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19 UNITED STATES DISTRICT COURT
20 FOR THE EASTERN DISTRICT OF CALIFORNIA

21 LESLIE NAPPER, JANET FISCHER, JACQUIE
22 EICHHORN-SMITH, TED YANELLO, and
23 LYNDA MANGIO, on behalf of themselves and
24 all others similarly situated,

25 Plaintiffs,

26 v.

27 COUNTY OF SACRAMENTO; BOARD OF
28 SUPERVISORS OF THE COUNTY OF
SACRAMENTO; County Supervisor ROGER
DICKINSON; County Supervisor JIMMIE YEE;
County Supervisor SUSAN PETERS; County
Supervisor ROBERTA MACGLASHAN; County
Supervisor DON NOTTOLI; SACRAMENTO
COUNTY DEPARTMENT OF BEHAVIORAL
HEALTH SERVICES; ANN EDWARDS-
BUCKLEY, Director, Department of Behavioral
Health Services; MARY ANN BENNETT, Mental
Health Director,

Defendants.

Case No.

CLASS ACTION

**CLASS ACTION COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

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INTRODUCTION

1
2 1. This civil rights class action lawsuit seeks declaratory and injunctive relief to
3 prevent the devastating and unlawful termination of essential mental health services to thousands
4 of low-income Medi-Cal recipients in Sacramento County. Defendant County of Sacramento
5 (“County”) and Defendant County officials have announced that effective June 30, 2010, they
6 will terminate mental health programs that provide “core” services to approximately 5,000
7 County residents with severe mental illness, such as schizophrenia, bipolar disorder and
8 depression. Specifically, the County intends to end all funding for the Regional Support Team
9 (“RST”) programs and the Transitional Community Opportunities for Recovery and Engagement
10 (“TCORE”) program and to reduce funding by more than 60% for the Wellness and Recovery
11 Centers. Together these impacted programs provide most of the outpatient mental health services
12 to Medi-Cal recipients in Sacramento County.

13 2. Although Defendants have publicly stated that they intend to open new clinics,
14 they have supplied so far few details about the staffing or capacity of these new clinics. It is
15 impossible for the Defendants to establish a fully functioning outpatient mental health system for
16 5,000 people in the time remaining before July 1, 2010. In less than two months Defendants
17 cannot open and outfit new facilities, hire the requisite staff and make all the other necessary
18 arrangements so as to assume treatment for these individuals, for whom they are not currently
19 providing any outpatient mental health services. Indeed, Defendants have limited expertise in
20 providing outpatient mental health services to County residents. Moreover, it seems highly
21 unlikely that the new clinics will even attempt to treat the same number of clients or offer the
22 same mental health services, inasmuch as County officials have cited fiscal considerations as the
23 reasons for eliminating all four RSTs and the TCORE program and drastically scaling back the
24 Wellness and Recovery Centers.

25 3. As of May 4, 2010, Defendants had provided no details to Plaintiffs and other
26 Medi-Cal recipients like them about what services will be provided, when they will be available
27 or where or how they can be accessed. Worse, Defendants have not attempted to notify recipients
28 of existing services or how they might obtain services beginning July 1, 2010, and they have not

1 drawn up individualized plans for serving these patients. As a result, thousands of the County's
2 most vulnerable citizens – persons who have until now had access to quality outpatient mental
3 health care treatment administered by dedicated professionals – face a catastrophic break in their
4 treatment, and will inevitably be exposed to increased harm of injury and death if the County's
5 unlawful acts are not enjoined. Even if equivalent services were to be provided, recipients would
6 suffer greatly by reason of being suddenly deprived of access to service providers upon whose
7 care they depend, and in whom they have learned to place their trust, in most cases only gradually
8 and with great difficulty.

9 4. It was not until recently that the County began to make any arrangements with the
10 RSTs and other programs for the transfer of these recipients to the new clinics (wherever they
11 may be). The County has not yet addressed all the important logistical details, such as the
12 copying of clients' records at the current facilities, transfer of records to the new facilities and the
13 scheduling of appointments for clients at the new facilities. Thus, to the extent the County has
14 drawn up any plans for the ongoing treatment of class members, those plans appear to be sketchy,
15 disorganized, and constantly changing, and are woefully inadequate to preserve the rights of class
16 members to continue receiving the kind and level of service they have been receiving to date.

17 5. Unless enjoined, the County's planned termination of mental health services will
18 cause immediate and irreparable harm by depriving Plaintiffs and thousands of class members
19 like them of medically necessary mental health treatment. Without this care, these individuals
20 with severe mental health disorders are at imminent and serious risk of harm to their health and
21 safety, as well as unnecessary and unwanted out-of-home placement, including
22 institutionalization.

23 6. The proposed termination of mental health services will not only cause profound
24 disruptions in the lives of our most vulnerable citizens, but will also end up costing the County
25 more in the short-term as well as the long-term. According to Defendant County, the closures are
26 purportedly necessitated by budget shortfalls and by a County ordinance that has been interpreted
27 to require preservation of County jobs. However, County officials publicly admit that providing
28 mental health services through County clinics and its own employees will be more expensive than

1 the current system, which relies on private nonprofit contractors who have successfully been
2 offering such services for at least the past 15 years. Curtailing outpatient services will also lead
3 to greater costs from needless psychiatric crises and hospitalizations.

4 7. The County's proposed plans to terminate mental health services are so severe
5 that, if implemented, they will violate a number of provisions of federal and state law. Under the
6 Americans with Disabilities Act of 1990, 42 U.S.C. § 12312 ("ADA"), Section 504 of the
7 Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504"), and California Government Code
8 § 11135, public entities, such as the County, have a duty to provide services to people with
9 disabilities in the "most integrated setting appropriate to their needs." Here, the most integrated
10 setting for current County mental health clients is living in the community with case management
11 and outpatient care, as they have been doing successfully to date. Without these services,
12 Plaintiffs and other similarly situated clients are at risk of institutionalization, self-injury and even
13 death.

14 8. The proposed termination of mental health services and the County's apparent
15 failure to provide adequate transition services contravene the above-mentioned federal and state
16 laws in a number of other ways: (a) by denying people with disabilities the opportunity to benefit
17 from the County's mental health services or providing them with less effective services; (b) by
18 using methods of administration that discriminate on the basis of disability and defeat the purpose
19 of the County's Mental Health Plan; (c) by selecting sites for new clinics that may not be
20 accessible to people with disabilities; and (d) by failing to make modifications and/or
21 accommodations when necessary to avoid discrimination.

22 9. The proposed actions also violate the requirements of Title XIX of the Social
23 Security Act (42 U.S.C. § 1396a) ("Medicaid Act") that Medicaid recipients such as the Plaintiffs
24 and others similarly situated are provided with (a) services that are sufficient in amount, duration,
25 and scope to reasonably achieve their purposes; (b) comparable Medicaid services to individuals
26 with similar needs; and (c) services according to reasonable standards.

27 10. Finally, Defendants' failure to provide adequate notice and opportunity for hearing
28 prior to depriving members of the Plaintiff class of critical Medi-Cal mental health services

1 violates the federal and state constitutional guarantees of due process and the Medicaid Act's
2 notice and hearing provisions.

3 **JURISDICTION**

4 11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and
5 1367. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201,
6 2202 and 1343, and by Rules 57 and 65 of the Federal Rules of Civil Procedure. At all times
7 relevant to this action, Defendants have acted under color of state law.

8 12. Plaintiffs' claims for violations of California state law concern the same actions
9 and omissions that form the basis of Plaintiffs' claims under federal law such that they are all part
10 of the same case or controversy. This Court therefore has supplemental jurisdiction over these
11 state law claims pursuant to 28 U.S.C. § 1367.

