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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MATTHEW SCOTT, an Individual by and through his Guardian Ad Litem, MARY RODGERS-VEY, and OMAR MOJICA, an Individual by and through his Guardian Ad Litem, ADRIAN MOJICA, on behalf of themselves and all others similarly situated, Plaintiffs, vs.	Case No. 16-03084-BRO-RAO [Hon. Beverly R. O'Connell] **FOURTH *AMENDED* CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEFAND DAMAGES** **DEMAND FOR JURY TRIAL**

CALIFORNIA FORENSIC MEDICAL GROUP; TAYLOR FITHIAN, an Official as Director of California Forensic Medical Group, in his individual capacity; PAUL ADLER, M.D., an Official as Director of California Forensic Medical Group, in his individual capacity; RONALD POLLACK, M.D., an Official of California Forensic Medical Group, in his individual capacity; PAM AHLIN, an Official as Director of California Department of State Hospitals, in her official and individual capacities; HARRY OREOL, an Official as Director of Patton State Hospital, in his official and individual capacities; MHM SERVICES OF CALIFORNIA, INC.; MARCUS LOPEZ, an Official as Director of MHM Services of California, Inc., in his individual capacity; and DOES 1 through 10, inclusive,

Defendants.

I. INTRODUCTION

1. This is a complaint for declaratory and injunctive relief and damages by Plaintiffs on behalf of themselves and those similarly situated, arising under 42 U.S.C. §1983, 42 U.S.C. §12132 *et seq.*, 29 U.S.C. §794 *et seq.*, California Civil Code §51 *et seq.*, California Civil Code §54 *et seq.*, and similar state laws. Plaintiffs seek redress for deprivation of their rights, privileges and immunities,

secured by the Fourth and Fourteenth Amendments to the United States Constitution.

2. Under California law, Defendant California Department of State Hospitals ("DSH") and its designees are charged with evaluating, placing and providing restorative treatment to individuals found incompetent to stand trial. ("ISTs") Prior to their placement in a specified DSH facility for restorative treatment, ISTs are entitled to receive constitutional and statutorily mandated care and treatment for their mental health condition. Throughout the class period and even today, this mandate is routinely ignored because the ISTs have not yet begun restorative treatment or have been at the DSH facility for too short a time to make a meaningful assessment of their progress. As a result, individuals with mental health disabilities have languished in jail for weeks and months without appropriate mental health treatment while awaiting restorative treatment. These individuals often end up spending more time in jail prior to adjudication than they would if they had entered a guilty plea. More importantly, the delays have caused individuals with mental health disabilities to suffer needless deterioration in their mental health as they sit in jail, frequently in prolonged isolation, for weeks and months without constitutionally adequate mental health treatment as they await placement in a facility licensed to provide restorative treatment.

3. All ISTs have been found by a qualified psychologist or psychiatrist to have a mental disorder so severe that they are unable to understand the nature of the proceedings or to assist counsel in the conduct of a defense in a reasonable manner. Thus, all ISTs have been found to have a significant mental disability. The lengthy delays in transferring ISTs from the jail to an appropriate restorative treatment facility, and the policies underlying these lengthy delays, result in significant harm to the ISTs while they are incarcerated in jail as follows:

A. ISTs are held in unjustified institutional isolation in the county jail for indefinite and prolonged periods of times without restorative mental health care, or even basic mental health treatment, after being found incompetent to stand trial and restorative treatment has been ordered by the court;

B. ISTs are held in isolation and not general population solely due to their IST status and/or mental health disability;

C. ISTs are often punished solely due to their IST status and/or mental health disability;

D. ISTs do not get the same day room time, roof time, visiting, phone call privileges, commissary, time outside of their cells working in the jail or going to recreation in general population day rooms or on the roof of the jail, solely due to their IST status and/or mental disability;

E. Because ISTs are civil detainees, they lose statutory pre-trial custody credits awarded to pre-trial detainees and sentenced prisoners as they languish indefinitely awaiting transfer; and

F. ISTs are denied meaningful access to the Courts because criminal proceedings are suspended after the court has found them to be IST and the orders that they receive restorative treatment based upon the treatment and placement recommendations from the State defendants. Because these court orders adopting the State defendants' placement recommendations are not implemented in a timely fashion, IST detainees languish in legal limbo in prolonged custody without appropriate and constitutionally adequate mental health care until the State defendants comply with the treatment orders; and,

G. ISTs are not provided with adequate mental health treatment by CFMG Defendants.

4. Non-IST inmates are housed in general population, are not punished due to their mental impairments, and do not lose commissary, visits and phone calls due

to their mental disabilities. They are not deprived of mental health care treatment. They do not lose pre-trial custody credits and serve additional time due to their non-IST condition. Defendants, despite their awareness of the disparate conditions in the jail and lengthy pre-trial incarceration without adequate mental health care and restorative treatment, do nothing to remedy their situation. The Defendants have been aware of these conditions for years but have not acted to remedy the situation, either by: (1) ensuring that the entity responsible for providing mental health care at the VCJ do not act with deliberate indifference toward IST inmates while they await transfer for restorative mental health care treatment, (2) ensuring that they receive adequate mental health treatment pending transfer to a state IST facility, (3) or ensuring that they are transferred immediately to a State Hospital, a jail based competency treatment program, ("JBCT") or to outpatient treatment through CONREP for restorative mental health treatment. These acts and omissions violate the IST detainees' federal and state constitutional and statutory rights.

II. JURISDICTION AND VENUE

5. This action is brought pursuant to 42 U.S.C. §1983 and 42 U.S.C. §12131, *et seq.*

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 (federal question jurisdiction), 28 U.S.C. §1343 (civil rights jurisdiction) and 28 U.S.C. §1367 (supplemental jurisdiction).

7. Venue in the United States District Court, Central District of California, is based upon 28 U.S.C. §1391(a) (2) in that a substantial part of the events giving rise to the claims occurred in this district.

III. PARTIES

A. PLAINTIFF REPRESENTATIVES

8. Mary Rodgers-Vey is the mother and guardian ad litem of Plaintiff MATTHEW SCOTT ("SCOTT"). SCOTT has been diagnosed with mental illness, and is a person with a disability defined in 42 U.S.C. §12102. SCOTT requires mental health treatment and accommodations to alleviate his symptoms and to function in jail. SCOTT was arrested on August 22, 2015, on suspicion of a felony violation of first degree residential burglary. He was booked into the Ventura County Jail the same day. On August 24, 2015, the Ventura County District Attorney filed a complaint alleging a single felony count of residential burglary as well as several allegations that he had suffered a prior conviction for a serious felony and had not remained free of prison custody for five years following his release on parole. Bail was set at $175,000 and he was remanded to the custody of the Sheriff. On August 25, 2015, SCOTT was arraigned in Ventura Superior Court. He waived arraignment and entered a plea of not guilty.

9. On November 5, 2015, SCOTT's attorney declared doubt as to his competency to stand trial pursuant to Penal Code §1368. Criminal proceedings were suspended and civil proceedings were instituted. That same day, Dr. Katherine Emerick, Ph.D., Forensic Psychologist, was ordered to perform a competency evaluation. Dr. Emerick found SCOTT to be incompetent to stand trial and filed a report with the court. On November 30, 2015, SCOTT was formally found to be incompetent to stand trial by the Ventura County Superior Court. The court made a finding that SCOTT consented to the administration of psychotropic medications and referred the case to MHM Services of California, Inc. ("MHM Services"), for a placement recommendation.

10. On December 14, 2015, the court held a hearing on placement. A letter from MHM Services was filed and the court ordered placement at any state hospital. The court found that the maximum commitment time was 3 years and awarded custody credit of 0 actual days and 0 days of Penal Code §4019 additional

credit for a total of 0 days of custody credit. SCOTT was committed to the DSH pursuant to Penal Code §1368. SCOTT was remanded to the custody of the sheriff and the sheriff was ordered to transport him to Patton State Hospital ("Patton"). On December 24, 2015, the 1370 Packet was sent to the transportation unit of the VCSO. On or about April 28, 2016, SCOTT was transported to Patton for treatment, 151 days after being found IST and 136 days after he was ordered to be transported to Patton.

11. During his incarceration, SCOTT was disciplined numerous times for a variety of violations of jail rules. Most of his violations and subsequent discipline arose because of his mental illness. For example, SCOTT believed that he was being attacked by the devil in his cell. Because he believed that the devil had somehow changed a part of his plastic armband to metal, he tore it off. He was also in an altercation with another inmate whom SCOTT perceived as "acting weird." Additionally, he was disciplined for throwing feces against the wall of his cell after he ran out of toilet paper and was not brought another roll by the guards after several requests. His discipline included loss of commissary, loss of visits, and isolation in a safety cell.

12. Adrian Mojica is the brother and guardian ad litem of OMAR MOJICA ("MOJICA"). MOJICA has been diagnosed with mental illness, and is a person with a disability defined in 42 U.S.C. §12102. MOJICA requires mental health treatment and accommodations to alleviate his symptoms and to function in jail. MOJICA was arrested on April 8, 2014, on suspicion of a felony violation of attempted robbery. He was booked into the Ventura County Jail the same day. On April 10, 2014, the Ventura County District Attorney filed a complaint alleging a single felony count of attempted robbery, as well as several allegations that he had suffered a prior conviction for a serious felony, and that he personally used a weapon during the commission of the crime. Bail was set at $110,000, and he was

remanded to the custody of the Sheriff. On May 7, 2014, MOJICA was arraigned in Ventura Superior Court and entered a plea of not guilty. MOJICA's attorney declared a doubt as to his competency to stand trial pursuant to Penal Code §1368. Criminal proceedings were suspended and civil proceedings were instituted. That same day, Dr. John Nightingale, Ph.D., Clinical Psychologist, was ordered to perform a competency evaluation. On September 10, 2014, after numerous continuances, a second doctor, Dr. Ines Monguio, Clinical Psychologist, filed a report with the court finding MOJICA incompetent to stand trial. The case was continued to September 24, 2014, and referred for a placement recommendation.

13. On September 26, 2014, the court made a finding that MOJICA consented to the administration of psychotropic medications and ordered placement in Patton State Hospital. The court found that the maximum commitment time was 3 years and awarded custody credit of 172 actual days and 172 days of Penal Code §4019 additional credit, for a total of 344 days of custody credit. MOJICA was committed to the DSH pursuant to Penal Code §1368, and the sheriff was ordered to transport him to Patton State Hospital. On December 23, 2015, a notice of admission to DSH was filed. On March 30, 2015, DSH sent the court a certificate of mental competency. On April 10, MOJICA returned to court. The case was continued to April 17, 2015, and criminal proceedings resumed on that date.

14. MOJICA entered a plea of not guilty. A preliminary hearing was held on May 11, 2015, and MOJICA was held to answer the charges and remained in custody with bail set at $110,000. After several continuances, MOJICA's attorney requested that he receive mental health treatment, pursuant to Penal Code §4011.6. The request was denied. On August 14, 2015, MOJICA entered a plea of not guilty by reason of insanity, and two psychiatrists were appointed to evaluate him. On October 13, 2015, Penal Code §1026 (not guilty by reason of insanity) evaluations were received from both doctors.

15. On November 25, 2015, MOJICA's attorney declared a doubt as to his mental competence. Criminal proceedings were suspended, civil proceedings were instituted, and Dr. Thomas Lauren was appointed to examine MOJICA. On December 24, 2015, it appears that the court found MOJICA incompetent to stand trial and continued the case to January 6, 2016 for a hearing on placement. On January 6, 2016, a placement recommendation was received from MHM Services and the court committed MOJICA to DSH pursuant to Penal Code §1368. MOJICA was remanded to the custody of the sheriff, and the court ordered the sheriff to transport him to Patton State Hospital. The court made a finding that the maximum term was 3 years, and awarded custody credit for 521 actual days, 0 days of Penal Code §4019 credit, for a total of 521 days of custody credit. On January 28, 2016, the 1370 Packet for Patton State Hospital was sent to the transportation unit of the VCSO.

16. During his incarceration, MOJICA has been disciplined several times for a variety of violations of the jail rules. Most of his violations and subsequent discipline arose because of his mental illness. For example, MOJICA describes "hearing voices," and one of the strongest voices is his former Catholic priest. MOJICA becomes agitated when he hears these voices and was in an altercation with another inmate early on in his incarceration after hearing the voices. He was also disciplined for "hoarding" pills which he did not want to take. His discipline included 5 days in an isolation cell, commonly referred to as "the hole," loss of visits, commissary, and a disciplinary diet. Thereafter, MOJICA was housed alone and locked down 23 hours a day. On May 19, 2016, MOJICA was transported to Patton for treatment, 148 days after being found IST and 135 days after he was ordered to be transported to Patton.

B. CFMG DEFENDANTS

17. Defendant California Forensic Medical Group, Inc. ("CFMG"), its agents, deputies, employees, and independent contractors, at all times mentioned herein was and is an agent of the County of Ventura, and Ventura County Sheriff's Office ("VCSO") and Sheriff Dean, and was and is under contract with Ventura County, VCSO and Sheriff Dean for the purpose of providing medical care and treatment on behalf of Ventura County, VCSO and Sheriff Dean to civil detainees, pre-trial detainees, and sentenced inmates under the care and control of defendants Ventura County. At all times mentioned herein, CFMG and its agents and employees were acting under color of law and under the direction and agency of Ventura County, VCSO and Sheriff Dean to provide such care and treatment to civil detainees, pre-trial detainees, and sentenced inmates. CFMG operates a medical unit inside the Ventura County Pre-Trial Detention Facility ("VCPTDF"), which houses its administrative offices including professional offices, clinics, including treatment rooms such as safety cells and examination rooms, inside the jail. As such, CFMG occupies controls and operates an actual physical place in the VCPTDF, and public accommodation inside the jail to provide medical and mental health treatment. Plaintiffs are informed and believe Defendants CFMG, and its agents Defendants Paul Adler and Ronald Pollack have offices inside the VCPTDF.

18. Defendant Taylor Fithian, M.D. ("Fithian"), at all times mentioned herein, was and is an employee and/or agent of Ventura County and VCSO, Sheriff Dean and CFMG, acting under color of law, who was and is the Medical Director of CFMG and the physician responsible for establishing policies and practices for CFMG employees and was and is responsible for training, supervision and management of CFMG employees including doctors, nurses, and nurse practitioners at VCPTDF, concerning the provision of medical and mental health treatment to civil detainees including IST detainees, pre-trial detainees, and

sentenced inmates at VCPTDF. Defendant Fithian is being sued in his individual capacity for damages.

