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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DISABILITY RIGHTS CALIFORNIA, a
California nonprofit corporation,

Plaintiff,

vs.

COUNTY OF ALAMEDA and ALAMEDA
COUNTY BEHAVIORAL HEALTH CARE
SERVICES,

Defendants.

Case No. 5:20-cv-05256-CRB

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Before: Hon. Charles R. Breyer

Trial Date: None Set

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I. INTRODUCTION

1. Plaintiff Disability Rights California (“DRC” or “Plaintiff”) brings this action for declaratory and injunctive relief against Alameda County and Alameda County Behavioral Health Care Services (“ACBHCS”) (collectively, “Defendants”). DRC challenges Defendants’ discrimination against adults with serious mental health disabilities who repeatedly cycle into and out of Alameda County’s psychiatric institutions. DRC asks this Court to direct Defendants to provide necessary community-based mental health services to end the avoidable institutionalization of hundreds of people with serious mental health disabilities.

2. Defendants’ failure to provide community-based services needlessly and illegally causes many adults with serious mental health disabilities, especially Black adults with such disabilities, to cycle into and out of Alameda County’s psychiatric institutions and puts them at constant and high risk of unnecessary and repeated institutionalizations. Alameda County’s psychiatric detention rate for people with mental health disabilities is more than three-and-a-half times the California statewide average. During a recent two-year period, over 2,300 people were detained at the County’s psychiatric facilities more than three times, the majority of whom were Black. Hundreds of people with serious mental health disabilities were detained more than 10 times, and some individuals were detained more than 100 times. These “cycling admissions” of individuals with high needs are “the hallmark of a failed system.” *United States v. Mississippi*, 400 F. Supp. 3d 546, 555 (S.D. Miss. 2019).

3. DRC is California’s Protection and Advocacy (“P&A”) system. It is empowered and charged by federal law to protect the rights of California residents with mental health disabilities. In 2018, DRC opened an investigation into Alameda County’s practices regarding unnecessary segregation in the County’s psychiatric institutions. These institutions include John George Psychiatric Hospital (“John George”), a public psychiatric hospital, and the Villa Fairmont Mental Health Rehabilitation Center (“Villa Fairmont”), a locked institution located on the same campus as John George. On November 1, 2019, DRC issued a written finding detailing the results of DRC’s investigation. Specifically, DRC found that Defendants’ actions constitute abuse and/or neglect based on, *inter alia*, Defendants’ providing services in institutions rather than the community. Because

1 Defendants have failed to implement a remedy, DRC is compelled to now file suit.

2 4. DRC brings this action on behalf of adult Alameda County residents who (a) have
3 serious mental health disabilities, (b) have been repeatedly institutionalized in John George and/or
4 Villa Fairmont, and (c) are at serious risk of being re-institutionalized in John George or Villa
5 Fairmont in the future. For the purpose of this action, individuals who have been repeatedly
6 institutionalized in John George and/or Villa Fairmont and are at serious risk of being re-
7 institutionalized at John George or Villa Fairmont in the future include individuals who have been
8 institutionalized in these facilities three or more times in the last 24 months. Many of these individuals
9 also cycle through jail and emergency rooms. Many are homeless. DRC refers to these individuals—
10 who are beneficiaries of DRC’s activities and advocacy—as “DRC Constituents.”

11 5. Defendants fail to provide DRC Constituents the mental health services they need in the
12 community to avoid institutionalization. Defendants require DRC Constituents to enter County
13 institutions to receive the mental health services they need. These services include the following:
14 rehabilitative mental health services, including medication support services; intensive case
15 management; services for psychiatric crises; substance use disorder treatment; and residential services.

16 6. Defendants’ failure to provide DRC Constituents with needed services in the
17 community leads to their being institutionalized at John George, after which many are institutionalized
18 at Villa Fairmont. At these two psychiatric institutions, Defendants provide DRC Constituents the
19 mental health services that they are denied while residing in the community.

20 7. If Defendants provided DRC Constituents the mental health services they need in the
21 community, most DRC Constituents could avoid repeated admissions into psychiatric institutions,
22 stays in jail, and visits to emergency rooms.

23 8. Defendants’ practice of providing DRC Constituents needed mental health care in
24 County institutions instead of in the community has dire effects. It undermines their participation in
25 community life. It contributes to homelessness and incarceration among DRC Constituents. It
26 perpetuates the stereotype that they are incapable of living successfully in the community.

27 9. Defendants’ over-reliance on institutional care also places DRC Constituents at
28 heightened risk of contracting COVID-19. Unlike residents without disabilities, who are encouraged

1 by the County to shelter in place, DRC Constituents are detained in congregate settings due to the lack
 2 of services in the community. Congregate facilities like the County's psychiatric institutions and jail
 3 are incubators for COVID-19 and hasten its spread.

4 10. Defendants' actions violate Title II of the Americans with Disabilities Act of 1990
 5 ("ADA"), 42 U.S.C. §§ 12131-12134, Section 504 of the Rehabilitation Act of 1973 ("Section 504" or
 6 the "Rehabilitation Act"), 29 U.S.C. §§ 794 *et seq.*, and California Government Code sections 11135-
 7 11139 ("Section 11135"). The ADA and Rehabilitation Act forbid all forms of discrimination against
 8 persons with disabilities, including needless institutionalization. *Olmstead v. L.C. ex rel. Zimring*, 527
 9 U.S. 581, 597 (1999). California law provides similar protections.

10 11. Defendants' methods of delivering mental health services results in discrimination, by
 11 leading to repeated institutionalization of DRC Constituents and placing DRC Constituents at serious
 12 risk of repeated institutionalization in the future. The County's system has irreparably harmed DRC
 13 Constituents and will continue to irreparably harm them unless this Court intervenes.

14 **II. JURISDICTION**

15 12. This Court has jurisdiction over this dispute pursuant to 28 U.S.C. § 1331, 28 U.S.C.
 16 § 2201, and 28 U.S.C. § 2202. A substantial, actual, and continuing controversy exists between the
 17 parties.

18 13. The Court's exercise of supplemental jurisdiction over Plaintiff's claims under state law
 19 is proper, as the state law claims "are so related to [Plaintiff's claims] that they form part of the same
 20 case or controversy." 28 U.S.C. § 1367(a).

21 **III. VENUE**

22 14. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
 23 §§ 1391(b)(1) and (2).

24 15. Defendants reside or are organized in the Northern District of California and the events
 25 or omissions giving rise to this action arose in Alameda County, which is located within the Northern
 26 District of California. Plaintiff Disability Rights California also has offices in Alameda County, and
 27 has constituents who reside in Alameda County.
 28

IV. PARTIES

A. Plaintiff DRC and Its Constituents

16. Plaintiff Disability Rights California is a federally funded non-profit corporation organized under the laws of the State of California, with offices in Oakland, Sacramento, Los Angeles, Fresno, Ontario, and San Diego. DRC's mission is to advocate, educate, investigate, and litigate to advance the rights and dignity of all people with disabilities.

17. The State of California has designated DRC to serve as California's Protection and Advocacy ("P&A") system for individuals with disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights ("DD") Act, 42 U.S.C. §§ 15041 *et seq.*, the Protection and Advocacy for Individuals with Mental Illness Act ("PAIMI"), 42 U.S.C. §§ 10801 *et seq.*, and the Protection and Advocacy of Individual Rights Act, § 29 U.S.C. § 794(e).

