSTITUTIONALIZATION SUCH AS HOMELESSNESS WHO ARE IN NEED OF EVIDENCED-BASED ADDICTION CARE:**

This sub-class includes Adults who are being released from jails and prisons and/or who are homeless as well as Adults who are otherwise institutionalized.

24. **MENTAL ILLNESS/ HOMELESSNESS/ INCARCERATION CYCLE:**

Several of the named plaintiffs in the present case have experience with mental, homelessness, incarceration and release to homelessness. This pattern is common in Colorado and nationally. See “Incarceration & Homelessness: A Revolving Door of Risk” -- Quarterly Research Review of the National Health Care for the Homeless Council.

http://www.nhchc.org/wp-content/uploads/2011/09/infocus_incarceration_nov2013.pdf

“The November [2013] issue of In Focus provides a synthesis of recent literature on the connections between incarceration and homelessness in the United States. The relationship between these topics is an intricate one, as both are risk factors for the other. **Some homeless sub-populations are at increased risk for incarceration, including those with mental health issues, youth, and veterans without stable housing.**” (emphasis added).

25. **COMMON CLAIMS OF THE CLASS:** The claims of the membership of the Associational Plaintiff and named Plaintiff are common to those of the Class and raise common issues of fact and law:

A.. **ASSERTIVE COMMUNITY TREATMENT (ACT) WAITING LISTS:**

Waiting lists for Evidence-Based and SAMHSA [US Substance Abuse and Mental Health Services Administration] Endorsed ACT (Assertive Community Treatment) moving at a reasonable pace;

- Olmstead v. L.C., 527 U.S. 581, 600 (1999).

- B. **HOUSING WAITING LISTS:** Waiting lists for Housing for those who qualify for HCBS – moving at a reasonable pace;
- Olmstead v. L.C., 527 U.S. 581, 600 (1999).
- C. A “reasonable” plan to bring Housing & ACT to scale for those who qualify for the CMHS HCBS waiver, including people who are homeless and being released from jails and prisons.
- Olmstead v. L.C., 527 U.S. 581, 600 (1999).
 - 2010 DOJ Findings Letter -- No Fundamental Alteration Of Delaware System Required Where Issue "Bringing To Scale" Supportive Housing & Assertive Community Treatment (ACT) **(U.S. v. Delaware – 11-CV-591 – (D. Del. 2010)**
http://www.ada.gov/olmstead/olmstead_cases_list2.htm#de
 - 2010 DOJ/Georgia Comprehensive Olmstead Settlement Agreement Involving 9,000 People With SPMI Including Those Who Are Chronically Homeless Or Being Released From Jails And Prisons. **(U.S. v. Georgia – 10-CV-249 – (N.D. Ga. 2010)**
http://www.ada.gov/olmstead/olmstead_cases_list2.htm#de

26. The rights and interests of the named Plaintiffs are common to and typical of those of all Class members.

27. The Plaintiffs will fairly and adequately protect the interests of the Class because they suffer from deprivations identical to those of the Class members and have

been denied the same federal rights that they seek to enforce on behalf of the other Class members, many of whom are unable to pursue claims on their own behalf as a result of their disabilities, their limited financial resources, and/or the actions of the Defendants to deprive them of their rights. Plaintiffs' interests in obtaining injunctive relief for the violations of their legal rights and privileges are consistent with and not antagonistic to those of any person within the Class. Defendants have acted or refused to act on grounds generally applicable to all members of the Class by unnecessarily segregating Class members. Therefore, declaratory and injunctive relief with respect to the entire Class is appropriate.

IV. STATEMENT OF THE CASE

A. The Integration Mandates of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act

28. **ADA:** In 1990, Congress enacted the Americans with Disabilities Act, 42 U.S.C. §§ 12101 - 12181, to advance the civil rights of people with disabilities.

29. **ADA'S GOAL:** The ADA's purpose and goal is "the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1).