12 13. This action for declaratory and injunctive relief arises in part under Title II of the
13 Americans With Disabilities Act of 1990, 42 U.S.C. § 12132; Section 504 of the Rehabilitation
14 Act of 1973, 29 U.S.C. § 794; Title XIX of the Social Security Act, 42 U.S.C. § 1396a *et seq.*;
15 42 U.S.C. § 1983; the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution,
16 and the Supremacy Clause of the U.S. Constitution (U.S. CONST. art. VI, cl. 2).

17 **VENUE**

18 14. Venue is proper in the Eastern District of California pursuant to 28
19 U.S.C. § 1391(b), because the Defendants operate and perform their official duties therein and
20 thus reside therein for purposes of venue, and because a substantial part of the events and
21 omissions giving rise to the claims herein occurred in Sacramento County, which is in the Eastern
22 District of California.

23 **PARTIES**

24 **Plaintiffs**

25 15. Plaintiff Leslie Napper is a resident of the County and a recipient of California's
26 Medicaid program ("Medi-Cal"). Ms. Napper is 41 years old and has been diagnosed with severe
27 and persistent mental illness. She depends upon the County for her Medi-Cal mental health
28 services. Ms. Napper is a client at the Northgate Point RST. Ms. Napper is a "qualified person

1 with a disability” within the meaning of all applicable statutes, including 42 U.S.C. §12131(2), 29
2 U.S.C. §705(20)(B), and California Government Code § 12926.

3 16. Plaintiff Jacquie Eichhorn-Smith is a resident of the County and a Medi-Cal
4 recipient. Ms. Eichhorn-Smith is 37 years old and has been diagnosed with severe and persistent
5 mental illness. She depends upon the County for her Medi-Cal mental health services. Ms.
6 Eichhorn-Smith is a client of the TCORE program. Ms. Eichhorn-Smith is a “qualified person
7 with a disability” within the meaning of all applicable statutes, including 42 U.S.C. §12131(2), 29
8 U.S.C. §705(20)(B), and California Government Code § 12926.

9 17. Plaintiff Jan Fischer is a resident of the County and a Medi-Cal recipient. Ms.
10 Fischer is 54 years old and has been diagnosed with severe and persistent mental illness. She
11 depends upon the County for her Medi-Cal mental health services. Ms. Fischer is a client at the
12 Northgate Point RST. Ms. Fischer is a “qualified person with a disability” within the meaning of
13 all applicable statutes, including 42 U.S.C. §12131(2), 29 U.S.C. §705(20)(B), and California
14 Government Code § 12926.

15 18. Plaintiff Ted Yanello is a resident of the County and a Medi-Cal recipient. Mr.
16 Yanello is 42 years old and has been diagnosed with severe and persistent mental illness. He
17 depends upon the County for his Medi-Cal mental health services. Mr. Yanello is a client at the
18 El Hogar RST. Mr. Yanello is a “qualified person with a disability” within the meaning of all
19 applicable statutes, including 42 U.S.C. §12131(2), 29 U.S.C. §705(20)(B), and California
20 Government Code § 12926.

21 19. Plaintiff Lynda Mangio is a resident of the County and a Medi-Cal recipient. Ms.
22 Mangio is 49 years old and has been diagnosed with severe and persistent mental illness. She
23 depends upon the County for her Medi-Cal mental health services. Ms. Mangio is a client at the
24 Northgate Point RST. Ms. Mangio is a “qualified person with a disability” within the meaning of
25 all applicable statutes, including 42 U.S.C. §12131(2), 29 U.S.C. §705(20)(B), and California
26 Government Code § 12926.

Defendants

1
2 20. Defendant County of Sacramento (“County”) is a local governmental entity duly
3 authorized and formed under the laws of the State California. Pursuant to California’s Welfare
4 and Institutions Code § 5775, the County has been designated as the Mental Health Plan
5 responsible for the provision of specialty mental health services to Medi-Cal recipients who are
6 County residents. The County is a local government entity within the meaning of Title II of the
7 ADA, and receives federal funding within the meaning of the Rehabilitation Act. The County is
8 responsible for providing mental health services to Medi-Cal recipients who reside within the
9 County, and receives funding from the federal and state governments for these services. The
10 County is responsible for oversight of Defendant Sacramento County Department of Behavioral
11 Health Services. The County also promulgates policies and procedures regarding the operation of
12 this agency and the provision of services through this agency.

13 21. Defendant Sacramento County Board of Supervisors oversees the management of
14 County government.

15 22. Defendants Roger Dickinson, Jimmie Yee, Susan Peters, Roberta MacGlashan and
16 Don Nottoli are current members of the Sacramento County Board of Supervisors. They have all
17 been sued only in their official capacities.

18 23. Defendant Sacramento County Department of Behavioral Health Services
19 (“DBHS”) is an agency of Defendant County and is responsible for providing mental health
20 services to the Sacramento community. The mission statement for DBHS’ Division of Mental
21 Health states that it will “[a]ssist adults with mental illnesses and children/youth with emotional
22 disturbance by providing services and supports to maximize their quality of life,” “[s]ustain and
23 enhance a public mental health system that supports recovery for adults with mental illness and
24 children/youth with disturbance,” and “[e]liminate mental health disparities for all cultural, ethnic
25 and racial groups.” DBHS receives federal and state funds.

26 24. Defendant Ann Edwards-Buckley is DBHS’ current Director and, as such, is
27 responsible for and supervises the operation of this County agency. She is sued only in her
28 official capacity.

1 25. Defendant Mary Ann Bennett is the current Mental Health Director for the
2 County. She is responsible for ensuring the provision of mental health services in the County and
3 for supervising the activities of DBHS' Division of Mental Health. She is sued only in her
4 official capacity.

5 CLASS ALLEGATIONS

6 26. This action can be maintained as a class action pursuant to Rule 23(a) and 23(b)(2)
7 of the Federal Rules of Civil Procedure. For all claims for relief, Plaintiffs bring this action on
8 behalf of a class consisting of "all current and future recipients of Medi-Cal funded mental health
9 services in the County of Sacramento" (the "Class").

10 27. **Numerosity:** The Plaintiff Class is so numerous that joinder of all its members is
11 impracticable. Upon information and belief, there are more than 5,000 persons in the Class.
12 Joinder of individuals in the Class is also impracticable because members of the Class lack the
13 knowledge and financial means to maintain individual actions.

14 28. **Commonality:** Common questions of fact and law predominate over questions
15 affecting individual class members. Questions of fact and law common to members of the Class
16 include but are not limited to whether the termination and reduction of Medi-Cal funded mental
17 health services to class members violate provisions of the Medicaid Act, the ADA, Section 504,
18 and California Government Code § 11135, and whether the County's implementation of these
19 reductions fails to meet the requirements of procedural due process established by the U.S. and
20 California Constitutions.

21 29. **Typicality:** The claims of Plaintiffs are typical of the claims of the Class as a
22 whole and members of the Class currently are eligible Medi-Cal recipients and qualified
23 individuals with disabilities who will be affected similarly by the terminations and reductions in
24 Medi-Cal funded mental health services in the County. The claims arise from the same unlawful
25 and discriminatory law and policies and practices of Defendants.

26 30. **Adequate representation:** Plaintiffs will fairly represent and adequately protect
27 the interests of members of the Class as a whole. Plaintiffs do not have any interests antagonistic
28 to those of other members of the Class. By filing this action, Plaintiffs have displayed an interest

1 in vindicating their rights, as well as the claims of others who are similarly situated. The relief
2 sought by Plaintiffs will inure to the benefit of members of the Class generally. Plaintiffs are
3 represented by counsel who are experienced, skilled, and knowledgeable about civil rights
4 litigation, disability discrimination, Medicaid law, practice and procedure in the federal courts,
5 and the prosecution and management of class action litigation.

