

1 MARY-LEE SMITH (CA BAR NO. 239086)
MICHELLE IORIO (CA BAR NO. 298262)
2 Disability Rights Advocates
2001 Center Street, Fourth Floor
3 Berkeley, California 94704
4 Telephone: (510) 665-8644
Facsimile: (510) 665-8511
5 TTY: (510) 665-8716
Email: msmith@dralegal.org

6 GAY GRUNFELD (CA BAR NO. 121944)
7 LISA ELLS (CA BAR NO. 243657)
KARA JANSSEN (CA BAR NO. 274762)
8 Rosen Bien Galvan & Grunfeld LLP
50 Fremont Street, 19th Floor
9 San Francisco, California 94105
10 Telephone: (415) 433-6830
Facsimile: (415) 433-7104
11 Email: LElls@rbgg.com

12 Attorneys for Plaintiffs

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 DAVID COLE, LEROY BENJAMIN,
16 ERASMO FLORES, JR., ROBERT
PHILLIPS and BRANDON WILLIAMS, on
17 behalf of themselves and all others similarly
situated,

18 Plaintiffs,

19 v.

20 COUNTY OF SANTA CLARA, a public
21 entity, COUNTY OF SANTA CLARA
22 DEPARTMENT OF CORRECTION, a public
entity under the control of the County of Santa
23 Clara, the COUNTY OF SANTA CLARA
OFFICE OF THE SHERIFF, a public entity
24 under the control of the County of Santa Clara,
and DOES 1 to 20, inclusive,

25 Defendants.
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CLASS ACTION

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

DISABILITY RIGHTS ADVOCATES
2001 CENTER STREET, FOURTH FLOOR
BERKELEY, CALIFORNIA 94704-1204
(510) 665-8644

1 Plaintiffs DAVID COLE, LEROY BENJAMIN, ERASMO FLORES, JR., ROBERT
2 PHILLIPS and BRANDON WILLIAMS (collectively, “Plaintiffs”), by and through their
3 counsel, Disability Rights Advocates and Rosen Bien Galvan & Grunfeld LLP, bring this
4 Complaint against Defendants COUNTY OF SANTA CLARA (“COUNTY”), COUNTY OF
5 SANTA CLARA DEPARTMENT OF CORRECTION (“CORRECTION DEPARTMENT”) and
6 the COUNTY OF SANTA CLARA OFFICE OF THE SHERIFF (“SHERIFF’S OFFICE”)
7 (collectively, “Defendants”).

8 INTRODUCTION

9 1. Plaintiffs bring this case to remedy the inaccessibility of the Santa Clara County
10 Jail system (“County Jails,” “Jails,” or “Jail”) for inmates with mobility disabilities. The Jail
11 system is the fifth largest jail system in the State of California. Due to the lack of accessible
12 cells, showers, and living units in the County Jails, many individuals with mobility disabilities
13 are segregated in restrictive medical units despite the fact they do not require ongoing medical
14 care, and/or are held in higher security and more restrictive settings than they otherwise would be
15 but for their disabilities. They are further denied access to educational, religious, and
16 rehabilitative programs due to physical and programmatic barriers, and cannot even use the toilet
17 and shower safely due to a lack of accessible features. Inmates are not informed of their rights,
18 are not provided with a method for requesting reasonable modifications to policies and practices,
19 and are denied access to a functioning and meaningful grievance system.

20 2. There are approximately 4,000 people incarcerated in the Jails at any given time
21 and over 65,000 individuals are booked into the Jails every year. The Jails include facilities at
22 the Santa Clara County Main Jail Complex (“Main Jail”), consisting of Main Jail North and
23 Main Jail South, in San Jose, California; facilities for male inmates at the Elmwood Correctional
24 Complex in Milpitas, California (“Elmwood”); and the Elmwood Complex Women’s Facility in
25 Milpitas, California (“Elmwood Women’s Facility”).

26 3. In the entire County Jail system, there is not a single housing unit that is fully
27 accessible in compliance with state and federal disability laws. As a result, inmates with
28 mobility disabilities cannot use the toilet safely and independently, take a shower safely and

1 independently, or otherwise have equal or meaningful access to programs and services offered at
2 the Jails. Further, this lack of accessible housing puts the physical safety of inmates with
3 mobility disabilities at risk.

4 4. Additionally, there is no functioning system of screening inmates upon intake to
5 ensure inmates with mobility disabilities are identified and accommodated. To the extent
6 Defendants are able to identify individuals with mobility disabilities, the County Jails lack a
7 system to track the location and needs of inmates identified as having a mobility disability,
8 causing Jail staff to fail to accommodate the inmates' disability needs..

9 5. Inmates with mobility disabilities regularly are housed in a medical setting and/or
10 a higher custody level than warranted based solely on their disability. Inmates in the Main Jail
11 with mobility disabilities who need a wheelchair are required to be housed in "special housing
12 units" including the Main Jail Infirmary, Unit 2C ("Main Jail Infirmary") and Main Jail Special
13 Housing, Unit 2B ("Main Jail Special Housing"). Additionally, medium security inmates with
14 mobility disabilities who need a wheelchair and who would otherwise be eligible for housing at
15 the less restrictive Elmwood facility are housed at in these special housing units at the Main Jail
16 instead.

17 6. The Main Jail Infirmary and Main Jail Special Housing units are each 30-bed
18 facilities that are, on information and belief, the only housing at the Main Jail that offer any
19 accessible features, such as grab bars, although these units are still not fully accessible.
20 Individuals housed in these units are generally held in their cells for 23 or more hours per day
21 and are sometimes not let out at all. These units do not provide access to programs, activities,
22 and services, including educational, vocational, and rehabilitative programs available in other
23 areas of the Main Jail or at Elmwood. Similarly, minimum security level inmates with mobility
24 disabilities who use a wheelchair are required to be housed in the Elmwood Minimum Security
25 Camp Special Housing Unit ("Elmwood Special Housing"), which also is not fully accessible.

26 7. Plaintiffs seek declaratory and injunctive relief against Defendants as a remedy
27 for their systemic discrimination against inmates with mobility disabilities. Defendants
28 discriminate in two predominant ways. First, Defendants deny inmates with disabilities access to

1 the County Jails' programs, services and activities. They do so at the Main Jail by segregating
 2 inmates who use wheelchairs, including inmates who would otherwise be eligible to be housed at
 3 the lower-security Elmwood, in the highly restrictive special housing units and by maintaining a
 4 physically inaccessible facility, the combination of which prevents inmates with mobility
 5 disabilities from participating in programs, services and activities at the Main Jail. At Elmwood,
 6 the denial of access to the programs, services and activities offered is due mostly to the
 7 physically inaccessible campus, which is particularly troubling given the far greater amount of
 8 programming available at Elmwood.

9 8. Second, Defendants discriminate by failing to modify their policies and
 10 procedures. Defendants fail to identify and/or track inmates with mobility disabilities, making it
 11 virtually impossible to properly accommodate them. Defendants have assistive device policies
 12 and procedures that result in inmates with mobility disabilities rarely, and certainly not in a
 13 timely manner, receiving the assistive devices that they need. Jail staff also lack the adequate
 14 disability-accommodation training, which only exacerbates Defendants' failure to provide legally
 15 required accommodations. Defendants also lack clear grievance policies and procedures for
 16 disability-related grievances, rendering the grievance system almost useless in achieving any sort
 17 of remedy. As a result of these actions and omissions, inmates with mobility disabilities are
 18 denied equal and meaningful access to Defendants' programs, services, and activities, including
 19 educational programs, vocational programs, health care services, mental health services,
 20 exercise, showers, recreational programs and religious services.

21 9. Moreover, Defendants' failure to modify its policies and procedures makes
 22 inmates with disabilities susceptible to exploitation and violence by other non-disabled inmates
 23 and increases the risk of serious injury or even death for inmates with disabilities.

24 10. Defendants' acts and omissions have resulted in the unequal treatment of, and
 25 severe harm to, individuals with mobility disabilities housed at the County Jails. Such
 26 discrimination violates Title II of the Americans with Disabilities Act ("ADA"), Section 504 of
 27 the Rehabilitation Act ("Rehabilitation Act" or "Section 504"), and California Government
 28 Code § 11153, *et seq.*

DISABILITY RIGHTS ADVOCATES
2001 CENTER STREET, FOURTH FLOOR
BERKELEY, CALIFORNIA 94704-1204
(510) 665-8644

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JURISDICTION

11. This Court has jurisdiction over Plaintiffs’ federal claims arising under Title II of the ADA, and Section 504 of the Rehabilitation Act and the regulations promulgated thereunder, pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction over the claims brought under California law pursuant to 28 U.S.C. § 1367.

12. This Court has jurisdiction over Plaintiffs’ claims for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202. This Court also has authority under the ADA pursuant to 42 U.S.C. § 12205 and under Section 504 pursuant to 29 U.S.C. § 794a(b) to award Plaintiffs’ reasonable attorneys’ fees and costs.

VENUE

13. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(b) because Defendants are located in this District and all of the acts and/or omissions complained of herein have occurred, are occurring, or will occur in the District.

INTRADISTRICT ASSIGNMENT

14. Pursuant to the Northern District of California’s Civil Local Rule 3-2(c)-(e), because a substantial part of the events giving rise to Plaintiffs’ claims occurred in Santa Clara County, the intradistrict assignment should be to the San Jose Division.

PARTIES

A. PLAINTIFF DAVID COLE

15. Plaintiff DAVID COLE has diabetes and Charcot neuropathy, or “Charcot foot,” a permanent condition caused by nerve damage related to diabetes. As a result, Plaintiff COLE does not have sensation in his feet, and something as minor as a blister can lead to a serious infection in a matter of days. It is extremely difficult for Plaintiff COLE to bear any weight on his feet as this can accelerate and exacerbate damage to his foot. As a result of these conditions, which substantially limit Plaintiff COLE’s ability to walk and stand, Plaintiff COLE uses a wheelchair to move about. Plaintiff COLE is a person with a disability as defined in 42 U.S.C. § 12102, 29 U.S.C. § 705(9)(B), and California Government Code § 12926(1).

16. Plaintiff COLE has been detained at the County Jails since November 14, 2012.

1 During this time he was housed at the Main Jail Infirmary, Main Jail Special Housing, and
2 Elmwood Special Housing. Since approximately July 6, 2016, he has been housed in an early
3 release residential treatment center.

4 17. During his time in the County Jails, Plaintiff COLE has required reasonable
5 modifications to policies and procedures necessary to ensure disability-related accommodations,
6 including but not limited to a wheelchair, wheelchair-accessible facilities, wheelchair-accessible
7 transportation, a shower chair, diabetic socks, Epsom salt foot soaks, insulin shots four times
8 daily, and a diabetic diet. As a result of Defendants' failure to make reasonable modifications to
9 policies and procedures, Plaintiff COLE has experienced substantial delays and other problems
10 obtaining each of these required accommodations, and in some cases, as a result of Defendants'
11 failure to make reasonable modifications to policies and procedures, he has been denied
12 necessary accommodations.

13 18. For example, at Elmwood, in order to get his insulin shots, Plaintiff COLE had to
14 travel to Elmwood's pill call area at least four times daily over an inaccessible path of travel. In
15 order to get there he had to rely on other inmates to assist him in opening heavy doors and
16 pushing his wheelchair up steep curb ramps. The Jail subsequently began assigning inmates to a
17 "wheelchair pusher" position to assist individuals such as Plaintiff COLE, but the wheelchair
18 pusher program does not provide the independence that other inmates enjoy. Additionally, there
19 are not always enough wheelchair pushers available to serve the need for such pushers,
20 particularly during busy times such as pill call, and they have often been late to bring Plaintiff
21 COLE to get his medication. Contributing to the problem is that the wheelchair pushers have
22 other jobs and, thus other obligations that prevent them from being available when needed. As
23 such, when no designated wheelchair pusher is available, Plaintiff COLE has had to rely on other
24 inmates in Elmwood Special Housing, many of whom also had disabilities, to assist him, which
25 put those inmates at risk of physical injury as well.

26 19. Plaintiff COLE also requires wheelchair-accessible vans when he is being
27 transported to court, medical appointments, or other services outside of the Jail, but has not been
28 consistently provided with accessible transportation. For example, Jail staff failed to provide

1 him with a wheelchair accessible van to transport him to a medical appointment. Instead, Jail
 2 staff suggested that he use a non-accessible van that required him to step in and out of the van
 3 and go without his wheelchair to stabilize him. He refused this arrangement because he feared
 4 for his physical safety and had to miss his medical appointment.

5 20. When Plaintiff COLE was at the Main Jail, even after he had his wheelchair
 6 issued to him, Jail staff sometimes took it away from him. As a result, Plaintiff COLE was left
 7 with no way to get around and without his wheelchair. Consequently, Plaintiff COLE was
 8 excluded from many Jail programs, services, and activities, including Narcotics Anonymous and
 9 Alcoholics Anonymous.

10 21. Plaintiff COLE was transferred to an early release program in July of 2016 to
 11 complete the rest of his jail sentence. However, at any time, Plaintiff COLE may be removed
 12 from the program and returned to Elmwood or to the Main Jail, including for such minor
 13 offenses as arguing or violating dress code. He can also be remanded for failing a routine drug
 14 test. Plaintiff COLE has been in and out of the County Jails many times since 1989 for drug and
 15 theft charges. As such, he is qualified to participate in the programs, services and activities of
 16 the County Jails.

17 **B. PLAINTIFF LEROY BENJAMIN**

18 22. Plaintiff BENJAMIN has pain in his left hip, shoulder, and leg due to bone loss
 19 and disc degeneration, as well as paralysis on the left side of his body from the waist down,
 20 which substantially limit his ability to walk and stand. As a result of these conditions, Plaintiff
 21 BENJAMIN, has, at various times, used a power wheelchair, walker, and cane for mobility
 22 assistance. Plaintiff BENJAMIN also has sleep apnea, which substantially limits his ability to
 23 breathe and sleep, and so requires the use of a continuous positive airway pressure (“CPAP”)
 24 machine, which he used prior to coming to the Jails. Plaintiff BENJAMIN currently uses a
 25 wheelchair for mobility and a cane to assist him with moving about in his cell. Plaintiff
 26 BENJAMIN is a person with a disability as defined in 42 U.S.C. § 12102, 29 U.S.C. §
 27 705(9)(B), and California Government Code § 12926(1).