30. **ADA, CONGRESS, & HISTORICAL DISCRIMINATION:** In enacting the ADA, Congress stated that "historically, society has tended to isolate and segregate individuals with disabilities" and that such forms of discrimination "continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2).

31. **ADA, CONGRESS, & “THE NATION’S PROPER GOALS”**: Congress further determined that “the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic sufficiency for such individuals.” 42 U.S.C. § 12101(a)(8).

32. **TITLE II OF THE ADA**: Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, *or be subjected to discrimination by any such entity.*” 42 U.S.C. § 12132 (emphasis added).

33. **DISCRIMINATION UNDER TITLE II OF THE ADA**: Discrimination under Title II of the ADA includes unnecessary segregation and institutionalization. As the Supreme Court stated in *Olmstead v. L.C.*, 527 U.S. 581 (1999), “unjustified institutional isolation of persons with disabilities is a form of discrimination” because “[i]n order to receive needed medical services, persons with [] disabilities must, because of those disabilities, relinquish participation in community life ...” *Id.* at 600-01.

34. **ADA REGULATIONS**: The regulations to the ADA codify the prohibition against unnecessary segregation and institutionalization. 28 C.F.R. § 35.130(d) (“A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities”). Section 504

has an identical mandate. 28 C.F.R. § 41.51(d) (“Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons”).

35. **“CRITERIA OR METHODS OF ADMINISTRATION” THAT LEAD TO DISCRIMINATION OR UNNECESSARY INSTITUTIONALIZATION:** Furthermore, the ADA prohibits public entities from utilizing “criteria or methods of administration” that have the effect of subjecting qualified individuals with disabilities to discrimination, which includes unnecessary institutionalization. 28 C.F.R. § 35.130(b)(3). Section 504 has an identical mandate. 45 C.F.R. § 84.4(b)(4); 28 C.F.R. § 41.51(b)(3).

36. **INTEGRATION.** Like all human beings, Plaintiffs need “family relations, social contacts, work options, economic independence, educational advancement and cultural enrichment.” *Olmstead v. L.C.*, 527 U.S. 581, 600 (1999). For many individuals with mental illness -including the Class members -- these needs can best be met in settings that integrate these individuals into the community and enable them to interact with non-disabled persons to the fullest extent possible.

37. **STATE INSTITUTIONS FOR PEOPLE WITH MENTAL ILLNESS:** Defendants administer and regulate a system for serving people with mental illness that relies heavily on large public institutions, including jails and prisons, nursing homes, and mental health institutes.

38. **STATE MAINTAINS NO COMPREHENSIVE PLAN TO MOVE PEOPLE**

IN THE COMMUNITY, WAITLISTS FOR ESSENTIAL SERVICES OR REASONABLE PLANS TO BRING TO SCALE TO MEET THE NEED:

Further, Defendants do not have a comprehensive, effectively working plan for moving persons into the community who are, or who are at risk of being, unnecessarily institutionalized against their will. Specifically, the plan does not effectively and comprehensively address the thousands of people with mental illness entering and leaving Colorado's Criminal Justice System. Defendants maintain no waiting list for intensive community services such as Assertive Community Treatment, Housing, Addiction Care, and Transition Services moving at a reasonable pace.

39. **SEGREGATION:** This segregation "perpetuates unwarranted assumptions" that Plaintiffs "are incapable or unworthy of participating in community life." *Olmstead*, 527 U.S. at 600.

40. **INTEGRATION MANDATES OF THE ADA & THE REHABILITATION ACT:** The "integration mandates" of Title II and Section 504 (implemented by 28 C.F.R. § 35.130(d) and 28 C.F.R. § 41.51(d)) require that state government services, programs and activities be provided in the most integrated setting appropriate to the needs of the person with a disability. The Supreme Court of the United States affirmed these mandates in *Olmstead*, finding that "unjustified institutional isolation of persons with disabilities is a form of discrimination." 527 U.S. at 600. Defendants have defied

this mandate by failing to develop a comprehensive, effectively working plan to offer individuals with mental illness housing and intensive community services necessary in some cases to stay out of institutions such as jails and prisons as well as the great risk of institutionalization brought on by homelessness.