6 31. **Rule 23(b)(2):** Class certification is appropriate pursuant to Federal Rule of Civil
7 Procedure 23(b)(2) because Defendants have acted, refused to act, or will act on grounds
8 generally applicable to the Class, thereby making final injunctive and declaratory relief
9 appropriate with respect to the Class as a whole.

10 **FACTUAL ALLEGATIONS**

11 **A. Medi-Cal and the California Medi-Cal Managed Mental Health Care Plans**

12 32. Medi-Cal recipients have an entitlement to mental health services through
13 California's Medicaid program ("Medi-Cal"). Medicaid is a joint federal and state medical
14 assistance program for certain groups of low-income people, including children. 42 U.S.C. §§
15 1396-1396v. California has elected to participate in the Medicaid program, and so must comply
16 with the requirements of the federal Medicaid Act and its implementing regulations.

17 33. The purpose of Medicaid is to furnish, as far as practicable, "medical assistance on
18 behalf of . . . aged, blind or disabled individuals, whose income and resources are insufficient to
19 meet the costs of necessary medical services" and "to help such families and individuals to attain
20 or retain capability for independence or self-care" 42 U.S.C. § 1396.

21 34. Participating States are reimbursed by the federal government for a portion of the
22 cost of providing Medicaid benefits. *See* 42 U.S.C. § 1396b. The remaining funding for the
23 Medi-Cal program comes from the State and the counties.

24 35. The Medicaid Act requires that recipients be provided with the freedom to choose
25 their own health and mental health providers. 42 U.S.C. § 1396a(a)(23). However, the Medicaid
26 Act allows participating states to establish Medicaid managed care programs in which freedom of
27 choice is limited, or waived. 42 U.S.C. § 1396n.

28

1 36. California has obtained federal approval for a managed care waiver program to
2 provide mental health services to its Medi-Cal recipients with severe and chronic mental illness
3 and these recipients are mandatorily included in that managed care waiver program. The mental
4 health services available to Medi-Cal recipients through the managed care waiver program are
5 called “specialty mental health services.” Cal. Code Regs. tit. 9, §§ 1810.00, 1810.247.

6 37. Medi-Cal specialty mental health care services are provided only through
7 designated Mental Health Plans (“MHPs”). Welf. & Inst. Code §§ 5775, 5776, 5777; Cal. Code
8 Regs. tit. 9, § 1810.305. Counties have the first option to become the Mental Health Plan in their
9 respective geographic areas. Welf. & Inst. Code § 5775 (c). Every county, including Sacramento
10 County, has elected to serve, alone or in conjunction with another county, as a local Mental
11 Health Plan.

12 38. Under the federal Medicaid waiver, Medi-Cal recipients do not have freedom of
13 choice regarding their mental health providers and may only obtain specialty mental health
14 services from the Mental Health Plan in their county.

15 39. As a condition of receiving state and federal Medicaid funding, Mental Health
16 Plans are obligated to:

- 17 • “comply with all applicable federal laws, regulations and guidelines” (Welf. &
18 Inst. Code § 5776);
- 19 • provide “medically necessary mental health services to Medi-Cal beneficiaries”
20 (*id.*, § 5777(a)(1));
- 21 • bear the financial risk of providing these services (*id.*, § 5777(a)(1));
- 22 • “be financially responsible for ensuring access and a minimum required scope of
23 benefits, consistent with state and federal law,” (*id.*, § 5777(a)(3)); and
- 24 • adopt “appropriate standards relating to quality, access and coordination of
25 services within a managed system of care” (*id.*, § 14684 (c)).

26 40. State regulations impose the same requirements on Mental Health Plans. *See* Cal.
27 Code Regs. tit. 9, § 1810.110(a) (MHP “shall comply” with “all applicable federal laws,
28 regulations and guidelines”); § 1810.345(a) (MHP “shall provide or arrange and pay for specialty

1 mental health services to the [Medi-Cal] beneficiary” when “medical necessity criteria” are met);
2 § 1810.405(a) (MHP “shall be responsible for assuring that the beneficiary has access to specialty
3 mental health services”).

4 41. State law defines the target population for specialty mental health services under
5 the managed care waiver as “adults with serious and persistent mental illness and children with
6 serious emotional disturbance.” Welf & Inst. Code § 14686(f). *Accord*, Cal. Code Regs. tit. 9,
7 § 1830.205 (medical necessity criteria for adults); § 1830.210 (medical necessity criteria for
8 children under age 21).

9 42. According to the California Department of Mental Health, specialty mental health
10 services are “those services requiring the services of a specialist in mental health,” as opposed to
11 general mental health care needs, “which could be met by a general health care practitioner.”
12 Specialty mental health services are also defined in Title 9 of the California Code of Regulations
13 at § 1810.247.

14 43. Pursuant to regulation, every Medi-Cal recipient participates with service
15 providers in the development of his or her client plan, which specifies the goals of the person who
16 is receiving the service. “Client plan” means a plan for the provision of specialty mental health
17 services to a Medi-Cal recipient who meets statewide medical necessity criteria. Cal. Code Regs.
18 tit. 9, § 1810.205.2. The plan also specifies the type of service and the proposed duration of each
19 type of service the person is to receive. It is signed by the recipient and the person who is
20 responsible for providing, coordinating and/or approving the service(s). The plan must be
21 updated at least annually.

22 **B. Sacramento’s Mental Health System**

23 44. Defendants Sacramento County and its DBHS constitute the designated Mental
24 Health Plan with obligations to provide specialty mental health services to Medi-Cal recipients in
25 Sacramento County. According to recent state data, the County served 20,626 recipients during
26 the 2008-2009 fiscal year, nearly half of whom (10,235) were adults.

27 45. Sacramento County provides a range of adult mental health services, including
28 acute psychiatric emergency services, crisis residential services, and outpatient mental health

1 services (both high and low-moderate intensity).

2 46. The County provides mental health services through a network of providers. The
3 County has contracted with outside agencies, most of which are private non-profit programs, to
4 provide virtually all of these mental health services. Only a small portion of the County's mental
5 health services are County operated and staffed by its own employees.

6 47. The County operates an "Access Center," which acts as the gate-keeper for Medi-
7 Cal clients seeking to obtain mental health services in the County. The Access Center is staffed
8 by teams that specialize in services to adults and in services for children. These teams accept
9 requests for service, assess the client's level of need and authorize services based on this
10 determination, make referrals to a network of county and contract providers, and approve requests
11 for re-authorization of services.

12 48. Defendant DBHS has adopted an "Adult Mental Health Services Policy &
13 Procedure Manual" that governs access to county mental health services. This manual dictates (a)
14 the target population for County mental health services, (b) the procedures for determining a
15 client's level of care and developing his or her treatment plan, (c) for each different contracted
16 and county mental health program, the staffing levels and caseload ratios required for clients with
17 different levels of care, and (d) the criteria for making referrals within the county's network of
18 providers.

19 49. County policy requires that the Access Center teams respond with a referral within
20 three days of every call. According to County documents and reports, the Access Center has
21 often failed to meet that time frame, with reports of two weeks to respond to requests for a
22 referral.

23 50. For many years, the County Mental Health Plan has been plagued by inadequate
24 capacity to serve clients in need, with resulting delays in treatment. A 100-page report by the
25 State's quality review team found that in 2008, the "system [did] not have sufficient program
26 capacity to provide services." The state reviewers found in particular that: timely access to
27 services was the County's "greatest systemic challenge," with "excessive wait times" such as
28 waits of up to five months for a psychiatry appointment; caseloads were excessively high with

1 adult caseloads of 130 -150 consumers; and the County had not adequately provided information
2 for and outreach to mono-lingual Spanish-speaking consumers. The reviewers' report also found
3 that there was an "over-reliance on crisis services," 40-50% of consumers in crisis were
4 "unlinked," meaning they had not had an appointment before, and there were long delays to
5 connect "unlinked" consumers to services and to get appointments. Finally, the reviewers
6 reported that "the demand for outpatient services continues to rise."