18. PAIMI provides for the establishment and funding of P&A systems, including DRC, to investigate the abuse and neglect of people with mental health disabilities, to engage in protection and advocacy "to ensure that the rights of individuals with mental health disabilities are protected," and "to ensure the enforcement of the Constitution and Federal and State statutes" on behalf of people with mental health disabilities. 42 U.S.C. §§ 10801(b)(1), 10801(b)(2)(A). As California's P&A system, DRC is authorized to "pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness who are receiving care or treatment in the State." 42 U.S.C. § 10805(a)(1)(B); *see also Oregon Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1110 (9th Cir. 2003).

19. Individuals with serious mental health disabilities have representation in DRC and guide and influence its activities. DRC is governed by a multi-member board of directors comprised predominantly of people with disabilities and their families. DRC's board is advised by a PAIMI advisory council, the majority of which, including the advisory council chair, are individuals who have received mental health services or have family members who do. The PAIMI advisory council has significant input in setting DRC's goals and objectives. Also, DRC uses surveys, focus groups, and public hearings to collect input from people with disabilities and their communities, and uses that input to set its goals and objectives.

20. DRC fulfills its federal mandate under PAIMI by providing an array of protection and

1 advocacy services to people with mental health disabilities across California, including individuals
2 who have been unnecessarily institutionalized or who are at risk of such institutionalization.

3 21. Under this authority, DRC pursues legal remedies on behalf of people with disabilities
4 in California and, in the context of this action, Alameda County residents who (a) have serious mental
5 health disabilities, (b) who have been repeatedly institutionalized in John George and/or Villa
6 Fairmont, and (c) are at serious risk of being re-institutionalized in John George or Villa Fairmont in
7 the future. For the purpose of this action, individuals “who have been repeatedly institutionalized in
8 John George and/or Villa Fairmont and are at serious risk of being re-institutionalized at John George
9 or Villa Fairmont in the future” include individuals who have been institutionalized in these facilities
10 three or more times in the last 24 months. There are hundreds, if not thousands, of individuals in
11 Alameda County who meet this definition. They include individuals currently institutionalized at John
12 George or Villa Fairmont who meet the above definition. It is on behalf of these individuals,
13 collectively referred to as the “DRC Constituents,” that DRC brings this action. *See Hunt v.*
14 *Washington State Apple Advertising Comm’n*, 432 U.S. 333, 343 (1977); *Oregon Advocacy Ctr.*, 322
15 F.3d at 1111-12.

16 22. DRC Constituents each have a serious mental health disability that substantially limits
17 one or more major life activities.

18 23. All or virtually all DRC Constituents are eligible to receive services under California’s
19 Medicaid program (known as “Medi-Cal”), services funded by California’s Mental Health Services
20 Act, and/or services funded through other state or local mental health and housing programs.

21 24. DRC has standing to bring this action to vindicate the rights of the DRC Constituents
22 under the ADA, the Rehabilitation Act, and state law to be free of unnecessary institutionalization and
23 to receive needed mental health services in their homes and communities. DRC Constituents have
24 representation and influence in DRC’s operations. The participation of individual DRC Constituents in
25 this lawsuit is not required. The declaratory and injunctive relief requested is appropriate for DRC to
26 pursue on behalf of its constituents and is germane to DRC’s mission and activities.

27 25. DRC Constituents include the individuals described below. Each has experienced three
28 or more institutionalizations at John George and/or Villa Fairmont in the last 24 months.

1 26. In order to avoid future unnecessary institutionalizations, each needs to receive in the
2 community the following services, in sufficient quantity, which the County currently provides them in
3 its psychiatric institutions: rehabilitative mental health services, including medication support services;
4 intensive case management; services for psychiatric crises; substance abuse treatment; and residential
5 services.

6 27. Upon information and belief, mental health professionals, including mental health
7 professionals employed by Defendants or their contractors, have determined that DRC Constituents
8 need these services in a community setting to avoid re-institutionalization. DRC Constituents do not
9 oppose receipt of these services in the community. These services can be provided to DRC
10 Constituents in the community with reasonable modifications to Defendants' service system.

11 **1. Rian Walter**

12 28. Rian Walter is a 42-year-old Black Alameda County resident who graduated from UC
13 Berkeley with degrees in Philosophy and English. He developed a mental health disability when he
14 was 26 years old. Mr. Walter has a history of psychosis. He is enrolled in Medi-Cal and is currently
15 an ACBHCS client.

16 29. Since 2004, Mr. Walter has been institutionalized at John George approximately ninety
17 (90) times, and four (4) times at Villa Fairmont. At least four of these institutionalizations occurred in
18 the 24 months before the filing of Plaintiff's Complaint. He has been incarcerated at Santa Rita Jail on
19 several occasions on charges related to his mental health symptoms. Mr. Walter believes his repeated
20 institutionalizations have contributed to the instability in his housing and stigmatization by family
21 members.

22 30. While institutionalized at John George and Villa Fairmont, Mr. Walter received
23 rehabilitative mental health services, including medication support services; intensive case
24 management; crisis services; substance abuse treatment; and residential services. However, upon
25 discharge from John George and Villa Fairmont, and while Mr. Walter was living in the community,
26 the County failed to provide him with these mental health services, which he needs to avoid
27 institutionalization.

28 31. Mr. Walter does not oppose receipt of these services in the community and, upon

1 information and belief, mental health professionals, including mental health professionals employed by
 2 Defendants or their contractors, have determined that it is appropriate to provide the following services
 3 to Mr. Walter in a community setting: rehabilitative mental health services, including medication
 4 support services; intensive case management; crisis services; substance abuse treatment; and
 5 residential services. Indeed, when Defendants previously provided Mr. Walter the mental health
 6 services he needed in the community, he was able to live independently and avoid repeated psychiatric
 7 hospitalizations. These services can be provided to Mr. Walter in the community with reasonable
 8 modifications to Defendants' service system.

9 32. Currently, Mr. Walter is not receiving the mental health services he needs in the
 10 community and, as a result, is at serious risk of re-institutionalization.

11 **2. KG¹**

12 33. KG is a 58-year-old Black Alameda County resident who attended Mills College and
 13 San Francisco State, and received her master's degree at UC Berkeley. KG used to have her own
 14 tutoring business. She has a history of bipolar disorder, depression, and post-traumatic stress disorder
 15 (PTSD). KG is currently homeless.

16 34. Since 1995, KG has been repeatedly institutionalized, including approximately 50
 17 psychiatric hospitalizations, mostly at John George. She has also been institutionalized at Villa
 18 Fairmont. She has been institutionalized at John George at least ten times in the 24 months before the
 19 filing of Plaintiff's Complaint. KG believes her repeated institutionalizations have contributed to the
 20 instability in her housing and stigmatization by family members.

21 35. While institutionalized, KG received rehabilitative mental health services including
 22 medication support services; intensive case management, crisis services, and residential services.
 23 However, upon discharge and while KG was living in the community, Defendants failed to provide
 24 KG with these mental health services she needs.

25 36. On multiple occasions in 2019 and 2020, KG was released from jail, where she was
 26

27 _____
 28 ¹ Plaintiff is using a pseudonym for this exemplar to protect the exemplar's privacy.