B. The Colorado Medicaid Program

1. Colorado's Participation in Medicaid

41. **MEDICAID IS A JOINT FEDERAL/ STATE PROGRAM:** Medicaid is a joint federal-state program through which the federal government reimburses a portion of expenses incurred by states to furnish health care services to low-income people, including services to persons with mental illness.

42. **STATE MEDICAID PLAN:** This State's Medicaid plan must contain "reasonable standards" to achieve the objectives and requirements of Title XIX. 42 U.S.C. § 1396a(a)(17).

2. Medicaid Home and Community Based Services Waivers

43. **MEDICAID HOME & COMMUNITY BASED SERVICES WAIVERS:** Title XIX also allows states to "waive" certain Medicaid requirements in order to enable people with disabilities to receive services in integrated community settings as opposed to institutions. 42 U.S.C. § 1396n(c). These are known as "Medicaid Home and Community Based Services waivers" ("HCBS waiver"); 42 C.F.R. § 441.300.

3. Medicaid and The Federal Mental Health Parity & Addiction Equity Act

44. CMS (the Centers for Medicare and Medicaid Services) has issued guidance regarding State Medicaid Managed Care Programs and the Federal Mental Health Parity & Addiction Equity Act, see January 16, 2013 CMS Letter, <https://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO-13-001.pdf>

The CMS noted in its November 2009 SHO letter that mental health and substance use disorder parity requirements apply to MCOs (defined in section 1903(m) of the Act) that contract with the state to provide both medical/ surgical and mental health or substance use disorder benefits.

“In light of Medicaid regulations that direct states to reimburse MCOs based only on state plan services, CMS will not find MCOs out of compliance with MHPAEA to the extent that the benefits offered by the MCO reflect the financial limitations, quantitative treatment limitations, nonquantitative treatment limitations, and disclosure requirements set forth in the Medicaid state plan and as specified in CMS approved contracts.

“However, this does not preclude state use of current Medicaid flexibilities to amend their Medicaid state plans or demonstrations/waiver projects to address financial limitations, quantitative treatment limitations, nonquantitative treatment limitations, and disclosure requirements in ways that promote parity.” (emphasis added)

Plaintiffs would argue the CMS Guidance appears to say what CMS is prepared to enforce, NOT what the States are legally required to do under their Medicaid Managed Care Programs. Otherwise, States would be allowed to violate the

clear mandates and wording of the MHPAEA and engage in discriminatory practices barred by the Americans with Disabilities Act.

Colorado Medicaid does provide Addiction Care/Substance Use Disorder Services. The concern is that many people who have been incarcerated or who are homeless need much more than a “class.” Colorado Medicaid provides more than that and the scale of the need is large, perhaps huge for these services. Further, this goes once again to the incredible need for assistance to access these services without which the services remain out of reach.

D. Defendants’ Unnecessary Segregation of Certain People with Mental Illness

45. **COLORADO’S INSTITUTIONALIZATION OF PEOPLE WITH MENTAL ILLNESS IN JAILS & PRISONS:** In Colorado as in most states, most people with mental illness who are institutionalized are institutionalized in jails and prisons. In Colorado, over 5,700 people with mental illness are incarcerated in Colorado prisons, according to reporting by the Denver Post.

46. **COLORADO DOES NOT MAINTAIN WAITING LISTS FOR PEOPLE WITH MENTAL ILLNESS:** Defendants do not maintain a “waiting lists moving at a reasonable pace” for housing or assertive community treatment for the population that might desire and qualify for those services and are being released from jails and prisons, have discharge barriers in nursing homes and mental institutes that such

services could overcome, and those people who are homeless and inherently at great risk of institutionalization.