19. Defendant Paul Adler, M.D. ("Adler"), at all times mentioned herein, was and is an employee and/or agent of Ventura County and VCSO, Sheriff Dean and CFMG, acting under color of law, who was and is the On-site Medical Director of CFMG at the VCPTDF and the physician hired to provide medical care, attention, and treatment to civil detainees, pre-trial detainees including IST detainees, and sentenced inmates at VCPTDF. He was and is the physician responsible for the hiring, training, supervision and management of subordinate medical staff providers, including doctors, nurses, and nurse practitioners at VCPTDF. Defendant Adler is being sued in his individual capacity for damages.

20. Defendant Ronald Pollack, M.D. ("Pollack"), at all times mentioned herein, was and is an employee and/or agent of Ventura County and VCSO, Sheriff Dean and CFMG, acting under color of law, who was and is a psychiatrist at VCPTDF and a physician hired to provide mental health treatment civil detainees, pre-trial detainees, and sentenced inmates at VCPTDF. Defendant Pollack was and is responsible for implementing all CFMG policies and practices governing the provision of mental health treatment for all civil detainees including IST detainees, pre-trial detainees and sentenced inmates at VCPTDF. He was, and is, responsible for the supervision and management of subordinate medical staff providers providing mental health treatment to detainees and inmates at VCPTDF. As the primary treating psychiatrist for detainees in custody at the VCPTDF, Dr. Pollack can refer acutely psychotic inmates for treatment at an outside facility immediately on an emergency basis or by seeking court approval to modify the conditions of a pre-detainee's bail or a sentenced prisoner's custody status pursuant to Welfare & Institutions Code section 5150 (if the detainee is a danger to self or others or is gravely disabled), or pursuant to Penal Code section 4011.6. Plaintiff is informed

and believes that such referrals are discouraged because they must be paid for out of CFMG's budget and therefore such referrals are almost never made which constitutes deliberate indifference the detainees' serious medical and psychological needs. Defendant Pollack is being sued in his individual capacity for damages.

C. STATE DEFENDANTS

21. The remaining State Defendants are either policy makers, supervisors, agents, employees or contractors performing duties delegated to them by the California Department of State Hospitals ("DSH"). DSH itself is not named as a defendant in this Fourth Amended Complaint. DSH is the state agency in the state of California designated to administer and supervise the administration of competency evaluation and restoration treatment pursuant to Penal Code §1367 *et seq*. (involuntary forensic commitment). As such, DSH utilizes federal and state funds in operating services in a way that ensures compliance with state and federal constitutional and statutory protections for people involuntarily detained in order to receive mental health services. Although IST detainees are regularly sent to Patton from VCPTDF, there are six other DSH mental health treatment facilities in California which potentially could house Ventura County IST detainees if there are no beds available at Patton: DSH-Atascadero, DSH-Coalinga, DSH-Metropolitan LA, DSH-Napa, DSH-Sacramento, DSH-Salinas Valley, DSH-Stockton and DSH-Vacaville. Furthermore, IST detainees can also receive competency restoration services through additional programs which are authorized by statute and approved for the provision of restorative treatment services by DHS. For example, a private healthcare corporation has been approved by DHS to provide "jail based competency treatment" ("JBCT") at certain jail facilities in San Bernardino and Sacramento. Additionally, incarcerated ISTs can also receive outpatient restorative treatment though CONREP. DSH contracts with individual County Behavioral

Health agencies or private contractors to administer the CONREP program in each county.

22. Defendant Pam Ahlin ("AHLIN") is the Director of DSH. She is sued under in her official capacity for injunctive relief only and for damages in her personal capacity under all causes of action alleged against her. Defendant AHLIN is ultimately responsible for the administration of all of the DSH facilities in the state including Patton State Hospital. Defendant AHLIN has been personally involved in the decision-making concerning Patton's one-in, one-out policy that has caused unconstitutional delays in the provision of mental health and restorative mental health treatment to IST inmates from Ventura County. She has also acted with deliberate indifference to the unconstitutional delays in treatment, because she is personally involved, and/or acquiesced in the policy and practices of DSH which resulted in the unconstitutional delays and the resultant harms which befell the Ventura County IST detainees. A California Legislative Analyst Report, "An Alternative Approach: Treating the Incompetent to Stand Trial," dated January 3, 2012 shows that the DSH and Director AHLIN funded a pilot program with the County of San Bernardino in which IST inmates are treated in the County jail rather than going to Patton, thereby reducing the long waitlists for state hospital beds and shortening the time to restore defendants to competency. The County of San Bernardino JBCT program began in 2010 and treats ISTs from San Bernardino and nearby counties which do not offer such a program. The ISTs are treated at the West Valley Detention Center in San Bernardino, which offers a restorative treatment program in a county jail setting. The report establishes that Defendant AHLIN can implement policies curtailing the unconstitutional delays in the treatment IST detainees and has acted with deliberate indifference to the rights of Ventura County detainees. A City News Group article, dated August 31, 2015, also makes clear that Defendant AHLIN, and Defendant Harry OREOL, the

Director of Patton, are well aware of the unconstitutional delay in treatment, and have ignored the problem in Ventura County in deliberate indifference to Plaintiffs' rights.

23. Patton State Hospital ("Patton") is a state psychiatric hospital that is charged with serving the needs of California individuals with pending criminal proceedings who are ordered to receive competency restoration services. Pursuant to statute, Patton may house "no more than 1,336 patients." Welfare and Institutions Code §4107(c). However, according to their website located at http://www.dsh.ca.gov/Patton, Patton operates 1,527 beds, 36% of which are used for treatment of IST detainees. This equates to approximately 550 beds total for IST detainees. Patton is not named as a defendant in this Fourth Amended Complaint. However, its Executive Director is named as a defendant.

24. Defendant Harry Oreol ("OREOL") is the Executive Director of Patton. He is sued under in his official capacity for injunctive relief only and for damages in his personal capacity under all causes of action alleged against him. As Executive Director, Defendant OREOL is responsible for oversight, operation, and management of Patton and competency restoration services for individuals with mental health disabilities in pending criminal proceedings. Defendant OREOL knows or should know that incarcerated IST detainees who are ordered to be placed at Patton will not receive appropriate mental health treatment in the jail for months while Patton's "one in and one out" policy slowly grinds forward. He has been personally involved in implementing and is responsible for, or has personally acquiesced, in the one-in, one out policy that has resulted in the unconstitutional deprivation of IST detainees rights who have been unreasonably denied timely mental health treatment and restorative treatment in violation of their constitutional rights.

25. Defendant MHM Services of California, Inc., ("MHM Services") is a private corporation whose parent company, MHM Services, Inc., is headquartered in Vienna, Virginia. The State of California and DSH entered into a contract with MHM Services in 2014 to provide mental health services in Ventura County including the operation of the CONREP or Forensic Conditional Release Program. Plaintiffs are informed and believe that MHM receives funding from DSH to provide outpatient treatment to ISTs but has not used this funding to treat ISTs but instead diverted such funds for other uses. On information and belief, MHM does not use this funding to treat ISTs, despite their awareness of the delays in restorative treatment of IST inmates. On information and belief, DSH has also delegated to MHM Services the task of conducting placement recommendations for IST detainees housed in the Ventura County jails. Delays in issuing these "placement recommendations" have contributed to the indefinite and prolonged delays faced by IST detainees in Ventura County and MHM Services has failed to recommend placement in the CONREP program which it operates for IST detainees despite the knowledge that IST detainees face indefinite and prolonged delays in receiving adequate mental health treatment when they are referred to DSH hospital facilities and spend months on the waiting list. Defendant MHM and Defendant Marcus Lopez have discretion under state law and DSH guidelines including the CONREP Policy and Procedure Manual to place IST detainees in CONREP out-patient restorative treatment programs, which would reduce the delay in placement and the provision of constitutionally required timely restorative mental health treatment. It would reduce the delay by lowering the number of placements to DSH facilities. Despite the authority to make such placements and with knowledge of the unconstitutional delays and unjustified institutional isolation of incarcerated ISTs, MHM continue to routinely make placement recommendations to DSH hospitals where treatment costs will not impact MHM's

budget. Plaintiffs are informed and believe that despite its authority to make recommendations for placement in CONREP for outpatient restorative treatment, only one recommendation for such placement has been made by MHM and Lopez, i.e. putative class member McKenney on February 17, 2017. As of May 1, 2017, Plaintiffs are aware of no IST detainees from Ventura who have been referred to a jail based competency treatment program ("JBCT"). Defendant MHM is sued for injunctive relief and damages under all causes of action alleged against MHM.

26. Defendant Marcus Lopez ("Lopez") is the CONREP Community Program Director of MHM Services of California, Inc. As the Community Program Director, Defendant Lopez is responsible for oversight, operation, and management of MHM Services' provision of mental health services in Ventura County including the operation of the Forensic Conditional Release Program or "CONREP". Defendant Lopez signs most of the IST placement recommendations for DHS and the overwhelming majority of the recommendations are for placement in Patton, or, more recently, in a DSH hospital. Defendant Lopez fails to exercise his discretion to recommend placement alternatives to a DSH hospital such as referrals to jail based competency treatment programs or outpatient treatment in CONREP, or referrals to private facilities. Defendant Lopez knows or should know that incarcerated IST detainees who are ordered to be placed at Patton or any DSH hospital will not receive appropriate mental health treatment in in the jail for months while the "one in and one out" policy slowly grinds forward and the waiting list for a bed grows longer and longer.

27. Defendant Marcus Lopez has discretion under state guidelines to place IST detainees in CONREP out-patient restorative treatment programs, which Defendant Lopez himself oversees as the Community Program Director for MHM Services, pursuant to a contract with DSH. Referral to MHM Services' outpatient restorative treatment program would reduce the number of incarcerated ISTs awaiting

restorative treatment at a DSH facility and allow the remaining incarcerated ISTs to move up on the DSH waiting list. DSH publishes a CONREP Policy and Procedure Manual which describes the criteria to be used in making recommendations for outpatient placement for treatment. Some of these criteria include compliance with taking prescribed psychotropic medications, compliance with jail rules, insight into the relationship between mental illness, substance abuse and dangerous, the severity of the IST detainee's criminal charges, and willingness to agree to and sign CONREP terms and conditions. Despite having the discretion and authority to recommend such placements and with knowledge of the unconstitutional delays and resultant harms which befall incarcerated detainees who end up on the waiting list for a bed at a DSH hospital, Lopez routinely recommends IST detainees be treated at Patton or a DSH hospital. These recommended placements foreseeably result in unconstitutional delays in treatment. Plaintiffs are informed and believe that despite his authority to make out patient recommendations and placements, only putative class member McKenney received such a recommendation on February 17, 2017. Numerous ISTs charged with nonviolent felonies or misdemeanors have been statutorily eligible and suitable pursuant to DSH guidelines to participate in outpatient treatment or other alternative placements. Plaintiffs are informed and believe that many of those eligible ISTs also have met the other criteria set forth by DSH for admission to outpatient treatment but have been nonetheless recommended for treatment at Patton or a DSH hospital instead. As of today, Plaintiff is aware of no IST detainees from Ventura who have been referred to the JBCT or to treatment in a private mental health facility. Defendant Lopez is sued for injunctive relief and damages.

D. DOE DEFENDANTS

28. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as Does 1 through 10, inclusive, are unknown to Plaintiffs, who therefore sues said Defendants by such fictitious names. Plaintiffs will amend this complaint to show such true names and capacities when they have ascertained the same. Plaintiffs are informed, believe and thereupon allege that each Doe Defendant named herein is, in some manner, legally responsible for the acts complained of. Does 1 through 10 are CFMG, DSH, and MHM Services employees and/or agents who have not yet been identified, including but not limited to, executive, management, and/or policy-making staff and employees, and medical and mental health professionals.

29. At all times herein mentioned Defendants, and each of them, were the agents, servants and employees of each of the Co-Defendants, and in doing the things herein mentioned were acting within the purpose, course and scope of their authorities and employment as such agents, servants and employees, and with the permission and consent of said Co-Defendants.

E. FACTS RELATING TO OTHER PUTATIVE CLASSMEMBER IST DETAINEES

30. Plaintiffs have identified several criminal cases pending in California state courts which challenge the unduly lengthy delays caused by the failure of DSH to accept IST detainees for treatment after they have been found IST and ordered transferred from a county jail to DSH for competency restoration services. For example, in both 2016 and 2017, the Ventura County Public Defender has filed a series of orders to show cause why DSH should not be held in contempt for failing to comply with the Ventura County Superior Court's Commitment Order and Order to Transport IST detainees in a timely manner, e.g. *People v. Tafolla*, Ventura County Superior Court Case no. 2015038403. In *Tafolla,* DSH filed responsive pleadings and supporting declarations. In several other pending cases,

including *People v McKean,* Ventura County Superior Case no. 2016036960, DSH has submitted declarations and an evidentiary hearing on an order show cause why DSH should not be held in contempt was held on March 28, 2017. Similarly, in 2017, the Contra Costa County Public Defender, after receiving a favorable ruling from the Court of Appeal in *In re Loveton* (2016) 244 Cal.App.4th 1025, moved the court for an order to show cause why DSH should not be held in contempt for continuing to fail to comply with the 60-day time limit for transfer which the court had previously ordered and the Court of Appeal approved in *In re Loveton* (2016) 244 Cal.App.4th 1025. See *People v. Keegan Czirban, et. al.* Contra Costa County Superior Court Case no. 2-32161, (*Czirban).*

31. In these actions, DSH personnel revealed in declarations, sworn testimony, and exhibits many several details relevant to the statewide problem of failing to provide timely restorative treatment in general and some statistics relevant to IST detainees in Ventura County in particular. Sixteen days before Plaintiffs filed this lawsuit on May 4, 2016, a DSH document entitled "Pending Admission Analysis for April 18, 2016" was disclosed as an exhibit to a responsive declaration from a DSH official. This document revealed that, as of that date, there were 445 1ST defendants on the DSH hospital admissions waiting list statewide. The report also contains summary and detailed information by gender, hospital, and committing county and an "Average Number of Days on List by County and Hospital chart" which indicates the average number of days for pending patients from a specific county. For Ventura County, as of April 28, 2016, 20 IST detainees were awaiting transport. The delay in time from the date of commitment for these 20 detainees was 28 days at the low end and 147 days at the high end.