1 incarcerated for minor offenses relating to her mental health symptoms, without being connected to the
 2 community-based mental health services she needs. On other occasions, KG was discharged from
 3 John George to homelessness without needed community-based mental health services.

4 37. The County's failure to provide needed services to KG while she is living in the
 5 community caused her to be repeatedly institutionalized at John George and has put her at serious risk
 6 of re-institutionalization.

7 38. Upon information and belief, mental health professionals, including mental health
 8 professionals employed by Defendants or their contractors, have determined that it is appropriate to
 9 provide the following services to KG in the community: rehabilitative mental health services including
 10 medication support services, intensive case management, crisis services, and residential services. KG
 11 does not oppose receipt of these services in the community. These services can be provided to KG in
 12 the community with reasonable modifications to Defendants' service system.

13 3. Azizah Ahmad

14 39. Azizah Ahmad is a 41-year-old Black Alameda County resident and mother of three
 15 children. She recently worked for the U.S. Census as a census field supervisor and is currently a coach
 16 for a tech-related online program. Ms. Ahmad has been diagnosed with bipolar disorder and post-
 17 traumatic stress disorder. She is currently enrolled in Medi-Cal.

18 40. In 2019, Ms. Ahmad developed increased symptoms of bipolar disorder due to stressors
 19 in her life. Ms. Ahmad was institutionalized at John George three times in the 24 months before the
 20 filing of Plaintiff's Complaint. At John George, she was provided rehabilitative mental health services
 21 including medication support services, intensive case management, crisis services, and residential
 22 services. Upon discharge and while Ms. Ahmad was living in the community, Defendants failed to
 23 provide her with these mental health services, which she needs to avoid re-institutionalization.

24 41. Upon information and belief, mental health professionals, including mental health
 25 professionals employed by Defendants or their contractors, have determined that it is appropriate to
 26 provide the following services to Ms. Ahmad in a community setting: rehabilitative mental health
 27 services including medication support services, intensive case management, and crisis services. Ms.
 28 Ahmad does not oppose receipt of these services in the community. These services can be provided to

1 Ms. Ahmad in the community with reasonable modifications to Defendants' service system.

2 42. The County's failure to provide these services to Ms. Ahmad in the community caused
3 her to be repeatedly institutionalized at John George and put her at serious risk of re-
4 institutionalization.

5 43. Ms. Ahmad is terrified of the prospect of being re-institutionalized at John George
6 again. She describes the difference between receiving mental health services in the community and
7 receiving them in an institution as the difference between "healing" and simply being "kept alive."

8 **B. Defendants**

9 44. Defendant County of Alameda (the "County" or "Alameda County") is a public entity,
10 duly organized and existing under the laws of the State of California. The County has the authority
11 and responsibility to provide mental health services to County residents either directly or through the
12 administration of contracts with providers, in both institutions and the community. Alameda County
13 also operates Santa Rita Jail. Alameda County is subject to Title II of the ADA, and receives "federal
14 financial assistance," thereby subjecting it to Section 504 of the Rehabilitation Act. The County is
15 funded directly or receives "financial assistance from the state," thereby subjecting it to California
16 Government Code Section 11135.

17 45. Defendant Alameda County Behavioral Health Care Services ("ACBHCS") is the
18 County entity that provides mental health services to Alameda County residents. ACBHCS is subject
19 to Title II of the ADA, and receives "federal financial assistance," thereby subjecting it to Section 504
20 of the Rehabilitation Act. ACBHCS also is funded directly or receives "financial assistance from the
21 state," thereby subjecting it to California Government Code Section 11135.

22 46. Defendants are responsible for ensuring that people with serious mental health
23 disabilities are provided services in accordance with federal and state law, including the ADA, Section
24 504, and Section 11135.

25 **V. STATUTORY AND REGULATORY FRAMEWORK**

26 **A. The Americans with Disabilities Act**

27 47. Title II of the ADA applies to all "public entities," including Defendants herein. 42
28 U.S.C. § 12131(1)(b). It provides that "no qualified individual with a disability shall, by reason of

1 disability... be subjected to discrimination by such entity.” 42 U.S.C. § 12132.

2 48. In enacting the ADA, Congress found that “historically, society has tended to isolate
3 and segregate individuals with disabilities, and, despite some improvements, such forms of
4 discrimination against individuals with disabilities continue to be a serious and pervasive social
5 problem[.]” 42 U.S.C. § 12101(a)(2). Among the areas in which Congress found that discrimination
6 persists was “institutionalization . . . and access to public services[.]” 42 U.S.C. § 12101(a)(3).
7 “[I]ndividuals with disabilities continually encounter various forms of discrimination, including . . .
8 segregation” 42 U.S.C. § 12101(a)(5). According to Congress, “the Nation’s proper goals
9 regarding individuals with disabilities are to assure equality of opportunity, full participation,
10 independent living, and economic self-sufficiency for such individuals.” 42 U.S.C. § 12101(a)(7).

11 49. More than twenty-one years ago, the United States Supreme Court in *Olmstead v. L.C.*
12 *ex rel. Zimring*, held that the unnecessary institutionalization of individuals with disabilities is a form
13 of discrimination prohibited under Title II of the ADA. 527 U.S. 581, 597 (1999). In that case, the
14 Supreme Court directed that public entities serve persons with disabilities in the community rather than
15 in institutions when: (1) providing community-based services is appropriate; (2) the individual does
16 not oppose receiving such services; and (3) the provision of community-based services can be
17 reasonably accommodated, considering the resources available to the entity and the needs of other
18 persons with disabilities. *Id.* at 607.

19 50. The regulations implementing Title II of the ADA similarly state that “[a] public entity
20 shall administer services . . . in the most integrated setting appropriate to the needs of qualified
21 individuals with disabilities.” 28 C.F.R. § 35.130(d);² *see also* 28 C.F.R. § 41.51(d) (same standard
22 for entities covered by the Rehabilitation Act); *Olmstead*, 527 U.S. at 592 (quoting Title II regulation).
23 The integration mandate requires public entities, like the Defendants, to provide individuals with

24 _____
25 ² Regulations implementing Title II of the ADA also provide that “[a] public entity may not, directly
26 or through contractual or other arrangements, utilize criteria or ...methods of administration: (i) that
27 have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of
28 disability; (ii) that have the purpose or effect of defeating or substantially impairing accomplishment
of the objectives of the entity’s program with respect to individuals with disabilities;” 28 C.F.R. §
35.130(b)(3); 28 C.F.R. § 41.51(b)(3); 45 C.F.R. § 84.4(b)(4).

1 disabilities “opportunities to live, work, and receive services in the greater community, like individuals
 2 without disabilities.” U.S. Dep’t of Justice, *Statement of the Department of Justice on Enforcement of*
 3 *the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.*,
 4 question 1, https://www.ada.gov/olmstead/q&a_olmstead.htm (last updated February 25, 2020)
 5 (“Department of Justice Statement on Integration Mandate”).³ The “most integrated setting” is the
 6 “setting that enables individuals with disabilities to interact with non-disabled persons to the fullest
 7 extent possible.” 28 C.F.R. pt. 35, App. A, p. 450 (2010). To satisfy this mandate, public entities must
 8 provide individuals services in the community rather than in institutions, when appropriate to their
 9 needs, including “the services and supports necessary for [their] community tenure” and “opportunities
 10 to live in their own apartments or family homes, with necessary supports.” Department of Justice
 11 Statement on Integration Mandate, question 15.