By arbitrarily denying an adequate supply of **Housing and intensive community treatments such as Assertive Community Treatment, “Person-Centered and Strengths-Based” Discharge Planning, and Transition Services** Defendants have caused substantial, irreparable harm and prejudice to Plaintiffs, as well as all similarly situated Class members, including the unnecessary institutionalization or risk thereof, segregation, loss of life skills, loss of opportunities to develop to their fullest potential, and aggravation of their physical, mental, and emotional conditions.

V. LEGAL CLAIMS

COUNT I: VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT

47. Plaintiffs re-allege paragraphs 1 through 48 as though fully set forth herein.

48. Plaintiffs and the members of the Class are qualified individuals with disabilities within the meaning of the ADA, 42 U.S.C. § 12131(2).

49. **MOST INTEGRATED SETTING:** Title II of the ADA requires that “a public entity shall administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d)

50. **ADA TITLE II REGULATIONS:** Regulations implementing Title II of the ADA provide that “a public entity may not, directly or through contractual or other arrangements, utilize criteria or other methods of administration: (i) that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; [or] (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the entity’s program with respect to individuals with disabilities ...” 28 C.F.R. § 35.130(b)(3).

51. **DEFENDANTS DISCRIMINATE AGAINST PLAINTIFFS:** Defendants have discriminated, and continue to discriminate, against the named Plaintiffs and the Class, and have violated, and continue to violate, the ADA and implementing regulations, by denying Plaintiffs and the Class access to community settings and by requiring them to be unnecessarily segregated, often in jails and prisons.

52. **DEFENDANTS HAVE NO COMPREHENSIVE WORKING PLAN TO SERVE PLAINTIFFS & CLASS:** Defendants do not have a comprehensive, effectively working plan to serve the named Plaintiffs and the Class, all of whom are people with mental illness, in the most integrated setting appropriate for their needs.

53. **DEFENDANTS’ FAILURE TO ADEQUATELY ADDRESS CRIMINAL JUSTICE IN ITS OLMSTEAD PLANNING IS A DANGEROUS DEFICIT FOR PEOPLE WITH MENTAL ILLNESS:** Defendants do not have a comprehensive, effectively working plan to serve people with mental illness in the most integrated setting appropriate for their needs. A critical and in fact dangerous deficit for people with

mental illness is the failure to address the criminal justice system, since that is in the words of former National Institute of Mental Health Executive Director Thomas Insel is the, “[D]e facto mental health system in this country,”

<https://www.washingtonpost.com/news/to-your-health/wp/2015/10/29/mental-health-in-the-spotlight-today-on-capitol-hill/> .

And that certainly holds true here in Colorado where approximately 5700 Colorado inmates are incarcerated with mental illness, <http://extras.denverpost.com/mentalillness/#court> [See Prisons: Treatment Centers of Last Resort from the Denver Post’s award-winning series “Breakdown: Mental Health in Colorado]. See also, “Coloradans with Mental Illness Warehoused in Jails and Prisons,” Rocky Mountain PBS I-News Network, <http://inewsnetwork.org/2014/05/23/coloradans-with-mental-illnesses-warehoused-in-jails-prisons/> and “Recent Study Finds That 2/3 of Grand Junction Inmates Struggle with Mental Illness,” Grand Junction Sentinel, <http://www.gjsentinel.com/news/articles/locking-up-the-mentally-ill#> .

Further, the failure to provide sufficient:

- Housing,
- Assertive Community Treatment,
- Addiction Care,
- Transition Services,
- Public Benefit Application Service Assistance, and
- Person Centered Strengths-Based Discharge Planning

Harms people with mental illness in Colorado on a daily basis.