28 23. Plaintiff BENJAMIN has been detained at the Jails since October 3, 2015. Since

1 arriving at the Jails, he has been housed in Main Jail South, the Main Jail Infirmery, Main Jail
2 Special Housing, and the mental health unit of the Main Jail, which is located on the eighth floor
3 (“Unit 8A”). Plaintiff BENJAMIN requires reasonable modifications to policies and procedures
4 necessary to ensure disability-related accommodations for his disabilities, including but not
5 limited to a wheelchair, cane, and CPAP machine. He has experienced substantial delays and
6 other problems obtaining each of these reasonable modifications, and in some cases has been
7 denied reasonable modifications.

8 24. Plaintiff BENJAMIN repeatedly has been housed in cells without accessible
9 features, such as grab bars, to allow him to use the toilet safely and independently. For example,
10 when he was housed in Main Jail South, he was placed in a cell with no grab bars to allow him to
11 use the toilet safely. Additionally, his current cell in Main Jail Special Housing only has a grab
12 bar located directly behind the toilet and no side grab bar to allow him to safely lift himself on
13 and off the toilet. As a result, he is at risk of falling and injuring himself every time he uses the
14 toilet and is forced to use his cane to try to stabilize himself.

15 25. He has also, at various times, been denied access to accessible shower facilities,
16 which has forced him to go without showers or to put himself at risk of injury due to the lack of
17 grab bars and other features that would allow him to bathe safely. For example, when Plaintiff
18 BENJAMIN first arrived at the Jails, he was housed in Main Jail South for approximately two
19 weeks without access to a shower with accessible features such as grab bars.

20 26. Plaintiff BENJAMIN was denied access to a wheelchair or cane upon arriving at
21 the Jails and when he was housed at Main Jail South. He was not provided with any assistive
22 devices until he was transferred to Main Jail Special Housing. He was again denied access to his
23 wheelchair and cane on multiple occasions when he was housed in Unit 8A in order to receive
24 mental health treatment.

25 27. Furthermore, Plaintiff BENJAMIN did not receive a CPAP machine until
26 approximately seven months after his initial request. Without his CPAP machine, Plaintiff
27 BENJAMIN wakes up feeling as if he is choking and is only able to sleep four to five hours per
28 night. The exhaustion caused by this lack of sleep worsens his pre-existing mobility disabilities.

1 After he received a CPAP machine, Plaintiff BENJAMIN again suffered a mental health crisis
2 and requested treatment in Unit 8A. Jail staff told him that he could not go to Unit 8A for mental
3 health treatment with his assistive devices.

4 28. By reason of his disabilities, Plaintiff BENJAMIN has been excluded from
5 programs and services at the Jail such as mental health treatment, visitation, shower, and yard
6 time.

7 29. At any time, Plaintiff BENJAMIN may be transferred from the Main Jail to
8 Elmwood or vice versa. As such, he is qualified to participate in the programs, services and
9 activities of the County Jails.

10 **C. PLAINTIFF ERASMO FLORES, JR.**

11 30. Plaintiff ERASMO FLORES, JR. has multiple disabilities including a vision
12 impairment, diabetes, water in his legs, and arthritis in his knees and shoulder, which
13 substantially limit his ability to walk and stand. As a result of these conditions, Plaintiff
14 FLORES typically uses a cane or a walker for mobility but has used a wheelchair since
15 September 2016 due to a surgery. Plaintiff FLORES is a person with a disability as defined in
16 42 U.S.C. § 12102, 29 U.S.C. § 705(9)(B), and California Government Code § 12926(1).

17 31. Plaintiff FLORES has been detained at the County Jails since April 28, 2015.
18 Since arriving at the County Jails, he has been housed in Elmwood, the Main Jail Infirmary, Unit
19 5B in the Main Jail, and in Main Jail Special Housing. When Plaintiff FLORES was initially
20 brought to the County Jails, he did not have his cane with him. Although he requested a cane
21 shortly after he arrived, Defendants initially rejected his request on the basis that he could not
22 have the cane in Unit 5B, where he was held at the time. Plaintiff FLORES did not receive a
23 cane until approximately three to four months later when he was transferred to the Main Jail
24 Infirmary for other reasons.

25 32. Plaintiff FLORES has repeatedly been housed in cells without grab bars and other
26 accessible features that would allow him to safely and independently use the toilet and navigate
27 his cell. He has also repeatedly been forced to use a shower that is not accessible to him due to a
28 lack of clearance space for him to get into the shower from his wheelchair and a lack of grab

1 bars, putting him at risk of injury. While housed in Unit 5B, Plaintiff FLORES was not only
 2 deprived use of a cane but was held in an inaccessible cell without features such as grab bars and
 3 without access to an accessible shower. In Unit 5B, Plaintiff FLORES constantly was afraid of
 4 falling and injuring himself and came close to falling multiple times due to the lack of grab bars
 5 and his cane. While housed in Elmwood, Plaintiff FLORES was also held in an inaccessible cell
 6 and was at risk of injuring himself due to the lack of grab bars in his cell. Plaintiff FLORES'
 7 current cell in Main Jail Special Housing is also not accessible because the only grab bar is
 8 located directly behind the toilet and there is no side grab bar to allow him to safely lift himself
 9 on and off the toilet. As a result, he is at risk of falling and injuring himself every time he uses
 10 the toilet.

11 33. Additionally, when Plaintiff FLORES is held in the Main Jail Infirmary and in
 12 Main Jail Special Housing, he is denied access to programs and services available to non-
 13 disabled inmates due solely to his disabilities, including but not limited to day room, yard time,
 14 bible study, and religious services.

15 34. At any time, Plaintiff FLORES may be transferred from the Main Jail to
 16 Elmwood or vice versa. As such, he is qualified to participate in the programs, services and
 17 activities of the County Jails.

18 **D. PLAINTIFF BRANDON WILLIAMS**

19 35. Plaintiff BRANDON WILLIAMS is paralyzed from the waist down. As a result
 20 of this condition, which substantially limits his ability to walk and stand, Plaintiff WILLIAMS
 21 uses a wheelchair for mobility and is a person with a disability as defined in 42 U.S.C. § 12102,
 22 29 U.S.C. § 705(9)(B), and California Government Code § 12926(1).

23 36. Plaintiff WILLIAMS has been detained at the County Jails since August 12, 2016
 24 and until approximately October 13, 2016 was housed in the Main Jail Infirmary despite the fact
 25 he did not require any ongoing medical care. While housed in the Main Jail Infirmary, Plaintiff
 26 WILLIAMS was denied access to programs and services available to non-disabled inmates due
 27 solely to his disabilities including, but not limited to, day room and yard time, educational
 28 programs, and vocational programs. Plaintiff WILLIAMS requested to be moved to Elmwood

1 multiple times in order to access such programs. Despite having been medically cleared prior to
 2 submitting his request for transfer and having been approved for transfer to Elmwood, he was not
 3 actually transferred for nearly a month. Plaintiff WILLIAMS filed a grievance on this issue on
 4 October 7, 2016 which was denied on October 10, 2016 on the basis that he could not go to
 5 Elmwood because he is an un-sentenced felon and because he had not been medically cleared,
 6 which was inaccurate because he was medically cleared prior to submitting his grievance.
 7 However, despite this response, Plaintiff WILLIAMS was nonetheless moved to Elmwood on
 8 approximately October 13, 2016. Plaintiff WILLIAMS is currently housed in the Elmwood
 9 Special Housing unit where he continues to face barriers due to lack of clearance space for him
 10 to safely navigate his unit, cracked and broken pavement, a lack of accessible exercise
 11 equipment, and a lack of accessible yard space.

12 37. Plaintiff WILLIAMS also requires wheelchair-accessible transportation to go to
 13 court and to medical appointments. While he has been provided with a wheelchair-accessible
 14 van, Jail staff failed to properly secure Plaintiff WILLIAMS' wheelchair and his wheelchair
 15 flipped over with him in it during transport. As a result, Plaintiff WILLIAMS was physically
 16 injured and missed his court hearing because he had to go to the hospital.

17 38. At any time, Plaintiff WILLIAMS may be transferred from the Main Jail to
 18 Elmwood or vice versa. As such, he is qualified to participate in the programs, services and
 19 activities of the County Jails.

20 E. **PLAINTIFF ROBERT PHILLIPS**

21 39. Plaintiff ROBERT PHILLIPS has slipped discs in his back and suffered multiple
 22 injuries in 2015, including nerve damage caused by a surgery on his neck, which cause him to
 23 drag his right foot when he walks. He suffered additional physical injuries in 2015 to his legs
 24 and back as a result of two separate car accidents. As a result of these conditions, which
 25 substantially limit his ability to walk, Plaintiff PHILLIPS uses a cane for mobility and is a person
 26 with a disability as defined in 42 U.S.C. § 12102, 29 U.S.C. § 705(9)(B), and California
 27 Government Code § 12926(1).

28 40. Plaintiff PHILLIPS has been detained at the Main Jail since July 25, 2016. When

1 he was arrested, he had his cane with him but the arresting officers did not bring it with him to
2 the Jail. Without his cane it is difficult for Plaintiff PHILLIPS to keep his balance when he
3 walks and he is at risk of falling and injuring himself. When Plaintiff PHILLIPS initially arrived
4 at the Jail, he was housed at the Main Jail in Unit 4C and was not assessed to determine whether
5 he needed a cane. Plaintiff PHILLIPS was initially housed in an inaccessible cell located on the
6 upper tier, which required the use of stairs. Jail staff also shackled Plaintiff PHILLIPS' legs,
7 which, in combination with his lack of cane and dragging foot, made it dangerous for him to
8 walk and to navigate stairs. As a result, Plaintiff PHILLIPS fell down the stairs and suffered
9 injuries. Despite repeated requests, Plaintiff PHILLIPS was not issued a cane for nearly three
10 months after being booked into the County Jails. Once he was finally issued a cane, it was only
11 on a temporary basis, and he has not been approved to use the cane permanently to date. The Jail
12 has also refused to give him the necessary medical documentation, known as a "chrono," to
13 ensure he is housed in a lower bunk and on a lower tier.

14 41. After several weeks in Unit 4C, Plaintiff PHILLIPS was transferred to Unit 5A.
15 Plaintiff PHILLIPS has also been held for short periods in the Main Jail Infirmary. In both Units
16 4C and Unit 5A, Plaintiff PHILLIPS has been housed in cells without any grab bars to allow him
17 to use the toilet safely and independently. The only shower he is permitted to use also lacks grab
18 bars and a shower seat to allow him to bathe safely and independently. To make matters worse,
19 when he is out of his cell, Jail staff continue to shackle Plaintiff PHILLIPS' hands and feet. This
20 makes it incredibly dangerous for him to move about because his right foot drags when he walks
21 which, combined with the shackles on his feet, can cause him to lose his balance. Since July 25,
22 2016, Plaintiff PHILLIPS has fallen multiple times due to the shackles and his lack of a cane for
23 support. He is unable to brace himself for a fall due to the shackles and, each time he has fallen,
24 he was knocked unconscious by the force.

25 42. At any time, Plaintiff PHILLIPS may be transferred from the Main Jail to
26 Elmwood or vice versa. As such, he is qualified to participate in the programs, services and
27 activities of the County Jails.
28

1 **D. Defendants**

2 43. Defendant SANTA CLARA COUNTY is a public entity, duly organized and
3 existing under the laws of the State of California. The COUNTY operates and manages the
4 County Jails and is, and was at all relevant times mentioned herein, responsible for the actions
5 and/or inactions and the policies, procedures, practices, and customs of the SHERIFF'S OFFICE
6 and CORRECTION DEPARTMENT, and their respective employees and/or agents. The
7 COUNTY employs 50 or more persons and is ultimately responsible for, and retains ultimate
8 authority over, the operation of the Jails in the COUNTY, including the housing and treatment of
9 Plaintiffs and the class they seek to represent. Upon information and belief, the COUNTY
10 receives state and federal funds for the operation of the County Jails and has received such funds
11 at all times relevant to this complaint.

12 44. Defendant SANTA CLARA COUNTY OFFICE OF THE SHERIFF is a public
13 entity, duly organized and existing under the laws of the State of California and employs 50 or
14 more persons. Sheriff Laurie Smith is the County Sheriff. The annual budget of the SHERIFF'S
15 OFFICE – which is separate from the CORRECTION DEPARTMENT budget – is over
16 \$150,000,000. The SHERIFF'S OFFICE oversees the jail system for Santa Clara County and is
17 responsible for day-to-day operation of the County Jails, including promulgating policies and
18 procedures for the operation of the County Jails and the safety and security of approximately
19 4,000 inmates who are held in the County Jails. Upon information and belief, the SHERIFF'S
20 OFFICE receives state and federal funds for the operation of the County Jails and has received
21 such funds at all times relevant to this complaint.

22 45. Defendant CORRECTION DEPARTMENT is a public entity, duly organized and
23 existing under the laws of the State of California and employs more than fifty persons. The
24 CORRECTION DEPARTMENT has an annual budget of over \$90,000,000. The Chief of
25 Correction for the CORRECTION DEPARTMENT is Carl Neusel. The Chief of Correction also
26 acts as undersheriff in the SHERIFF'S OFFICE and supervises the Assistant Sheriff of Custody
27 and Services who, in turn, supervises custody managers at each of the facilities as well as
28 custody administrative and support services. The CORRECTION DEPARTMENT is

1 responsible for the care and custody of incarcerated pretrial and sentenced offenders in the
 2 County Jails and a day reporting center, providing approximately 4,000 approved inmate housing
 3 beds. The CORRECTION DEPARTMENT also manages detainees in a court holding facility in
 4 conjunction with the SHERIFF'S OFFICE. Upon information and belief, the CORRECTION
 5 DEPARTMENT receives state and federal funds for the operation of the County Jails and has
 6 received such funds at all times relevant to this complaint.

7 46. Plaintiffs are ignorant of the true names and capacities of Defendants sued in this
 8 complaint as DOES 1 through 20, inclusive, and therefore sue these Defendants by such
 9 fictitious names. Plaintiffs will amend this complaint to allege their true names and capacities
 10 when ascertained. Plaintiffs are informed and believe, and thereon allege that each of the
 11 fictitiously named Defendants is responsible in some manner for the occurrences alleged in this
 12 complaint.

13 47. At all times mentioned in this complaint, each Defendant was the agent of the
 14 others and was acting within the course and scope of this agency, and all acts alleged to have
 15 been committed by any one of them was committed on behalf of every other Defendant.