12 51. Title II’s “integration mandate” protects both people who are currently institutionalized
 13 and people with disabilities who are at serious risk of re-institutionalization. *See, e.g., M.R. v. Dreyfus*,
 14 697 F.3d 706, 720, 734 (9th Cir. 2012). As the U.S. Department of Justice has explained:

15 [T]he ADA and the *Olmstead* decision extend to persons at serious risk
 16 of institutionalization or segregation and are not limited to individuals
 17 currently in institutional or other segregated settings. Individuals need
 18 not wait until the harm of institutionalization or segregation occurs or is
 19 imminent. *For example, a plaintiff could show sufficient risk of*
institutionalization to make out an Olmstead violation if a public entity’s
failure to provide community services ... will likely ... lead to the
individual’s eventual placement in an institution.

20 ³ *See Olmstead*, 527 U.S. at 598 (“[T]he well-reasoned views of the agencies implementing a statute
 21 ‘constitute a body of experience and informed judgment to which courts and litigants may properly
 22 resort for guidance.’”) (quoting and citing *Bragdon*); *Bragdon v. Abbott*, 524 U.S. 624, 642 (same,
 23 quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-140 (1944)); *Steimel v. Wernert*, 823 F.3d 902,
 24 911 (7th Cir. 2016) (“In general, we defer to an agency’s interpretation of its own regulation unless the
 25 agency’s interpretation is ‘plainly erroneous or inconsistent with the regulation’ or ‘there is reason to
 26 suspect that the agency’s interpretation ‘does not reflect the agency’s fair and considered judgment on
 27 the matter in question.’ We see no such flaws in the path that DOJ has taken.”) (deferring to
 28 Department of Justice Statement on Integration Mandate) (citation omitted); *Pashby v. Delia*, 709 F.3d
 307, 322 (4th Cir. 2013) (“Because Congress instructed the DOJ to issue regulations regarding Title II,
 we are especially swayed by the DOJ’s determination that ‘the ADA and the *Olmstead* decision extend
 to persons at serious risk of institutionalization or segregation and are not limited to individuals
 currently in institutional or other segregated settings.’”) (quoting Department of Justice Statement);
see also Davis v. Shah, 821 F.3d 231, 263 (2d Cir. 2016) (“We find DOJ’s and our sister circuits’
 interpretation of *Olmstead* both consistent with the integration mandate and well-reasoned, and we
 adopt it as our own.”).

1 Department of Justice Statement on Integration Mandate, question 6 (emphasis added).

2 52. In *Olmstead*, the defendants’ treating professionals had judged the two plaintiffs
 3 “appropriate” for community care. That is, defendants’ treating professionals had determined the two
 4 plaintiffs could receive the care they needed in the community. 527 U.S. at 602. The Supreme Court
 5 explained that *Olmstead* plaintiffs must be “qualified” for a community-based program, and indicated
 6 that lower courts should defer to “reasonable assessments” of “the State’s” treating professionals when
 7 considering whether an individual could be appropriately served in the community. *Id.* at 601-02. The
 8 Supreme Court did not require, as a pre-condition for asserting a legal claim, that treating professionals
 9 have actually made such a determination.

10 53. In authoritative guidance, the U.S. Department of Justice has found that such a
 11 determination by treating professionals is not required to assert a claim under the ADA or *Olmstead*:

12 **What evidence may an individual rely on to establish that an**
 13 **integrated setting is appropriate?**

14 A: An individual may rely on a variety of forms of evidence to establish
 15 that an integrated setting is appropriate. A reasonable, objective
 16 assessment by a public entity’s treating professional is one, but only one,
 17 such avenue. ... However, the ADA and its regulations do not require an
 18 individual to have had a state treating professional make such a
 19 determination. People with disabilities can also present their own
 20 independent evidence of the appropriateness of an integrated setting
 This evidence may come from ... community-based organizations that
 provide services to people with disabilities outside of institutional
 settings, or from any other relevant source. Limiting the evidence on
 which *Olmstead* plaintiffs may rely would enable public entities to
 circumvent their *Olmstead* requirements by failing to require
 professionals to make recommendations regarding the ability of
 individuals to be served in more integrated settings.⁴

21
 22 ⁴ *Accord Joseph S. v. Hogan*, 561 F. Supp.2d 280, 290-91 (E.D.N.Y. 2008) (“[T]he language from
 23 *Olmstead* concerning determinations by ‘the State’s treatment professionals []’ appears to be based on
 24 the particular facts of that case and not central to the Court’s holding. ... I reject defendants’ argument
 25 that *Olmstead* requires that the state’s mental health professionals be the ones to determine that an
 26 individual’s needs may be met in a more integrated setting.”) (finding that plaintiffs may prevail if the
 27 complaint plausibly alleges that “a determination has been made that a particular individual’s needs
 28 may be met in a more integrated setting”); *Disability Advocates, Inc. v. Paterson*, 653 F. Supp.2d 184,
 258-59 (E.D.N.Y. 2009), *rev’d on other grounds sub nom. Disability Advocates, Inc. v. N.Y. Coalition*
for Quality Assisted Living, Inc., 675 F.3d 149 (2d Cir. 2012) (The court concludes that the law does
 not require DAI to [show that each of its constituents has been deemed eligible for supported housing
 by a treatment provider] in order to prove that its constituents are qualified. ... The court does not
 read *Olmstead* as creating a requirement that a plaintiff alleging discrimination under the ADA must
 present evidence that he or she has been assessed by a ‘treatment provider’ and found eligible to be

Department of Justice Statement on Integration Mandate, question 4.

54. The *Olmstead* decision has become firmly embedded in national policy. In 2001, President Bush issued Executive Order 13125, affirming that “[t]he United States is committed to community-based alternatives for individuals with disabilities and recognizes that such services advance the best interests of Americans” and “foster independence and participation in the community for Americans with disabilities.” The Executive Order directed key federal agencies to fully implement the *Olmstead* decision and “ensure that community-based services for people with disabilities are available.” The same year, President Bush launched a New Freedom Initiative to promote community living for people with disabilities. The President’s New Freedom Commission on Mental Health declared, “Not since the Americans with Disabilities Act (ADA) ... and the Supreme Court’s *Olmstead v. L.C.* decision, which affirmed the right to live in community settings, has there been cause for such promise and opportunity for full community participation for all people with disabilities, including those with psychiatric disabilities.”⁵ In 2009, on the tenth anniversary of the *Olmstead* decision, President Obama launched the “Year of Community Living.”⁶ The Justice Department’s dedicated *Olmstead* webpage highlights its enforcement efforts across the country. U.S. Department of Justice, Civil Rights Division, *Olmstead: Community Integration for Everyone*, https://www.ada.gov/olmstead/olmstead_enforcement.htm.

B. The Rehabilitation Act and California’s Non-Discrimination Statute

55. Section 504 of the Rehabilitation Act bans discrimination by recipients of federal funds,

served in a more integrated setting. ... DAI has presented persuasive evidence from a variety of sources, including the Defendants’ Assessment Project, that its constituents are qualified to receive services in the community.”) *Long v. Benson*, No. 4:08-cv-00026-RH-WCS, 2008 WL 4571904, at *2 (N.D. Fla. Oct. 14, 2008) (“[A public entity] cannot deny the right [to be served in the community] simply by refusing to acknowledge that the individual could receive appropriate care in the community. Otherwise the right would, or at least could, become wholly illusory.”).