54. ADA/Olmstead/DOJ require Effective Plan to Transition People with Disabilities to Supported Housing.

“The State must implement an effective plan to transition people with mental illness unnecessarily institutionalized . . . to supported housing. Each person with mental illness in . . . should receive an independent, professionally appropriate, and person-centered assessment, by a transition team, of his or her preferences, strengths, and needs in order to the determine the community-based services necessary for him or her to live in supported housing,” DOJ/North Carolina Findings Letter

http://www.ada.gov/olmstead/olmstead_cases_list2.htm#NC

55. Effective Assistance in Obtaining Housing, Medicaid, Services, Etc.

In the “ADA Update: A Primer for State and Local Governments” by the US Department of Justice (DOJ), one of the examples of reasonable accommodations or modifications required by the ADA involves application assistance.”

“A person who has an intellectual or cognitive disability may need assistance in completing an application for public benefits,” **ADA Primer, General Non-Discrimination Requirements, Reasonable Modification of Policies and Procedures.**

http://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html

This is critical and why so many people who are homeless with mental illness are not on Medicaid or do not have the services they want and need. “Effective assistance”

is equally critical, the systems are complex and difficult to navigate. The current travesty is that people enduring the most severe mental disabilities sometimes have the most difficult time accessing services because of those very mental disabilities.

56. **THE STATE’S OBLIGATIONS UNDER THE ADA & OLMSTEAD GO BEYOND MEDICAID.** “A state’s obligations under the ADA are independent from the requirements of the Medicaid program. Providing services beyond what a state currently provides under Medicaid may not cause a fundamental alteration, and the ADA may require states to provide those services, under certain circumstances. For example, the fact that a state is permitted to “cap” the number of individuals it serves in a particular waiver program under the Medicaid Act does not exempt the state from serving additional people in the community to comply with the ADA or other laws.” US Department of Justice Q&A on the ADA’s Integration Mandate and Olmstead Enforcement, #7 (footnotes omitted), http://www.ada.gov/olmstead/q&a_olmstead.htm

57. **THE ADA & COMMUNITY TRANSITION SERVICES:** While Community Transition Services are currently limited to transition from a nursing home, Plaintiffs maintain that the law requires that services be brought to scale to serve people with mental illness who qualify for the CMHS waiver and are transitioning from incarceration, homeless, or the Mental Institute and those individuals who may not qualify for the waiver and are transitioning from the mental institute from a civil certification or a criminal determination of Incompetent to Proceed or Not Guilty by Reason of Insanity because they are in equal or greater need of the services which

include additional support and financial support for such things as rental deposits, see the Americans with Disabilities Act and the Equal Protection Clause to the US Constitution.

58. **REASONABLE MODIFICATIONS:** With reasonable modifications to its system for providing long term care services to people with mental illness and discharge from its Mental Institutes, Defendants could provide services to the named Plaintiffs and the Class in community settings.

COUNT II: VIOLATIONS OF SECTION 504 OF THE REHABILITATION ACT

59. Plaintiffs re-allege paragraphs 1 through 57 as though fully set forth herein.

60. **SECTION 504:** Section 504 of the Rehabilitation Act provides that: “No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” 29 U.S.C. § 794(a).

61. **504 REGULATIONS:** Regulations promulgated pursuant to Section 504 of the Rehabilitation Act provide that: “Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.” 28 C.F.R. § 41.51(d).

62. **PLAINTIFFS & CLASS QUALIFY UNDER REHABILITATION ACT:**

Named Plaintiffs and the Class are qualified individuals with disabilities within the meaning of the Rehabilitation Act. 29 U.S.C. § 794(a).

63. **CRITERIA OR METHODS OF ADMINISTRATION LEADING TO DISCRIMINATION PROHIBITED:** The regulations promulgated under Section 504 of the Rehabilitation Act further prohibit recipients of federal financial assistance from “utiliz[ing] criteria or methods of administration . . . (i) that have the effect of subjecting handicapped persons to discrimination on the basis of handicap; [or] (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient’s program with respect to handicapped persons.” 28 C.F.R. § 41.5(b)(3); 45 C.F.R. §84.4(b).