7 51. In 2009, the increased need for mental health care and the County's over-reliance
8 on crisis and inpatient care resulted in the census in its inpatient facility, the Mental Health
9 Treatment Center, exceeding capacity again and again. This forced a series of rolling closures in
10 which police and emergency response teams with mentally ill patients were diverted to
11 surrounding counties, where the patients were left in hospital emergency rooms.

12 52. In 2009, despite the continued demand for mental health services, the County cut
13 millions of dollars from its mental health budget. Thousands of clients were terminated from
14 services. Because no providers were terminated or closed, their staff members worked to identify
15 the clients whose mental illnesses were the least severe and who were best able to tolerate a
16 transition to a lower level of care. The County also terminated almost all mental health clients
17 who did not have Medi-Cal eligibility. Many in this group were simply unable to navigate the
18 arduous process for qualifying for federal social security benefits, which is the primary means for
19 an adult to establish Medi-Cal eligibility.

20 53. The County made deep reductions in mental health funding for contracted agencies
21 in 2009 in part to preserve county positions that would otherwise have been eliminated.
22 According to the minutes of a public meeting on August 20, 2009, Defendant Bennett stated that
23 "the reason that the number of affected contract employee positions is larger than the number of
24 displaced county employees is that County employees cost more than contract employees."

25 54. A report by the State's quality review team in 2009, just as reductions were
26 occurring, found that "the number of adults served by the RSTs decreased by 64% to just under
27 3000 in a very short time frame, much of which was the result of budgetary reductions. This
28 leaves many consumers at risk of 'falling through the cracks.'" The state reviewers reiterated that

1 the “[mental health] system does not have sufficient program capacity to provide services,” that
2 “in patient capacity continues to be problematic The system is in urgent need for more
3 options for and alternatives to hospitalization.”

4 55. The County has continued to commit millions of dollars to funding costly services
5 in locked treatment settings. A memorandum dated April 1, 2010, from Defendant DBHS
6 explains that the County spends \$22,908,341 annually to fund 217 locked inpatient and nursing
7 home beds at four institutions. Two are non-county facilities, Napa State Hospital and Crestwood
8 Psychiatric Health Facility (“PHF”), while the remaining two are County-owned facilities – its
9 Mental Health Treatment Center with 50 beds and its new 12-bed PHF. The two non-county
10 facilities average more than \$60,298 per bed per year. The average cost for the two locked
11 County facilities exceeds \$215,000 per bed per year.

12 **Regional Support Teams (“RSTs”)**

13 56. For many years, the Regional Support Teams (“RSTs”) have been the primary
14 source of adult outpatient services in the County. The most recent state audit of Sacramento’s
15 Mental Health Plan described the RSTs as “the core mental health specialty services for low to
16 moderate intensity clients.” The County’s Adult Mental Health Service Directory identifies the
17 RSTs as the only outpatient source of “comprehensive mental health and medication services for
18 adults” in the County.

19 57. There are four RSTs, all operated by private, non-profit mental health programs:
20 Northgate Point in the northern part of Sacramento County; Human Resource Consultants in the
21 eastern part of Sacramento County; Visions Unlimited in the southern part of Sacramento County;
22 and El Hogar in the western part of Sacramento County.

23 58. At present, the four RSTs serve approximately 3600 clients per year. A majority
24 of the RST clients are Medi-Cal recipients.

25 59. The County identifies four levels of care for outpatient services. RST clients are
26 eligible for services at Level II or Level III within the County’s level of care framework,
27 according to the DBHS Adult Mental Health Services Grid, dated January 12, 2010.

28 60. To be eligible for community support services (Level II) from the RSTs, an adult

1 must, among other things, have been “currently assessed as requiring a need for a strong
2 connection to treatment and support” and “still in need for assistance in maintaining stable living
3 environment, supported employment, and identification of meaningful activities for community
4 reentry.” The County has specified a required staffing ratio of 1:25 for this level of care.

5 61. To be eligible for intensive services (Level III) from the RSTs, an adult must meet,
6 *inter alia*, the following criteria: (1) is being discharged from an acute setting; (2) has been
7 hospitalized for psychiatric reasons three times in the past twelve months; and (3) is willing to
8 accept services or would most likely risk deterioration without intensive level of services. The
9 County has specified a required staffing ratio of 1:70 for this level of care.

10 **Transitional Community Opportunities for Recovery and Engagement (“TCORE”)**

11 62. Besides the RSTs, another outpatient treatment program is Transitional
12 Community Opportunities for Recovery and Engagement (“TCORE”). TCORE focuses on
13 clients who are being discharged from acute treatment settings or at risk of entering acute care
14 settings and are not linked to ongoing services. TCORE provides crisis intervention, case
15 management, rehabilitative services and medication management. The program emphasizes
16 access for non-English speakers and other under-served and unserved groups.

17 63. TCORE serves a significant number of adult Medi-Cal recipients. On information
18 and belief, TCORE currently serves over 700 clients per year.

19 **Consumer Self Help (“CSH”) Wellness and Recovery Centers**

20 64. Another outpatient treatment program consists of the Consumer Self Help
21 (“CSH”) Wellness and Recovery Centers – North and South. Like the RSTs, the Wellness and
22 Recovery Centers provide community support services (“Level II”). These Centers provide group
23 activities, self help, peer counseling and peer support along with medication management.

24 65. According to the County’s 2009 Mental Health Services Act report on this
25 program, the Wellness and Recovery Centers serve 1600 clients annually.

26 66. Other than the RSTs, TCORE and the Wellness and Recovery Centers, the County
27 Service Directory lists only a few other programs that provide outpatient mental health services to
28 particular groups of County mental health patients. These are the County-operated Adult

1 Psychiatric Support Service (“APSS”) clinic (providing medication support and referrals), the
2 County-operated APSS Aftercare Center (referrals for people leaving jail or institutions), the
3 Transcultural Wellness Center (serving Asian Pacific Islander clients), the El Hogar Senior Sierra
4 Program (seniors only), and Turning Point Integrated Service Agency and the Telecare SOAR
5 program (24 hour per day services for people in secure or locked institutions).

6 **C. Proposed Terminations and Reductions of Medi-Cal Mental Health Services**
7 **in Sacramento County**

8 67. On March 16, 2010, Defendant Bennett issued a memorandum to employees of
9 Defendant DBHS announcing a reduction of \$17.5 million in expenditures for the 2010-2011
10 fiscal year. The memorandum stated that the reductions would “significantly impact our
11 contracted providers and the vital services they provide to our clients.” According to Defendant
12 Bennett’s memorandum, the Department of Behavioral Health Services would lose 58.9
13 positions, for a reduction of \$4.9 million. The bulk of the cuts – \$11.9 million – were proposed
14 for “our contracted providers and the vital services they provide to our clients.” This would
15 require closing all four RSTs and making other “significant reductions to mental health services”
16 within the County.

17 68. On March 18, 2010, Defendant Bennett made a presentation at a public County
18 meeting regarding the above-mentioned reductions for the 2010-2011 fiscal year, adding that
19 “[t]hese cuts will necessitate a redesign of the MHSA programs to compensate for the losses,
20 especially in the adult outpatient system.”