⁵ President’s New Freedom Commission on Mental Health, *Achieving the Promise: Transforming Mental Health Care in America*, Executive Summary, <https://govinfo.library.unt.edu/mentalhealthcommission/reports/FinalReport/FullReport-1.htm>.

⁶ The White House, *President Obama Commemorates Anniversary of Olmstead and Announces New Initiatives to Assist Americans with Disabilities* (June 22, 2009), <https://obamawhitehouse.archives.gov/the-press-office/president-obama-commemorates-anniversary-olmstead-and-announces-new-initiatives-ass>.

1 such as Defendants herein. 29 U.S.C. §§ 794-794(a). It contains the same “integration mandate” and
 2 similar prohibitions against discrimination as Title II of the ADA.

3 56. Likewise, California’s non-discrimination statute prohibits discriminatory actions by the
 4 state and state-funded agencies or departments, and provides civil enforcement rights for violations.
 5 Section 11135 states, in pertinent part:

6 With respect to discrimination on the basis of disability, programs and
 7 activities subject to subdivision (a) shall meet the protections and
 8 prohibitions contained in Section 202 of the Americans with Disabilities
 9 Act of 1990 (42 U.S.C. § 12132), and the federal rules and regulations
 10 adopted in implementation thereof, except that if the laws of this state
 11 prescribe stronger protections and prohibitions, the programs and
 12 activities subject to subdivision (a) shall be subject to stronger
 13 protections and prohibitions.

14 Cal. Gov’t Code § 11135(b).

15 **VI. FACTUAL ALLEGATIONS**

16 57. Alameda County is a large, diverse county located in Northern California. It is home to
 17 a population of approximately 1.67 million residents and contains fourteen incorporated cities
 18 (including Oakland, Berkeley, Fremont, Union City, Hayward, Alameda, Newark, Pleasanton and
 19 Dublin) and several unincorporated areas. Alameda County’s population is approximately 32% Asian,
 20 30% White, 22% Latinx, and 11% Black.

21 58. Defendants’ mental health care system is required by federal and state law to provide
 22 treatment and services to County residents with serious mental health disabilities, including DRC
 23 Constituents.

24 59. ACBHCS is the agency primarily responsible for implementing Alameda County’s
 25 system for serving people with serious mental health disabilities, including executing the County’s
 26 Medi-Cal Mental Health Plan and overseeing its Mental Health Services Act (“MHSA”) planning and
 27 spending. ACBHCS contracts with organizations and businesses to provide services. ACBHCS
 28 contracts with Alameda Health System for institutional care at John George and with Telecare
 Corporation for institutional care at Villa Fairmont.

60. State law requires that Alameda County’s mental health system include the services that DRC Constituents require, while in the community, to avoid unnecessary institutionalization.⁷ A primary goal of California’s County-based “systems of care” is to provide services to adults with serious mental health disabilities who use inpatient care, are homeless, and/or are involved in the criminal system. Cal. Welf. & Inst. Code § 5600.3(b).

A. The County’s Provision of Mental Health Services

61. The County’s mental health service system includes the following: rehabilitative mental health services including medication support services, intensive case management, psychiatric crisis services, substance use disorder treatment, and residential services. These services can be provided in institutional settings like John George or Villa Fairmont, or in community settings.

a. **Rehabilitative mental health services** include assessment and plan development, medication support services, therapies, interventions, and education designed to restore, maintain or increase independence and self-sufficiency, including employment. When these services are provided by or with the help of peers, who have lived experience in the mental health system, they are often referred to as “peer support services.”⁸

b. **Intensive case management** helps individuals gain access to needed medical, social, educational, and other services including through face-to-face encounters with provider staff; supports the assessment and periodic reassessment of individual needs and the development of an individualized service plan; and includes monitoring of whether the plan is being properly implemented and is successful, and, if not successful, facilitating revisions to the plan.

⁷ The provision of services in the community is authorized and funded (using federal, state and local monies) under a number of California programs, including: the Bronzan-McCorquodale Act, Cal. Welf. & Inst. Code §§ 5600, *et seq.*; Medi-Cal Specialty Mental Health Services, Cal. Welf. & Inst. Code §§ 14700, *et seq.*; 9 Cal. Code Regs. §§ 1810.100, 1810.247; Mental Health Services Act, Proposition 63 (2003); and California’s Medi-Cal program, Cal. Welf. & Inst. Code §§ 14000 *et seq.*, 22 Cal. Code Regs. §§ 50000 *et seq.*

⁸ Peer supports can help people with serious mental health disabilities stay connected to treatment providers, develop or maintain social relationships, and participate in community activities. They help individuals transition to the community from institutional or correctional settings.

1 c. **Crisis services** include crisis stabilization, mobile crisis services, and community-based
 2 residential crisis services, such as crisis homes or apartments. Crisis services are provided by teams of
 3 mental health professionals who respond quickly to individuals in crisis and utilize a variety of
 4 techniques to de-escalate the situation and resolve the crisis.

5 d. **Substance use disorder treatment** includes individual and group services including
 6 medication assisted therapy (“MAT”), outpatient and residential treatment, counseling and therapy,
 7 and peer support services.

8 62. **Residential services** include providing a safe and supportive place to live while
 9 receiving mental health services. These services are cost effective and successfully integrate people
 10 into their communities when they are provided in the form of supported housing. Supported housing
 11 typically has two components: (1) a rental subsidy for the individual with a mental health disability,
 12 and (2) services to support the individual’s successful tenancy, including rehabilitative mental health
 13 services that promote independent living skills.

14 63. When these services are provided in community settings, they may be provided through
 15 programs such as **Full Service Partnerships (“FSPs”)**. FSPs are funded through the County’s Medi-
 16 Cal and MHSA programs. FSPs are vehicles for providing in the community rehabilitative mental
 17 health services, intensive case management services, crisis services, and substance abuse disorder
 18 treatment to individuals with serious mental health disabilities who are frequent users of hospital or
 19 emergency room services, are criminal system involved, and/or are homeless. 9 Cal. Code Regs. §
 20 3620.05. Housing is also part of the “full spectrum of services” that FSPs were designed to provide,
 21 including “rental subsidies, housing vouchers ... and transitional and temporary housing.” 9 Cal. Code
 22 Regs. § 3620(a)(1)(B)(iii). All or virtually all DRC Constituents are eligible to receive services in the
 23 community through the County’s FSP program.

24 64. Typically, FSPs provide services using an “ACT” model, which emphasizes outreach to
 25 and engagement of people with serious mental health disabilities. “ACT” refers to “Assertive
 26 Community Treatment.” In the ACT model, teams of professionals and peers provide individuals with
 27 mental health services they need for as long as they need them. Services are provided at home, at
 28 work, and in other settings, with the goal of helping individuals live stably in the community. In

1 recognition that the ACT model delivers *in the community* a range of services available in institutional
 2 settings, it has often been referred to as a “hospital without walls.”

3 65. DRC Constituents do not oppose—and in fact would strongly prefer—to receive the
 4 above-described services in the community.