32. A similar exhibit entitled "Weekly Pending Placement Reports" prepared by DSH for the month of September 2016, provides the weekly number of pending IST placements, along with other forensic and civil commitment types. These

reports also provide comparisons to statewide data on pending placements as of July 1, 2014, July 1, 2015, and July 1, 2016. With respect to the statewide numbers, the weekly Pending Placement Report dated September 5, 2016 revealed 371 pending placements for ISTs as of July 1, 2014, 340 pending placements for ISTs as of July 1, 2015, and 464 pending placements for ISTs on July 1, 2016. With respect to IST detainees from Ventura in particular, this document revealed that between 12 and 13 ISTs were awaiting transport each week during the month of September, 2016.

33. On January 20, 2017, Dr. Mark Grabau, PhD, the Chief Psychologist with the Forensic Services Division of DHS testified at an evidentiary hearing in *People v. Keegan Czirban, et. al.,* Contra Costa County Superior Court Case No. 2-32161, (*Czirban).* Dr. Grabau testified that he oversees the statewide operations of the CONREP program for DHS and the recently implemented statewide Jail Based Competency Treatment (JBCT) program for DSH. He testified that DSH employs independent contractors to administer the CONREP program and also designates various county agencies to administer the program and that DSH pays for the cost of the outpatient treatment provided to IST detainees. He identified a 16-bed facility in Fresno, (the "Haskins facility"), which opened on January 3, 2017 and could be used for IST outpatient treatment. MHM's website indicates that MHM is the contractor responsible for CONREP in Fresno County. (See http://www.mhm-services.com/phone/contact.html.) Thus, it is clear that MHM has been aware of the availability of outpatient treatment facilities for ISTs and apparently operates an outpatient treatment facility in Fresno County where it is the CONREP designee. The website also states that MHM is the DSH's CONREP designee for a total of seven counties in California: Fresno, Solano, San Bernardino, Santa Rosa, San Luis Obispo, Ventura, and San Francisco. (*Id.*)

34. As of the date of his testimony, January 20, 2017, Dr. Grabau revealed that either 28 or 29 IST detainees statewide were receiving outpatient treatment. Approximately 14 of the detainees were from San Joaquin County. One was from Contra Costa County. He confirmed that the CONREP designee in each county could recommend placement in either outpatient treatment in CONREP or treatment in the new JBCT program. The CONREP designee for Ventura County is Defendant MHM.

35. The First IST detainee from Ventura County to receive outpatient treatment in CONREP was Brian McKenney on February 17, 2017. After originally recommending that Mr. McKenney be sent to a DSH hospital for restorative treatment, MHM contacted the Ventura County Jail to determine whether any of the ISTs awaiting transfer to DSH might be eligible and suitable for outpatient restorative treatment. After determining that Mr. McKenney was both eligible and suitable for outpatient restorative treatment through a CONREP psychiatrist, MHM submitted a new placement recommendation to the Ventura County Superior Court requesting outpatient restorative treatment through CONREP and the court accepted the recommendation and released Mr. McKenney from custody. Despite the availability of CONREP, and despite knowledge of the delays in placement, in deliberate indifference to their rights to restorative mental health treatment, Marcus Lopez, the CONREP Community Program Director of MHM Services Inc. in Ventura County, failed to refer anyone in Ventura County to CONREP or a JBCT program prior to Mr. McKenney.

36. As of June 1, 2017, Plaintiffs are aware of no IST detainees from Ventura who have been referred to a JBCT program.

37. Plaintiffs have identified a number of other ISTs whose factual circumstances raise common questions of fact and law as follows.

38. Stephanie Swofford was booked into the Ventura County Jail on October 6, 2015. She was found incompetent to stand trial on November 10, 2015. The Ventura County Superior Court ordered her transferred to Patton on December 15, 2015. Her "1370 Packet," was sent to the Ventura County Sheriff's Office Transportation Unit on December 16, 2015. She was transported to Patton State Hospital on or about May 23, 2016, 196 days after she was found IST and 161 days after she was ordered to be transported to Patton.

39. Timothy Cundieff was booked into Ventura County Jail on September 10, 2015. He was found incompetent to stand trial on December 22, 2015. The Ventura County Superior Court ordered him transferred to Patton on January 11, 2016. His 1370 Packet was sent to the Ventura County Sheriff's Office Transportation Unit on January 21, 2016. He was transported to Patton State Hospital on or about May 12, 2016, 143 days after he was found IST and 123 days after he was ordered to be transported to Patton.

40. Robert Ortega was booked into Ventura County Jail on September 2, 2015. He was found incompetent to stand trial on December 4, 2015. Ventura County Superior Court ordered him transferred to Patton on December 11, 2015. His 1370 Packet was sent to the Ventura County Sheriff's Office Transportation Unit on December 24, 2015. He was transported to Patton State Hospital on or about May 19, 2016, 168 days after he was found IST and 161 days after he was ordered to be transported to Patton.

41. Terrill Berntson was booked into Ventura County Jail on September 11, 2015. He was found incompetent to stand trial on December 3, 2015. Ventura County Superior Court ordered him transferred to Patton on December 17, 2015. His 1370 Packet was sent to Ventura County Sheriff's Office Transportation Unit on December 24, 2015. He was transported to Patton State Hospital on or about

May 12, 2016, 162 days after he was found IST and 148 days after he was ordered transported to Patton.

42. Spencer Neminski was booked into Ventura County Jail on August 5, 2015. He was found incompetent to stand trial on September 30, 2015. Ventura County Superior Court ordered him transferred to Patton on February 16, 2015. His 1370 Packet was sent to Ventura County Sheriff's Office Transportation Unit on February 16, 2016. He was transported to Patton State Hospital on or about May 19, 2016, 233 days after he was found IST and 94 days after he was ordered to be transported to Patton.

43. Additional recent IST detainees identified were transported to Patton after several months and the lengths of their incarceration prior to their transportation to Patton are set forth below in order to provide concrete examples of the length of pre-treatment delay experienced by members of the Class.

44. Dominic Diaz was booked into Ventura County Jail on July 14, 2015. He was found incompetent to stand trial on October 19, 2015. Ventura County Superior Court ordered him transferred to Patton on November 4, 2015. His 1370 Packet was sent to Ventura County Sheriff's Office Transportation Unit on November 17, 2015. He was transported to Patton State Hospital on or about February 18, 2016, 122 days after he was found IST and 107 days after he was ordered transported to Patton.

45. Mark Crockett booked into Ventura County Jail on September 13, 2015. He was found incompetent to stand trial on October 21, 2015. Ventura County Superior Court ordered him transferred to Patton on November 17, 2015. His 1370 Packet was sent to the Ventura County Sheriff's Office Transportation Unit on November 25, 2015. He was transported to Patton State Hospital on or about March 3, 2016, 134 days after he was found IST and 108 days after he was ordered transported to Patton.

46. James Siler booked into Ventura County Jail on July 23, 2015. He was found incompetent to stand trial on October 28, 2015. Ventura County Superior Court ordered him transferred to Patton on November 24, 2015. His 1370 Packet was sent to Ventura County Sheriff's Office Transportation Unit on December 7, 2015. He was transported to Patton State Hospital on or about February 25, 2016, 121 days after he was found IST and 94 days after he was ordered transported to Patton. It is also noteworthy that Mr. Siler was severely beaten by a fellow inmate in the jail while he awaited transfer to Patton.

47. Robert Morton was booked into Ventura County Jail on September 25, 2015. He was found incompetent to stand trial on October 29, 2015. Ventura County Superior Court ordered him transferred to Patton on November 30, 2015. His 1370 Packet was sent to Ventura County Sheriff's Office Transportation Unit on December 8, 2015. He was transported to Patton State Hospital on or about March 18, 2016, 141 days after he was found IST and 109 days after he was ordered transported to Patton.

48. Brian McKenney was booked into Ventura County Jail on August 13, 2016. He was found incompetent to stand trial on November 17, 2016. Ventura County Superior Court ordered him transferred to Atascadero State Hospital on December 9, 2016. His "1370 Packet," was sent to Ventura County Sheriff's Transportation Unit on December 21, 2016. While in custody waiting to be transferred, he was severely beaten by another inmate. On February 14, 2017, the transfer order to Atascadero was vacated. On February 17, 2017, he was ordered released for outpatient restorative treatment at CONREP, an outpatient facility operated by MHM Services of California, Inc. ("MHM"). The Director of MHM Services is Marcus Lopez and, although outpatient services can be recommended for IST inmates, Plaintiffs are informed and believe putative class member McKenney is the first Ventura County IST detainee being held on felony charges

placed in an outpatient facility by MHM and the California Department of State Hospitals. McKenney was released for outpatient restorative treatment at CONREP on or about February 20, 2017, 97 days after he was found IST and 75 days after he was ordered transferred to Atascadero. State Defendants and MHM have always had the option of recommending outpatient restorative treatment for IST detainees accused of felonies throughout the class period. For the very first time that Plaintiffs are aware of, outpatient restorative treatment was recommended, and the court ordered it for an IST detainee accused of a felony. It is also noteworthy that Dr. Grabau testified that 28 or 29 ISTs were receiving outpatient treatment on January 20, 2017.

49. Jayden Sunder was booked into Ventura County Jail on March 18, 2016. He was found incompetent to stand trial on September 23, 2016. Ventura County Superior Court ordered him transferred to Atascadero State Hospital on November 10, 2016. His "1370 Packet," was sent to Ventura County Sheriff's Transportation Unit on December 8, 2016. On or about February 22, 2017, he was released from jail and presumably was transferred to Atascadero, 152 days since he was found IST, and 104 days since he was ordered transferred to Atascadero.

50. Daniel Webster was booked into Ventura County Jail on August 23, 2016. He was found incompetent to stand trial on November 16, 2016. Ventura County Superior Court ordered him transferred to Atascadero State Hospital on December 7, 2016. His "1370 Packet," was sent to Ventura County Sheriff's Transportation Unit on December 16, 2016. As of February 22, 2017, he has waited in custody for 98 days since he was found IST, and 77 days since he was ordered transferred to Atascadero.

51. Arturo Valtierra was booked into Ventura County Jail on April 26, 2016. He was found incompetent to stand trial on November 7, 2016. Ventura County Superior Court ordered him transferred to Atascadero State Hospital on November

28, 2016. His "1370 Packet," was sent to Ventura County Sheriff's Transportation Unit on December 21, 2016. On or about February 22, 2017, he was released from jail and presumably was transferred to Atascadero, 107 days since he was found IST, and 86 days since he was ordered transferred to Atascadero.

52. In conformance with this Court's latest ruling requiring Plaintiffs to name the class representatives and putative class members referred to in our pleadings, information obtained from Ventura County Superior Court's public minute orders is set forth below in a chart which summarizes the number of days each IST detainee languished in custody before being placed in a State Hospital, Patton or Atascadero,[1] or in the case of Brian McKenney to CONREP, from the date of the IST finding by the Superior Court. Column 1 represents the number of days the IST detainee was held after the transport order and column 2 represents the number of days the IST detainee was held from the date after the 1370 packet is sent to the State hospital.

NAME / VENTURA COUNTY CASE NO.	**Days After IST Finding**	**Days After Transport Order**	**Days After 1370 Packet Sent**
Omar Mojica / 2015031109	147	134	112
Matthew Scott / 2015026800	149	135	125
Dominic Diaz / 2015022047	122	106	93
Stephanie Swofford / 2015031789	195	160	159
Mark Crockett / 2015029308	134	107	99
Terrill Berntson / 2015029405	161	147	140

[1] It appears that some IST detainees, since the filing of the lawsuit, have been initially placed at Atascadero State Hospital.

Omar Mojica / 2015031109	147	134	112
Robert Morton / 2015030797	141	109	101
Robert Ortega / 2015023998	167	160	147
Timothy Cundieff / 2015028904	142	122	112
Keith Chambers / 2015031852	107	107	98
James Siler / 2015023540	120	93	80
Enrique Davalos/ 2015031763	160	34	23
Christine Thomas / 2015026544	183	110	98
Bonifasio Tafolla / 2015038403	118	104	98
Anthony Parish / 2013005294	101	80	70
Dalila Medina / 2016011482	111	90	UNK.
Spencer Neminski / 2015025085	232	93	93
April Swan / 2016004093	139	76	67
Annette Magallon / 2015011813	171	128	57
Monica Turnbull / 2015040456	121	100	UNK.
Joseph Siquiedo / 2016002109	56	23	UNK.
Genaro Ramirez / 2016000848	94	73	70
Tucker Moore / 2015029503	134	22	20
Rustin Stewart / 2015018950	120	106	104

Everard Douglas / 2015016360	118	99	97
Case Crone / 2013027968	97	83	79
Arturo Fernandez / 2015023867	101	54	53
Michael Marquez / 2015038380	96	45	10
Jacob Hooper / 2015040867	126	105	95
Ben Kallas / 2015038518	138	123	112
Rodney Holder / 2014028235	119	115	112
Arturo Valtierra / 2016016724	107	86	63
Jayden Sunder / 2016012302	152	104	76
Daniel Johnson II / 2014025449	107	86	85
Brian McKenney / 2016030003	95	73	61

53. The IST detainees identified in the above chart were transported an average of 131 days after being found IST, 98 days after the transport order, and 89 days after the 1370 packet was sent. The range of values for the above IST detainees from the date of being found IST until they were transported is 56 at the low end and 232 at the high end. The range of values for the above IST detainees from the date of the transport order until they were transported is 23 at the low end and 160 at the high end. The range of values for the above IST detainees from the date that the 1370 Packet was sent to transportation, until they were transported, is 10 at the low end and 159 at the high end.

IV. FACTS ENTITLING PLAINTIFFS AND CLASS MEMBERS TO RELIEF

a. **Defendants' Duty to Provide Adequate Mental Health Care and Restorative Treatment.**

54. Penal Code §1367 et seq. governs procedures for evaluation and restoration of competency. Under California law, a person accused of a crime cannot be tried or punished while that person is mentally incompetent. (Penal Code §1367(a)). A court may find a defendant is mentally incompetent if, as a result of mental disorder, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner. If, during the pendency of an action a doubt arises in the mind of the judge as to the mental competence of the defendant, the court shall order a hearing into the mental competence of the defendant. (Penal Code §1368(a)).