21 69. At a public meeting on April 1, 2010, Defendant Bennett provided a summary of
22 the proposed budget reductions. This document identified “unavoidable cost increases” that led
23 to the budget shortfall, including \$5.4 million in raises for County employees and \$856,000 in
24 increased costs for the County’s new 12-bed locked psychiatric facility (in addition to the
25 millions already committed to that project). Another \$2.9 million will be repayment of an earlier
26 interdepartmental loan. This attachment also identified the “loss of revenue due to the
27 reductions,” which consists of an estimated loss of \$4 million in federal Medicaid funding for
28 adults and \$951,974 in Federal Medicaid funding for children.

1 70. At this public meeting on April 1, 2010, Defendant Bennett released the County's
2 "proposed" plan to open new County clinics staffed with county employees displaced from other
3 positions. Another document distributed at the April 1 meeting described the County's "System
4 Redesign Proposed Plan." This document acknowledged that the budget reductions will affect
5 "6500 individuals served in a moderate service level system." The System Redesign Proposed
6 Plan states that "we are planning services for approximately 5000 to 6000 of consumers [sic]
7 currently in services," and would reduce services by referring clients to health care clinics instead
8 of the Mental Health Plan. The Plan states that the new County clinics will be staffed by 28.6
9 county employees slated for termination but whose positions "are protected" by the voter-
10 approved County Charter Section 71J. In addition, the County purportedly plans to increase its
11 contract with University of California Davis to provide medical staff in the County clinics.

12 71. In the meantime, Defendants have informed the non-profit agencies that provide
13 adult outpatient services that effective June 30, 2010, the County will do the following:

- 14 • Terminate all funding for the four RSTs, which together have a staff of 149
15 employees.
- 16 • Terminate all funding for the TCORE program operated by Human Resources
17 Consultants. This program has 39 employees.
- 18 • Reduce funding for the Consumer Self-Help Wellness and Recovery Centers by
19 more than 60%, which will necessitate closing one of the facilities.

20 72. On information and belief, Defendants held a meeting on April 26, 2010, with the
21 RSTs and other contracting agencies to discuss transition plans. Yet, as of May 4, 2010,
22 Defendants had made no concrete arrangements for the transfer of existing clients from treating
23 staff at the RSTs, the TCORE program and the Wellness and Recovery Centers to new treating
24 staff at County clinics. Defendants have not addressed such important logistical details as the
25 copying of clients' records at the current facilities, transfer of records to the new facilities and the
26 scheduling of appointments for clients at the new facilities. Such arrangements to transition
27 existing clients to the new County clinics cannot be completed in less than two months.
28

1 73. As of May 4, 2010, Defendants had publicly announced few details about the
2 operations of the new County clinics, such as their locations, staffing, hours of operation and
3 range of available services.

4 74. As of May 4, 2010, Defendants had not sent any notices to current clients of the
5 RSTs, the TCORE program or the Wellness and Recovery Centers regarding the termination of
6 their services effective June 30, 2010, or where they should go to receive alternative services
7 beginning July 1, 2010. Nor had Defendants made any announcements to other Medi-Cal
8 recipients with severe mental health disorders or to the public at large about what would be the
9 available outpatient mental health services for Medi-Cal recipients in the County beginning June
10 30, 2010.

11 75. For each client currently in treatment at the RSTs, TCORE and the Wellness and
12 Recovery Centers, the County has made an individualized determination that he or she meets the
13 admission criteria for this program and requires this level of mental health services. The
14 County's Policy Manual specifies the process for making a level of care determination. The
15 County's level of care determination is reflected in each client's treatment plan. The County
16 Manual specifies that the treatment plan is in effect for twelve months and that services are
17 authorized based on this plan. Each level of service also requires a staffing ratio that is specified
18 in the County Manual and the RST's contract.

19 76. On information and belief, the County does not have the ability to provide the
20 services required in each client's treatment plan if the clients are referred to County clinics
21 beginning June 30, 2010.

22 77. On information and belief, the County will not be providing medically necessary,
23 mental health services to thousands of members of the Class beginning June 30, 2010.

24 78. According to the "Adult Mental Health Services Policy & Procedure Manual," the
25 general criteria for discharge from the RSTs include that the "Client does not meet medical
26 necessity criteria" or that the "Client is receiving services from another mental health provider
27 within Sacramento County including private/public entities." The criteria for discharge from
28 community support services from the RSTs include that the "Client has met treatment goals and is

1 no longer receiving mental health services.”

2 79. On information and belief, the County does not have the ability to meet these
3 discharge criteria before terminating services for class members because they will not be
4 receiving services from another provider on July 1, 2010, and have not met their treatment goals.

5 80. On information and belief, Defendants do not intend to send any notices of action
6 in advance of the termination or reduction in mental health services to class members who are
7 currently receiving mental health services from the RSTs, the TCORE program or the Wellness
8 and Recovery Centers.

9 **D. Impact of the Proposed Mental Health Cuts upon Medi-Cal Recipients**

10 81. The RST programs, the TCORE program and the Wellness and Recovery Centers
11 all provide effective mental health treatment that helps prevent unnecessary and costly
12 institutionalization, improving the quality of life for the individuals served, and, at the same time,
13 saving the County and the State significant funds.

14 82. The closure of the RST programs and the TCORE program and the drastic
15 reductions in the Wellness and Recovery Centers are likely to cause class members to suffer
16 deterioration in their mental status, an increase in symptoms of their mental illness, and increased
17 impairment in their ability to relate to others. This will expose them to a serious risk of family
18 break-up if they are unable to care for minor children or dependent adults. Foster care placements
19 may increase.

20 83. Many physicians are unable and/or unwilling to prescribe psychotropic
21 medications for patients or to manage their medications over a period of time. Meanwhile, many
22 patients with psychiatric disabilities will not take their medications without day-to-day support.
23 Even if the County opens up new clinics in the upcoming months and schedules appointments for
24 people, many individuals will not come to these appointments without case management, which is
25 why Defendants started the RSTs in the first place in the 1990s.

26 84. If terminated from their current providers on June 30, 2010, Plaintiffs will be
27 unable to access replacement mental health services. They are among the most vulnerable
28 members of society. Many of them do not have telephones, internet access or access to

1 transportation, and as a result it will be difficult, if not impossible, for them to learn what
2 alternative plans (if any) have been made for them or to travel to the locations of new treatment
3 centers (if any), in contrast to the ability of RST staff, until now, to travel to meet with them.
4 Many of them have great difficulty learning to place trust in others, which is a necessity for
5 effective treatment, and an abrupt termination of services announced by Defendants will have
6 severe psychiatric and emotional impacts on them.

7 85. Beginning June 30, 2010, some class members are likely to stop taking their
8 medications and attending their counseling sessions and, as a consequence, will become
9 delusional, suicidal, or otherwise present a danger to themselves and others. They may become
10 so disoriented that they no longer carry out normal activities of daily living, and are unable to
11 shop, cook food, clean their homes and clothing, dress, bathe, and care for themselves. This will
12 place them at risk of physical illness and injury.

13 86. A decline in class members' mental status will also place them at a serious risk of
14 losing their current housing situations and ultimately becoming homeless. In addition, the RST
15 programs are currently required to sign off on supported housing placements for some class
16 members and so those individuals will be at risk of losing their housing unless the County
17 assumes this critical task after June 30.

18 87. The impending disruptions in the mental health services and treatment are likely to
19 cause some class members to experience crises so severe that they present a danger to themselves
20 or others. This will place class members at great risk of attempting suicide or even death and will
21 require their emergency psychiatric hospitalization.

22 88. The closure of the RST programs and the TCORE program and the drastic
23 reductions in the Wellness and Recovery Centers are also likely to place class members at great
24 risk of unwanted institutionalization in other psychiatric facilities, including hospitals, psychiatric
25 health facilities, locked psychiatric nursing homes and other institutions.