5 66. Upon information and belief, the community placements sought by DRC Constituents
 6 are appropriate and mental health professionals, including mental health professionals employed by
 7 Defendants or their contractors, have determined that DRC Constituents are eligible for the above-
 8 described community service.

9 67. Defendants know how to provide the above-described mental health services in the
 10 community, and Defendants have a framework for providing these services in the community.
 11 However, Defendants have failed to provide DRC Constituents with these services as needed to
 12 prevent their institutionalization.

13 68. Defendants’ failure to provide DRC Constituents with these services in the community
 14 places DRC Constituents at serious risk of institutionalization at John George and/or Villa Fairmont
 15 and perpetuates a cycle of repeated institutionalization.

16 **B. Institutionalization at John George and Villa Fairmont**

17 69. When a DRC Constituent is experiencing a mental health crisis, California’s civil
 18 commitment laws allow the DRC Constituent to be detained in a psychiatric institution.⁹

19 70. More individuals are detained in Alameda County than any other county in
 20 California. Its psychiatric detention rate is three-and-a-half times higher than the statewide average.

21 71. Throughout Defendants’ service system, decisions of treating professionals are made
 22 against the backdrop of, and are constrained by, the services actually available for treatment and where
 23 they are located.

24 72. John George provides 24-hour emergency psychiatric care, seven days a week. It is the
 25 _____

26 ⁹ Cal. Welf. Inst. Code § 5150(a). Cal. Welf. Inst. Code § 5120 authorizes Counties to designate the
 27 facilities in which individuals will be detained. John George is a designated facility. John George is
 28 part of the County’s mental health care system. The County contracts with the Alameda Health
 System (AHS), which operates John George. The County provides funding for John George.

1 only facility in the County that does so. It has a locked Psychiatric Emergency Services unit (“PES”)
 2 and three locked inpatient units. It is large, crowded, and physically isolated from community life.

3 73. Defendants detain 30% more people at the John George than a decade ago, although the
 4 population of the County has grown by less than 10% during that period.

5 74. A disproportionate number of the individuals detained at John George —36%—are
 6 Black. This is more than three times their overall representation in Alameda County.

7 75. At John George’s Psychiatric Emergency Services unit, DRC Constituents may receive
 8 rehabilitative mental health services including medication support services, intensive case
 9 management, crisis services, and residential services.

10 76. In the process of receiving or waiting to receive these services, DRC Constituents are
 11 crowded into a locked 35-foot-by-45-foot room, illuminated by harsh fluorescent lights. The room can
 12 be filled with upwards of sixty (60) people with mental health disabilities. Sometimes they overflow
 13 into hallways. These conditions can exacerbate people’s mental health symptoms.

14 77. Most DRC Constituents admitted to the PES unit are discharged to the community.

15 78. As the County has acknowledged, the majority of people discharged from the PES unit
 16 “are not linked to planned services and continue to over-use emergency services.”¹⁰

17 79. Approximately 25% of those admitted to the PES are transferred to John George’s
 18 locked inpatient units. In John George’s inpatient units, patients receive rehabilitative mental health
 19 services including medication support services, intensive case management, crisis services, substance
 20 use disorder treatment, and residential services.

21 80. In the process of receiving these services, DRC Constituents are confined in locked
 22 wards, monitored continuously, afforded little privacy or autonomy, and required to abide by rigid
 23 rules.

24 81. In recent years, the average daily census and length of stay in the John George’s
 25 _____

26 ¹⁰ See Alameda County: Community Assessment and Transport Team (CATT) Innovation Plan -
 27 October 25, 2018, available at [http://mhsoac.ca.gov/document/inn-plan-alameda-county-community-](http://mhsoac.ca.gov/document/inn-plan-alameda-county-community-assessment-and-transport-team-catt-october-25-2018)
 28 [assessment-and-transport-team-catt-october-25-2018.](https://www.eastbayexpress.com/oakland/overwhelmed/Content?mode=print&oid=4705660)
[https://www.eastbayexpress.com/oakland/overwhelmed/Content?mode=print&oid=4705660.](https://www.eastbayexpress.com/oakland/overwhelmed/Content?mode=print&oid=4705660)

1 inpatient units have risen.

2 82. Some DRC Constituents in John George's PES or inpatient units are discharged to Villa
3 Fairmont, a 96-bed, locked "sub-acute" mental health facility located on the same campus as John
4 George. Villa Fairmont is an institution where residents have little privacy or autonomy. At Villa
5 Fairmont, patients receive rehabilitative mental health services including medication support services,
6 intensive case management, services for psychiatric crises, substance use disorder treatment, and
7 residential services.

8 **C. Failure to Provide Community Services Puts DRC Constituents at Serious Risk of**
9 **Unnecessary Institutionalization.**

10 83. Denied needed services in the community, DRC Constituents "cycle" in and out of John
11 George and Villa Fairmont. Such cycling in and out of institutionalizations is "the hallmark of a failed
12 system" that violates disability civil rights laws. *United States v. Mississippi*, 400 F. Supp. 3d 546, 555
13 (S.D. Miss. 2019).

14 84. A highly disproportionate number of DRC Constituents who cycle in and out of the
15 County's psychiatric institutions are Black. From January 2018 to June 2020, more than 45% of
16 individuals institutionalized in County psychiatric facilities three or more times were Black.

17 85. During that period, 55% of the more than 350 individuals institutionalized at the PES
18 over ten (10) times were Black, close to 60% of the more than eighty (80) individuals admitted twenty-
19 five (25) times or more to PES were Black, five of the six individuals institutionalized at the PES more
20 than eighty-five (85) times were Black, and approximately 44% of the more than 360 individuals
21 institutionalized at John George's inpatient units four (4) or more times were Black.

22 86. The high rate of re-institutionalization is the direct result of Defendants' failure to
23 provide DRC Constituents the services they need while in the community.

24 87. The services provided through Defendants' Full Service Partnership programs fail to
25 reach DRC Constituents who need them, leading to their returning again and again to institutional
26 settings to receive services.

27 88. Defendants have some community-based crisis services, designed to be alternatives to
28 institutionalization at John George. But these crisis services have inadequate capacity, hours of

operation, and geographic accessibility, meaning that they do not reach DRC Constituents who need such services to avoid unnecessary institutionalizations.

89. In order to avoid re-institutionalization, many DRC Constituents need residential services in the community. The two Plaintiffs in *Olmstead*, for example, when discharged by Defendants from the state hospital, were provided not only the non-residential services they had formerly received in the hospital, but also supported housing. *See Olmstead*, 527 U.S. at 594 (“L.C.’s pleading requested, among other things, that the State place her in a community care residential program.”); *L.C. v. Olmstead*, No. 1:95-cv-01210 (N.D. Ga.), Doc. No. 128 (June 22, 2000) (Joint Motion for Incorporation of Settlement Agreement Into Order Upon Remand), at 5 (“Community Services and Placements To Be Provided ... It is hereby agreed by the undersigned Defendant(s) that the Plaintiffs will be maintained in their current community-based residential placements or other setting appropriate to their needs ...”), <https://www.clearinghouse.net/chDocs/public/PB-GA-0001-0012.pdf>.