55. When an order for a hearing has been issued, all proceedings in the criminal prosecution are suspended. (Penal Code §1368(c)). The court then appoints a licensed psychologist or psychiatrist to examine the defendant.

56. After proceedings in the criminal prosecution are suspended, Penal Code §1369 requires that **"While the person is confined pursuant to order of the court under this section, he or she shall be provided with necessary care and treatment."** (Penal Code §1369(a), emphasis added). Thus, under the state statutory scheme, IST detainees are entitled to receive "necessary care and treatment" during the whole period they are confined after criminal proceedings are suspended, including before being transferred to a state IST treatment facility. While, as is discussed *infra*, restorative treatment is supposed to occur at state authorized facilities, the obligation to provide necessary, and constitutionally adequate treatment exists during the whole period of confinement, including the period of time the IST remains incarcerated awaiting transport to a DSH hospital.

57. More fundamentally for this lawsuit, Plaintiffs' Section 1983 claim is not reliant on duties or responsibilities as they are allocated under California law.

Rather, the fundamental basis of Plaintiffs' Section 1983 claim is that any government agency that is confining a person clearly known to require mental health treatment, specifically including ISTs, is constitutionally required to provide adequate mental health treatment. The failure to do so, where the agency or its designees is on notice of the need for such treatment, constitutes deliberate indifference to, and reckless disregard for, the constitutional rights of the affected inmate. Regardless of the California statutory scheme, and how it allocates responsibilities, it cannot override or remove the constitutional obligations of the entity that is actually holding the affected inmate and the entity responsible for providing constitutionally adequate treatment to the inmate. IST detainees are entitled to receive constitutionally mandated treatment that meets the constitutional minimum for their mental disabilities while they await placement by DSH for restorative treatment.

58. The failure to timely provide mental treatment and restorative mental treatment, violates the rights of IST inmates under the ADA and the Rehabilitation Act as the actions by Defendants have a negative disparate impact on Ventura County IST detainees. The failure to provide constitutionally adequate mental health treatment to ISTs suffering from a serious mental disease or defect diagnosed by a qualified psychiatrist or psychologist rises to the level of deliberate indifference to the ISTs serious mental health treatment needs under the 14th Amendment and the Bane Act. Defendants' actions had a negative disparate impact on ISTs because IST inmates have been denied equal access to the Courts, equal statutory pre-trial custody credits, reasonably timely mental health and restorative mental health care, and appropriate conditions of confinement for treatment.

59. If the state court determines that a defendant is IST, all proceedings in the criminal prosecution are suspended and civil proceedings are instituted until the

defendant regains mental competence or a finding is made that the detainee is unlikely to regain competence. (Penal Code §§1370(a)(1)(B), 1370.01(a)(1)). Such a finding triggers a process designed to evaluate, treat and restore the defendant's mental health so that judicial proceedings may resume. On information and belief, such a finding also suspends their entitlement to statutory pre-trial custody credits against their sentences.

60. After the court makes a formal finding that the defendant is IST, Penal Code §1370(a)(2)(A) mandates that, within 15 judicial days, "A person shall not be admitted to a state hospital or other treatment facility or placed on outpatient status without having been evaluated," and further requires the community program director or designee, (Defendants MHM and Marcus Lopez in this case), to:

A. Evaluate the defendant and submit a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or committed to any other treatment facility; and

B. Evaluate the appropriate placement and recommend treatment at a DSH hospital, the community based outpatient residential treatment system, or another facility (such as a jail based competency treatment program or other private facility). (Penal Code §1370(a)(2)(A).

61. Once the IST finding is made by the court in a felony case, "the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, as directed by the State Department of State Hospitals, **or to any other available public or private treatment facility, including a county jail treatment facility or the community-based residential treatment system […] if the facility has a secured perimeter or a locked and controlled treatment facility, approved by the community program director that will promote the defendant's speedy restoration to mental competence,** or placed on outpatient status as specified in Penal Code

§1600." (Penal Code §1370(a)(1)(B)(i), emphasis added). Thus, it appears that the statute requires placement in a facility other than a DSH hospital or placement of the IST on outpatient patient status, (which can be recommended by MHM), requires placement in a facility with a secured perimeter or a locked and controlled treatment facility.

62. For ISTS accused of sex crimes specified in Penal Code section 290 or violent felonies specified in Penal Code section 667.5(c), the statutory scheme requires placement in a state hospital or other facility with a locked or secure perimeter "unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others." Penal Code sections 1370(a)(1)(B)(ii) – (iii) and 1370(a)(1)(C) – (F).

63. If a defendant is charged with a felony and determined to be IST, he or she may be held for treatment for a maximum of three years from the date of commitment or for a period equal to the maximum term of imprisonment for the most serious charge, whichever is shorter. (Penal Code §1370(c)(1)). If the person never regains competence, the criminal charges may be dismissed, and under certain circumstances, the person may become the subject of a conservatorship.

64. In accordance with these statutes and DSH guidelines such as the CONREP manual, MHM may approve placement in a:

A. Public Treatment Facility - California law allows a county jail to be designated as a "treatment facility," upon concurrence of the Board of Supervisors, the county mental health director, and the county sheriff, but provides that the maximum amount of time that a defendant may be "treated" in a designated county jail is six months. Penal Code §1369.1(a); or a

B. Private Treatment Facility; or the

C. Community Based Residential Treatment System, i.e., CONREP.

65. Once the IST finding is made by the court in a misdemeanor case, the defendant shall be delivered by the sheriff to an available public or private treatment facility approved by the county mental health director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status. (Penal Code §1370.01(a)(1)).

66. If a defendant is charged with a misdemeanor and determined to be IST, he or she may held one year from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter. (Penal Code §1370.01(c)(1)). If the person never regains competence, the criminal charges may be dismissed, and under certain circumstances, the person may become the subject of a conservatorship.

67. Prior to admission, DSH is required to evaluate each IST patient "to determine the placement of the patient to the appropriate state hospital." (Cal. Welf & Inst. Code §7228). DSH utilizes the 1370 packet to evaluate an IST patient for security risks, and thereby determine whether to place an IST patient in low-security DSH facilities, such as DSH-Napa and DSH- Metropolitan or in the "most secure facilities" such as DSH-Atascadero or DSH-Patton." (Cal. Welf & Inst. Code §§7225, 7228, and 7230).

68. After the court receives the placement recommendation and makes an order committing the IST for treatment, DSH or any other treatment provider is required to submit a progress report within 90 days concerning the defendant's progress towards recovery of mental competence and the likelihood that the defendant will regain mental competence in the foreseeable future. (Penal Code §1370(b)(1)). If their competency is restored, their criminal cases may be adjudicated. If their competency is not restored, the criminal charges may be dismissed without

prejudice to the initiation of a conservatorship proceeding. During the evaluation and restoration periods, speedy trial rights are automatically waived, and the criminal proceedings are stayed. Unfortunately, ISTs are not provided with necessary care and treatment prior to the initiation of restorative treatment. Furthermore, the evaluation and placement process is unduly lengthy and stays of criminal proceedings often last for months even before restorative treatment begins.

69. If the report shows that the defendant has been restored to competency, he is returned to court within ten days so that criminal proceedings can resume. (Penal Code §§1372(a), 1372(a)(3)(C) and 1370.1(a)(1)(C)).

70. If the report indicates that there is no substantial likelihood that the defendant will regain mental competence, the court shall order the defendant returned to court. (Penal Code §1370(b)(1)(A)) The prosecutor may choose to initiate further civil commitment proceedings pursuant to Penal Code §1370(c)(2), or the court can dismiss the charges pursuant to Penal Code §1385 without prejudice to the initiation of additional civil commitment proceedings. (Penal Code §1370(e)).

71. Similarly, at the end of three years from the date of the commitment or the maximum term of imprisonment for the most serious offense charged in a felony case or one year from the date of commitment in a misdemeanor case, whichever is shorter, a defendant who has not recovered competence shall be returned to the court. (Penal Code §1370(c)(1)). The prosecutor may choose to initiate further civil commitment proceedings pursuant to Penal Code §1370(c)(2), or the court can dismiss the charges pursuant to Penal Code §1385 without prejudice to the initiation of additional civil commitment proceedings. (Penal Code §1370).

72. A 2014 amendment to Penal Code §1370 which became effective January 1, 2015 requires that the court send DHS a 1370 Packet prior to the IST detainee's

admission. The packet includes medical, psychiatric, legal, and security information. The list of documents required to be included in the transfer packet is set forth in Penal Code § 1370(a)(3).[2] DSH will not accept an IST detainee in the absence of a fully completed 1370 Packet. Health and/or medical records must be included as part of the complete 1370 packet. (Penal Code §1370(a)(3)). If the transportation packet is incomplete in any way, DSH will not approve the transfer and the IST detainee will not be placed on the waiting list for transfer.

73. Prior to admission, DSH also requires an order from the court that Patton (or other DSH facility) be authorized "to administer involuntary antipsychotic medication to the defendant pursuant to Penal Code §1370(a)(2)(b)," or a finding by the court that the detainee "consents to the administration of psychotropic medications."

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[2] Penal Code §1370(a)(3):

(3) When the court orders that the defendant be committed to the State Department of State Hospitals or other public or private treatment facility, the court shall provide copies of the following documents prior to the admission of the defendant to the State Department of State Hospitals or other treatment facility where the defendant is to be committed:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(D) State summary criminal history information.

(E) Arrest reports prepared by the police department or other law enforcement agency.

(F) Court-ordered psychiatric examination or evaluation reports.

(G) The community program director's placement recommendation report.

(H) Records of a finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or a pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(I) Medical records.

74. After these procedural hurdles are satisfied, the IST detainee is placed on the waiting list for transfer to a treatment facility.

75. DSH in general and Patton, in particular, have adopted a policy which has come to be known colloquially in Ventura County as "the one in and one out" rule. In essence, DSH will not take a new Ventura County IST detainee "in" until a Ventura County patient currently being treated at Patton has been restored to competency and sent "out" of Patton and back to Ventura County. Every Thursday, a small number, (usually one, two, or three) of IST detainees are brought back from DSH facilities, usually from Patton. A correspondingly small number of IST detainees at the jail are then transferred for treatment. However, it is not unusual for no transfers to occur because no ISTs were returned from DSH that particular week.

76. In addition to referring IST detainees for outpatient restorative treatment in CONREP, there are seven other DSH mental health treatment facilities in California where DSH could house Ventura County IST detainees if there are no beds available at Patton: DSH-Atascadero, DSH-Coalinga, DSH-Metropolitan LA, DSH-Napa, DSH-Sacramento, DSH-Salinas Valley, DSH-Stockton, DSH-Vacaville, and Haskins Residential Facility. Despite the availability of restorative treatment in these other facilities, DSH has traditionally limited its referrals of Ventura County IST detainees to Patton. Only recently did DSH begin to refer IST detainees to DSH-Atascadero. Similarly, for the very first time that Plaintiffs are aware of in Ventura County, Defendant MHM referred an IST detainee for outpatient treatment in CONREP, an outpatient program which is operated by MHM. Plaintiffs are currently unaware of any referrals to private treatment facilities or to a JBCT program.

77. Stays of criminal proceedings pending the evaluation, placement recommendation, preparation of the 1370 Packet, and time spent on the waiting list

for placement in a DSH treatment facility often last for months before any restorative treatment begins. As a result, ISTs often end up spending more time in jail prior to adjudication than they would if they had pled guilty to a misdemeanor or non-serious felony.

78. The failure to timely transfer IST detainees for treatment delays their restoration to competency and also delays the issuance of the treatment facility's mandatory report concerning the defendant's progress toward becoming mentally competent. Unreasonable delays in treating IST detainees have persisted for years, even after California and federal appellate courts have held that these types of delays are unlawful and numerous superior court judges have ordered the State Defendants to show cause why they should not be held in contempt for failing to admit IST detainees to an appropriate treatment facility in a timely manner.

79. Other than the report from DSH or other treatment provider which is due 90 days after the order of commitment pursuant to Penal Code §1370(b)(1), no specific time limits for transfer to a treatment facility or release to an outpatient program are set forth in California's statutory framework.

80. California law allows a county jail to be designated as a "treatment facility," upon concurrence of the Board of Supervisors, the county mental health director, and the county sheriff, but provides that the maximum amount of time that a defendant may be "treated" in a designated county jail is six months.[3]

[3] Penal Code §1369.1(a):

As used in this chapter, "treatment facility" includes a county jail. Upon the concurrence of the county board of supervisors, the county mental health director, and the county sheriff, the jail may be designated to provide medically approved medication to defendants found to be mentally incompetent and unable to provide informed consent due to a mental disorder, pursuant to this chapter. In the case of Madera, Napa, and Santa Clara Counties, the concurrence shall be with the board of supervisors, the county mental health director, and the county sheriff or the chief of corrections. The provisions of Sections 1370, 1370.01, and 1370.02 shall apply

81. The statutory scheme established under Penal Code §1367 *et seq*. is to provide mental competency restorative services so that these disabled individuals have the same access to the criminal justice system and the same rights in connection with facing prosecution for alleged crimes as other mentally able defendants. Indeed, Penal Code §1367 specifically states that a person cannot be tried or punished when that person "is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense." Further, a person must suffer from a mental disorder or developmental disability in order to be considered incompetent to stand trial. *Id*.

82. During the IST evaluation and restoration periods, speedy trial rights are automatically waived and ISTs lose statutory pre-trial custody credits applicable to criminal pre-trial detainees, (*e.g.* Penal Code §4019), and receive only day-for-day credit pursuant to Penal Code §1375.5. Non-IST inmates receive additional time off of their sentences in the form of pre-trial custody credits for good behavior ("good time") and for working in the jail, ("work time").

83. The sole purpose of this IST statutory scheme "is the humanitarian desire to assure that one who is mentally unable to defend himself not be tried upon a criminal charge." *Tarantino v. Superior Court*, 48 Cal.App.3d 465, 469 (1975). The laudable goals of the statutory scheme to avoid trying and punishing those who are incapable of understanding the process and the reason for their institutionalization have been turned on their head because IST detainees, in effect, get a stiff dose of punishment in the form of lengthy incarceration before restorative treatment even begins.