26 89. Out-of-home placement in an institution can often further destabilize already
27 compromised mental or physical functioning. Once placed in an institution, it is extremely
28 difficult for individuals to move out of institutions and back into the community.

1 90. It costs far more to institutionalize individuals with mental illness than it does to
2 provide outpatient mental health services that allow them to live in community-based settings.

3 91. The impending cuts in mental health services will not only harm the clients of the
4 RST programs, the TCORE program and the Wellness and Recovery Centers, but will also
5 destabilize the entire system for all Medi-Cal recipients in need of mental health services from the
6 County. The Access line and local emergency rooms will not be able to absorb the increased
7 demand for services.

8 LEGAL CLAIMS

9 92. Defendants' actions, as alleged herein, have resulted in, and will continue to result
10 in, irreparable injury to Plaintiffs and members of the Class for which they have no plain, speedy,
11 or adequate remedy at law. Plaintiffs and members of the Class will suffer irreparable injury in
12 that they will be deprived of critical mental health treatment and subjected to imminent risk of
13 out-of-home placement, institutionalization and/or harm to their health and safety.

14 93. An actual controversy exists between Plaintiffs and Defendants in that Defendants
15 are seeking to implement reductions and terminations in Medi-Cal mental health services to
16 which members of the Class are entitled, and which, if implemented, will place members of the
17 Class at risk of unnecessary emotional and physical suffering, illness, out-of-home placement,
18 institutionalization and harm to their physical and mental health. Further, these reductions and
19 terminations violate the ADA, Section 504, various provisions of the Medicaid Act, and the Due
20 Process Clauses of the United States and California Constitutions. Plaintiffs therefore seek a
21 declaration as to their rights and Defendants' corresponding duties with respect to the matters
22 alleged herein.

23 94. The balance of harms favors entering an injunction because the harm suffered by
24 individuals deprived of crucial and needed mental health treatment outweighs any monetary loss
25 to Defendants.

26 95. It is in the public interest that the Court grant an injunction to ensure that Plaintiffs
27 and other similarly-situated individuals continue to receive, without interruption, medically
28 necessary mental health services to which they are entitled.

1 96. In taking the relevant actions, Defendants have acted under color of state law.

2
3 **FIRST CLAIM FOR RELIEF**
4 **Americans with Disabilities Act, 42 U.S.C. § 12134-35 et seq.**

5 97. Plaintiffs reallege and incorporate herein by reference each and every allegation
6 and paragraph set forth previously.

7 98. Each Named Plaintiff and member of the Class is a “qualified individual with a
8 disability” within the meaning of the ADA in that they (1) have mental impairments that
9 substantially limit one or more major life activities; and (2) meet the essential eligibility
10 requirements for Medi-Cal specialty mental health services under the Mental Health Plan.

11 99. Defendants County and DBHS are public entities within the meaning of Title II of
12 the ADA.

13 100. Title II of the ADA provides that “no qualified individual with a disability shall,
14 by reason of disability, be excluded from participation in or be denied the benefits of services,
15 programs, or activities of a public entity or be subjected to discrimination by such entity.” 42
16 U.S.C. § 12132.

17 101. In enacting the ADA, Congress found that “[i]ndividuals with disabilities
18 continually encounter various forms of discrimination, including . . . segregation” 42 U.S.C.
19 § 12101(a)(5).

20 102. Regulations implementing Title II of the ADA provide: “A public entity shall
21 administer services, programs, and activities in the most integrated setting appropriate to the
22 needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d).

23 103. The United States Supreme Court in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S.
24 581 (1999), held that the unnecessary institutionalization of individuals with disabilities is a form
25 of discrimination under Title II of the ADA. The Supreme Court interpreted the ADA’s
26 “integration mandate” as requiring persons with disabilities to be served in the community when:
27 (1) the state determines that community-based treatment is appropriate; (2) the individual does
28 not oppose community placement; and (3) community placement can be reasonably
accommodated. *Id.* at 607.

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

7 105. Regulations implementing Title II further require a public entity to “make
8 reasonable modifications in policies, practices, or procedures when the modifications are
9 necessary to avoid discrimination on the basis of disability, unless the public entity can
10 demonstrate that making the modifications would fundamentally alter the nature of the service,
11 program, or activity.” 28 C.F.R. § 35.130(b)(7).

12 106. Finally, Title II regulations provide that a public entity “may not, in determining
13 the site or location of a facility, make selections (i) That have the effect of excluding individuals
14 with disabilities from, denying them the benefits of, or otherwise subjecting them to
15 discrimination; or (ii) That have the purpose or effect of defeating or substantially impairing the
16 accomplishment of the objectives of the service, program, or activity with respect to individuals
17 with disabilities.” 28 C.F.R. § 35.130(b)(4).

18 107. Pursuant to the ADA, public entities are required to provide meaningful access to
19 their programs, services and activities, and provide any accommodations or modifications
20 necessary for people with disabilities to access those services.

21 108. Defendants’ actions discriminate against Plaintiffs and members of the Class by,
22 including but not limited to, engaging in the following actions or inactions in violation of the
23 ADA and implementing regulations:

- 24 A. Denying class members access to necessary mental health services because
25 either there are no mental health services in place, or replacement services
26 are sorely inadequate, in combination with insufficient transition planning,
27 so as to effectively deny individuals the opportunity to benefit or
28 participate in the program;

- 1 B. Failing to provide services in the most integrated setting by denying or
2 impeding access to community-based mental health care to class members
3 and placing them at risk of institutionalization, hospitalization and other
4 harm because without the outpatient services which they require, they will
5 experience repeated emotional crises, the loss of their therapeutic support
6 and an increase in the symptoms of their mental illness;
- 7 C. Failing to provide accommodations and/or modifications to the program
8 including transition planning and assuring that replacement services are in
9 fact provided and in place, without interruption, prior to terminating
10 current mental health care;
- 11 D. Using methods of administration that defeat the purpose of the program,
12 including: failing to provide individual transition plans based on client
13 needs (e.g., transportation, identification of alternative providers, transition
14 time to ensure that clients are able to access replacement services and
15 providers, and provisions to individuals who have difficulty with
16 transition), failing to make sure that replacement services are in place,
17 without interruption, prior to termination, and failing to make sure that new
18 services are sufficient to meet the needs of current and wait listed clients;
- 19 E. Closing RST sites that are currently accessible and available throughout the
20 county, and failing to relocate services and programs in sites that are
21 accessible to class members.

22 **SECOND CLAIM FOR RELIEF**

23 **Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 *et seq.***

24 109. Plaintiffs reallege and incorporate herein by reference each and every allegation
25 and paragraph set forth previously.

26 110. Section 504 of the Rehabilitation Act of 1973, on which the ADA is modeled, sets
27 forth similar protections against discrimination by recipients of federal funds, such as Defendants
28 herein. 29 U.S.C. §§ 794-794a. These protections include the prohibition against unnecessary

1 segregation. Regulations implementing Section 504 require that a public entity administer its
2 services, programs and activities in “the most integrated setting appropriate” to the needs of
3 qualified individuals with disabilities. 45 C.F.R. § 84.4(b)(2).

4 111. Section 504’s regulations prohibit recipients of federal financial assistance from
5 “utiliz[ing] criteria or methods of administration (i) that have the effect of subjecting qualified
6 handicapped persons to discrimination on the basis of handicap [or] (ii) that have the purpose or
7 effect of defeating or substantially impairing accomplishment of the objectives of the recipient’s
8 program with respect to handicapped persons” 45 C.F.R. § 84.4(b)(4).

9 112. Similar to the ADA, Section 504 regulations require that Defendants refrain from
10 selecting facility sites which have a discriminatory effect on participants. 45 C.F.R. § 84.4(b)(5).