90. The California legislature has found that those receiving supported housing “reduced their visits to an emergency department by 56 percent, and their hospital admissions by 45 percent.” Cal. Welf. & Inst. Code § 5849.1(b)(9). The provision of supported housing through FSP programs in Alameda County has “demonstrated reductions in inpatient ... per client costs by an average of more than \$50,000/year.”¹¹

91. Yet, according to ACBHCS and service providers, the lack of residential services, including permanent supported housing, is “a major challenge” for DRC Constituents, and leads to further re-institutionalization.

92. Because the County lacks residential services, DRC Constituents are frequently discharged from John George and Villa Fairmont to homelessness. Some DRC Constituents end up in emergency shelters, when shelter beds are available. Others end up in homeless encampments

¹¹ Alameda County Health Care Services Agency, Subject: Adopt the Fiscal Year 2018-19 Mental Health Services Act Annual Plan Update for Alameda County Behavioral Health (June 4, 2019), at 9, http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_06_18_19/HEALTH%20CARE%20SERVICES/Regular%20Calendar/Homelessness%20Council%20-%20HCSA_281214.pdf.

1 cramped under overpasses.¹² This housing instability contributes directly to their being re-
2 institutionalized at John George.

3 93. Mr. Walter's experiences illustrate the link between homelessness and re-
4 institutionalization. From 2015 to 2017, when Mr. Walter was homeless, Mr. Walter was
5 institutionalized at John George on forty-three (43) occasions, including seven (7) times in one month.
6 During this past year, Mr. Walter lost his housing and was institutionalized again.

7 94. Defendants are aware of their failure to serve Black DRC Constituents in particular.
8 Speaking for ACBHCS, former director Marye L. Thomas, M.D., noted that in Alameda County, as
9 with many other parts of California, its behavioral health program generally serves African Americans
10 in "extremely restrictive (often involuntary) settings such as hospitals and jails." This "leads
11 [Defendant ACBHCS] to conclude that many African Americans are being inappropriately served."¹³

12 95. If DRC Constituents received the mental health services they needed in the community,
13 they could avoid future unnecessary psychiatric institutionalizations.

14 **D. The County's Provision of Mental Health Services in Institutions Rather than**
15 **Community Settings Harms DRC Constituents.**

16 96. Defendants' failure to provide needed community-based services has devastating
17 effects. DRC Constituents do not receive the services they need to stabilize their conditions in the
18 community, and they live at constant and high risk of unnecessary institutionalization.

19 97. Defendants' practice of requiring DRC Constituents to be admitted to the County's
20 psychiatric institutions to receive needed services hinders DRC Constituents' ability to gain control
21 over their symptoms, undermines their participation in community life, and perpetuates the stereotype
22 that they are incapable of living stably in the community and leading a full life.

23 98. The lack of community services puts DRC Constituents, particularly Black DRC
24 _____

25 ¹² Thomas Fuller & Josh Haner, *Among the World's Most Dire Places: This California Homeless*
26 *Camp*, N.Y. Times (Dec. 17, 2019), <https://www.nytimes.com/interactive/2019/12/17/us/oakland-california-homeless-camp.html>;

27 ¹³ African American Utilization Report at 8, 24 (Winter 2011),
28 http://archive.mhsoac.ca.gov/Meetings/docs/Meetings/2014/August/CLCC_082014_AI3_AAURReport.pdf

1 Constituents, at high risk of being arrested and incarcerated in the County’s jail. Approximately one-
 2 quarter of the people held in the County’s jail population have been identified as having a “serious
 3 mental illness.”¹⁴ Typically, DRC Constituents are jailed for minor offenses that are disability-related.

4 99. Once detained, DRC Constituents have longer stays on average than other jail inmates
 5 and are at greater risk of committing acts of self-harm and being punished for minor infractions. A
 6 large number of people with mental illness have died in the County’s jail.¹⁵

7 100. Defendants’ actions have also increased DRC Constituents’ risk of contracting COVID-
 8 19. Congregate settings can be incubators for COVID-19, which has spread through John George and
 9 Villa Fairmont, as well as the jail and County homeless shelters. Those institutionalized at John
 10 George’s PES sit in close proximity to one another for several hours. In John George’s inpatient units
 11 and at Villa Fairmont, rooms have multiple beds and sealed windows, hallways are narrow, staff move
 12 between wards, and alcohol-based hand sanitizer is not readily available. Many DRC Constituents
 13 have health conditions that increase the risk of death if they contract COVID-19.

14 101. Residents without disabilities are encouraged by the County to shelter in place. But
 15 DRC Constituents must enter congregate settings to obtain needed services.

16 102. Recent data indicates that the COVID-19 death rate among Black people is substantially
 17 higher than that of other groups, and that rates of depression and anxiety have spiked among Black
 18 people since the pandemic began. These factors compound the racial disparities already present in the
 19 County’s mental health system.

20 **E. The County Can Provide Community Services Without Fundamentally Altering Its**
 21 **System.**

22 103. The community placement of DRC Constituents, including provision of the services
 23 _____

24 ¹⁴ A “serious mental illness” is another term for “serious mental health disability” and is generally
 25 defined as “a mental, behavioral, or emotional disorder resulting in serious functional impairment,
 26 which substantially interferes with or limits one or more major life activities.” Nat’l Inst. of Mental
 Health, Mental Health Information, <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml>.

27 ¹⁵ See, e.g., Lisa Fernandez, A look at the 45 inmates who have died at Santa Rita Jail in the last five
 28 years, KTVU (Oct. 4, 2019), <https://www.ktvu.com/news/a-look-at-the-45-inmates-who-have-died-at-santa-rita-jail-in-the-last-five-years>.

sought herein, can be reasonably accommodated. This can be accomplished with reasonable modifications to Defendants' service system.

104. Defendants can implement the relief DRC seeks without fundamentally altering their service system. Defendants could reasonably modify their service system to avoid the needless re-institutionalization of DRC Constituents by, *inter alia*, expanding provider capacity to deliver mental health services in the community, relocating services from institutions to the community, and maximizing available funding including through Medi-Cal.

105. Publicly available records show that the average cost per visit to John George's PES is \$3,010. The average cost per day for John George's inpatient units is \$2,602, and the average daily cost at Villa Fairmont is close to \$400 per day. The average length of stay at John George for DRC Constituents who are homeless is eight days, amounting to more than \$20,000 in cost per person. At Villa Fairmont, the average stay is four (4) months, costing \$48,000 per person.

106. According to County data, in 2019 the County spent 30% of its entire mental health budget on about 800 individuals with the highest utilization of public mental health services in the County. Fully 70% of those dollars were spent on institutional care at John George and Villa Fairmont and mental health services in jail. The County could prevent DRC Constituents' needless re-institutionalization if the dollars the County spent on avoidable institutional care were spent instead to provide them needed mental health services in the community including supported housing.

107. The relief DRC seeks is both legally required and financially feasible.

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of Title II of the ADA

Unnecessary Institutionalization and

Failure to Provide Services in the Most Integrated Setting Appropriate

42 U.S.C. §§ 12131 *et seq.*, 28 C.F.R. § 35.130

108. Plaintiff repeats and incorporates by reference the preceding paragraphs of this Complaint as if set forth in full herein.

109. DRC Constituents are qualified individuals with disabilities within the meaning of Title II of the ADA and meet the essential eligibility requirements for the receipt of services, programs, or

1 activities of Defendants. 42 U.S.C. § 12131(2).