16 **FACTUAL ALLEGATIONS**

17 **A. Background**

18 48. The Santa Clara County jail system is the fifth largest jail system in California,
 19 and among the twenty largest systems in the United States. The County jail system is among the
 20 100 systems nationwide with an inmate population of more than 1,000. The average daily
 21 population for the County Jails in 2015 was approximately 3,638 inmates.

22 49. The Custody Division of the SHERIFF'S OFFICE in conjunction with the
 23 CORRECTIONS DEPARTMENT oversees the County Jails. The County Jails include the Main
 24 Jail Complex, in downtown San Jose, which houses both men and women; and the Elmwood
 25 Correctional Complex, located in Milpitas, which includes the Elmwood Men's Facility and the
 26 Elmwood Women's Facility.

27 50. The County Jails' facilities have undergone construction and/or alterations since
 28 January 26, 1992 and since July 26, 1992. In particular, several units at the Elmwood

1 Correctional Complex were constructed in the 1990's including building M-8, which was
 2 constructed in 1996. Additionally, Barrack 3, which is part of the minimum security housing at
 3 Elmwood, was remodeled in 2008.

4 *Main Jail*

5 51. The Main Jail Complex houses medium security, medium high security, and high
 6 security inmates and is located at 150 West Hedding Street in downtown San Jose. All arrestees,
 7 both male and female, are booked into custody at the Main Jail. The annual budget for the Main
 8 Jail is approximately \$37 million. Each year, the Main Jail receives and books approximately
 9 65,000 persons. The average length of stay is approximately 110 days. The Main Jail Complex
 10 is divided into Main Jail North and Main Jail South. Individuals at the Main Jail are housed in
 11 either dorm-style housing units, where many beds are placed in an open area shared by inmates,
 12 or in celled housing, where the unit is divided into cells and inmates are housed individually or
 13 with a small number of cellmates.

14 52. Main Jail North, which includes general population, Main Jail Special Housing,
 15 and Main Jail Infirmary, is designed to house up to 919 inmates and was opened in 1987.

16 53. Main Jail North uses the direct supervision inmate management model where
 17 correctional deputies oversee inmates from within locked housing units. Inmate areas include
 18 the basement level, which contains intake, booking, and court staging functions; the second
 19 floor, which includes the health center, special housing, and infirmary; the fourth floor, which
 20 includes maximum and high-maximum housing; general inmate housing on floors five through
 21 seven; and mental health services on the eighth floor. Housing units contain up to 48 cells
 22 holding one or two inmates each and have a central common area with tables, chairs, television,
 23 telephones, and a shower. Each cell contains a toilet, sink, mirror, and bed.

24 54. Correctional deputies in "direct supervision" housing, such as those in Main Jail
 25 North, are locked in an inmate housing unit and are responsible for all aspects of inmate care and
 26 custody including programming (time out of cell), meals, pill calls, headcounts, and removal
 27 from cells for court appearances and seeing visitors. Staffing is such that the majority of housing
 28 units have only one correctional deputy on duty which means that a single correctional deputy

1 eligible for housing at Elmwood are instead housed at the Main Jail due solely to their
 2 disabilities. As such they are denied access to the additional programs, services, and activities
 3 offered at Elmwood, which are not available at Main Jail.

4 63. These special housing units are not the most integrated settings appropriate to the
 5 needs of inmates with mobility disabilities. Defendants' policy of placing inmates who use
 6 wheelchairs in these units has resulted in Plaintiffs and many other inmates with mobility
 7 disabilities being unnecessarily segregated into highly restrictive special housing units in the
 8 Main Jail and places many more such inmates at serious risk of unnecessary segregation.

9 ***Physical Inaccessibility of Defendants' Main Jail Facilities***

10 64. The County Jails' facilities were assessed in 2015 by experts at Sabot Consulting
 11 to identify barriers at the Jails related to mobility disabilities ("Report").

12 65. Main Jail North is not physically accessible to inmates with mobility disabilities.
 13 According to the Report, typical physical barriers observed in Main Jail North include: (1) doors,
 14 including cell doors and doors to visiting areas, that are too narrow for wheelchairs; (2)
 15 inaccessible toilets and lavatories due to a lack of grab bars, improper positioning of toilets in a
 16 manner that fails to provide adequate clearance for a person with a mobility disability, and grab
 17 bars and lavatories which are not provided at the correct height; (3) ramps with excessive slopes;
 18 (4) showers that are inaccessible due to curbs or lips, lack of grab bars, lack of shower seats, and
 19 lack of spray hose; (5) tables in day rooms and in the chapel that are inaccessible due to a lack of
 20 knee space; (6) inaccessible visiting areas that are not usable by wheelchair users due to the
 21 presence of a fixed stool; (7) call buttons and telephones that are placed too high for a wheelchair
 22 user to reach; (8) lack of clearance in the law library; (9) lack of accessible routes; and (10) lips
 23 at thresholds that present a barrier to wheelchair users and a tripping hazard to persons using
 24 canes, walkers, or other mobility assistive devices.

25 66. Main Jail South is also not physically accessible. According to the Report, typical
 26 physical barriers observed in Main Jail South include: (1) cell doors that are too narrow for
 27 wheelchairs; (2) inaccessible toilets and lavatories due to a lack of grab bars and improper
 28 positioning of toilets in a manner that fails to provide adequate clearance for a person with a

1 mobility disability; (3) ramps with excessive slopes; (4) showers that are inaccessible due to
2 curbs or lips, lack of grab bars, lack of shower seats, and lack of spray hose; (5) tables in day
3 rooms and in the chapel that are inaccessible due to a lack of knee space; and (6) inaccessible
4 visiting areas that are not usable by wheelchair users due to the presence of a fixed stool.

5 67. Inmates who are medium security and higher and who require wheelchairs are
6 housed in either the Main Jail Infirmary or Main Jail Special Housing. These are the only
7 housing units in the Main Jail facilities that contain cells and showers with some accessible
8 features, such as grab bars. However, these units still contain physical barriers for inmates with
9 mobility disabilities and are not fully accessible. For example, both Plaintiff BENJAMIN and
10 Plaintiff FLORES are housed Main Jail Special Housing in cells where the toilet is missing a
11 side grab bar to allow them to safely lift themselves on and off the toilet. Instead, the only grab
12 bar is located directly behind the toilet, which is of no practical use. As a result, Plaintiff
13 BENJAMIN and FLORES, who both use wheelchairs, are at risk of falling and injuring
14 themselves every time they use the toilet.

15 68. Individuals at the Main Jail who use assistive devices besides a wheelchair, such
16 as a cane, may be housed outside of the Main Jail Infirmary or Main Jail Special Housing.
17 However, these units are not accessible to inmates with disabilities and lack grab bars in the
18 showers and toilets to allow inmates with mobility disabilities to bathe and go to the bathroom
19 safely. For example, Plaintiff PHILLIPS uses a cane due to his mobility disability and is
20 currently housed in Unit 5A in a cell without grab bars and without an accessible shower.
21 Plaintiff PHILLIPS was previously held in Unit 4C in a cell that also lacked grab bars and where
22 he did not have access to an accessible shower. Another inmate who uses a cane due to a
23 mobility disability has been held in Main Jail South on the seventh floor and in Units 4B and 4C
24 at the Main Jail; in all of these locations, this inmate was housed in cells without an accessible
25 toilet with grab bars and without access to an accessible shower.

26 69. Upon information and belief, Defendants did not conduct a full and
27 comprehensive Self-Evaluation of the Main Jail and/or a Transition Plan for the Main Jail in
28 compliance with Title II of the Americans with Disabilities Act, and/or Section 504 of the

1 Rehabilitation Act of 1973, and/or California Government Code § 11135.

2 *Denial of Programs, Services and Activities Due to Segregation*

3 70. Inmates with disabilities segregated in these restrictive units – due either to the
4 policy prohibiting wheelchairs or due to physical inaccessibility – are excluded from the range of
5 programs available to inmates housed in the general population units. Because these inmates are
6 sometimes locked in their cell for the entire day, they are denied access to even basic services
7 and activities, including showers, phone calls, and recreation. At the Main Jail, few programs
8 are made available to inmates with mobility disabilities who are housed in the segregated, highly
9 restrictive units due to their need for wheelchairs.

10 71. In particular, inmates with mobility disabilities housed in the Main Jail Infirmary
11 and Main Jail Special Housing Unit are not provided with equal, and in some cases any, access
12 to: (1) the recreational library or law library; (2) religious programming; (3) commissary; (4)
13 visiting, including attorney visiting; (5) recreational activities, including yard, dayroom,
14 telephones, and recreational reading; and (6) inmate programs and work assignments.

15 72. The only formal programs offered to individuals with disabilities housed in the
16 Main Jail Special Housing or the Main Jail Infirmary are limited to self-study workbooks that do
17 not involve leaving one's cell.

18 73. For example, Plaintiff BENJAMIN is housed in Main Jail Special Housing and is
19 currently denied access to the full spectrum of rehabilitative and educational programs offered at
20 the Jail that would allow him to earn certificates of completion. Plaintiff BENJAMIN has also
21 not been able to participate in treatment programs offered in other parts of the Jail because of his
22 wheelchair and CPAP machine. Plaintiff WILLIAMS was also denied access to educational and
23 vocational programs when he was housed in the Main Jail Infirmary. When he is housed in Main
24 Jail Special Housing and in the Main Jail Infirmary, Plaintiff FLORES is similarly denied access
25 to programs he would have otherwise been able to access when housed at Elmwood, including
26 bible study programs. Plaintiff COLE was also not allowed to leave his cell in the Main Jail
27 Infirmary and Main Jail Special Housing to participate in any classes or rehabilitative
28 programming. Other inmates have been denied access to such classes, programs, and services,

1 including the opportunity to work on their GED, while housed in these segregated units.

2 74. Inmates who are housed in the Main Jail Infirmary and in Main Jail Special
3 Housing due to their need for wheelchairs are also denied access to the less formal services
4 offered in the Jails because they are housed in units where they are let out of their cells for an
5 hour or less per day and sometimes not at all.

6 75. For example, because of their disabilities and the physical inaccessibility of the
7 showers, inmates with mobility disabilities often need additional time to shower. Because
8 inmates who use wheelchairs are housed in restrictive, segregated units at the Jails and therefore
9 generally have an hour or less out of their cells, these individuals are frequently forced to choose
10 between calling loved ones or their attorneys, socializing with other inmates and taking care of
11 basic needs such as showering. On days when they are not let out at all from their cells, they are
12 denied access to all of these activities.

13 76. Plaintiffs COLE and BENJAMIN have been locked in their cells in Main Jail
14 Special Housing and in the Main Jail Infirmary for many consecutive days with no way to get to
15 a phone to even call an attorney. This breach of the Plaintiffs' rights is in direct violation of the
16 Jail's own rules in the Inmate Orientation and Rulebook, which specifies that lockdowns shall
17 not restrict inmates' access to legal help.

18 77. Because Plaintiff COLE uses a wheelchair, he has been held in Main Jail Special
19 Housing in a cell by himself for at least 23 hours per day, and some days he was not let out of his
20 cell at all. In the Main Jail Infirmary, Plaintiff COLE has been held in a small cell with three
21 other inmates for over 23.5 hours most days, and some days he was never let out of his cell at all.
22 In both Main Jail Special Housing and Main Jail Infirmary, Jail staff have explicitly refused to
23 allow Plaintiff COLE out of his cell during daytime hours on weekdays to call his attorneys.
24 Instead, Jail staff would only let him out during evening hours (around 9 p.m.) on weekdays, if at
25 all.

26 78. Plaintiff BENJAMIN has been held in Main Jail Special Housing in a cell by
27 himself for at least 23 hours per day. While he occasionally is let out for 1.5 hours, he is far
28 more frequently not let out of his cell at all. In the Main Jail Infirmary, Plaintiff BENJAMIN has

1 been held for over 23.5 hours on certain days, and some days he was never let out of his cell at
2 all. Recently, Plaintiff BENJAMIN was not allowed out of his cell at all for fourteen days in a
3 row. During this time he was in his cell 24 hours a day and was not provided with any
4 explanation for why he was not being allowed out.

5 79. Plaintiff WILLIAMS has similarly been held in the Main Jail Infirmary for over
6 two months in a cell by himself for approximately 23 hours per day, and some days was not let
7 out at all. Plaintiff FLORES is currently housed in Main Jail Special Housing and typically kept
8 in his cell for 23 hours a day and sometimes not let out at all.

9 80. Upon information and belief, other inmates with mobility disabilities are likewise
10 denied the opportunity to participate in the Jails' programs, services, and activities because of
11 these inmates' placement in the special housing units because of their mobility disabilities.

12 2. Due to the Physical Inaccessibility of the Elmwood Facilities, Inmates
13 with Disabilities Are Denied Access to Defendants' Programs, Services
14 and Activities.

15 81. As with the Main Jail facilities, the Elmwood Correctional Complex is not
16 physically accessible to inmates with mobility disabilities. According to the Report, typical
17 barriers found at Elmwood include: (1) doors, including cell doors and doors to visiting areas,
18 that are too narrow for wheelchairs; (2) inaccessible toilets and lavatories due to a lack of grab
19 bars, improper positioning of toilets in a manner that fails to provide adequate clearance for a
20 person with a mobility disability, and grab bars and lavatories which are not provided at the
21 correct height; (3) ramps with excessive slopes; (4) showers that are inaccessible due to curbs or
22 lips, lack of grab bars, lack of shower seats, and lack of a spray hose; (5) tables in day rooms,
23 inmate work and program areas, and the chapel that are inaccessible due to a lack of knee space;
24 (6) lack of accessible routes that present a barrier to wheelchair users and a tripping hazard to
25 persons using canes, walkers, or other mobility assistive devices; (7) a lack of high/low drinking
26 fountains to accommodate wheelchair users and individuals who have difficulty bending or
27 stooping and which are not located outside the path of travel; and (8) inaccessible classroom
28 buildings due to presence of stairs, curbs, excessive slopes, and narrow doorways.

82. In particular, all of the visiting areas at Elmwood are inaccessible due to the lack

1 of clear floor space due to fixed stools, all of the group holding cells in the medical unit lack
2 compliant toilet grab bars and knee space, all of the holding cell doors are too narrow and none
3 of the minimum housing barracks provide fully accessible toilet and shower facilities.