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to antipsychotic medications provided in a county jail, provided, however, that the maximum period of time a defendant may be treated in a treatment facility pursuant to this section shall not exceed six months.

(b) This section does not abrogate or limit any law enacted to ensure the due process rights set forth in *Sell v. United States* (2003) 539 U.S. 166.

B. CFMG, Taylor Fithian (CFMG), Paul Adler (CFMG), Ronald Pollack (CFMG) Do Not Evaluate the Competency of Individuals Charged with Crimes and Do Not Provide Adequate Mental Health Treatment While the ISTs are Awaiting Transfer to Restorative Services. They Act with Deliberate Indifference Toward IST Inmates Compared to Non-IST inmates.

84. As noted above, Ventura County Sheriff Dean contracts with Defendant CFMG, a private corporation to provide all medical and mental healthcare to detainees housed at the VCPTDF and TRJ. Only one psychiatrist is employed full-time by CFMG. CFMG staff do not perform competency evaluations. These evaluations are performed by approved, private psychiatrists and licensed psychologists.

85. Neither the VCPTDF nor the TRJ are facilities which are licensed to perform competency restoration services. Furthermore, CFMG staff are not contracted to perform competency restoration services. Accordingly, no competency restoration services are provided at the VCPTDF or the TRJ pursuant to Penal Code §1369.1(a), and there is never a Penal Code §1368 placement recommendation or court order that an IST detainee be treated in Ventura County jail facilities. However, Defendants CFMG, Fithian, Adler and Pollack are required to provide mental health treatment to IST detainees while under their care and custody. Plaintiffs are informed that once determined to be IST, CFMG, Fithian, Adler and Pollack essentially ignore IST detainees, and provide them constitutionally deficient mental health treatment while they are pending placement to a DSH facility.

86. While CFMG typically provides medication management for people who are willing to take medications, they do not administer medication involuntarily, except in an emergency.

87. Treatment for IST detainees is generally limited to basic clinical psychiatry and intervention designed to stabilize an individual's mental health condition. The

mental health treatment that they receive prior to being transferred for restorative treatment falls below acceptable constitutional and statutory standards. They are warehoused pending transfer to a State Hospital, and Ventura County and CFMG do nothing to provide on-going mental health treatment, restorative treatment or prompt transfer to a suitable facility that can provide adequate mental health treatment or restorative treatment pending transfer to a State Hospital.

88. As the primary treating psychiatrist for detainees in custody at the VCPTDF, Dr. Pollack can refer acutely psychotic inmates for treatment at an outside facility immediately on an emergency basis or by seeking court approval to modify the conditions of a pre-detainee's bail or a sentenced prisoner's custody status pursuant to Welfare & Institutions Code section 5150 (if the detainee is a danger to self or others or is gravely disabled), or pursuant to Penal Code section 4011.6. Plaintiff is informed and believes that such referrals are discouraged because they must be paid for out of CFMG's budget and therefore such referrals are almost never made which constitutes deliberate indifference the detainees' serious medical and psychological needs.

89. Individuals found IST are often overtly psychotic and require special housing or segregation. They are unpredictable and disruptive, taking up valuable resources needed for the care of other inmates. If they refuse to take medications, they often decompensate rapidly.

90. Incapacitated criminal defendants have a high risk of suicide, and the longer they are deprived of treatment, the greater the likelihood they will decompensate and suffer unduly. For example, one detainee committed suicide on May 25, 2015, 61 days after he was found IST and ordered to be transported to Patton. James Siler was attacked in jail by a fellow inmate weeks after he was found IST and ordered to be transported to Patton. All of the currently incarcerated IST detainees face an obvious and significant risk of deterioration of

their mental health conditions while they are warehoused in the jail awaiting treatment.

91. Because incapacitated criminal defendants are often found to be either a danger to themselves or others, they are often strip searched, placed in safety cells and housed in isolation. Because they are mentally ill and often incapable of defending themselves or controlling unusual behaviors, they are at high risk of being beaten, having their property taken, or otherwise being taken advantage of by fellow inmates. Jails are punitive environments and the conditions of confinement undermine the mental health of these detainees as well as the government's interests in competency restoration and trial.

92. Jails control inmates through discipline. Jail disciplinary systems are ineffective for individuals with severe mental health disabilities, such as IST detainees. Because of their unpredictable or disruptive behavior, they are often disciplined, which can include being locked in their cells for 23 hours a day, denied visits or phone calls from friends or loved ones, denied commissary privileges or placed on a disciplinary diet. These forms of discipline exacerbate their mental illness. IST detainees are treated as inmates rather than patients. They do not have regular access to phones. They cannot have contact visits with their families and loved ones. Their cells are locked. Their primary custodians are deputies. Instead of providing the needed mental health treatment, Plaintiffs are subjected to harsh and punitive treatment as a result of their mental disabilities.

93. Unlike the VCPTDF and TRJ, DSH hospitals can treat a person's mental health disabilities and provide competency restoration services in a clinical setting. IST detainees are treated as patients rather than inmates. They have regular access to phones. They can leave their rooms. They can have contact visits with their families and their primary custodians are doctors, nurses and social workers. Their hospitals are staffed by full-time psychiatrists and psychologists, mental health

specialists, social workers, mental health technicians, and nurses. In addition, unlike the VCPTDF and TRJ, DSH hospitals can provide necessary medication, even if it is sometimes involuntary, which is necessary for some persons to regain their competency.

94. In addition to assessment, medication evaluation and management, and individual and group psychotherapy, DSH hospitals provide individuals with mental health disabilities with legal skills training to assist them in learning about the law, the roles of the attorneys, witnesses and the court, and what they can expect after returning to court. This treatment is designed to restore a person to competency to stand trial and to otherwise exercise their constitutional rights meaningfully.

C. Defendants Have Failed to Evaluate and/or Treat Individuals with Mental Health Disabilities Who Have Been Charged with a Crime in Ventura County in a Timely Fashion.

95. According to public records obtained by Plaintiffs' counsel, at the time of the filing of the initial complaint in this matter, there were more than fifteen people waiting in the VCPTDF and TRJ who had been found incompetent to stand trial, had been approved for transportation to Patton or another facility, but had not yet been transported. Plaintiffs are further informed and believe that at least ten, and probably more, of these civilly committed detainees who were in custody at VCPTDF or TRJ waited more than 30 days for transportation to a treatment facility after being civilly committed by the court. Plaintiffs are further informed and believe that at least six, and probably many more, of these civilly committed detainees at VCPTDF or TRJ waited for more than 120 days for transportation to a treatment facility after being civilly committed by the court. Plaintiffs are further informed and believe that delays of three to six months have been commonplace for several years preceding the date of this filing, and that the class affected by these policies numbers well over 100 individuals. Defendants have consistently

failed to timely admit these individuals to DSH hospitals for restoration of competency.

96. Plaintiffs and those similarly situated each have histories of severe mental health conditions. Most have been ordered by courts presiding over their criminal proceedings to be transported to a DSH hospital to be restored to competency to stand trial. Plaintiffs have languished in the jail for weeks and months without necessary care and treatment to the detriment of their overall mental health.

97. As a result of languishing in jail for weeks or months without necessary care and treatment, Plaintiffs and those similarly situated have suffered pain, anxiety, isolation, worsening of their mental illnesses, unequal conditions of confinement, are often subjected to unjustified disciplinary measures, and face an increased risk of being the victims of violence by deputies and other inmates because of their unusual behaviors and perceived or actual inability to defend themselves. ISTs also receive less statutory pre-trial and custody credits. All Defendants are aware of these problems but do nothing to remedy the situation in reckless disregard for, and deliberate indifference to Plaintiffs' constitutional and statutory rights.

D. CFMG Defendants' Custom, Pattern and Practice of Failing to Provide Constitutionally Required Mental Health Treatment

98. The CFMG Defendants have a custom, pattern and practice of failing to timely provide mental health treatment and medication to IST inmates held in their custody.

99. The CFMG Defendants engage in a custom, pattern and practice of failing to provide IST detainees with proper housing to ensure appropriate mental health care treatment. IST inmates are often written up for behavior based on their disability, mental problems and incompetency and are then disciplined inappropriately by placing them in isolation for prolonged periods of time, feeding

them a disciplinary diet, denying them commissary and visits and phone calls from friends and family.

100. CFMG Defendants have a custom, pattern and practice of failing to adequately keep records of mental health treatment of IST detainees, failing to adequately staff the jail with mental health caretakers, failing to prevent suicides of IST detainees, failing to provide therapy or therapeutic services for IST detainees, and failing to ensure IST detainees have equal opportunities to participate in and benefit from jail services, programs and activities. CFMG does not comply with the proper ratio of specialized staff for a psychiatric unit in a hospital or private treatment facility. 22 CFR 70217(a)(13) requires a ratio of 1:6 or fewer of licensed nurses vs. psychiatric patients.

101. CFMG Defendants have deprived IST inmates of mental health treatment and have acted with reckless disregard of IST inmates' State and Federal constitutional and statutory rights. They have acted with deliberate indifference toward IST inmates by failing to provide timely and constitutionally adequate mental health treatment.

102. On August 12, 2015, Sheriff Dean submitted a Proposal Form to the Board of State and Community Corrections (BSCC) for construction financing for a 64-bed housing, clinic and programming unit for inmates with medical and mental health needs. (See Plaintiff's Request for Judicial Notice ("PRJN"), ECF Doc. No. 51, Ex. 1, pp. 1- 2).

103. CFMG was well aware of the contents of this proposal because Nicoletta Weeks, CFMG's Facility Manager at the VCPTDF was, and is, a member of the proposed Todd Road Jail medical/mental health facility's Planning Team, which "meets regularly and performs all the necessary tasks associated with the planning process". (PRJN, Ex. 1, p. 40).

104. In the Proposal, Sheriff Dean identified a growing gap between the number of mentally ill inmates and the number of available beds for them. On a system-wide basis, only 2 percent of available beds are presently designed for inmates in need of medical or mental health treatment. The number of beds allocated for inmate-patients requiring treatment services falls short of meeting even minimal jail system needs. (*Id.* at pp. 12-13)

105. "The PTDF was designed with 12 medical/mental health beds to serve a total inmate capacity of 400 in single-bunk cells." (*Id.* at p. 12) The original medical/mental health housing was inadequate to support the facility's larger population. In response, double-bunking of the existing medical/mental health area and conversion of some office and dayroom space increased total facility medical/mental health housing to 32 beds. (*Id.* at p. 12) "Even with this increase, the Sheriff's Office was forced to utilize a housing area designed for general population inmates to house the overflow of inmate-patients with mental health issues. This housing area has inadequate resources with which to provide necessary services to this population." (*Id.*) Currently, inmate-patients housed in the PTDF's medical/mental health housing do not have access to the higher level of programming that is available at TRJ, due to the PTDF facility's limitations. (*Id.* at p. 22)

106. "Approximately 2 percent of the inmate population is assigned to a specialized medical/mental health care bed, while the current need for the population that has been diagnosed with acute medical/mental health needs is around 5 percent." (*Id.* at p. 19) "The PTDF facility was never intended to house medical or mental health inmate-patients for the length of time they are holding offenders today. The current design does not allow a reasonable way to provide the type of space or programs this population so desperately needs." (*Id.* at p. 29)

107. From 2015-2016, the Ventura County Grand Jury "inquired into the condition and management" of jails in Ventura County and presented its findings in a final report dated May 24, 2016. (See Plaintiffs' PRJN, Ex. 2, ECF Doc. No. 51.) The Grand Jury reported very different and much more alarming figures than Sheriff Dean. "The Main Jail has 18 cells to house the medically ill and two cells to house inmates with Severe and Persistent Mental Illness (SPMI). The severely mentally ill are segregated from the general populace and are supervised 24/7. It was reported that 42% of female inmates and 18% of male inmates exhibit some symptoms of mental illness. Of this population, 21% of the female inmates and 11% of the male inmates are classified SPMI." (*Id.* at p. 6) (emphasis added).

108. These problems are compounded by the lack of treatment beds and resources identified by Sheriff Dean in his Funding Proposal for a new facility at Todd Road last year. Sheriff Dean asserted that "the jail system's 32 dedicated treatment beds [sic] do not provide adequate resources to manage and effectively treat these inmate-patients." (See Plaintiffs' PRJN, Ex. 1, p. 14) Sheriff Dean identified six specific problems relating to treating the mentally ill as a result:

(1) "This shortage of medical/mental health housing has resulted in the release of inmate-patients from medical beds back to general population housing prior to the completion of their medical treatment plans[…] The population of inmates with severe and persistent mental illness that are housed in overflow housing often require separation from other inmates for their own protection." (*Id.* at p. 14);

(2) "While the Sheriff's Office attempts to provide support and programming within the housing unit, the facility is not designed for treatment or for evidence-based programming, diminishing the effectiveness of the treatment provided." (*Id.* at p. 14);

(3) "In addition, the medical/mental health housing unit is located near an area with heavy traffic from within the main circulation area of the PTDF, creating undo stress on the mental health inmate-patient population." (*Id.* at p. 16);

(4) "The lack of adequate programming space within the medical/mental health housing units requires treatment to take place in hallways." (*Id.* at p. 16);

(5) "Currently, the program space for medical/mental health is almost non-existent. When programming does occur, inmate-patients need to be handcuffed to individual tables within the dayroom to allow for safe programming. Handcuffing these individuals to tables in the dayroom is not conducive to the successful treatment of the medical/mental health inmate-patients." (*Id.* at p. 27); and

(6) "Currently, inmate-patients housed in the PTDF's medical/mental health housing do not have access to the higher level of programming that is available at TRJ, due to the PTDF facility's limitations." (*Id.* at p. 22). These TRJ programs include evidence-based treatment for substance abuse, treatment basics, English as a Second Language, Malachi Men class and Women of the Word (both faith-based leadership programs), ServeSafe food handler certificate, working in the Print Shop, moral reconation therapy, Transitions Program, S.T.E.P.S. program, Re-entry Action Planning (R.A.P.) Bridges to Work, Changing Course Journal, Transitional-Aged Youth programs, Vocational Training (emphasis on local agricultural and landscape employment), County Behavioral Health Agency discharge/pre-release counseling and planning for inmates with mental disorders (including that a prescribed medication supply is available for those in need), County Public Health Agency AIDS awareness sessions and individual counseling. (*Id.* at p. 11, 32-34, 93).