2 110. Defendant Alameda County, which includes Alameda County Behavioral Health Care
3 Services, is a public entity subject to Title II, 42 U.S.C. § 12131(1).

4 111. Defendants violate the ADA, and its implementing regulations, including as follows:

5 a. By administering the County's mental health system in a way that subjects DRC
6 Constituents to unnecessary institutionalization at a psychiatric hospital or other institution instead of
7 providing them with services in the community, and places them at serious risk of such
8 institutionalization. 42 U.S.C. § 12132.

9 b. By failing to administer services, programs, and activities in "the most integrated
10 setting" appropriate to the needs of DRC Constituents. 28 C.F.R. § 35.130(d).

11 c. By directly or through contractual or other arrangements utilizing criteria or methods of
12 administration in Alameda County's mental health system that subject DRC Constituents to
13 discrimination on the basis of their disabilities. 28 C.F.R. § 35.130(b)(3).

14 d. By failing to make reasonable modifications to allow DRC Constituents to participate in
15 Defendants' services, programs, and activities in an integrated community setting.

16 112. Providing DRC Constituents with the community services they need to avoid
17 unnecessary institutionalization and segregation at a psychiatric hospital or other institution would not
18 fundamentally alter Defendants' programs, services, or activities.

19 113. Plaintiff and DRC Constituents have suffered and will suffer injury as a proximate
20 result of Defendants' violation of their rights under the ADA.

21 114. Plaintiff is entitled to declaratory relief, injunctive relief, attorneys' fees, and costs.

22 **VIII. SECOND CLAIM FOR RELIEF**

23 **Violation of Section 504 of the Rehabilitation Act**

24 **Unnecessary Institutionalization and**

25 **Failure to Provide Services in the Most Integrated Setting Appropriate**

26 **29 U.S.C. § 794; 28 C.F.R. § 41.51; 45 C.F.R. § 84.4**

27 115. Plaintiff repeats and incorporates by reference the preceding paragraphs of this
28 Complaint as if set forth in full herein.

116. DRC Constituents are qualified individuals with disabilities within the meaning of

1 Section 504 of the Rehabilitation Act. 29 U.S.C. § 794(a).

2 117. Defendants are engaged in providing programs or activities receiving Federal financial
3 assistance sufficient to invoke the coverage of Section 504. *Id.* § 794(b)(1) & (b)(3).

4 118. Defendants violate Section 504, and its implementing regulations, including as follows:

5 a. By failing to administer services, programs, and activities in “the most integrated
6 setting” appropriate to the needs of the DRC Constituents. 28 C.F.R. § 41.51(d); 45 C.F.R.
7 § 84.4(b)(2).

8 b. By directly or through contractual or other arrangements utilizing criteria or methods of
9 administration in Alameda County’s mental health system that subject DRC Constituents to
10 discrimination on the basis of their disabilities. 28 C.F.R. § 41.51(b)(3); 45 C.F.R. § 84.4(b)(4)

11 119. Providing DRC Constituents with the community services they need to avoid
12 unnecessary institutionalization and segregation at a psychiatric hospital or other institution would not
13 fundamentally alter Defendants’ programs, services, or activities.

14 120. Plaintiff and DRC Constituents have suffered and will suffer injury as a proximate
15 result of Defendants’ violation of their rights under Section 504 of the Rehabilitation Act.

16 121. Plaintiff is entitled to declaratory relief, injunctive relief, attorneys’ fees, and costs.

17 **IX. THIRD CLAIM FOR RELIEF**
18 **Violation of California Government Code §§ 11135 and 11139**

19 122. Plaintiff repeats and incorporates by reference the preceding paragraphs of this
20 Complaint as if set forth in full herein.

21 123. California Government Code sections 11135 and 11139 prohibit discrimination against
22 persons on the basis of physical or mental disability and other protected statuses in state-run or state-
23 funded programs and activities.

24 124. Defendants Alameda County and ACBHCS are recipients of financial assistance from
25 the state of California under Government Code section 11135(a).

26 125. California Government Code § 11135(b) incorporates the protections and prohibitions
27 contained in the ADA and its implementing regulations. Section 11135(b) states in pertinent part, that:

28 With respect to discrimination on the basis of disability, programs and
activities subject to subdivision (a) shall meet the protections and

prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to stronger protections and prohibitions.

126. Accordingly, Defendants' failure to provide DRC Constituents with services in the most integrated setting appropriate as alleged above, which violates the ADA, also violates Section 11135.

127. In addition, Defendants' policies and methods of administering Alameda County's mental health system—directly or through contractual or other arrangements—subjects DRC Constituents to unnecessary institutionalization and segregation at psychiatric hospitals and other institutions, instead of providing them with services in the community. 2 Cal. Code Regs. § 11154(e).

128. For all the reasons outlined above, Defendants have violated and continue to violate California Government Code § 11135 and 11139 through their non-compliance with the statute and its implementing regulations, *see* 2 Cal. Code Regs. § 11154(i).

129. Plaintiff is entitled to declaratory relief, injunctive relief, attorneys' fees, and costs.

X. REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

130. Issue a declaratory judgment that Defendants are violating the ADA, Section 504 of the Rehabilitation Act, and California Government Code section 11135 by, *inter alia*:

a. failing to provide DRC Constituents with services in the most integrated setting and needlessly institutionalizing them in a psychiatric hospital or other institution or putting them at serious risk of such institutionalization;

b. discriminating against DRC Constituents on the basis of disability by utilizing methods of administration that result in unnecessary institutionalization or subjecting them to a serious risk of such institutionalization;

131. Enjoin Defendants, their successors in office, subordinates, agents, employees and assigns, and all persons acting in concert from subjecting DRC Constituents to the unlawful acts and omissions described herein, and issue an injunction sufficient to remedy these violations;

132. Order Defendants to take immediate action to reform their policies, procedures, and

practices to fully comply with the ADA, Section 504, and state law. Under such order, Defendants must:

a. Operate a mental health system that does not result in the unnecessary institutionalization of DRC Constituents, or place DRC Constituents at serious risk of institutionalization;

b. Provide these mental health services in the community in a quantity and manner that prevents unnecessary institutionalization of DRC Constituents: rehabilitative mental health services, including medication support services; intensive case management; services for psychiatric crises; substance use disorder treatment; and residential services.

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

134. Award Plaintiff reasonable attorneys' fees, costs, expenses, and disbursements as authorized by law; and

135. Grant further relief as the Court may deem just and proper.

Dated: February 22, 2021

Respectfully submitted,

DISABILITY RIGHTS CALIFORNIA

/s/ Kimberly Swain

Kimberly Swain

GOLDSTEIN, BORGEN, DARDARIAN & HO

/s/ Andrew P. Lee

Andrew P. Lee

BAZELON CENTER FOR MENTAL HEALTH LAW

/s/ Ira A. Burnim

Ira A. Burnim

1 DISABILITY RIGHTS EDUCATION AND DEFENSE
2 FUND

3 /s/ Claudia Center

Claudia Center

4 LAW OFFICE OF AARON J. FISCHER

5 /s/ Aaron J. Fischer

6 Aaron J. Fischer

7 *Attorneys for Plaintiff*

8
9 **SIGNATURE ATTESTATION**

10 In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this
11 document has been obtained from the signatories on this e-filed document.

12 Dated: February 22, 2021

/s/ Andrew P. Lee

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