11 113. Each Plaintiff and member of the Class is a “qualified individual with a
12 disability” within the meaning of Section 504 in that they (1) have mental impairments that
13 substantially limit one or more major life activities; and (2) meet the essential eligibility
14 requirements for Medi-Cal specialty mental health services under the Mental Health Plan.

15 114. Pursuant to Section 504, recipients of federal financial assistance are required to
16 provide meaningful access to their programs, services and activities, and provide any
17 accommodations or modifications necessary for people with disabilities to access those services.

18 115. Defendants’ actions discriminate against Plaintiffs and members of the Class by,
19 including but not limited to, engaging in the following actions or inactions in violation of Section
20 504 and implementing regulations:

- 21 A. Denying class members access to necessary mental health services because
22 either there are no mental health services in place, or replacement services
23 are sorely inadequate, in combination with insufficient transition planning,
24 so as to effectively deny individuals the opportunity to benefit or
25 participate in the program;
- 26 B. Failing to provide services in the most integrated setting by denying or
27 impeding access to community-based mental health care to class members
28

- 1 and placing them at risk of institutionalization, hospitalization and other
2 harm;
- 3 C. Failing to provide accommodations and/or modifications to the program
4 including transition planning and assuring that replacement services are in
5 fact provided and in place, without interruption, prior to terminating
6 current mental health care;
- 7 D. Using methods of administration that defeat the purpose of the program,
8 including: failing to provide individual transition plans based on client
9 needs (e.g., transportation, identification of alternative providers, transition
10 time to ensure that clients are able to access replacement services and
11 providers, and provisions to individuals who have difficulty with
12 transition), failing to make sure that replacement services are in place,
13 without interruption, prior to termination, and failing to make sure that new
14 services are sufficient to meet the needs of current and wait listed clients;
- 15 E. Closing RST sites that are currently accessible and available throughout the
16 county, and failing to relocate services and programs in sites that are
17 accessible to class members.

18
19 **THIRD CLAIM FOR RELIEF**
Medicaid Act Sufficiency Requirement

20 116. Plaintiffs reallege and incorporate herein by reference each and every allegation
21 and paragraph set forth previously.

22 117. Under federal Medicaid requirements, states must provide “sufficient” benefits.
23 That is, “[e]ach service must be sufficient in amount, duration, and scope to reasonably achieve
24 its purpose.” 42 C.F.R. § 440.230(b).

25 118. By terminating and reducing Medi-Cal funded mental health services to
26 individuals for whom such services have been found to be medically necessary, Defendants’
27 actions will result in insufficient services to fulfill the purpose of the Medi-Cal mental health
28 benefit.

1 119. The proposed terminations and reduction of Medi-Cal funded mental health
2 services is inconsistent with the federal law and preempted by the Supremacy Clause of the U.S.
3 Constitution (U.S. CONST. art. VI, cl. 2).

4
5 **FOURTH CLAIM FOR RELIEF**
6 **Medicaid Act Comparability Requirement**

7 120. Plaintiffs reallege and incorporate herein by reference each and every allegation
8 and paragraph set forth previously.

9 121. Under federal Medicaid requirements, states must provide comparable benefits,
10 i.e., benefits that are equal in “amount, duration and scope,” to all categorically needy Medicaid
11 beneficiaries. 42 U.S.C. § 1396a (a)(10)(B)(ii); 42 C.F.R. §§ 440.240(a), (b)(1). Categorically
12 needy Medicaid beneficiaries are beneficiaries who, in most cases, receive cash public assistance
13 to meet basic needs.

14 122. The Medicaid Act also requires states to provide comparable benefits to all
15 medically needy Medicaid beneficiaries. 42 U.S.C. § 1396a (a)(10)(B)(ii); 42 C.F.R. §
16 440.240(b)(1). Medically needy Medicaid beneficiaries are beneficiaries who do not receive cash
17 public assistance because they have income or resources in excess of the requirements for receipt
18 of such assistance, but who nevertheless meet categorical requirements for such assistance, e.g.,
19 they are over age 65, blind, or disabled.

20 123. States may provide benefits to the medically needy that are less in amount,
21 duration and scope than benefits to the categorically needy, but California has not elected to do
22 so.

23 124. Therefore (with certain exceptions for some groups not relevant here), Medi-Cal
24 recipients in one county must be provided with Medicaid benefits that are equal in amount,
25 duration and scope to eligible beneficiaries in other counties. The only permissible basis for
26 distinguishing among such beneficiaries is differing levels of need.

27 125. As a result of the proposed reduction in Medi-Cal mental health services in
28 Sacramento County, Defendants will provide Medicaid benefits to recipients in Sacramento
County that are not comparable to those provided to recipients in other counties. The proposed

1 terminations and reduction thus violate Medicaid's comparability requirement, 42 U.S.C. §
2 1396a(a)(10)(B)(i).

3 126. Defendants' actions deprive Plaintiffs and members of the Class of rights,
4 privileges or immunities secured to them by the Constitution of the United States, in violation of
5 42 U.S.C. § 1983, and are preempted by the Supremacy Clause of the U.S. Constitution (U.S.
6 CONST. art. VI, cl. 2).

7
8 **FIFTH CLAIM FOR RELIEF**
9 **Medicaid Reasonable Standards Requirement**

10 127. Plaintiffs reallege and incorporate herein by reference each and every allegation
11 and paragraph set forth previously.

12 128. Federal Medicaid law requires participating states to establish reasonable
13 standards, consistent with the objectives of the Medicaid Act, for determining the extent of
14 covered services. *See* 42 U.S.C. § 1396a(a)(17).

15 129. The proposed terminations and reductions of Medi-Cal mental health services will
16 deny medically necessary care to clients of the RSTs, who are the most severely mentally ill
17 clients in the County and who are the least able to cope with the loss of their existing services. In
18 making these cuts, Defendants have failed to utilize a fair or reasonable measure of need for
19 services.

20 130. Defendants' proposed terminations and reductions of Medi-Cal funded mental
21 health services are inconsistent and in conflict with the reasonable standards requirements of the
22 federal Medicaid Act, 42 U.S.C. § 1396a(a)(17), and interpretive federal guidelines, and is thus
23 preempted by the Supremacy Clause of the U.S. Constitution (U.S. CONST. art. VI, cl. 2).

24 **SIXTH CLAIM FOR RELIEF**
25 **Constitutional Due Process**

26 131. Plaintiffs reallege and incorporate herein by reference each and every allegation
27 and paragraph set forth previously.
28

1 132. Plaintiffs and members of the Class are entitled to adequate notice of and
2 opportunity for a pre-termination or pre-reduction hearing on any termination or reduction in
3 medical care and services. *See Goldberg v. Kelly*, 397 U.S. 254 (1970).

4 133. On information and belief, if Defendants provide any notice at all, they will do so
5 ten days before the planned terminations and the notice will not inform Plaintiffs of their right to
6 appeal the termination and to have their services continue pending the outcome of the hearing.

7 134. On information and belief, if Defendants provide any notice at all, this notice of
8 the planned terminations of mental health services will not be adequate or effective in light of
9 Plaintiffs' circumstances. Defendants will not inform Plaintiffs of the alternative services that are
10 available to them and whether these are equivalent to the services being terminated. Defendants
11 will not provide Plaintiffs and class members with meaningful information necessary to
12 determine whether they should request a hearing to contest the terminations.

13 135. On information and belief, if Defendants provide any notice at all, notice that is
14 provided ten days prior to the planned terminations of mental health services is not adequate or
15 effective. Ten days is not sufficient time for Plaintiffs and other class members, who are
16 individuals with mental illness, to determine whether they should appeal the decision to terminate
17 their services and how to submit such an appeal. Because of their mental illness, Plaintiffs will
18 need to obtain the assistance of case managers, family members or others in order to determine
19 whether to appeal. They must also determine whether any alternative services offered to them are
20 equivalent to those being terminated, whether they are actually available and whether they are
21 accessible to Plaintiffs. Plaintiffs will require more than ten days for this process.