109. State defendants have a custom, pattern and practice of failing to accept IST detainees on a timely basis within a reasonable amount of time after the date on which the court entered an order for the Sheriff to transfer the person to a treatment

facility, and failing to recommend placement in alternative programs such as CONREP, private treatment facilities, or a JBCT. Ahlin and Oreol have either implemented policies which fail to provide funding or adequate resources for outpatient treatment in CONREP or the MHM Defendants have failed to use such funding and/or resources for its intended purpose. State Defendants have violated the IST inmates' state and federal constitutional and statutory rights by failing to provide timely and constitutionally adequate mental health treatment or restorative treatment, and the ISTs suffered significant harm as they waited for months for restorative treatment. The delays also resulted in a disparate negative impact on ISTs because the ISTs were deprived of equal statutory pretrial custody credits.

V. CLASS ACTION ALLEGATIONS

110. Plaintiffs SCOTT and MOJICA by and through their guardians ad litem, (collectively, the "Class Plaintiffs") bring this action pursuant to Civil Rule 23(a), (b)(1), (b)(2) and (b)(3) on behalf of themselves and all others similarly situated (collectively, the "Class Members").

111. Class Members seek class-wide equitable, declaratory and injunctive relief, as well as damages, pursuant to Federal Rules of Civil Procedure, Rule 23(a), b(1), and (b)(2), and (b)(3).

112. The Equitable Relief Class (F.R.Civ.P. 23(b)(3)) is defined as follows:

All persons who are presently, and/or who will be in the future:

(1) incarcerated at the VCPTDF or TRJ;

(2) charged with a crime in Ventura County, California;

(3) found by a court to be incompetent to stand trial;

(4) held in custody while awaiting competency restoration services; and,

(5) have waited for court-ordered restoration services for seven or more days (or a reasonable period of time as determined by the constitution) after DHS first had a duty to admit the

detainee. (This duty arises when **both** of the following have occurred: (1) the court enters an order for the Sheriff to transfer the person to a treatment facility, and (2) the treatment facility has received the 1370 Packet from the court.)

113. The damages relief (F.R.Civ.P. 23(b)(3)) class is defined as follows:

All persons who have been, during the time period of May 5, 2014 (or possibly earlier, based on a legal determination of the applicable statute of limitations, hereafter the "damages class period"), until the present, and through the time of resolution of this case

(1) incarcerated at the VCPTDF or TRJ;

(2) charged with a crime in Ventura County, California;

(3) found by a court to be incompetent to stand trial;

(4) held in custody while awaiting competency restoration services; and,

(5) have waited for court-ordered restoration services for seven or more days (or a reasonable period of time as determined by the constitution) after DHS first had a duty to admit the detainee. (This duty arises when **both** of the following have occurred: (1) the court enters an order for the Sheriff to transfer the person to a treatment facility, and (2) the treatment facility has received the 370 Packet from the court.)

A. Numerosity

114. The class meets the numerosity requirement of Rule 23(a)(1). On information and belief, more than 60 Class members are denied the rights at issue each year, and the Damages Class currently exceeds 200 individuals (and growing), making individual joinder of all members impractical. Similarly, the Equitable Relief Class consists of an ever increasing number of individuals whose rights are being violated.

115. The identities of the Class Members are ascertainable through records held by Defendants and/or the courts from which the evaluations or restorations of competency were ordered. Members of the Class may be informed of the pendency of this class action by use of contact information in the possession of Defendants as well as from court records.

B. Commonality.

116. The class meets the commonality requirement of Rule 23(a)(2). Questions of law and fact presented by the named plaintiffs are common to other members of the class. The common contentions that unite the claims of the class include, but are not limited to, the following:

a. Did/do the State Defendants, AHLIN and OREOL, personally implement, or acquiesce in a policy that resulted in denying IST inmates their constitutional rights to timely restorative mental health treatment?

b. Did/do Defendants AHLIN and OREOL act with deliberate indifference to Plaintiff's constitutional rights, and did their actions have a negative disparate impact on Plaintiffs under Title II of the ADA and Section 504 of the Rehabilitation Act?

c. Did the individual State Defendants, AHLIN and OREOL, violate the due process clause of the United States and California Constitutions, Title II of the ADA, Section 504 of the Rehabilitation Act, and the Bane Act, Civil Code § 52.1?

d. Are Plaintiffs entitled to injunctive relief against AHLIN and OREOL in their official capacity for violating Plaintiffs' rights?

e. Are Plaintiffs entitled to damages against AHLIN and OREOL in their individual capacities?

f. As to Defendants MHM Services and Lopez, did they violate the Federal Constitution by failing to refer IST detainees to available alternatives to

DSH facilities with long waiting lists or other out-patient programs so that they could receive restorative mental health treatment on a timely basis. Did DSH provide funding to provide outpatient restorative treatment for ISTs through CONREP? Did MHM fail to refer eligible and suitable IST detainees for outpatient treatment through CONREP? Did their deliberate indifference to the ISTs' treatment in the jail violate the Bane Act? If so, are Plaintiff's entitled to damages against them, as well as injunctive relief?

g. As to Defendants CFMG, Fithian, Adler and Pollack, did they violate Plaintiff's constitutional rights to mental health treatment?

h. Are Plaintiffs entitled to presumed damages under § 1983 and/or statutory damages for violations of California Civil Code 52.1?

117. These and other common questions of law and fact predominate over any questions affecting only individual Class Members. The Class Action is superior to individual actions; the class is manageable, particularly in light of information contained in Defendants' records; and members of the Class are ascertainable through Defendants' records.

C. <u>Typicality.</u>

118. The claims of Plaintiffs SCOTT and MOJICA are typical of those of the class as a whole because they were detained in the County facilities without adequate (or any) mental health services for extended periods (many weeks or months beyond the mandatory periods provided by California law) prior to their admission to a treatment facility which provides restorative services in violation of the Federal Constitution, Federal Statutes, State Constitution and State law.

119. The Class Plaintiffs' claims are typical of the claims of the Class because Defendants have uniformly and systematically failed to provide timely adequate mental health treatment and competency restoration services to Class Plaintiffs and to the Class.

120. Class Plaintiffs will fairly and adequately protect the interests of the Class. There are no known conflicts of interest between the Class Plaintiffs and other Class Members. The Class Plaintiffs will vigorously prosecute this action on behalf of the Class. The Class Plaintiffs are represented by competent counsel with considerable skill and experience in civil rights and class action litigation, who will vigorously prosecute this case on behalf of the Class.

D. Adequacy of Representation.

121. Class Plaintiffs will fairly and adequately protect the interests of the Class. There are no known conflicts of interest between the Class Plaintiffs and other Class Members. The Class Plaintiffs will vigorously prosecute this action on behalf of the Class. The Class Plaintiffs are represented by competent counsel with considerable skill and experience in civil rights and class action litigation, who will vigorously prosecute this case on behalf of the Class.

122. Defendants have acted or refused to act on grounds generally applicable to the entire class, thereby making final injunctive and declaratory relief appropriate with respect to the Class as a whole.

123. The claims asserted herein are capable of repetition while evading review. There is a continuing and substantial public interest in these matters.

124. The class action is the best available method for the efficient adjudication of these legal issues because individual litigation of these claims would be impracticable, and individual litigation would be unduly burdensome to the courts. Further, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single-adjudication, economies of scale, and comprehensive supervision by a single court.

VI. EXHAUSTION OF JURISDICTIONAL PREREQUISITES

125. Plaintiff representatives on behalf of themselves and Class Members exhausted the administrative remedies to the extent available required under the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. §1997e, prior to filing this Complaint. Additionally, such remedies were unavailable within the meaning of the PLRA because a) Ventura County Jail asserted that the claims were beyond its control and it had no ability to remedy them, b) Plaintiffs totally lacked mental capacity such that they were able to pursue administrative remedies on their own, and Defendants had no grievance mechanism available for such circumstances, and c) Plaintiffs could not pursue administrative remedies against a State entity or the private defendants because Plaintiffs were not inmates of any state entity or private defendant at the time they failed to receive adequate mental health treatment and restorative services such that administrative remedies were available to them.

126. Plaintiff representatives, on behalf of themselves and Class Members, filed Government Code §910 tort claims with the State of California and the County of Ventura. The County denied the 910 claim on May 3, 2016. Inexplicably, the State stated that Claim G631362 for SCOTT was untimely even though SCOTT was still in the custody of the VCPTDF and the other class representative, MOJICA, was also in custody of the VCPTDF at that time. Plaintiffs and Class Members have timely filed this lawsuit thereafter.

127. Plaintiff representatives, on behalf of themselves and Class Members, filed a complaint with the DHS on or about November 7, 2016 in order to comply with the administrative remedies exhaustion requirements pursuant to California Code of Regulations, Title 22, § 98003. Plaintiffs will amend this Complaint to add a claim under Civil Code § 11135 when those administrative remedy provisions have been exhausted.

VII. DAMAGES

128. As a result of the various violations alleged herein, Plaintiffs experienced physical, emotion and mental harm, and general and/or special damages. Plaintiffs seek all available damages remedies, including but not limited to compensation for actual damages, special and general damages, statutory damages, and, as against the individual defendants, punitive or exemplary damages. They also seek civil penalties to the extent available.

VIII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Fourteenth Amendment to the United States Constitution (42 U.S.C. §1983) and Article 1, Section 7, California Constitution (Due Process)
Against Defendants AHLIN, OREOL, (for injunctive relief in their official capacities, and for damages in their personal capacities), and against MHM and Lopez for damages and injunctive relief,
And Does 1-10

129. As a result of the various violations alleged herein, Plaintiffs experienced physical, emotional and mental harm, and general and/or special damages. Plaintiffs seek all available damages remedies, including but not limited to compensation for actual damages, special and general damages, statutory damages, and, as against the Individual Defendants, punitive or exemplary damages. They also seek civil penalties to the extent available.

130. Plaintiffs incorporate by reference each and every allegation contained in the foregoing and following paragraphs, as though set forth herein *verbatim.*

131. Due process requires that the nature and duration of confinement must bear a reasonable relation to the purpose for which a person is committed.

132. Once an individual is found IST, the only lawful purpose for confinement is to treat the individual in order to return him or her to competency.

133. Individuals found IST have a constitutional right to such individualized treatment as will give each of them a realistic opportunity to be cured or to improve their mental condition to a point of competency.

134. IST inmates are also entitled to constitutionally adequate mental health treatment during the time in which they await restorative treatment. The lengthy delays result in significant harm to the ISTs as described herein.

135. The State Defendants have consistently failed to timely treat IST detainees after their Constitutional and statutory duty to do so arose. The Individual State Defendants, AHLIN and OREOL, are the supervisors and policy makers charged with enacting policies to provide restorative treatment to IST detainees in a timely manner.

The State Defendants failed to provide timely and adequate mental health treatment to, IST inmates, despite their knowledge of the substandard conditions of confinement experienced by the IST detainees as they awaited transfer for restorative treatment. The State Defendants knew, or should have known, that the lengthy delays in transferring ISTs from the jail to an appropriate restorative treatment facility, and the failure to change their policies in order to remedy these lengthy delays, result in significant harm to the ISTs as set forth in this complaint.

136. Defendant MHM and Defendant Marcus Lopez have discretion under state guidelines to place IST detainees in CONREP out-patient restorative treatment programs in a JBCT program, or a private facility, which would reduce the delay in placement and the provision of constitutionally required timely restorative mental health treatment. Such placements would reduce the delay by allowing immediate access to restorative treatment for eligible and suitable ISTs and reduce the number of ISTs being held in custody awaiting treatment at a DSH hospital. Despite the authority to make such placements and with knowledge of the unconstitutional delays, MHM routinely makes recommendations for treatment at Patton or, more

recently, to a DSH hospital which results in unconstitutional delays in treatment. Plaintiffs are informed and believe and based thereon allege that in 2017, statewide DHS has referred more than 28-29 IST inmates from various counties in California to outpatient treatment in CONREP. The First IST detainee from Ventura County to receive outpatient treatment in CONREP was Brian McKenney on February 17, 2017. Mr. McKenney was placed in an outpatient sober living home and treated by a psychiatrist employed or under contract with MHM. As of today, Plaintiff is aware of no IST detainees from Ventura who have been referred to the JBCT. Despite their ability to place Ventura IST inmates in CONREP and JBCT facilities, and despite their knowledge of unconstitutional delays in placement, Lopez and MHM have acted with deliberate indifference, to Plaintiffs' constitutional right to timely restorative mental health treatment.

137. The California statutory scheme set forth above provides Plaintiffs and the Plaintiff Class a liberty interest in timely and meaningful medical and mental health treatment while being held pending evaluation, treatment and restoration of their mental health. However, Plaintiffs' claims do not depend on such a state created liberty interest, as Plaintiffs have independent liberty interests in freedom from incarceration absent a criminal conviction and in restorative treatment. Plaintiffs are civilly committed detainees who have not yet been convicted of the crime for which they were pending trial before being found to be IST. Due process requires that they be provided with mental health treatment that gives them a realistic opportunity to be cured or improve the mental condition for which they were confined to a point that they are competent to stand trial.

138. These Plaintiffs and the Plaintiff Class are incarcerated civil detainees who lose statutory pre-trial custody credit that ordinary criminal defendants receive while held pending restoration of their mental competency. Therefore, ISTs are often held in custody longer. These IST detainees sit in county jails for months

without treatment so their mental health often deteriorates. They are disciplined more frequently than other inmates, are often taken advantage of by other inmates, and are at a higher risk for suicide.

139. Acting under color of state law, Defendants have violated and caused violations of the Class Plaintiffs' due process rights pursuant to the Fourteenth Amendment to the United States Constitution.

140. Unless enjoined by the Court, Defendants will continue to violate and cause the violation of the constitutional rights of the Class Plaintiffs and the Class.

141. Plaintiffs have no adequate remedy at law for the continuing, ongoing violations of their rights, and will suffer irreparable harm unless the court enjoins the defendants' conduct.

142. As a direct and proximate cause of the aforementioned acts of Defendants, Plaintiffs and those similarly situated have been damaged in amounts to be determined at trial.

143. Under this claim, Plaintiffs seek damages from Defendants AHLIN and OREOL in their personal capacity, and against MHM and Lopez, and for injunctive relief against them.