4 83. Individuals who use wheelchairs and are medium security, and who would
5 otherwise be eligible to be housed at Elmwood, are instead held above their custody level at
6 Main Jail in the highly restrictive special housing units discussed above due solely to their
7 disability. As such these medium-security inmates with disabilities are denied access to the many
8 additional programs, services, and activities offered at Elmwood.

9 84. Minimum security inmates who use wheelchairs, however, are housed at
10 Elmwood, but are restricted to Elmwood Special Housing. Elmwood Special Housing is not
11 fully accessible and contains physical barriers for inmates with mobility disabilities. Elmwood
12 Special Housing consists of 16 beds and shared restroom facilities. The bunks are arranged so
13 close together that there is insufficient space for a wheelchair to turn around in the aisle space
14 between bunks, let alone for two wheelchair users to pass each other. This makes it consistently
15 difficult for individuals who use wheelchairs to access their bunks, and impossible to access their
16 bunks if two wheelchair users are assigned adjacent bunks. Additionally, the sink in the unit's
17 restroom is too high for individuals who use wheelchairs to comfortably use, and the shower
18 lacks grab bars.

19 85. For example, Plaintiff COLE experienced barriers when housed in Elmwood
20 Special Housing because the bunks are arranged too close together, thus limiting or even
21 precluding physical access to the bunks for people who use wheelchairs, walkers, or other
22 mobility aids. Plaintiff WILLIAMS has also experienced barriers related to the lack of sufficient
23 clearance for wheelchair users.

24 86. Individuals at Elmwood who do not need wheelchairs are typically held in the
25 minimum security camp barracks and medium security units, but these units and barracks are not
26 fully accessible to inmates with mobility disabilities, including lacking grab bars in showers and
27 toilets as described above. Nonetheless, inmates who have mobility disabilities requiring
28 accessible features have been housed in these inaccessible units and barracks.

1 87. Elmwood’s recreational facilities are also inaccessible for inmates with mobility
2 disabilities. For example, Plaintiff COLE could not wheel himself to Elmwood’s large yard
3 because the path of travel was too uneven and the pavement was broken in places, requiring him
4 to ask a fellow inmate to push him. The yard itself was not accessible to him because it is one
5 big grassy area with bumpy and uneven dirt paths. Additionally, a curb leading to the yard and
6 the absence of ramps prevented safe access to the yard. The inmate helping him tried to back
7 Plaintiff COLE’s wheelchair over the curb into the grass and dirt, causing Plaintiff COLE to
8 nearly fall out of his wheelchair. Ultimately, Plaintiff COLE had to stay in his wheelchair on the
9 grass. Plaintiff WILLIAMS has experienced similar barriers. Plaintiff WILLIAMS has also
10 experienced barriers accessing the special housing unit yard due to lack of an accessible path of
11 travel and lack of accessible exercise equipment.

12 88. Multiple programs are offered at Elmwood, including all prison industries
13 programs, job readiness and exit planning, the literacy program, the domestic violence workshop,
14 codependency education, computer skills, art, and classes on parenting skills. Inmates must
15 travel at least 100 yards to get to the classroom areas in Elmwood. However, inmates with
16 mobility disabilities cannot safely and independently get to the classrooms where programs are
17 offered because of physical barriers. Such barriers include broken pavement, steep curb cuts,
18 heavy doors, and long routes outdoors to the classrooms where these programs are held. These
19 same physical barriers also impede the ability of inmates with mobility disabilities to access
20 necessary medical treatment. Traveling to the classroom areas or medical facilities is even more
21 inaccessible in the rain, as pushing a wheelchair with wet wheels on an already barrier-ridden
22 path can become dangerous and impossible. Also, when Elmwood does not clean up debris –
23 such as tree limbs – after a storm, it makes it even more difficult for inmates with mobility
24 disabilities to travel.

25 89. Due to the fact that these programs are not offered in a location or manner that is
26 accessible to inmates who need assistive devices, inmates with disabilities are unable to work to
27 reduce their sentences in the same manner as their nondisabled peers and may also be unable to
28 comply with court-ordered requirements to participate in certain programs. For example,

1 Plaintiffs COLE and WILLIAMS have both been housed in Elmwood Special Housing due to
 2 their need for a wheelchair. Both Plaintiffs COLE and WILLIAMS have been forced to travel
 3 along an inaccessible path in order to get to pill call to get necessary medications, or to get to
 4 classrooms to participate in other programs. As a result, Plaintiff COLE had to use all his energy
 5 to wheel himself to pill call and did not have energy remaining to wheel himself to classes. After
 6 repeated requests to access programs, Jail staff recently arranged for an inmate to push Plaintiff
 7 COLE's wheelchair to classes for the Regimented Correctional Program ("RCP Program") and
 8 to pill call. Plaintiff WILLIAMS has recently also been provided with a wheelchair pusher to get
 9 him to medical appointments, pill call, and classes. This proposed solution of a wheelchair
 10 pusher does not allow for Plaintiffs COLE and WILLIAMS to independently access classrooms
 11 and services; instead, they must rely on other inmates, thereby increasing their risk of being
 12 exploited by those inmates. Wheelchair pushers are not always available to assist inmates who
 13 use wheelchairs and the wheelchair pusher program does nothing to obviate the obstacles
 14 presented to a person who uses a cane, walker, or other assistive device for mobility.
 15 Additionally, the wheelchair pusher program does not prevent damage to an inmate's wheelchair
 16 due to the cracked and uneven pavement. For example, the front wheel of Plaintiff WILLIAMS'
 17 wheelchair was damaged while he was being pushed to a medical appointment when he was
 18 pushed into an area with cracked pavement and his wheel was bent from colliding with the
 19 uneven section.

20 90. The Elmwood Women's Facility is also not accessible. According to the Report,
 21 typical barriers found at the Elmwood Women's Facility include: (1) showers that are
 22 inaccessible due to curbs, lack of grab bars, lack of shower seats, and lack of spray hose; (2)
 23 inaccessible toilets and lavatories due to lack of grab bars, the improper positioning of toilets in a
 24 manner that fails to provide adequate clearance for a person with a mobility disability, and
 25 toilets and lavatories which are not provided at the correct height; (3) inaccessible faucets at
 26 lavatories; and (4) lack of knee space at tables in the day room to allow for a wheelchair user.

27 91. In the Elmwood Women's Facility, female inmates with mobility disabilities are
 28 typically housed in building W-4, which is the medical unit. This unit is not accessible.

1 According to the Report, typical barriers found in building W-4 include: (1) inaccessible toilets
 2 due to lack of grab bars and improper positioning of grab bars; (2) lack of knee space at tables in
 3 dayrooms, (3) stairs that lack a cane-detectable railing; (4) phones that are placed too high for
 4 wheelchair users; and (5) excessive slopes without handrails in various paths of travel. In
 5 particular, there are no accessible showers in building W-4. All showers in W-4 have a one inch
 6 high curb and/or lack folding seat, spray house and grab bars. Further, all isolation cells and
 7 court holding cells in W-4 lack grab bars at the toilet.

8 92. Upon information and belief, Defendants did not conduct a full and
 9 comprehensive Self-Evaluation of the Elmwood Correctional Complex and/or a Transition Plan
 10 for the Elmwood Correctional Complex in compliance with Title II of the Americans with
 11 Disabilities Act, and/or Section 504 of the Rehabilitation Act of 1973, and/or California
 12 Government Code § 11135.

13 3. Defendants Fail to Make Reasonable Modifications to Their Policies,
 14 Practices and Procedures to Avoid Discrimination Against Inmates with
 15 Disabilities.

16 93. Compounding the denial of access to programs, services and activities offered at
 17 the County Jails, Defendants fail to modify to their policies, practices and procedures in ways
 18 that could provide such access.

19 *a. Defendants Lack Adequate Policies and Practices to Identify and*
 20 *Track Inmates with Disabilities and to Ensure They Are Provided*
 21 *with Reasonable Modifications.*

22 94. Defendants have no comprehensive system for identifying and tracking
 23 individuals with mobility disabilities and the accommodations and modifications they require.
 24 As such, Defendants fail to provide the assistive devices needed and/or take away such assistive
 25 devices without warning, and fail to provide appropriate housing for inmates with mobility
 26 disabilities.

27 95. During the intake process, staff are supposed to identify inmates with disabilities
 28 using the Medical Authorization Form. However, the form does not allow staff to identify all
 potential needed accommodations. Additionally, Jail staff have not been properly trained on
 how to identify people with disabilities, or how to use these forms, and therefore frequently fail

1 to identify inmates with disabilities and/or the reasonable modifications they need to access Jail
2 programs and services. The current screening process is also not confidential and deters inmates
3 with mobility disabilities from self-reporting disabilities. For instance, Jail staff have, upon
4 information and belief, persistently failed to identify several older individuals who have great
5 difficulty walking as needing a cane or other mobility aid, despite the fact at least one of them
6 had been allowed to use a cane for six years while in state prison. Finally, the screening area
7 itself is physically inaccessible.

8 96. There is also no centralized electronic repository for approved Medical
9 Authorization Forms, which document disability information. Instead, only the inmate and the
10 housing unit deputy/officer have copies of these forms. To the extent that Defendants maintain
11 information about an inmate's disabilities in any form, custody, medical, and clerical staff are
12 not provided with access to the information in a manner that would timely and effectively inform
13 them of an inmate's disabilities and required reasonable modifications. Defendants also do not
14 maintain adequate information about inmates' disabilities and related disability-related
15 accommodations in the inmates' custody and/or medical files. Without a central depository,
16 approved Medical Authorization Forms may end up being lost, confiscated, or destroyed. For
17 example, deputies in his housing unit recently confiscated from his cell all of Plaintiff
18 PHILLIPS' documents, and now has no record of his medical and disability-related needs.

19 97. Additionally, the classification unit has the improper authority to override a
20 physician's authorization to provide a mobility-disabled inmate with the appropriate reasonable
21 accommodation, including assignment to accessible housing and allowance of an assistive
22 device.

23 ***b. Defendants' Policies Relating to Assistive Devices Must Be***
24 ***Modified In Order to Avoid Discriminating Against Persons with***
Mobility Disabilities.

25 98. Defendants have failed to modify their practice of prohibiting the use of
26 wheelchairs at the Main Jail outside of the highly restrictive Main Jail Infirmary and Main Jail
27 Special Housing units. Defendants have also failed to modify their policy requiring medium
28 security inmates who use wheelchairs to be housed at the Main Jail even where such inmates

1 would otherwise be eligible for housing at Elmwood.

2 99. Additionally, Defendants have failed to consistently provide inmates with needed
3 assistive devices, even after Defendants have identified the person as having a disability and as
4 needing a particular assistive device.

5 100. Multiple inmates with mobility disabilities housed at the Main Jail have been
6 denied access to needed assistive devices, including canes and walkers. As detailed in the
7 Report, an inmate with partially amputated feet has had his cane taken from him at booking and
8 was not promptly issued a replacement. Another inmate at Main Jail South with Myasthenia
9 Gravis, a muscular disease, had his cane taken away from him at booking and was not promptly
10 issued a replacement. Another inmate was denied access to a cane for nearly a year and a half
11 while housed in Main Jail South and on the fourth and seventh floors of the Main Jail despite the
12 fact that he lacks muscle in his legs due to injuries that left him partially paralyzed. Plaintiff
13 PHILLIPS was denied access to his cane for nearly three months despite repeated requests while
14 housed in the Main Jail in Unit 5C. Plaintiff FLORES was also denied access to his cane when
15 he was initially brought to the County Jails and was not allowed to have a cane or other assistive
16 device for the approximately five months he was housed in Unit 5B at the Main Jail.

17 101. Another inmate, who has a prosthetic leg, was not able to get stump socks (fabric
18 socks worn over the stump of an amputated limb) for his prosthetic leg for his first four to five
19 months in Main Jail Special Housing despite the fact that he asked for them. Stump socks are
20 critical to ensuring that the prosthetic limb does not damage the skin of the edge of the body
21 which attaches to the prosthetic limb. If a person with a prosthetic leg does not have stump
22 socks, the prosthetic limb can wear on the remaining skin, causing ulcers and infections that can
23 become serious enough so as to require amputation. For his first four months in Main Jail
24 Special Housing, this inmate had to ask family members to mail him stump socks because Jail
25 staff would not provide them to him.

26 102. Upon information and belief, Defendants did not initially identify an individual
27 with an amputated foot as needing reasonable modifications to policies and procedures necessary
28 to ensure disability-related accommodations. Jail staff took away his prosthetic leg and the

1 special shoe for his prosthetic when he entered the Jail, making it extremely difficult for this
2 individual to walk. While he eventually got his prosthesis back, his leg had become infected and
3 too inflamed for him to use it. As a result, he was not able to ambulate to the library to attend
4 classes.

5 103. Where the Jails do provide an inmate with an assistive device, Defendants often
6 unjustifiably and abruptly take these devices away from inmates. For example, staff in the Main
7 Jail Infirmary suddenly took away Plaintiff COLE's wheelchair, thus leaving him no means of
8 getting around. Jail staff returned it to him only when a family member called the Jail to
9 advocate on his behalf.

10 104. Upon entering the Main Jail, Defendants identified Plaintiff BENJAMIN as an
11 inmate with a disability and as needing a wheelchair. However, he was initially housed in Main
12 Jail South and was not provided with a wheelchair or other assistive device when he was there
13 except for when he had to go to court or other appointments outside of Main Jail South. Plaintiff
14 BENJAMIN was unable to meet with his attorney because he could not ambulate to the visiting
15 room without a wheelchair. Plaintiff BENJAMIN was also unable to shower, as he could not
16 ambulate to the shower without a wheelchair. Plaintiff BENJAMIN was eventually moved to the
17 Main Jail Infirmary and provided with a wheelchair but staff then confiscated it and left him
18 confined to his hospital bed. Further, staff confiscated Plaintiff BENJAMIN's wheelchair when
19 he was housed in the Main Jail Special Housing unit, and he injured himself trying to maneuver
20 without one. Lastly, staff confiscated Plaintiff BENJAMIN's wheelchair when he was housed in
21 the mental health unit, Unit 8A, on two separate occasions, forcing him to crawl on the ground to
22 transport himself.

23 105. Staff in Main Jail Special Housing suddenly took away another prisoner's cane
24 for periods of up to several weeks, despite knowing that he could barely move without it and
25 despite the fact that Defendants had previously approved his use of the cane. Jail staff also took
26 away a different inmate's wheelchair. Jail staff then rehoused both of the men in the Main Jail,
27 where both men were effectively bedridden without their assistive devices and consequently
28 were denied access to showers, phones, programs and recreation time.