64. **504 OF THE REHABILITATION ACT APPLIES TO DEFENDANTS:** The programs and activities maintained by Defendants and their agencies, at issue in this case, including institutional and community services for people with mental illness, receive substantial federal financial assistance, and therefore, Defendants are subject to the provisions of Section 504 of the Rehabilitation Act.

65. **HOUSING & APPROPRIATE SERVICES MOST INTEGRATED SETTING:** Placement in a community setting with housing and appropriate services is the most integrated setting appropriate to meet the needs of the named Plaintiffs and the Class.

66. **DEFENDANTS CONTINUE TO DISCRIMINATE AGAINST PLAINTIFFS & THE CLASS:** Defendants have discriminated, and continue to discriminate, against

the named Plaintiffs and the Class, and have violated, and continue to violate, the Rehabilitation Act and its implementing regulations, by denying named Plaintiffs and the Class access to **housing, assertive community treatment, addiction care/substance use disorder services, necessary assistance in accessing those services, and person-centered/strength-based discharge planning from the mental health institutes** and by effectively requiring them to be confined unnecessarily or at great risk of institutionalization as a result of homelessness.

67. **REASONABLE MODIFICATIONS:** With reasonable modifications to its system for providing services to people with mental illness, Defendants could provide services and Housing to the named Plaintiffs and the Class as requested. It's important to note that the requests are in large measure made in terms of waitlists moving at a "reasonable pace" and "reasonable plans to bring to scale to meet the need."

**COUNT III: VIOLATIONS OF TITLE XIX (MEDICAID) OF
THE SOCIAL SECURITY ACT**

Plaintiffs re-allege paragraphs 1 through 66 as though fully set forth herein.

68. **COLORADO PARTICIPATES IN MEDICAID:** Colorado participates in the federal Medicaid program and has chosen to provide mental health services through a Community Mental Health System and long term care services under its Medicaid plan to eligible people with mental illness and through HCBS waivers. Because Colorado participates in the federal Medicaid program, it must comply with the requirements of Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v.

69. **PLAINTIFFS & CLASS NEED ASSISTANCE BEFORE, DURING, & AFTER MEDICAID & OTHER PUBLIC BENEFIT APPROVALS:** Named Plaintiffs and the Class are recipients of, or are eligible for, Medicaid. Some of them need considerable assistance in navigating the complex eligibility processes – before, during, and after Medicaid approval and other public benefit processes due to complexity of the systems in general, mental disabilities and impairments.

70. Defendants have failed, and continue to fail, to comply with Title XIX of the Social Security Act.

**COUNT IV: VIOLATIONS OF THE EQUAL PROTECTION CLAUSE TO THE
US CONSTITUTION**

71. Plaintiffs re-allege paragraphs 1 through 69 as though fully set forth herein.

72. **COLORADO COMMUNITY TRANSITION PROGRAM VIOLATES EQUAL PROTECTION:** The Equal Protection Clause to the US Constitution applying to the States, the 14th Amendment, guarantees citizens equal protection of the laws. That includes the right to equal benefit of the laws such as Colorado’s Community Transition Program which is limited to people with disabilities transitioning from the nursing home, and excludes people transitioning from the Mental Health Institute, Homelessness, and Incarceration who are “similarly situated.” The reality is that many

of those who are homeless or incarcerated with mental illness are also Black. Plaintiffs contend such exclusion is arbitrary and capricious and ignores the realities of people with significant mental health disabilities within the State and their needs, violating not only the Americans with Disabilities Act and other statutes but US Equal Protection provisions as well. Further, such benefits relate to “fundamental rights” and as such deserve strict scrutiny as well as the fact that many class members who are affected are Black and homeless and incarcerated such denial of benefits represents a conscious or unconscious suspect class. Such limitations are unconstitutional.