SECOND CLAIM FOR RELIEF

Failure to Provide Adequate Medical Care to Inmates: Violations of the 14th Amendment of U.S. Constitution, and Article I, Sections 7 and 17 of California Constitution As Against Defendants CFMG, Fithian, Adler and Pollack

144. Plaintiffs incorporate by reference each and every allegation contained in the foregoing and following paragraphs, as though set forth herein *verbatim.*

145. Defendants CFMG and Fithian, have a policy and practice of failing to provide adequate mental health care to IST detainees in the Jail. This policy and practice was implemented by Defendant Adler, the medical director at VCPTDF, and Defendant Pollack, the psychiatrist at VCPTDF. The mental health care

provided by these Defendants to IST detainees in the Jail is woefully inadequate and falls far short of all of the minimum elements of a constitutional mental health system.

146. Defendants are deliberately indifferent to the fact that their failure to provide adequate mental health care subjects inmates to a substantial risk of deteriorating psychiatric conditions, extreme and unnecessary anguish and suffering, and, in some cases, even death. Defendants have been and are aware of all of the deprivations complained of herein, and have condoned or been deliberately indifferent to such conduct.

147. Defendants' failure to provide minimally adequate mental health care to pre-trial detainees violates the due process clause of the Fourteenth Amendment to the United States Constitution, and Article I, Sections 7 and 15 of the California Constitution.

148. By their policies and practices described herein and above, Defendants CFMG, Fithian, Adler and Pollack, subject Plaintiffs and the IST class they represent, to inadequate mental health care which falls below minimal constitutional and statutory standards during their pre-trial incarceration at VCPTDF and TRJ.

149. These policies and practices have been, and continue to be, implemented by Defendants and their agents or employees in their official capacities, and are the proximate cause of Plaintiffs' and the IST class's ongoing deprivation of rights secured by the United States Constitution and the California Constitution.

150. All mental health care in the Jails, like medical care, is provided by Defendant CFMG and its employees. CFMG is a for-profit corporation which provides these services pursuant to its contract with Defendants COUNTY and VCSO, and DEAN.

151. Defendants CFMG, Fithian, Adler, and Pollack are the sole providers of and fully control all medical and mental health care available to inmates in VCPTDF and TRJ. Accordingly, inmates cannot receive any mental health care services--including psychotropic medication, group and individual therapy, and suicide intervention--unless Defendants provide them. Defendants control inmates' access to mental health care professionals, inside or outside of the Jails, as well as their access to laboratory or other diagnostic testing.

152. CFMG Defendants fail to provide adequate mental health care to the mentally ill population including IST detainees at the pre-trial detention facility, in that they have been aware of the facility's deficiencies identified in Sheriff Dean's August 2015 "Proposal Form to the Board of State and Community Corrections" and the Ventura County Grand Jury report in 2015-2016 (which include: (1) on a system-wide basis, only 2% of available beds are designated for inmates in need of medical or mental health treatment, while the current need is around 5% of the inmate population; (2) there are only two cells to house the severely mentally ill inmates, and as a result they are segregated from the general populace; (3) the program space at the pre-trial detention facility is almost non-existent and those at the pre-trial detention facility do not have access to the level of programming at the Todd Road facility; and (4) the medical/mental health housing unit is located near an area with heavy traffic, creating undo stress on the mental health inmate-patient population) but have failed to provide adequate treatment in light of the facility's deficiencies, including a failure to place IST detainees in alternative facilities which could provide adequate care for these inmates.

153. Defendants maintain insufficient numbers of mental health care professionals to provide minimally adequate care to the IST detainees.

154. Upon information and belief, Defendants CFMG, Fithian, Pollack and Adler, fail to work with jail custody staff in order to ensure that the mentally ill

inmates, including IST detainees, receive adequate treatment with regard to : (1) appropriately housing for inmates with serious mental illness; (2) transferring inmates to facilities that provide inpatient mental health care when it is necessary; (3) identifying inmates who are at risk of suicide and responding adequately to inmates who are exhibiting suicidal tendencies; (4) treating mental health issues without resorting to use of physical force, improper use of restraints, and/or violence to control the inmates; (5) responding to mentally ill inmates whose non-conforming behaviors are a product of their mental illness; (6) recognizing when they need to refer mentally ill inmates to therapy; and (7) improperly placing inmates with mental illness in safety cells for prolonged periods of time.

155. Defendants provide little to no individual or group treatment to inmates with mental health problems, even for inmates who are acutely or chronically mentally ill. Therapy in an individual or group setting is almost never offered or provided to inmates, regardless of whether inmates were receiving therapy as a part of their treatment for mental illness outside of the Jail.

156. Defendants do not provide psychosocial rehabilitation services, which include structured out-of-cell programming that addresses their symptoms of mental illness, reduces their isolation, and promotes compliance with treatment and medications. Without this care, seriously mentally ill inmates are at an unreasonable risk of decompensating and of not responding fully to the treatment they do receive. This deterioration can take many damaging forms, including increased symptoms and non-adherence to treatment.

157. Defendants CFMG, Fithian, Adler and Pollack fail to provide adequate mental health treatment to inmates housed in administrative segregation. Upon information and belief, these Defendants and jail custody staff do not have adequate safeguards in place to ensure that inmates with mental illness are only placed in administrative segregation when absolutely necessary. IST Detainees are

housed in administrative segregation units in ways that place such inmates at substantial risk of serious harm and with little to no amount of structured out of cell time. The conditions in the administrative segregation units are extremely punitive, isolating, and restrictive. These conditions significantly increase the risk that inmates with mental illness will have their condition decompensate when placed in administrative segregation. A significantly disproportionate percentage of suicides occur in administrative segregation units. Because of the risks posed by administrative segregation to inmates with mental illness, a consensus has been reached in mental health correctional communities that inmates with mental illness should only be placed in administrative segregation if absolutely necessary.

158. In addition, if inmates with mental illness are placed in administrative segregation, there must be limits on the amount of time they remain in such units, they must be monitored closely, and they must be provided with significant structured and unstructured out-of-cell time. IST Detainees are often housed in isolation cells, commonly referred to as "the hole" and safety cells. When housed in an isolation cell, inmates have even less freedom to move around and interact with other inmates, and they have extremely limited access to programs and services at the Jail. Accordingly, inmates with serious mental illnesses are denied access to programs and services because Defendants place inmates with serious mental illness in lockdown units or isolation cells.

159. Upon information and belief, Defendants CFMG, Fithian, Adler and Pollack exacerbate the psychological trauma experienced by inmates with serious mental health conditions who are housed in safety cells by failing to provide them with necessary mental health care and by allowing overuse of these safety cells for prolonged periods of time by jail custody staff. These inmates do not receive sufficient contact with mental health providers. As a result, their nonconforming

behaviors often escalate and they are forced to stay in safety cells or administrative segregation.

160. Upon information and belief, Defendants fail to intervene in the disciplinary process which fails to take into account behavior which results from inadequate mental health care. Upon information and belief, as a result of Defendants' failure to provide adequate mental health care, inmates with serious mental impairments may be unable to conform to Jail rules or be safe.

161. Rather than providing the ISTs with the treatment that they need, VCSO deputies discipline the IST detainees in various ways, including but not limited to: (1) housing these inmates in isolation in the rubber rooms; (2) taking away their visitation rights; (3) taking away commissary rights; and (4) taking away phone calls. Defendants CFMG, Fithian, Adler and Pollack do nothing to explain to VCSD staff that IST detainees should not be disciplined for behaviors that manifest mental illness and are not discipline problems. Plaintiffs are informed and believe that they do nothing to intervene on behalf of the IST detainee population, not only to prevent unwarranted discipline, but to ensure that their mental health issues are treated appropriately and are not exacerbated, and that they receive the constitutionally required mental health treatment after their IST designation and before transfer to a State hospital.

162. As the primary treating psychiatrist for detainees in custody at the VCPTDF, Dr. Pollack can refer acutely psychotic inmates for treatment at an outside facility immediately on an emergency basis or by seeking court approval to modify the conditions of a pre-detainee's bail or a sentenced prisoner's custody status pursuant to Welfare & Institutions Code section 5150 (if the detainee is a danger to self or others or is gravely disabled), or pursuant to Penal Code section 4011.6. Plaintiff is informed and believes that such referrals are discouraged because they must be paid for out of CFMG's budget and therefore such referrals are almost never made

which constitutes deliberate indifference the detainees' serious medical and psychological needs.

163. Upon information and belief, VCPTDF and Defendants CFMG, Fithian, Adler and Pollack lack adequate policies and procedures regarding the transfer of IST inmates who require inpatient care to outside medical facilities that provide higher levels of care and treatment. Inmates in the Jail may require care at an inpatient facility in a variety of circumstances, including, but not limited to, when they are in acute mental health crisis and they have been found IST. The County Jail is not a facility licensed to provide inpatient mental health care treatment to any individuals, and the Jail and defendants CFMG, Fithian, Adler and Pollack do not provide an adequate inpatient level of care to IST detainees.

164. Plaintiffs and the IST detainee class have each been damaged by Defendants' failure to provide adequate mental health care to the IST detainees before their transfer, including but not limited to, suffering pain, anxiety, isolation, and worsening of their mental illnesses. CFMG Defendants' failure to provide adequate mental health care to the IST detainees causes further damages by allowing for these inmates to suffer unequal conditions of confinement, punishment due to their IST condition, denial of equal statutory custody credits, being subjected to unjustified disciplinary measures, increased risk of being the victims of violence by other inmates because of their perceived or actual inability to defend themselves, as well as Defendants' failure to provide adequate mental health care in response to the IST inmates' serious medical needs continues to result in further significant injury and the unnecessary and wanton infliction of pain.

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THIRD CLAIM FOR RELIEF

Violation of Title II of the Americans with Disabilities Act (42 U.S.C. §12132 *et seq*.) Against the Defendants AHLIN, and OREOL

165. Plaintiffs incorporate by reference each and every allegation contained in the foregoing and following paragraphs, as though set forth herein *verbatim.*

166. The ADA defines "a qualified individual with a disability" as a person who suffers from a "physical or mental impairment that substantially limits one or more major life activities," including, but not limited to, "caring for oneself, performing tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." 42 U.S.C. §12102(1)(A), (2)(A). All Plaintiffs and the IST class members are individuals with a disability as defined in 42 U.S.C. §12102 and have met the essential eligibility requirements for the receipt of the services, programs, or activities of the Defendants.

167. Defendants AHLIN, who is the director of DSH, and OREOL, the Executive Director of Patton State Hospital where most of Ventura County ISTs have historically been sent, implemented the "one in and one out" policy that deprived IST detainees of timely restorative mental health treatment. AHLIN and OREOL have a mandatory statutory duty to treat the ISTs' mental disabilities and a constitutional duty to do so in a timely manner. In addition, the Defendants AHLIN and OREOL, by failing to implement policies which would allow for the timely and adequate mental health a restorative treatment, caused a negative disparate impact on a class of mentally disabled persons by barring them from "meaningful access" to not only the public benefit of those services, but also impairing their access to an adequate criminal defense. During the lengthy delays, ISTs are harmed because they lose pre-trial custody credits, which they otherwise

would have earned if restorative treatment had been provided in a timely manner. Their actions burden ISTs in a manner different and greater than it burdens others. These defendants violate Title II of the ADA by implementing and acquiescing to placement policies such as the "one in and one out" policy that have a negative disparate impact against IST inmates because these policies: (a) deprived them of adequate mental treatment, and (b) through the Defendants' actions and failure to act, deprived them of timely access to the courts, (c) prolonged their incarceration by failing to provide immediate restorative services, and (d) deprived them of equal statutory pre-trial custody credits.

168. AHLIN and OREOL have alternatives that they could and should have implemented to eliminate the violations of Title II of the ADA and the unconstitutional delays in treatment by implementing restorative treatment centers inside the jail, such as the pilot program at San Bernardino County Jail, ensuring appropriate IST detainees receive community based outpatient mental health treatment such as CONREP, eliminating the arbitrary "one in and one out" policy so inmates who are found IST earlier do not have to wait longer than inmates from other Counties who do not have such a long waiting list to receive housing, supplying more beds on-site at existing facilities, building more housing at existing facilities, hiring more mental health professionals to treat IST detainees at existing facilities, leasing existing lock down facilities that can easily and cheaply be converted to mental hospitals. They can also reduce the waiting time by reducing the bureaucratic hurdles for transfer such as reducing the paperwork required for transfer in the 1370 packets so if an inmate is designated they can be transferred right away instead of waiting for the compilation of unnecessary paperwork that delays the transfer. If the paperwork for the 1370 packet is lost, not complete, or delayed, AHLIN and OREOL have implemented policies that IST inmates cannot be transferred until the paperwork is complete or there is a showing made as to the

reason the paperwork cannot be completed, resulting in the warehousing of IST detainees without appropriate mental health treatment. In addition, ISTs who are unlikely to be restored to competency are held for lengthy periods of time even after a determination could be made that the detainee is unlikely to be restored to competency. Such a finding would result in the detainee being released from DSH and returned to Ventura County for further proceedings, such as the initiation of a conservatorship. These actions and alternatives would result in more available beds, reduce the waiting list, and reduce the time that ISTs languish in jail.

169. Congress enacted the ADA upon finding, among other things, that "society has tended to isolate and segregate individuals with disabilities" and that such forms of discrimination continue to be a "serious and pervasive social problem." 42 U.S.C. §12101(a) (2).

170. In response to these findings, Congress explicitly stated that the purpose of the ADA is to provide "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and "clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." 42 U.S.C. §12101(b) (1)-(2).

171. Title II of the ADA provides in pertinent part: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. §12132.

172. The ADA requires public entities to ensure that their programs, services and activities are accessible to and useable by detainees and inmates with disabilities and must provide reasonable accommodations and modifications so they can avail themselves of these programs, services and activities.

173. At all times relevant to this action, the government entities DSH and Patton were each a "public entity" within the meaning of Title II of the ADA and provided a program, service or activity to the general public.

174. Title II of the ADA prohibits a public entity from discriminating against a qualified individual with a disability on the basis of a disability. 42 U.S.C. §12132.