1 106. Similarly, Defendants have on multiple occasions taken away another inmate's
2 brace and sling and moved him out of his lower bunk into an upper bunk, despite being aware
3 that he needed these reasonable modifications to policies and procedures necessary to ensure
4 disability-related accommodations. Staff in Main Jail Special Housing suddenly, and without
5 explanation, ripped off that inmate's velcro arm brace and sent him to the Main Jail general
6 population, where he suffered increased pain and decreased strength in his broken arm with no
7 brace or support for it. That inmate was also given a top tier bunk, meaning that he frequently
8 had to climb a set of stairs to reach his bunk – a dangerous situation given his epilepsy and
9 inability to hold on to the rail due to his injured arm. Both while in the Main Jail and at
10 Elmwood, he was denied a bottom bunk. In both places, due to his disabilities, he fell from his
11 top bunk onto the hard floor below.

12 107. Another individual, who was approved for corrective shoes due to the fact that his
13 legs are not the same length, was only briefly allowed to use the shoes before Defendants took
14 them away without explanation. Without his shoes, his condition rapidly deteriorated to the
15 point where he required a wheelchair. However, even after the Jail issued this individual a
16 wheelchair, Jail staff proceeded to take it away on at least three occasions with no explanation,
17 even though his inability to walk had not changed. At one point, Main Jail staff withheld this
18 individual's wheelchair for three months. Without his wheelchair, the individual was effectively
19 bedridden and unable to shower, make phone calls, go outside, or participate in any classes or
20 programs.

21 108. Defendants have also taken away the specialized shoe of an individual with a
22 prosthetic leg even though he required this shoe to keep the foot of his prosthesis in working
23 order. Defendants withheld the shoe for two weeks, and during that time, the individual
24 struggled to walk, and the foot of his prosthesis developed deep scrapes and tears. Eventually
25 the Jail staff returned his shoe, but by then, his prosthetic foot was destroyed to the point that he
26 had to replace his expensive prosthesis.

27 109. Defendants fail to consider inmates' specific needs and abilities in assigning
28 assistive devices, to the detriment of those inmates' overall health and safety. For example,

1 when Plaintiff COLE entered Elmwood, he was given a boot for Charcot foot, even though he
2 asked for and needed a wheelchair. As a result, he had to walk on his affected foot, which
3 rapidly deteriorated until Plaintiff COLE needed a wheelchair and additional medical attention
4 soon thereafter. When another inmate with a mobility disability first arrived at Main Jail Special
5 Housing, he was allowed to use his wheelchair, until Jail staff took it away from him after
6 approximately five months and gave him a cane to use instead. Jail staff told him his ankle
7 would gain strength if he walked on it, but walking with a cane exacerbated this individual's
8 ankle injury and caused it to swell. Although he could walk short distances with the cane, he
9 needed a wheelchair to travel long distances, which the Jail refused to provide. Another inmate
10 was provided with a cane after nearly a year and a half at the Jail but was then told he could only
11 use it to travel long distances and was not allowed to use it on his unit. Without his cane he is at
12 risk of losing balance due to a lack of muscle in his legs as a result of injuries that partially
13 paralyzed him.

14 110. Defendants also fail to provide properly operational assistive devices to inmates.
15 For example, at Elmwood and the Main Jail, Plaintiff COLE was forced for approximately one
16 year to use a wheelchair with nonfunctioning wheel locks, a broken footrest, and a front wheel
17 that was so wobbly even a Jail deputy could not properly steer him in the wheelchair. His
18 wheelchair often got caught in cracks and thresholds, making it even more difficult for him to
19 move around. Plaintiff COLE was eventually given a functioning wheelchair, though it was too
20 small for his size and weight and was, therefore, physically uncomfortable.

21 111. Additionally, for two weeks while housed in Main Jail South, Plaintiff
22 BENJAMIN was being denied access to a wheelchair or any other assistive device on his
23 housing unit. Instead he was provided with a hospital wheelchair intended to be pushed by a
24 caregiver or a person that aids the user in order to go to and from court and other medical
25 appointments. This type of wheelchair has only four tiny wheels, which made it nearly
26 impossible for Plaintiff BENJAMIN to propel himself on his own. In order to move without
27 assistance, therefore, Plaintiff BENJAMIN had to use his feet to scuttle forward and back on his
28

1 own, which was very painful. In comparison, a wheelchair with two large back wheels is
2 designed to allow the user to propel himself with his arms without assistance.

3 112. Another individual at the Main Jail who relied on the use of a wheelchair was
4 given one that lacked a footrest, which he needed, and that was generally in very poor condition.
5 The lack of a footrest made it difficult for him to use the wheelchair to move about and keep his
6 feet safe.

7 113. The Jail has also failed to consistently provide accessible transportation to
8 inmates with mobility disabilities. Plaintiff COLE requires a wheelchair-accessible van with a
9 ramp or lift and proper securement for his wheelchair, but the Jail failed to provide him with one
10 to transport him to a medical appointment. As a result, Plaintiff COLE had to miss his medical
11 appointment or else face potential physical injury. Plaintiff WILLIAMS was physically injured
12 while being transported to court due to the failure of Jail staff to properly secure his wheelchair.
13 Because he was improperly secured inside the van, his wheelchair flipped over during transport
14 with him in it and he missed his court hearing because he had to go to the hospital instead.

15 114. Because of Defendants' failure to modify its policies and procedures to ensure
16 equal access, inmates with disabilities are susceptible to exploitation by other inmates. In
17 exchange for help getting to the toilet, shower, or meals, or communicating with prison staff,
18 inmates with disabilities have been, for instance, required to pay other inmates.

19 115. To the extent the Jail has disability-related policies and procedures in place, the
20 County fails to adequately train Jail staff regarding such policies and procedures. The lack of
21 proper training is evident in the failure of staff to provide legally required accommodations. For
22 example, staff at the Main Jail do not consistently allow assistive devices outside of the Main Jail
23 Infirmary and Main Jail Special Housing. One inmate with a mobility disability housed in the
24 Main Jail on the fourth floor was not allowed to have his cane for over a year. When he was
25 finally provided with his cane, Jail staff would not permit him to use it in his housing unit. He
26 is still only allowed to use it when he leaves his housing unit, and he is required to check it in
27 and out with custody officers when he returns to and leaves his unit to go elsewhere in the
28 facility. Upon information and belief, an inmate who uses a wheelchair was recently moved to

1 the fourth floor and instead of allowing him to keep his wheelchair; Jail staff put him on top of a
 2 mattress and dragged him into his cell where he was left without access to his wheelchair or any
 3 other assistive device. Jail staff are also not adequately trained regarding how to properly secure
 4 a wheelchair user for transportation, as discussed above.

5
 6 ***c. Defendants Lack an Effective Grievance Procedure for Inmates
 to Request Reasonable Modification.***

7 116. Defendants do not provide an effective or functional grievance system for inmates
 8 with disabilities and do not have a disability-specific grievance process or any way for an inmate
 9 to mark their grievance as disability-related. There is no expedited process for disability-related
 10 grievances that are emergent in nature and there is no process for provision of interim
 11 accommodations for inmates during the time that the disability-related grievance is being
 12 processed and considered.

13 117. Upon information and belief, the only formal notice inmates receive regarding
 14 any Jail grievance procedure comes from the Inmate Orientation and Rulebook (“Rulebook”),
 15 which is not consistently provided to inmates when booked into the Jail. For example, while
 16 Plaintiff BENJAMIN received a copy of the Rulebook, Plaintiffs PHILLIPS and FLORES did
 17 not. Plaintiff WILLIAMS was not provided with a Rulebook when he was booked into the Main
 18 Jail and only received a copy nearly a month later when he was transferred to Elmwood. The
 19 version of the Inmate Orientation and Rulebook currently provided to inmates states only that
 20 grievances should be submitted by individuals, not groups, and may pertain to any condition of
 21 confinement over which the Department of Correction has control. Inmates are directed to
 22 request grievance forms from the Housing Unit Officer and to deliver completed grievances to
 23 any officer on their unit. If the grievance is denied, inmates are told they may appeal the
 24 decision by “writing a letter to the Facility Captain.” The Rulebook does not specify what
 25 should be in this letter or provide an address for the Facility Captain, and inmates are not
 26 provided with envelopes or stamps to allow them to mail their appeals. Jail staff are not
 27 adequately trained or informed about this procedure and so are unable to assist inmates with the
 28 logistics of any appeals. As a result of these deficiencies the appeals process is functionally

1 unavailable to inmates.

2 118. The Inmate Orientation and Rulebook does not contain any information regarding
3 what process inmates with mobility disabilities should use to request disability-related
4 accommodations except for a statement that inmates with hearing impairments may request
5 accommodations such as assistive listening devices and interpreters. No other information
6 regarding inmates' rights under the ADA is provided. Because inmates are not made aware of
7 the process, they make requests for accommodations using whatever means are available to
8 them, including verbally, through medical request forms known as white cards, and through the
9 grievance process detailed above. Until recently, inmates were charged three dollars to obtain
10 and submit a "white card" and it is not clear if the County Jails intend to reinstitute such an
11 illegal charge.

12 119. For example, Plaintiff PHILLIPS was not provided with any information at
13 orientation regarding how to request assistive devices. In order to obtain his cane, Plaintiff
14 PHILLIPS filed multiple requests using medical request forms and grievances. He also made
15 verbal requests to Jail staff and medical staff. These requests were ineffective and he did not
16 receive his cane until after he was visited by his attorney who advocated on his behalf.

17 120. Plaintiff FLORES was also not provided with any information regarding how to
18 request assistive devices and so attempted to request accommodations using white cards and by
19 verbally asking nurses. Another inmate requested an ADA Accommodations Form so that he
20 could get his cane back and in response a nurse told him that the Jail did not have any such form,
21 leaving him without a means to officially make his request. Without a consistent and effective
22 method to request reasonable accommodations or modifications, these inmates are denied timely,
23 equal, and meaningful access to Defendants' programs, services, and activities.

24 121. In addition, Defendants routinely deny inmates with mobility disabilities access to
25 grievance forms that these inmates need to request reasonable modifications to policies and
26 procedures. Such modifications are necessary to ensure that the inmates receive the disability-
27 related accommodations to which they are entitled. In order to obtain grievance forms at the
28 County Jails, inmates either have to ask a custody officer in their unit for one, or hope that the

1 forms will be available in the common areas of their housing unit, which is rare. This sporadic
2 availability means inmates cannot reliably access grievance forms, particularly during times
3 when they are not let out of their cells into the common areas. For example, one inmate went
4 days without being let out of his cell, and when he has asked Jail staff for grievance forms, they
5 did not provide them.

6 122. Even when inmates are able to submit grievances with regard to disability
7 discrimination, Defendants frequently do not provide any response or the response is so delayed
8 that it is not meaningful. For instance an inmate who uses a specialized shoe that fits his
9 prosthetic leg filed a grievance after his specialized shoe was taken away. While he waited for a
10 response to this grievance, his prosthetic leg was damaged to the point of having to be
11 completely replaced. Plaintiff BENJAMIN submitted grievances only to have responses to those
12 grievances returned to a different inmate on his unit.

13 123. Even when inmates are able to submit a grievance and Defendants provide a
14 response, the responses are not adequate or comprehensive, and are in some cases arbitrary and
15 counterproductive. For example, an inmate who uses a wheelchair filed a grievance asking why
16 he was not getting physical therapy for his mobility impairment, and the Jail responded that it
17 was because the inmate was in Jail.

18 124. Furthermore, many inmates with mobility disabilities are afraid to file grievances
19 due to concerns that County Jail staff will retaliate against them. This is a real concern because
20 guards control access to the grievance forms and completed forms must be turned in to custody
21 staff, even if it is the same staff member about whom the inmate is filing a grievance.
22 Grievances are in no way kept confidential and may be read by any staff member on the unit.
23 Female inmates with mobility disabilities have had guards take their belongings or ransack their
24 rooms in response to receiving grievances. Other inmates with mobility disabilities are afraid
25 they will lose the little access to programs they have if they file grievances.

26 125. Plaintiff PHILLIPS suffered retaliation after filing a grievance related to
27 accessibility issues. After Plaintiff PHILLIPS turned in his grievance to the deputy on his unit,
28 the deputy slammed his cell door on him while he was standing in the door way, which caused

1 Plaintiff PHILLIPS to fall and injure his back. A few days later, a deputy grabbed Plaintiff
 2 PHILLIPS from behind while he was cutting his own hair with hair clippers and his head was
 3 down, which caused him to cut himself. When Plaintiff PHILLIPS asked to see a doctor and to
 4 report the use of force, the deputy refused to let him do so and then locked down the unit, which
 5 requires all inmates to return to their cells and stops all programming. The deputies then
 6 announced to the other inmates that the lockdown was caused by Plaintiff PHILLIPS and
 7 proceeded to allow Plaintiff PHILLIPS and approximately half of the other inmates out of their
 8 cells. Due to the deputies' announcement, the other inmates were angry at Plaintiff PHILLIPS
 9 and he felt his safety was at serious risk. Following the filing of his grievance, County Jail staff
 10 also confiscated all of Plaintiff PHILLIPS' personal property and documents from his cell,
 11 including his legal documents, past grievances, and medical records including documentation of
 12 his disability and disability-related needs. The County Jail has refused to return these items to
 13 him, claiming they have been lost.

14 126. For individuals with mobility disabilities, particularly wheelchair users, the
 15 grievance process is futile because many of the barriers they face are architectural in nature and
 16 there are no facilities at either the Main Jail or at the Elmwood Correctional Complex that are
 17 fully accessible in compliance with legal requirements.

18 127. Additionally, the Report found that Defendants' grievance policy is not in
 19 compliance with legal requirements established in *Armstrong v. Brown*, 857 F.Supp. 2d 919, 939
 20 (N.D. Cal. 2012), which applies to correctional facilities, like the County Jail, that house inmates
 21 who are also under the jurisdiction of the California Department of Corrections and
 22 Rehabilitation.

23 CLASS ACTION ALLEGATIONS

24 128. All Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(a),
 25 (b)(1), and (b)(2) of the Federal Rules of Civil Procedure, on behalf of a class of all individuals
 26 with mobility disabilities who are substantially limited in the major life activities of walking,
 27 standing, lifting, and/or ambulating who are now, or will be in the future, incarcerated in the
 28 County Jails (the "Class").