73. **MASS INCARCERATION OF PEOPLE WITH MENTAL ILLNESS IN COLORADO VIOLATES EQUAL PROTECTION:** Mental Health has a long tradition of being inadequately funded in Colorado and nationally. The results are horrific. As detailed previously, Colorado doesn’t even maintain waitlists for intensive mental health services such as Assertive Community Treatment, the State provides what it wants to provide. Meanwhile there are approximately 5,700 people in Colorado Department of Corrections custody with mental illness. Colorado Sheriffs openly complain about the lack of funding for mental health in the State and that “the system is broken.”

(***See also*** “This (grant) has to do with the realization in Colorado that state resources to deal with mentally ill people are really lacking,” [Don Bird, Pitkin County Jail administrator] said. “It’s inexcusable

<http://www.aspentimes.com/news/19366244-113/pitkin-county-jail-gets-grant-to-provide-inmates>

. Grand Junction Daily Sentinel, “Recent study finds 2/3 of Mesa County Jail inmates struggle with Mental Health,”

<http://www.gjsentinel.com/news/articles/locking-up-the-mentally-ill#>

“Coloradans with Mental Illnesses Warehoused in Jails & Prisons,”
---Rocky Mountain PBS I-News Network, “Jails and prisons have become the warehouses for people who aren’t getting treated elsewhere,” says Attila Denes, a captain at the Douglas County jail. “It’s among the most expensive and least humane” ways to provide care.

<http://inewsnetwork.org/2014/05/23/coloradans-with-mental-illnesses-warehoused-in-jails-prisons/>

Boulder Sheriff maintains “System is Broken” and Boulder Jail is over-crowded with female inmates with mental illness,

<https://www.youtube.com/watch?v=kSScljkjF-w>

The mass incarceration, homelessness, lack of services in Colorado violates not only the Americans with Disabilities Act and other statutes. Such Horrors deny people with mental illness the Equal Protection of the Laws guaranteed by the US Constitution.

**COUNT V: VIOLATIONS OF THE FEDERAL MENTAL HEALTH PARITY &
ADDICTION EQUITY ACT**

74. Plaintiffs re-allege paragraphs 1 through 71 as though fully set forth herein.

75. Failure of the State of Colorado to provide necessary services as alleged herein, violates the Federal Mental Health Parity & Addiction Equity Act of 2008, Public Law 110-343 (Text of the Act: <https://www.cms.gov/regulations-and-guidance/health-insurance-reform/healthinsreformforconsume/downloads/mhpaea.pdf>). CMS Statement on the MHPAEA (https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs7.html#). Specifically, CMS advises that the following practices would be prohibited under the Parity & Equity law:

“ Plans and issuers often impose non-quantitative treatment limitations, such as:

- Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether a treatment is experimental or investigative;
- Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy

protocols); “

Unfortunately in Colorado as in many States, thousands of individuals with mental illness are not only allowed to fail-first before going to the more expensive therapy such as Assertive Community Treatment --- they are left to spend their lives in a vicious cycle of homelessness and incarceration, seemingly never going to intensive evidence-based treatments that are promoted by the US Department of Substance Abuse and Mental Health Services or not at the scale that is needed, nor with any waitlists, nor any reasonable plans to bring to scale to meet the need.

COUNT VI: VIOLATIONS OF THE FEDERAL ACCOUNTABLE CARE ACT

76. Plaintiffs re-allege paragraphs 1 through 73 as though fully set forth herein.

77. Failure of the State of Colorado to provide the necessary services as alleged herein, violates the Federal Accountable Care Act (CMS Technical Assistance Brief --- Coverage and Delivery of Adult Substance Abuse Services in Medicaid Managed Care [Discusses Accountable Care Act as well as Mental Health Parity & Addiction Equity Act] <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/benefits/downloads/cms-adult-substance-abuse-services-coverage.pdf> .