22 136. On information and belief, if Defendants provide any notice at all, they will not
23 inform Plaintiffs and class members of their right to continued services pending the outcome of
24 their appeal, nor will they agree to continue services pending the hearings.

25 137. Unless enjoined, Defendants will reduce or terminate Medi-Cal services to which
26 members of the Class are entitled and have a property interest in maintaining, thereby depriving
27 class members of their right to an opportunity for fair hearing before reduction or termination of
28 benefits.

1 138. These actions violate the Due Process Clause of the Fourteenth Amendment to the
2 U.S. Constitution (U.S. CONST. Amend. XIV), as well as the Due Process Clauses of the
3 California Constitution (Cal. CONST. art. I, §§ 7, 15).

4 139. Defendants' actions deprive Plaintiffs and members of the Plaintiff Class of rights,
5 privileges or immunities secured to them by the Constitution of the United States, in violation of
6 42 U.S.C. § 1983.

7
8 **SEVENTH CLAIM FOR RELIEF**
Medicaid Act Right to a Fair Hearing

9 140. Plaintiffs reallege and incorporate herein by reference each and every allegation
10 and paragraph set forth previously.

11 141. Under federal Medicaid requirements, recipients and applicants for Medicaid
12 services have rights to written notice and a pre-termination fair hearing if their benefits are
13 reduced, suspended, or terminated. 42 U.S.C. § 1396a(a)(3).

14 142. This notice must contain the following:

- 15 (a) A statement of what action the State . . . intends to take;
- 16 (b) The reasons for the intended action;
- 17 (c) The specific regulations that support, or the change in Federal or State law that
18 requires, the action;
- 19 (d) An explanation of—
- 20 (1) The individual's right to request an evidentiary hearing if one is available,
21 or a State agency hearing; or
- 22 (2) In cases of an action based on a change in law, the circumstances under
23 which a hearing will be granted; and
- 24 (e) An explanation of the circumstances under which Medicaid is continued if a
25 hearing is requested.

26 42 C.F.R. § 431.210.

27
28

1 143. If the agency mails the notice of action and the recipient requests a hearing before
2 the date of action, the “agency may not terminate or reduce services until a decision is rendered
3 after the hearing” except in circumstances not applicable to this case. 42 C.F.R. § 431.230(a).

4 144. Pursuant to the Medicaid Act, California has established procedures to provide fair
5 hearings to any Medi-Cal beneficiary whose services are terminated, reduced, or denied. Cal.
6 Code Regs. tit. 22, § 51014.1(a). The state regulations provide, in pertinent part, that a Medi-Cal
7 managed care plan shall send a notice in writing to Medi-Cal recipients of “[a]ny intended
8 action . . . to terminate or reduce any medical service.” *Id.*, § 5104.1(a)(2). These state
9 regulations impose essentially the same requirements as the above-mentioned federal regulations
10 in terms of the contents of the notice of action. *Id.*, § 51014.1(c)(1)-(6). In general, this written
11 notice shall be mailed to the Medi-Cal beneficiary “at least 10 days before the effective date of
12 action.” *Id.*, § 51014.1(c).

13 145. In reducing or terminating services as set forth above, Defendants have deprived
14 Plaintiffs and members of the Class of their opportunity to notice and a fair pre-termination
15 hearing in violation of 42 U.S.C. § 1396a(a)(3) and 42 C.F.R. § 431.210.

16 146. Defendants’ actions deprive Plaintiffs and members of the Plaintiff Class of rights,
17 privileges or immunities secured to them by the Constitution of the United States, in violation of
18 42 U.S.C. § 1983, and are preempted by the Supremacy Clause of the U.S. Constitution (U.S.
19 CONST. art. VI, cl. 2).

20
21 **EIGHTH CLAIM FOR RELIEF**
California Government Code § 11135

22 147. Plaintiffs incorporate by reference each and every allegation contained in the
23 foregoing paragraphs.

24 148. Section 11135(a) of the California Government Code provides in pertinent part:
25 “No person in the State of California shall, on the basis of . . . disability, be unlawfully denied the
26 benefits of, or be unlawfully subjected to discrimination under, any program or activity that is
27 funded directly by the state or receives any financial assistance from the state.”
28

1 149. At all times relevant to this action, Defendant DBHS has been an agency of
2 Defendant County. At all times relevant to this action, DBHS and the County received financial
3 assistance from the State of California.

4 150. Through their acts and omissions described herein, Defendants have violated and
5 continue to violate California Government Code Section 11135 by unlawfully denying Plaintiffs
6 the benefits of, and unlawfully subjecting Plaintiffs to discrimination under, Defendants'
7 programs and activities.

8 151. Plaintiffs and class members further allege that violations of their rights under the
9 Americans with Disabilities Act and implementing regulations contained in the First Claim for
10 Relief are incorporated herein and constitute a violation of California Government Code Section
11 11135 *et seq.* as well, as set forth in section 11135(b).

12 152. Because Defendants' discriminatory conduct is ongoing, declaratory and
13 injunctive relief are appropriate remedies. Moreover, as a result of Defendants' actions Plaintiffs
14 are suffering irreparable harm, and thus immediate relief is appropriate.

15 **REQUEST FOR RELIEF**

16 WHEREFORE, Plaintiffs pray that the Court order the following relief and remedies on
17 behalf of themselves and all others similarly situated:

18 a) Assume jurisdiction over this action and maintain continuing jurisdiction until
19 Defendants are in full compliance with every order of this Court;

20 b) Certify this action as a class action and appoint the individual named Plaintiffs as
21 Class representatives;

22 c) Declare that the proposed termination and reduction of Medi-Cal funded mental
23 health services and Defendants' policies, practices, acts and omissions as set forth above violate
24 the American with Disabilities Act and Section 504 of the Rehabilitation Act, the Medicaid Act
25 (sufficiency, comparability, reasonable standards and reasonable fair hearing), the Due Process
26 Clauses of the United States and California Constitution, California Government Code § 11135,
27 and 42 U.S.C. § 1983, and are preempted by the Supremacy Clause of the U.S. Constitution (U.S.
28 CONST. art. VI, cl. 2).

1 d) Grant a preliminary and permanent injunction enjoining Defendants, their officers,
2 agents, employees, attorneys, and all persons who are in active concert or participation with them
3 from terminating and reducing medically necessary Medi-Cal funded mental health services
4 without first:

- 5 (i) Demonstrating that alternative services sufficient to meet the needs of
6 Plaintiffs and other class members are currently available;
- 7 (ii) Providing a process of transition to any alternative services that meets the
8 needs of Plaintiffs and other class members and is consistent with
9 minimum professional standards;
- 10 (iii) Providing adequate and effective written notice of the proposed termination
11 and reduction of Medi-Cal funded mental health services, and notice of the
12 right to appeal these actions and of the right to continued benefits pending
13 an appeal hearing;
- 14 (iv) Providing accommodations in the form of case management and other
15 assistance for Plaintiffs and class members that will enable them to
16 participate in the process of transition and in exercising their right to
17 appeal.

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1 e) Award the Plaintiffs the costs of this action and reasonable attorneys' fees
2 pursuant to 20 U.S.C. § 794a; 42 U.S.C. §§ 1988, 12133, 12205; California Code of Civil
3 Procedure § 1021.5; and as otherwise may be allowed by law.

4 f) All such other and further relief as the Court deems to be just and equitable.

5 Dated: May 6, 2010

Respectfully submitted,

7 COOLEY LLP

8
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