Numerosity: Fed. R. Civ. P. 23(a)(1)

1
2 129. The proposed Class as defined is sufficiently numerous that joinder of all
3 members of the Class is impracticable and unfeasible. The exact number of members of the
4 Class is unknown. However, according to data from the United States Census conducted in
5 2010, more than 3.7 million Californians and more than 155,000 Santa Clara County residents
6 identify as having a physical disability. According to the 2010 Census, approximately 10% of
7 Americans have some mobility impairment. Based on available census data, approximately 10%
8 of the inmates in the Jail, which averages 4,000 inmates per day, are qualified individuals with
9 mobility disabilities as that term is defined in 42 U.S.C. § 12102, 29 U.S.C. § 705(20), and
10 California Government Code § 12926(j) and (m).

11 130. Class members are easily ascertainable and identifiable using commonly used
12 methods of assessment and/or records maintained in the ordinary course of business by
13 Defendants.

Commonality: Fed. R. Civ. P. 23(a)(2)

14
15 131. There are questions of law and fact common to the class, including but not limited
16 to: whether Defendants' failure to reasonably accommodate prisoners with disabilities violates
17 the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and California
18 Government Code § 11135.

19 132. Defendants are expected to raise common defenses to these claims, including
20 denying that their actions violate the law.

Typicality: Fed. R. Civ. P. 23(a)(3)

21
22 133. The claims of the named Plaintiffs are typical of the claims of the members of the
23 proposed class. Plaintiffs and all other members of the class have sustained similar injuries
24 arising out of and caused by Defendants' common course of conduct and policies in violation of
25 the law as alleged herein. All of the proposed class members are at risk of being discriminated
26 against or denied access to programs, services, and activities offered at the Jail as a result of the
27 policies and practices of Defendants. Therefore, all class members will suffer the same or
28

1 similar injuries for the purposes of the injunctive and declaratory relief sought. Plaintiffs' claims
2 are thereby representative of and co-extensive with the claims of the class.

3 *Adequacy: Fed. R. Civ. P. 23(a)(4)*

4 134. Plaintiffs are members of the Class and will fairly and adequately represent and
5 protect the interests of the putative class members because they have no conflict(s) of interest
6 that would be antagonistic to those of the other class members. Plaintiffs, as well as class
7 members, seek to enjoin the unlawful acts and omissions of Defendants.

8 135. The attorneys representing the Plaintiffs and the Class are competent and
9 experienced in complex class action litigation, disability law, and prisoners' rights litigation.
10 Counsel representing the Plaintiff class is qualified to fully prosecute this litigation and possesses
11 adequate resources to see this matter through to resolution. Counsel will fairly and adequately
12 represent and protect the interests of the class.

13 *Fed. R. Civ. P. 23(b)(1)(A) and (B)*

14 136. Because the class consists of approximately 10% of the inmate population in the
15 Jails, separate actions by individuals could result in inconsistent and varying decisions, which in
16 turn would result in conflicting and incompatible standards of conduct for Defendants.

17 *Fed. R. Civ. P. 23(b)(2)*

18 137. This action is also maintainable as a class action pursuant to Fed. R. Civ. P.
19 23(b)(2) because Defendants have acted and refused to act on grounds that apply generally to the
20 class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting
21 the class and will apply to all members of the class.

22 **FIRST CAUSE OF ACTION**

23 *Violation of Americans with Disabilities Act*

24 *42 U.S.C. § 12101, et seq.*

25 138. Plaintiffs incorporate by reference each and every allegation contained in the
26 foregoing paragraphs as if specifically alleged herein.

27 139. Title II of the ADA states, in pertinent part:

28 [N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the

1 benefits of the services, programs, or activities of a public entity,
2 or subjected to discrimination by any such entity. 42 U.S.C. §
3 12132.

4 140. The term “disability” includes physical and mental impairments that substantially
5 limit one or more major life activities. 42 U.S.C. § 12102(2). The named Plaintiffs and the
6 Plaintiff Class represent people who have mobility disabilities that substantially limit the major
7 life activities of walking, standing, lifting, and/or ambulating. Additionally, Plaintiffs and the
8 Plaintiff Class, as inmates in the County Jails, are all qualified – with or without reasonable
9 modifications – to participate in the programs, services, and activities that the County Jails
10 offered. Thus, members of the Plaintiff Class are, and Plaintiffs represent, qualified individuals
11 with disabilities within the meaning of 42 U.S.C. § 12102, 42 U.S.C. § 12131, and 28 C.F.R. §
12 35.104.

13 141. A “public entity” includes state and local governments, their agencies, and their
14 instrumentalities. 42 U.S.C. § 12131(1). Defendants qualify as public entities within the
15 meaning of 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104 and provide “program(s), service(s), or
16 activit(ies)” to individuals housed in the County Jails including, but not limited to, (1) physical
17 facilities where such programs, services or activities are held, including medical, mental health
18 related, dining, housing, and recreational facilities, (2) administrative processes including
19 classification, and grievance processes, and (3) other formal and informal programs including
20 telephone services, entertainment, bathing and toileting, library, socialization, and educational
21 and rehabilitative programs.

22 142. Congress directed the United States Department of Justice (“DOJ”) to write
23 regulations implementing Title II’s prohibition against discrimination. 42 U.S.C. § 12134.
24 Pursuant to this mandate, the DOJ has issued regulations defining the forms of discrimination
25 prohibited by Title II of the ADA. 28 C.F.R. § 35.101 *et seq.* These regulations include
26 regulations specific to adult detention and correctional facilities. 28 C.F.R. § 35.152.

27 143. Defendants have violated the rights of Plaintiffs and members of the Plaintiff
28 Class secured by Title II of the ADA and its implementing regulations.

144. The discrimination prohibited by the regulations discussed below stems from (1)

1 Defendants' policy and practice of prohibiting wheelchairs units at the Main Jail outside of the
 2 Main Jail Infirmary and Main Jail Special Housing, thereby requiring the segregation of inmates
 3 housed at the Main Jail with mobility disabilities into separate, more restrictive housing units
 4 where inmates spend up to 23 hours or more per day in their cells and where inmates are denied
 5 access to Defendants' programs, services or activities.; (2) the physical inaccessibility of
 6 Defendants' County Jail facilities that ultimately exclude such inmates from participation in, and
 7 deny such inmates the benefits of, the services, programs, and/or activities of the County Jails;
 8 and (3) Defendants' failure to make reasonable modifications to the County Jails' policies and
 9 practices in order to avoid discriminating against inmates with disabilities, including
 10 inadequately identifying and tracking inmates with disabilities, adopting discriminatory policies
 11 and practices relating to assistive devices and/or failing to adopt policies sufficient to avoid
 12 discrimination relating to assistive devices, insufficiently training staff to identify and address
 13 disability-related needs of such inmates, and offering a deficient grievance system.

14 145. A public entity must "administer services, programs, and activities in the most
 15 integrated setting appropriate to" an individual's needs and is therefore prohibited from
 16 unnecessarily segregating or isolating the individual. 28 U.S.C. § 35.130(d).

17 146. Additionally, public entities responsible for the operation or management of adult
 18 detention and correctional facilities "shall ensure that inmates or detainees with disabilities are
 19 housed in the most integrated setting appropriate to the needs of the individuals. Unless it is
 20 appropriate to make an exception, a public entity – (i) Shall not place inmates or detainees with
 21 disabilities in inappropriate security classifications because no accessible cells or beds are
 22 available; (ii) Shall not place inmates or detainees with disabilities in designated medical areas
 23 unless they are actually receiving medical care or treatment; (iii) Shall not place inmates or
 24 detainees with disabilities in facilities that do not offer the same programs as the facilities where
 25 they would otherwise be housed; and (iv) Shall not deprive inmates or detainees with disabilities
 26 of visitation with family members by placing them in distant facilities where they would not
 27 otherwise be housed." 28 C.F.R § 35.152(b)(2).

28 147. Furthermore, a public entity may not "deny a qualified individual with a disability

1 the opportunity to participate in services, programs, or activities that are not separate or different,
 2 despite the existence of permissibly separate or different programs or activities.” 28 C.F.R. §
 3 35.130(b)(2).

4 148. When Plaintiffs and members of the Plaintiff Class are segregated in Main Jail
 5 Special Housing, and the Main Jail Infirmery Defendants deny Plaintiffs and the Plaintiff Class
 6 the opportunity to participate in services, programs, or activities that are in the most integrated
 7 setting appropriate to their needs and that are not separate and different from those offered to
 8 their nondisabled peers.

9 149. Inmates with mobility disabilities who use wheelchairs are housed in the Main
 10 Jail Infirmery, Main Jail Special Housing, and Elmwood Special Housing and are not integrated
 11 into the general population most obviously because they are housed in separate units. These
 12 separate units are only “appropriate” for their needs because the rest of the Jail is inaccessible to
 13 them and/or because their disability-related needs are not accommodated in the Jail.

14 150. Moreover, in segregating individuals who use wheelchairs,, the Main Jail
 15 provides an opportunity to participate only in programs, services, and activities that are both
 16 separate and inferior to those offered to their nondisabled peers, to the extent they are provided at
 17 all. The only programs offered to individuals who use wheelchairs housed in the Main Jail
 18 Infirmery and in Main Jail Special Housing are in-cell programs that involve completing
 19 workbooks inside the individual’s cell, such as the Roadmap to Recovery program.
 20 Additionally, inmates who use wheelchairs and are classified as medium security are not able to
 21 be housed at Elmwood even if they would otherwise be eligible. Instead, these inmates are
 22 housed in the more restrictive Main Jail Infirmery and Main Jail Special Housing units. As such
 23 they are denied access to the more expansive programs offered at Elmwood.

24 151. A public entity may not (1) “impose or apply eligibility criteria that screen out or
 25 tend to screen out an individual with a disability or any class of individuals with disabilities from
 26 fully and equally enjoying any service, program, or activity, unless such criteria can be shown to
 27 be necessary[.]” 28 C.F.R. § 35.130(b)(8); or (2) “utilize criteria or methods of administration . . .
 28 that have the effect of subjecting qualified individuals with disabilities to discrimination on the

1 basis of disability . . . or the purpose or effect of defeating or substantially impairing
2 accomplishment of the objectives of the public entity’s program with respect to individuals with
3 disabilities[.]” 28 C.F.R. § 35.130(b)(3)(i)(ii).

4 152. By requiring that inmates at the Main Jail must reside outside of the Main Jail
5 Infirmary and Main Jail Special Housing to be allowed to fully and equally enjoy the educational
6 and rehabilitative programs and basic services offered, Defendants have imposed eligibility
7 criteria that screens out individuals with disabilities. Similarly, in Elmwood, Defendants have
8 screened out individuals with disabilities by placing physical barriers and safety risks that result
9 in a denial of full and equal enjoyment of the programs, services, and activities offered at
10 Elmwood.

11 153. Furthermore, Plaintiffs and members of the Plaintiff Class are subjected to
12 discrimination on the basis of their disability because Defendants utilize criteria and methods of
13 administration that (1) segregate individuals with disabilities in separate units because of their
14 need for assistive devices and in so doing deny them access to Defendants’ programs, services
15 and activities; and (2) deny individuals with disabilities access to programs, services or activities
16 due to physical inaccessibility of the County Jails. These methods of administration also have
17 the purpose and effect of defeating or substantially impairing accomplishment of the objectives
18 of Defendants’ educational and rehabilitative programs, services, and activities with respect to
19 Plaintiffs and members of the Plaintiff Class, as Plaintiffs and members of the Plaintiff Class
20 cannot participate in or benefit from these programs, services and activities.

21 154. In providing any aid, benefit, or service, a public entity “may not . . . [d]eny a
22 qualified individual with a disability the opportunity to participate in or benefit from the aid,
23 benefit or service,” “[a]fford a qualified individual with a disability an opportunity to participate
24 in or benefit from the aid, benefit, or service that is not equal to that afforded others,” “[p]rovide
25 a qualified individual with a disability with an aid, benefit, or service that is not as effective in
26 affording equal opportunity . . . as that provided to others,” “[o]therwise limit a qualified
27 individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity
28 enjoyed by others,” or “provide different or separate aids, benefits, or services to individuals

1 with disabilities or to any class of individuals with disabilities than is provided to others unless
 2 such action is necessary to provide qualified individuals with disabilities with aids, benefits, or
 3 services that are as effective as those provided to others.” 28 C.F.R. § 35.130(b)(1)(i)-(iv).

4 155. Here the County Jails offer the aids, benefits and services available in a way that
 5 violates the regulation above. Defendants’ policies and practices do not permit access to
 6 individuals with disabilities who reside in the Main Jail Infirmery or Main Jail Special Housing
 7 to educational and rehabilitative programs that are available to persons without disabilities
 8 housed in other units of the Main Jail. These programs included but are not limited to the GED
 9 program and substance abuse programs, including Alcoholics Anonymous and Narcotics
 10 Anonymous, and sentence-reduction programs. Inmates who are segregated in Main Jail Special
 11 Housing or the Main Jail Infirmery because of their disabilities are only offered one unequal,
 12 limited and separate benefit in their segregated housing units: a substance abuse program called
 13 Roadmap to Recovery, which is completed in-cell using workbooks and has no actual classes.

14 156. Moreover, because individuals with disabilities segregated in the Main Jail
 15 Infirmery and Main Jail Special Housing are routinely locked in their cells for at least 23 hours
 16 daily, they do not have sufficient time to participate in all the activities and services offered by
 17 the Jail, including showers, large muscle activity and television, in which their nondisabled peers
 18 can participate. Additionally, inmates who use wheelchairs and are classified as medium
 19 security are not able to be housed at Elmwood even if they would otherwise be eligible. Instead,
 20 these inmates are housed in the more restrictive Main Jail Infirmery and Main Jail Special
 21 Housing units.

22 157. Similarly in Elmwood, inmates with disabilities face physical inaccessibility that
 23 otherwise limits their ability to enjoy the programs, services and activities that are enjoyed by
 24 others. Moreover, Defendants “solution” to the inaccessibility at Elmwood – the wheelchair
 25 pushers – also violates the law since it provides an aid, benefit, or service that is not as effective
 26 in affording equal opportunity as that provided to others because inmates with mobility
 27 disabilities must rely on wheelchair pushers. Such reliance deprives them of independence that
 28 other non-disabled inmates have. Traversing the physically inaccessible features at Elmwood

1 also endangers their safety, a risk that non-disabled inmates do not have to bear to access
 2 Defendants' programs, services and activities. Additionally, upon information and belief,
 3 multiple educational and vocational programs offered at Elmwood are not accessible to inmates
 4 with mobility disabilities due to physical barriers at the program facilities such as stairs or
 5 inadequate clearance space.