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Class, respectfully request that the Court:

1. **CERTIFICATION OF CLASS:** Enter an order certifying named Plaintiffs as representatives of a class of people with mental illness, consisting of sub-classes of adult individuals in Colorado who:
 - A. Have “mental illness” who meet the level of care for Colorado Medicaid Long Term Care Home and Community Based Services within the meaning of the ADA, 42 U.S.C. § 12131(2) and the Rehabilitation Act, 29 U.S.C. § 794(a); or
 - B. Have a “mental illness” of a substance use disorder and desire and are in need of Addiction Care/Substance Abuse Services; or
 - C. Any adult who is being released from the Colorado Mental Institutes upon a civil certification, or a criminal certification of Incompetent to Proceed or Not Guilty by Reason of Insanity back to the community who are in need of timely, comprehensive, person-centered, strengths-based discharge planning.

2. **DECLARATORY JUDGMENT:** Declare that Defendants' failure:

A. To provide the named Plaintiffs and the Class with services in the most integrated setting appropriate to their needs violates:

- Title II of the Americans with Disabilities Act,
- Olmstead Decision
- US Department of Justice Olmstead ADA Enforcement Actions
- Section 504 of the Rehabilitation Act,
- Federal Mental Health Parity & Addiction Equity Act
- The Federal Patient Protection and Accountable Care Act;
- and
- Title XIX (Medicaid) of the Social Security Act.

B. Declare that Defendants do not have a **comprehensive, effectively working plan** for placing the named Plaintiffs and the Class in less restrictive settings with appropriate Housing and Services in order to maintain a "Fundamental Alteration Defense" under the US Supreme Court's Olmstead decision. This may be for many reasons, on its face the plan does not address the thousands of individuals in Colorado with mental illness who are in the

Criminal Justice System and as such is fatally flawed and cannot be comprehensive or an effectively working plan.

3. **PERMANENT INJUNCTION:** Issue a Permanent injunction:

A. Requiring Defendants to identify those people with mental illness and addiction/substance use issue be being released from jails and prisons, nursing homes, mental institutes,

- Who would met the level of care criteria for Medicaid Home & Community Based Services under Colorado Medicaid's ULTC 100.2 (assessment instrument).

B. Require Defendants to provide waitlists moving at a reasonable pace and reasonable plans to bring to scale to meet the need for adults with mental illness and substance use issues who are incarcerated, homeless, in nursing homes or mental health institutes:

- Housing,
- Assertive Community Treatment,
- Transition Services
- Addiction Care/Substance Use Services appropriate to level of need;

- Person-centered/Strengths-Based Discharge Planning from the Mental Health Institutes.

C. Those who are being released from jails and prisons are to be given first priority for services;

Grant such other and further relief as this Court deems just and proper, including an award of reasonable attorneys' fees, monitoring expenses, litigation expenses and costs.

Respectfully submitted:

Dated: February <u>22</u> , 2016	By: /s/ Valerie L. Corzine, Esq. Orchid Mental Health Legal Advocacy of Colorado, Inc. Attorney for Plaintiffs www.orchidadvocacy.org Mailing Address: 6834 S. University Blvd., # 221 Centennial, CO 80122 Meetings by Appointment 201 S. Cherokee Denver, CO 80223 (Conference Room Located Inside Atlantis Community, Inc.) Fax: 720-306-2470 Toll-Free: 1-844-9-ORCHID or 1-844-947-2443 E-mail: vcorzine@orchidadvocacy.org
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CERTIFICATE OF SERVICE

The undersigned, an attorney for the plaintiffs, certifies that on February
22, 2016, she electronically filed the foregoing document with the Clerk of the
Court using the ECF system which will send notification of such filing
to the counsel of record for the State of Colorado.

s/ Valerie L. Corzine, Esq.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> _____</p>	<p style="text-align: center;">DEFENDANTS</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i> _____</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i></p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*: _____

Brief description of cause: _____ AP Docket _____

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service; **OR "AP Docket."**
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.