175. Defendants AHLIN and OREOL are mandated to operate each program, service, or activity "so that, when viewed in its entirety, it is readily accessible to and useable by individuals with disabilities." 28 C.F.R. §35.150; see also 28 C.F.R. §§35.149 & 35.151. Defendants AHLIN and OREOL continue to violate the ADA by maintaining inaccessible facilities that deny people with disabilities access to programs, services and activities through the arbitrary "one in and one out" policy, and the refusal to house Ventura IST detainees in alternative ways, particularly by failing to recommend and place ISTs in community based facilities which they could receive restorative treatment through CONREP, Defendants also fail to eliminate the bureaucratic hurdles and unnecessary paperwork that further delays transfer of IST detainees to facilities where they can receive appropriate mental health care to restore their competency.

176. DSH and Patton, and Defendants AHLIN and OREOL have been personally involved in and personally acquiesced to "the one in and one out" policy and other practices which have caused a negative disparate impact on IST detainees. They know their policies and practices have resulted in the unconstitutional treatment delays and a disparate negative impact on ISTs, yet Defendants have allowed the practices to be continued without making obvious and appropriate changes to the policies to remedy the constitutional and statutory violations. Their actions had a negative disparate impact upon IST inmates and excluded Plaintiffs and Class Members from participation in the services, programs and treatment to which they were entitled. Their actions burden ISTs in a manner different and greater than it

burdens others. These policies have denied ISTs the rights and benefits accorded to others because of their IST status and inherent mental disabilities. Defendants have also violated the ADA by failing or refusing to provide Plaintiffs with reasonable accommodations and other services related to their disabilities. See generally 28 C.F.R. §35.130.

177. DSH and Patton, and AHLIN and OREOL, are further required under the ADA's "integration mandate" to provide care in integrated environments for as many disabled persons as is reasonably feasible. In order to comply with the integration mandate, DSH and Patton, and AHLIN and OREOL, are required to make "reasonable modifications in policies, practices, or procedures" that are "necessary to avoid discrimination on the basis of disability." 42 U.S.C. §12132; 28 C.F.R. §35.130(b)(7); See also *Townsend v. Quasim*, 328, F.3d 511, 515-518 (9th Cir. 2003); *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 592, 600-601, 119 S.Ct. 2176 (1999); *Arc of Washington State, Inc. v. Braddock*, 427 F.3d 615 (2005).

178. DSH and Patton, and Defendants AHLIN and OREOL, have failed to comply with the ADA's "integration mandate" by limiting DSH mental health services to a particular number of mentally disabled inmates. DSH and Patton, and Defendants AHLIN and OREOL, have not and cannot demonstrate that either (1) that they have made a comprehensive and effective state program to cope with the lack of services for these mentally ill inmates; or (2) that the necessary modifications would fundamentally alter the nature of the service, program, or activity to be provided.

179. As a direct and proximate result of the aforementioned acts, Plaintiffs have suffered significant harm as set forth herein. These harms include pain, humiliation, hardship, anxiety, isolation, and a worsening of their mental illnesses

due to Defendants' failures to address accommodations, modifications, services and access required for Plaintiffs' disabilities.

180. DSH and Patton, and Defendants AHLIN and OREOL were personally involved in the decisions that resulted in the negative disparate impact on Plaintiffs' class and were deliberately indifferent to the rights of Plaintiffs in that they had known of the problem for years but have not remedied the problem.

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

182. Pursuant to 42 U.S.C. §12133, Plaintiffs are entitled to declaratory and injunctive relief as well as reasonable attorneys' fees and costs incurred in bringing this action.

FOURTH CLAIM FOR RELIEF

Section 504 of the Rehabilitation Act (29 U.S.C. §794 *et seq*.) Against the Defendants AHLIN and OREOL

183. Plaintiffs incorporate by reference each and every allegation contained in the foregoing and following paragraphs, as though set forth herein *verbatim.*

184. Section 504 of the Rehabilitation Act of 1973 provides in pertinent part: "[N]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance..." 29 U.S.C. §794.

185. Each Plaintiff and Class Member is at all times relevant herein a qualified individual with a disability within the meaning of the Rehabilitation Act because they have a physical impairment that substantially limits one or more of their major life activities. 29 U.S.C. §705(20) (B).

186. Plaintiffs and Class Members are otherwise qualified to participate in the services, programs, or activities that are provided to inmates at DSH facilities. See 29 U.S.C. §794 (b).

187. Plaintiffs are informed and believe, and based thereon allege that at all times relevant to this action DSH and Patton were recipients of federal funding within the meaning of the Rehabilitation Act. At all times relevant to this action, AHLIN was and is the Director of DSH and OREOL was and is the Executive Director of Patton. They operate and direct DSH and Patton, which are recipients of federal funds, and are required to reasonably accommodate inmates with disabilities in their facilities, program activities, and services. The act further requires the Defendants to modify their facilities, services, and programs as necessary to accomplish this purpose.

188. DSH and Patton, and Defendants AHLIN and OREOL, implemented and directed policies and practices, or personally acquiesced in such policies and practices, such as the "one in and one out" policy and a policy which did not result in the utilization of available alternative placements. These policies had a negative disparate impact on Plaintiffs' class, and were implemented or acquiesced to with deliberate indifference to the rights of Plaintiffs. The State Defendants knew, or should have known, that the lengthy delays in transferring ISTs from the jail to an appropriate restorative treatment facility, and the failure to change their policies in order to remedy these lengthy delays, result in significant harm to the ISTs as set forth in this complaint.

189. At all times relevant to this action, the government entity Defendants were each a "public entity" that received federal funding for various programs and therefore are liable under the Rehabilitation Act.

190. Through their acts and omissions described herein and above, Defendants AHLIN and OREOL have violated the Rehabilitation Act by implementing and

directing policies and practices, or personally acquiesced in such policies and practices, such as the "one in and one out" policy, that had a negative disparate impact on Plaintiffs' class, and was done with deliberate indifference to the rights of Plaintiffs. Defendants AHILIN and OREOL failed to modify policies, procedures, and their facilities to accommodate IST inmates with disabilities.

191. Plaintiffs are informed, believe, and based thereon allege that Defendants AHLIN and OREOL committed the acts and omissions alleged herein with knowledge of the harm caused by their policies in reckless disregard for the rights of Plaintiffs and Class Members. Because they were personally involved in, aware of, and directing policies and practices such as the arbitrary "one in and one out" policy and they failed to change the policies to remedy the constitutional and statutory violations, Plaintiffs suffered harm. Their acts and omissions burden ISTs in a manner different and greater than it burdens others, and results in a negative disparate impact upon Plaintiffs. Defendants have also violated the Act by providing substandard, inadequate or nonexistent accommodations or refusing to provide plaintiffs with reasonable accommodations for their disabilities.

192. Pursuant to the Rehabilitation Act's implementing regulations, specifically, 28 C.F.R. 42.521, Defendants AHLIN and OREOL were required to make any structural changes necessary to render the programs and activities in providing constitutionally required, reasonable and timely restorative mental health treatment to IST inmates. They have not done so for IST detainees in Ventura County, although they knew of the problem, and have acknowledged the existence of the problem for years.

193. As a direct and proximate result of the aforementioned acts, Plaintiffs suffered and continue to suffer humiliation, hardship, anxiety as well as deteriorating physical and mental health conditions due to Defendants AHLIN and

OREOL's failures to address accommodations, modifications, services and access required for their disabilities.

194. Plaintiffs and class members are entitled to damages as a result of the foregoing violations according to proof.

195. Because Defendants AHLIN's and OREOL's conduct of deliberate indifference is ongoing, declaratory and injunctive relief are appropriate remedies. Moreover, as a result of Defendants' actions, Plaintiffs and the class members are suffering irreparable harm, and thus immediate relief is appropriate.

196. Pursuant to 29 U.S.C. §794(a) Plaintiffs are entitled to declaratory and injunctive relief and to recover from Defendants the reasonable attorneys' fees and costs incurred in bringing this action.

FIFTH CLAIM FOR RELIEF

***California Civil Code* §52.1 Interference with Exercise of Civil Rights Against Defendants AHLIN, OREOL, for Injunctive Relief Only, and Against CFMG, Fithian, Adler and Pollack, MHM Services and Marcus Lopez, and Does 1-10 for Damages and Injunctive Relief**

197. Plaintiffs incorporate by reference each and every allegation contained in the foregoing and following paragraphs, as though set forth herein *verbatim.*

198. As alleged above, the conduct of the Defendants AHLIN, OREOL, CFMG, Fithian, Adler and Pollack, MHM Services and Marcus Lopez, and Does as described herein violated *California Civil Code* §52.1, in that they interfered with Plaintiffs' and Class Members' exercise and enjoyment of their civil rights, by purposefully failing to respond to the ISTs' serious psychological needs and denying them access to timely restorative treatment.

199. Plaintiffs seek only injunctive relief against AHLIN and OREOL.

200. Defendants, separately and independently, were deliberately indifferent to Plaintiffs' serious psychological needs, failed to provide adequate and appropriate

mental health care, and further failed to provide timely treatment. As a result, Plaintiffs were held in criminal custody when they were required to be held in civil detention for treatment and were held in criminal custody for a period of time longer than they otherwise would have. By doing so, Defendants separately and independently, through coercion, violated Plaintiffs' rights under the Fourteenth Amendment of the United States Constitution and other statutes described above.

201. Plaintiffs are informed and believe that MHM receives funding from DSH to provide outpatient treatment to ISTs but has failed to provide such services to the Plaintiff Class. DSH has delegated to Defendants MHM and LOPEZ the task of conducting placement recommendations for IST detainees. Despite the authority to make such placements and with knowledge of the fact that the ISTs do not receive adequate and appropriate mental health treatment while incarcerated, MHM routinely makes placement recommendations to DSH hospitals which foreseeably result in lengthy delays in treatment. Numerous ISTs charged with nonviolent felonies or misdemeanors have been statutorily eligible and suitable pursuant to DSH guidelines to participate in outpatient treatment. Defendants MHM and LOPEZ nonetheless fail to recommend placement alternatives to a DSH hospital such as referrals to jail based competency treatment programs or private psychiatric facilities. More significantly, Defendants MHM and LOPEZ fail to recommend outpatient treatment in CONREP which they are responsible for providing pursuant to MHM's contract with DSH.

202. Each of the Defendants separately and independently through their acts and omissions were deliberately indifferent to the ISTs serious medical/psychological needs because they knew or should have known that the ISTs were not receiving adequate and appropriate treatment about the lack of adequate but nonetheless delayed their access to such treatment.

203. Plaintiffs are informed, believe, and based thereon allege that in engaging in the conduct alleged herein, Defendants acted with deliberate indifference and the intent to injure, vex, annoy and harass Plaintiffs, and subjected Plaintiffs to cruel and unjust hardship in conscious disregard of Plaintiffs' rights with the intention of causing Plaintiffs injury and depriving them of their constitutional rights.

204. As a result of the foregoing, Plaintiffs seek exemplary and punitive damages against the private entity and individual Defendants.

205. As a direct and proximate cause of the aforementioned actions of Defendants and Does, Plaintiffs were injured as set forth above, thereby entitling Plaintiffs to damages against Defendants under Cal. Civil Code §52.1, including but not limited to actual damages, exemplary damages, civil penalties, statutory damages and attorneys' fees.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

A. For certification of a class as defined above;

B. For a declaration that Defendants are depriving Plaintiffs and Class Members of their due process rights pursuant to the Fourteenth Amendment to the United States Constitution, the Americans with Disabilities Act; and the other statutes alleged above.

C. For the issuance of preliminary and permanent injunctions restraining Defendants from violating the Fourteenth Amendment to the United States Constitution and the Americans with Disabilities Act in the confinement of individuals awaiting competency evaluation and/or restoration treatment, and violating the other statutes alleged above, including but not limited to:

1. An order requiring Defendants AHLIN and OREOL to provide prompt and adequate restorative mental health treatment to Plaintiffs

and Class Members in a reasonable and timely manner as required by the Constitution and applicable statutes;

2. An order requiring Defendants MHM and LOPEZ to provide referrals to restorative mental health treatment within the statutorily-required and constitutionally mandated time frame and to refer qualifying IST detainees to alternative facilities, including but not limited to the outpatient CONREP program;
3. An order requiring proper training of CFMG mental health staff to ensure that Plaintiffs and Class Members receive proper constitutionally adequate and appropriate mental health care and treatment while they are in county custody awaiting restorative treatment;
4. An order that Class Members shall not improperly be placed in isolation or disciplined due to their mental impairments, and shall receive access to full programming, visitation and commissary while in county custody;
5. An order that, if the transfer from county custody to a State Mental Health Hospital as designated by DSH cannot be accommodated within the constitutionally and statutorily reasonable time period as required by this Court to transfer an inmate to State Mental Health Hospital for restorative mental health care treatment to restore competency, the Defendants either release the inmate, or find alternative custody where medications and restorative health care can commence;
6. An order that the DSH, Patton and Defendants AHLIN and OREOL, abolish the "one in and one out" policy, and accept Class Members within the constitutionally or statutorily time period as required by

this Court to transfer to a State Mental Health Hospital, and hire the staff and establish facilities so that Class Members can be transferred on a timely basis as required by the applicable statutes and federal and state constitutional provisions;

7. An order that the Defendants comply with all applicable time periods for various actions, including reporting requirements on Class Members, as required by State law; and,

8. An order that the Defendants comply with all federal and state laws, including the Penal Code, the Statutes cited above, and the State and Federal Constitution, concerning the treatment, custody and care of Class Members.

D. For general, special and compensatory damages for the named Plaintiffs and Class Members, to be determined according to proof;

E. For any applicable statutory damages or penalties;

F. For punitive damages against the applicable Defendants.

G. For an award of Plaintiffs' costs and attorneys' fees under 42 U.S.C. §1988, 42 U.S.C §12205; Cal. Civil Code §52.1(h), Cal. CCP §1021.5, and other applicable statutes; and,

H. For such other and further relief as the Court may deem just and proper.

Dated: July 14, 2017

LAW OFFICES OF BRIAN A. VOGEL, PC
By: /s/ Brian A. Vogel
BRIAN A. VOGEL

Dated: July 14, 2017

KAYE, McLANE, BEDNARSKI & LITT, LLP
By: /s/ Barrett S. Litt
BARRETT S. LITT
Attorneys for Plaintiffs and the Class

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial.

Dated: July 14, 2017

LAW OFFICES OF BRIAN A. VOGEL, PC
By: /s/ Brian A. Vogel
BRIAN A. VOGEL

Dated: July 14, 2017

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