6 158. In addition, public entities responsible for the operation or management of adult
 7 detention and correctional facilities "shall ensure that qualified inmates or detainees with
 8 disabilities shall not, because a facility is inaccessible to or unusable by individuals with
 9 disabilities, be excluded from participation in, or be denied the benefits of, the services,
 10 programs, or activities of a public entity, or be subjected to discrimination by any public entity."
 11 28 C.F.R. § 35.152(b)(1).

12 159. Because of the inaccessibility of the Main Jail, inmates with mobility disabilities
 13 are denied the benefits of Defendants' programs, services and activities in two ways. First,
 14 inmates who use wheelchairs are segregated in more restrictive units where there is little access
 15 to any of Defendants' formal programs, services or activities, such as classes or treatment
 16 programs. Second, inmates with mobility disabilities face inaccessibility within their more
 17 restrictive units, as inmates with mobility disabilities cannot access basic services such as
 18 showers or even toilets without risk of injury. Additionally, to the extent inmates with mobility
 19 disabilities are housed outside of the Main Jail Infirmary and Main Jail Special Housing they are
 20 housed in inaccessible cells and without access to accessible showers.

21 160. Similarly, in Elmwood Special Housing, educational or rehabilitative programs
 22 are denied because of the presence of physical barriers. In order to access such programs, which
 23 are available to their nondisabled peers, inmates with disabilities at Elmwood must travel
 24 outdoors for at least 100 yards to the classroom area of Elmwood. The path of travel to the
 25 classroom area is not accessible due to barriers such as broken pavement, steep curb cuts and
 26 heavy doors. This path of travel is even more inaccessible in the rain, as pushing a wheelchair
 27 with wet wheels on an already barrier-ridden path can become dangerous and impossible. Also,
 28 when Elmwood does not clean up debris – such as tree limbs – after a storm, it makes it even

1 more difficult for inmates with mobility disabilities to travel. While Defendants have recently
 2 provided wheelchair pushers, wheelchair pushers are not always available such that inmates
 3 traveling along the path to the classroom may become stranded due to heavy doors that they are
 4 unable to open due to their disability. In addition, there is no guarantee that a wheelchair pusher
 5 will be able to safely traverse the inaccessible pathway and thus, the dangers of an inaccessible
 6 path remain. The denial of physical access to the educational and rehabilitative programs at
 7 Elmwood is by reason of disability because these architectural barriers affect only inmates with
 8 disabilities.

9 161. A public entity “shall make reasonable modifications in policies, practices, or
 10 procedures when the modifications are necessary to avoid discrimination on the basis of
 11 disability[.]” 28 C.F.R. § 35.130(b)(7).

12 162. Defendants fail to make reasonable modifications to their policies, practices, and
 13 procedures even though such modifications are necessary to avoid discriminating against
 14 Plaintiffs and members of the Plaintiff Class by, *inter alia*, not identifying and tracking Plaintiffs
 15 and members of the Plaintiff Class who require disability-related accommodations and not
 16 modifying Defendants’ policies, practices, and procedures to allow individuals with disabilities
 17 who need assistive devices and other such disability-related modifications (1) to be housed with
 18 their nondisabled peers or, (2) at the very least, to receive the same access to the programs,
 19 services or activities offered at the County Jails as their nondisabled peers.

20 163. Reasonable modifications would include but are not limited to: (1) modifying
 21 policies and practices that do not allow inmates who use wheelchairs and housed in segregated
 22 units to participate in rehabilitative and educational programs; (2) modifying housing policies
 23 and practices so that assistive devices, including wheelchairs, are allowed in all units, (3)
 24 modifying assistive device policies and practices to allow the use of wheelchairs in all units such
 25 that the use of wheelchairs would not limit housing options; (4) implementing an
 26 identification/tracking system for reasonable modifications in the County Jails; (5) modifying
 27 assistive devices policies so that such devices will be provided and not removed when deemed
 28 needed in all areas of the Jail; (6) providing staff training to ensure that reasonable modifications

1 for individuals are implemented; and (7) making the grievance system effective for inmates with
 2 disabilities including by adding a method for grievances to be marked as disability-related.

3 164. Defendants' failure to modify Defendants' policies and practices
 4 disproportionately burdens Plaintiffs and the Plaintiff Class by reason of their disabilities. But
 5 for the fact that Plaintiffs and the Plaintiff Class have disabilities, they would not require these
 6 reasonable modifications which they are being denied.

7 165. The regulations implementing Title II of the ADA also require public entities to
 8 prepare and implement a Self-Evaluation and Transition Plan to evaluate and improve the
 9 accessibility of their facilities. A Self-Evaluation must "evaluate current services, policies and
 10 practices, and the effects thereof, that do not or may not meet the requirement of this part and, to
 11 the extent modification of any such services, policies, and practices is required, the public entity
 12 shall proceed to make the necessary modifications." 23 C.F.R. § 35.105(a). Further, "a public
 13 entity shall provide an opportunity to interested persons . . . to participate in the self-evaluation
 14 process by submitting comments." 28 C.F.R. § 35.105(b). A Transition Plan must "(i) identify
 15 physical obstacles in the public entity's facilities that limit accessibility of its programs or
 16 activities to individuals with disabilities; (ii) describe in detail the methods that will be used to
 17 make the facilities accessible; (iii) specify the schedule for taking the steps necessary to achieve
 18 compliance with this section and, if the time period of the transition plan is longer than one year,
 19 identify steps that will be taken during each year of the transition period; and (iv) indicate the
 20 official responsible for implementation of the plan." 28 C.F.R. § 35.150(d)(3).

21 166. Upon information and belief, Defendants have failed to conduct a full and
 22 comprehensive Self Evaluation and Transition Plan with a complete and up-to-date schedule for
 23 providing physical and program access in the County Jails. Upon information and belief,
 24 Defendants have also failed to make a copy of their Transition Plan available for public
 25 inspection, in violation of 28 C.F.R. § 35.150(d)(1).

26 167. Pursuant to 28 C.F.R. § 35.149 "[n]o qualified individual with a disability shall,
 27 because a public entity's facilities are inaccessible to or unusable by individuals with disabilities,
 28 be excluded from participation in, or be denied the benefits of the services, programs, or

1 activities of a public entity, or be subjected to discrimination by any public entity.” Additionally,
 2 pursuant to 28 C.F.R. § 35.150(a), Defendants must “operate each service, program, or activity
 3 so that the service, program, or activity, when viewed in its entirety, is readily accessible to and
 4 usable by individuals with disabilities.”

5 168. Pursuant to 28 U.S.C. § 35.151(b)(1), “[e]ach facility or part of a facility altered
 6 by, on behalf of, or for the use of a public entity in a manner that affects or could affect the
 7 usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in
 8 such a manner that the altered portion of the facility is readily accessible to and usable by
 9 individuals with disabilities, if the alteration was commenced after January 26, 1992.”

10 169. Upon information and belief, the County Jails have been altered in a manner that
 11 affects the usability of the County Jails since January 26, 1992, and the altered portions of the
 12 facilities are not readily accessible to and usable by individuals with disabilities in violation of
 13 28 U.S.C. § 35.151(b)(1).

14 170. Pursuant to 28 U.S.C. § 3.151(c)(1) physical alterations that commence after July
 15 26, 1992 must comply with the DOJ’s Standards for Accessible Design published on July 26,
 16 1991 and republished as Appendix D to 28 CFR Part 36 (“1991 Standards”) or with the Uniform
 17 Federal Accessibility Standards (“UFAS”).

18 171. Upon information and belief, areas of the County Jails have been constructed after
 19 July 26, 1992 and are not in compliance with the 1991 Standards or UFAS.

20 172. Pursuant to 28 U.S.C. § 35.151(4) an “alteration that affects the usability of or
 21 access to an area of a facility that contains a primary function shall be made accessible so as to
 22 ensure that, to the maximum extent feasible, the path of travel to the altered area and the
 23 restrooms, telephones, and drinking fountains serving the altered area are readily accessible to
 24 and usable by individuals with disabilities, including individuals who use wheelchairs” A
 25 “primary function” is a major activity for which the facility is intended. 28 U.S.C. §
 26 35.151(b)(4)(i).

27 173. Upon information and belief, Defendants have altered the usability of areas that
 28 contain primary functions but have failed to make the path of travel to such areas readily

1 accessible to individuals with disabilities, including individuals who use wheelchairs, in
2 violation of 28 U.S.C. § 35.151(4).

3 174. The regulations implementing Title II of the ADA also require that alterations that
4 commence on or after September 15, 2010 to jails, prisons, and other detention and correctional
5 facilities may comply with the DOJ's 2010 Standards. 28 C.F.R. § 35.151(c)(2). Alterations
6 that commence on or after March 15, 2012 must comply with the DOJ's 2010 standards. 28
7 CFR § 35.151(c)(3). The 2010 Standards are defined to include the requirements set forth in
8 appendices B and D to 36 CFR part 1191 (2009) (known as the "2004 ADAAG") and the
9 requirements contained in 28 CFR § 35.151. 28 CFR § 35.104. Specifically, pursuant to 28
10 U.S.C. § 35.151(k)(2), altered cells with mobility features shall be provided in each classification
11 level, although public entities may satisfy this obligation by providing the required mobility
12 features in cells other than those where alterations were originally planned. Such cells must:

- 13 • be "located within the same prison site;"
- 14 • be "integrated with other cells to the maximum extent feasible;"
- 15 • provide, "at a minimum, equal physical access as the altered cells to areas used by
16 inmates or detainees for visitation, dining, recreation, educational programs, medical
17 services, work programs, religious services, and participation in other programs that
18 the facility offers to inmates or detainees;" and
- 19 • provide "a substitute cell" at another prison site within the corrections system "if it is
20 technically infeasible to locate a substitute cell within the same prison site."

21 28 U.S.C. § 35.151(k)(2)(i)-(iv).

22 175. Upon information and belief, the County Jails have altered cells after the
23 applicable dates without installing the required mobility features in compliance with 28 U.S.C. §
24 35.151(k).

25 176. With respect to medical and long-term care facilities in jails, prisons, and other
26 detention and correctional facilities, public entities are required to apply the 2010 Standards
27 technical and scoping requirements for those facilities, irrespective of whether those facilities are
28 licensed, for alterations and construction occurring after the applicable dates. 28 U.S.C. §

1 35.151(k)(3). Upon information and belief, Defendants fail to apply these standards here.

2 177. Because Defendants’ discriminatory and wrongful conduct is ongoing,
3 declaratory and injunctive relief are appropriate remedies. Further, as a direct result of
4 Defendants’ actions, Plaintiffs and members of the Plaintiff Class are suffering irreparable harm,
5 including lost opportunities to participate in rehabilitative programs and/or classes that could
6 reduce the rate of recidivism upon their release and/or reduce the length of their sentence.
7 Therefore, speedy and immediate relief is appropriate.

8 178. Pursuant to 42 U.S.C. § 12133, Plaintiffs are entitled to declaratory and injunctive
9 relief as well as reasonable attorneys’ fees and costs incurred in bringing this action under 42
10 U.S.C. § 12205.

11 **SECOND CAUSE OF ACTION**

12 *Violation of Section 504 of the Rehabilitation Act*

13 *29 U.S.C. § 794*

14 179. Plaintiffs incorporate by reference each and every allegation contained in the
15 foregoing paragraphs as if specifically alleged herein.

16 180. Section 504 provides, in pertinent part:

17 No otherwise qualified individual with a disability in the United
18 States . . . shall, solely by reason of his or her disability, be
19 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).

20 181. Each Defendant was, at all times relevant to this action, and is currently a
21 recipient of federal financial assistance within the meaning of Section 504 and provides a
22 “program or activity,” including “all the operations of” the recipient which includes the
23 educational and rehabilitative programs and activities offered in the County Jails. 29 U.S.C. §
24 794(b).

25 182. An “individual with a disability” is defined under the statute, in pertinent part, as
26 “an individual who has a physical or mental impairment that substantially limits one or more
27 major life activities of such individual.” 29 U.S.C. § 705(20)(B) (referencing 42 U.S.C.
28 § 12102). “Qualified” means, with respect to services, a person who meets the essential

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(510) 665-8644

1 eligibility requirements for the receipt of such services. 28 C.F.R. § 41.32.

2 183. Plaintiffs and the Plaintiff Class were, at all times relevant to this action, and are
3 currently “otherwise qualified individuals with disabilities” within the meaning of Section 504,
4 as they all have impairments that substantially limit a major life activity, and they were and/or
5 are all residents of the County Jails qualified – with or without reasonable accommodation – to
6 participate in the programs, services, and activities offered by Defendants in the County Jails.

7 184. Defendants have violated the rights of Plaintiffs and members of the Plaintiff
8 Class secured by Section 504 and its implementing regulations.

9 185. The DOJ is charged under Executive Order 12250 with coordinating the
10 implementation of Section 504 of the Rehabilitation Act of 1973. 28 C.F.R. § 41.1.

11 186. In providing any aid, benefit, or service, a recipient of federal financial assistance
12 “may not . . . [d]eny a qualified handicapped person the opportunity to participate in or benefit
13 from the aid, benefit or service,” “[a]fford a qualified handicapped person an opportunity to
14 participate in or benefit from the aid, benefit, or service that is not equal to that afforded others,”
15 “[p]rovide a qualified handicapped person with an aid, benefit, or service that is not as effective
16 in affording equal opportunity . . . as that provided to others,” “[o]therwise limit a qualified
17 handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed
18 by others or “provide different or separate aids, benefits, or services to individuals with
19 disabilities or to any class of individuals with disabilities than is provided to others unless such
20 action is necessary to provide qualified individuals with disabilities with aids, benefits, or
21 services that are as effective as those provided to other.” 45 C.F.R. § 84.4(b)(i)-(iv), (vii).

22 187. A public entity may not “deny a qualified individual with a disability the
23 opportunity to participate in services, programs, or activities that are not separate or different,
24 despite the existence of permissibly separate or different programs or activities.” 45 C.F.R. §
25 84.4(b)(3).

26 188. When Plaintiffs and members of the Plaintiff Class are placed in the Main Jail
27 Infirmary, Main Jail Special Housing, and/or Elmwood Special Housing, Defendants exclude
28 them from participating in and deny them the benefits of Defendants’ educational and

1 rehabilitative programs, services, and activities solely by reason of their disabilities. Inmates who
 2 use wheelchairs segregated in the Main Jail Infirmary and Main Jail Special Housing are housed
 3 in highly restrictive units, where they are routinely locked in their cells for 23 hours per day, due
 4 solely to their disability. Additionally, inmates who use wheelchairs and are classified as
 5 medium security are not able to be housed at Elmwood even if they would otherwise be eligible
 6 and are thus denied access to the additional programs and activities available at Elmwood.
 7 Defendants' actions and omissions deny Plaintiffs and the Plaintiff Class the opportunity to
 8 participate in services, programs or activities that are not separate and different from those
 9 offered to their nondisabled peers.

10 189. Defendants also deny inmates with mobility disabilities access to programs and
 11 activities due to the physical inaccessibility of the Main Jail and Elmwood. Due to physical
 12 barriers at the Main Jail inmates with mobility disabilities are frequently housed in inaccessible
 13 cells and without access to accessible showers. Inmates with mobility disabilities at Elmwood
 14 are denied access to programs and activities due to barriers in the path of travel throughout
 15 Elmwood and due to physical barriers including steps and insufficient clearance space in some
 16 classrooms and other facilities where programs are offered.

17 190. A recipient of federal financial assistance may not "utilize criteria or methods of
 18 administration (i) that have the effect of subjecting qualified handicapped persons to
 19 discrimination on the basis of handicap and/or (ii) that have the purpose or effect of defeating or
 20 substantially impairing accomplishment of the objectives of the recipient's program or activity
 21 with respect to handicapped persons" 45 C.F.R. § 84.4(b)(4)(i), (ii).

22 191. By denying individuals with disabilities access to wheelchairs and other needed
 23 modifications to Defendants' policies and procedures outside of the Main Jail Infirmary and
 24 Main Jail Special Housing units, Defendants deny inmates with mobility disabilities who require
 25 wheelchairs access to programs and services and lock them in a cell for 23 or more hours per
 26 day. As such, Defendants utilize methods of administration that have the effect of subjecting
 27 Plaintiffs and members of the Plaintiff Class to discrimination by reason of their disabilities.
 28 These methods of administration also have the purpose and effect of defeating or substantially

1 impairing accomplishment of the objectives of Defendants' educational and rehabilitative
2 programs, services, and activities with respect to Plaintiffs and members of the Plaintiff Class.

3 192. Defendants fail to make reasonable modifications to their policies, practices, and
4 procedures even though such modifications are necessary to avoid discriminating against
5 Plaintiffs and members of the Plaintiff Class by, *inter alia*, not identifying and tracking Plaintiffs
6 and members of the Plaintiff Class who require reasonable accommodations and not modifying
7 Defendants' assistive devices and housing policies to allow individuals with disabilities who
8 need use wheelchairs to be housed in the least restrictive setting appropriate to their needs and
9 with their nondisabled peers. Reasonable modifications would include but are not limited to: (1)
10 modifying policies and practices that do not allow inmates who use wheelchairs and housed in
11 segregated units to participate in rehabilitative and educational programs; (2) modifying housing
12 policies and practices so that assistive devices, including wheelchairs, are allowed in all units, (3)
13 modifying assistive device policies and practices to allow the use of wheelchairs in all units such
14 that the use of wheelchairs would not limit housing options; (4) implementing an
15 identification/tracking system for reasonable modifications in the County Jails; (5) modifying
16 assistive devices policies so that such devices will be provided and not removed when deemed
17 needed in all areas of the Jail; (6) providing staff training to ensure that reasonable modifications
18 for individuals are identified and implemented properly; and (7) making the grievance system
19 effective for inmates with disabilities including by adding a method for grievances to be marked
20 as disability-related.

21 193. Defendants' failure to modify Defendants' policies and practices
22 disproportionately burdens Plaintiffs and the Plaintiff Class by reason of their disabilities.

23 194. Because Defendants' discriminatory conduct is ongoing, declaratory relief and
24 injunctive relief are appropriate remedies. Further, as a direct result of Defendants' actions,
25 Plaintiffs and members of the Plaintiff Class are suffering irreparable harm, including lost
26 educational and rehabilitative opportunities. Therefore, speedy and immediate relief is
27 appropriate.

28 195. Pursuant to 29 U.S.C. § 794a, Plaintiffs are entitled to declaratory and injunctive

1 relief and to recover from Defendants the reasonable attorneys’ fees and costs incurred in
2 bringing this action.

3 **THIRD CAUSE OF ACTION**

4 ***Violation of California Government Code § 11135***

5 ***Cal. Gov’t Code § 11135 et seq.***

6 196. Plaintiffs incorporate by reference each and every allegation contained in the
7 foregoing paragraphs as if specifically alleged herein.

8 197. California Government Code section 11135 sets forth a nondiscrimination policy
9 for state programs. It provides, in pertinent part, that:

10 [n]o person in the State of California shall, on the basis of race,
11 national origin, ethnic group identification, religion, age, sex,
12 sexual orientation, color, genetic information or disability, be
13 unlawfully denied full and equal access to the benefits of, or be
14 unlawfully subjected to discrimination under, any program or
15 activity that is conducted, operated, or administered by the state or
16 by any state agency, is funded directly by the state, or receives any
17 financial assistance from the state. Cal. Gov’t Code § 11135(a).

18 198. Upon information and belief, each Defendant was, at all times relevant to this
19 action, and is currently operating or administering a program or activity that receives state
20 financial assistance within the meaning of section 11135, including educational and rehabilitative
21 programs and activities in the County Jails.

22 199. Plaintiffs and the Plaintiff Class were, at all times relevant to this action, and are
23 currently “persons in the State of California” within the meaning of California Government Code
24 section 11135. Plaintiffs and the Plaintiff Class all have disabilities as defined by California
25 Government Code section 12926, and they were and/or are all residents of the County Jails
26 qualified to participate in the programs, services and activities of the County Jails.

27 200. Defendants have violated the rights of Plaintiffs and members of the Plaintiff
28 Class secured by Section 11135 *et seq.* and the regulations promulgated thereunder, 22 Cal. Code
29 Regs. § 98100, *et seq.*

30 201. It is a “discriminatory practice” for a recipient of state financial assistance, “in
31 carrying out any program or activity,” on the basis of disability, “(a) to deny a person the

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(510) 665-8644

1 opportunity to participate in, or benefit from an aid, benefit or service; (b) to afford a person the
 2 opportunity to participate in or benefit from an aid, benefit or service that is not equal to that
 3 afforded others; (c) to provide a person with an aid, benefit or service that is not as effective in
 4 affording an equal opportunity to obtain the same result, to gain the same benefit, or to reach the
 5 same level of achievement as that provided to others . . . [or] (g) to otherwise limit a person in
 6 the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving any
 7 aid, benefit or service resulting from the program or activity.” 22 Cal. Code Regs. § 98101 (a),
 8 (b), (c), (g).

9 202. When Plaintiffs and members of the Plaintiff Class are placed in Main Jail Special
 10 Housing, Main Jail Infirmary, and/or Elmwood Special Housing, Defendants exclude them from
 11 participating in and deny them the benefits of Defendants’ educational and rehabilitative
 12 programs, services, and activities solely by reason of their disabilities. Inmates who use
 13 wheelchairs segregated in the Main Jail Infirmary and Main Jail Special Housing are housed in
 14 highly restrictive units, where they are routinely locked in their cells for 23 hours per day, due
 15 solely to their disability. Additionally, inmates who use wheelchairs and are classified as
 16 medium security are not able to be housed at Elmwood even if they would otherwise be eligible
 17 and are thus denied access to the additional programs and activities available at Elmwood.
 18 Defendants’ actions and omissions deny Plaintiffs and the Plaintiff Class the opportunity to
 19 participate in services, programs or activities that are not separate and different from those
 20 offered to their nondisabled peers.

21 203. Defendants also deny inmates with mobility disabilities access to programs and
 22 activities due to the physical inaccessibility of the Main Jail and Elmwood. Due to physical
 23 barriers at the Main Jail inmates with mobility disabilities are frequently housed in inaccessible
 24 cells and without access to accessible showers. Inmates with mobility disabilities at Elmwood
 25 are denied access to programs and activities due to barriers in the path of travel throughout
 26 Elmwood and due to physical barriers including steps and insufficient clearance space in some
 27 classrooms and other facilities where programs are offered.

28 204. It is also a “discriminatory practice” for a recipient of state financial assistance “to

1 utilize criteria or methods of administration that: (1) have the purpose or effect of subjecting a
 2 person to discrimination on the basis of disability; (2) have the purpose or effect of defeating or
 3 substantially impairing the accomplishment of the objectives of the recipient's program with
 4 respect to a person with a disability." 22 Cal. Code Regs. § 98101(i).

5 205. By denying individuals with disabilities access to wheelchairs and other needed
 6 modifications to Defendants' policies and procedures outside of the Main Jail Infirmary and
 7 Main Jail Special Housing units, Defendants deny inmates with mobility disabilities who require
 8 wheelchairs access to programs and services and lock them in a cell for 23 or more hours per
 9 day. As such, Defendants utilize methods of administration that have the effect of subjecting
 10 Plaintiffs and members of the Plaintiff Class to discrimination by reason of their disabilities. .
 11 These methods of administration also have the purpose and effect of defeating or substantially
 12 impairing accomplishments of the objectives of Defendants' educational and rehabilitative
 13 programs, services, and activities with respect to Plaintiffs and members of the Plaintiff Class.

14 206. Section 11135 of the California Government Code further requires that the
 15 programs and activities that receive financial assistance from the state "shall meet the protections
 16 and prohibitions contained in Section 202 of the federal Americans with Disabilities Act . . .
 17 except that if the laws of this state prescribe stronger protections and prohibitions, the programs
 18 and activities subject to subdivision (a) shall be subject to the stronger protections and
 19 prohibitions." Cal. Gov't Code § 11135(b). Because Defendants are violating Title II of the
 20 ADA, they also are violating section 11135 of the California Government Code.

21 207. Defendants have further violated California Government Code § 11135 by failing
 22 to prepare and maintain a compliant Self-Evaluation and a compliant Transition Plan pursuant to
 23 the requirements of Cal. Code Regs. Tit. 22 §§ 98251 and 98258.

24 208. Defendants have also discriminated on the basis of disability in violation of
 25 Government Code § 11135 by constructing, altering, or repairing parts of the Jail in a manner
 26 that violates the accessibility requirements of Title 24 of the California Building Standards Code
 27 and California Government Code § 4450.

28 209. Defendants and their agents and employees have violated and continue to violate

1 California Government Code § 11135 by unlawfully denying Plaintiffs and members of the
 2 Plaintiff Class the benefits of, and unlawfully subjecting Plaintiffs and members of the Plaintiff
 3 Class to discrimination under, the County's programs and activities and for the reasons set forth
 4 above.

5 210. Because Defendants' discriminatory and wrongful conduct is ongoing,
 6 declaratory and injunctive relief are appropriate remedies. Further, as a direct result of
 7 Defendants' actions, Plaintiffs and members of the Plaintiff Class are suffering irreparable harm,
 8 including lost education and rehabilitative opportunities. Therefore, speedy and immediate relief
 9 is appropriate.

10 211. Pursuant to section 1021.5 of the California Code of Civil Procedure, Plaintiffs
 11 are entitled to declaratory and injunctive relief as well as reasonable attorneys' fees and costs
 12 incurred in bringing this action.

13 **FOURTH CAUSE OF ACTION**

14 *Declaratory Relief*

15 *28 U.S.C. § 2201*

16 *Cal. Code Civ. Proc. § 1060 et seq.*

17 212. Plaintiffs incorporate by reference each and every allegation contained in the
 18 foregoing paragraphs as if specifically alleged herein.

19 213. Plaintiffs contend that Defendants have failed and are failing to comply with
 20 applicable laws prohibiting discrimination against persons with disabilities in violation of
 21 Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, *et seq.*, Title II of the ADA, 42 U.S.C. §
 22 12131, *et seq.*, and California Government Code § 11135, *et seq.*

23 214. Defendants dispute Plaintiffs' contention, therefore, a judicial declaration is
 24 necessary and appropriate at this time in order that each of the parties may know their respective
 25 rights and duties and act accordingly.

26 215. Pursuant to 28 U.S.C. § 2201 and Cal. Code Civ. Proc. § 1060, *et seq.*, Plaintiffs
 27 are entitled to declaratory relief.

28 216. WHEREFORE, Plaintiffs pray for relief as set forth below.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

217. An order certifying that this action may be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(1)-(2);

218. An order and declaration that the Defendants' conduct as alleged herein has violated, and continues to violate, the ADA, 42 U.S.C. §§ 12101 *et seq.*, and accompanying regulations, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and accompanying regulations, and California Government Code § 11135, *et seq.* and accompanying regulations.;

219. An order permanently enjoining Defendants from violating the ADA, 42 U.S.C. §§ 12101 *et seq.*, and accompanying regulations, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and accompanying regulations, and California Government Code § 11135, *et seq.* and accompanying regulations;

220. An order requiring Defendants and their agents, employees, officials, and all persons acting in concert with them under color of state law or otherwise to develop and implement, as soon as practical, a plan to eliminate the substantial risk of harm, discrimination, and statutory violations that Plaintiffs and members of the class they represent suffer due to the unlawful acts, omissions, conditions and practices described in this Complaint;

221. An order requiring Defendants to ensure that Plaintiffs and the Plaintiff Class are not denied the benefits of, or participation in, programs, services, and activities at the Jail;

222. Retain jurisdiction of this case until Defendants have complied with the orders of this Court, and there is a reasonable assurance that Defendants will continue to comply in the future, absent continuing jurisdiction;

223. Award Plaintiffs' attorneys' fees and costs, as provided by statute and law; and

224. Any such other relief as the Court finds just and proper.

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(510) 665-8644

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DATED: November 14, 2016

Respectfully submitted,

DISABILITY RIGHTS ADVOCATES
ROSEN BIEN GALVAN & GRUNFELD LLP



Mary-Lee K. Smith
Attorneys for Plaintiffs

/s/ Lisa Ells
Lisa Ells
Attorneys for Plaintiffs

DISABILITY RIGHTS ADVOCATES
2001 CENTER STREET, FOURTH FLOOR
BERKELEY, CALIFORNIA 94704-1204
(510) 665-8644