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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FRED PIERCE, et al.,

Plaintiffs,

vs.

COUNTY OF ORANGE, et al.,

Defendants.

JERRY E. STEWART, et al.

Plaintiffs,

vs.

BRAD GATES, et al.,

Defendants.

Case No: SACV01-00981-ABC (MLGx)
Consolidated with
Case No. CV 75-3075 ABC (MLGx)

[Assigned to the Honorable Audrey B. Collins – Roybal Courtroom 680]

PLAINTIFF'S REPLY TO DEFENDANT'S PROPOSED PLAN

Status Conference/Hearing:
Date: April 4, 2011
Time: 10:00 a.m.
Ctrm: 980

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiffs submit the following response to Defendant County of Orange's Proposed Plan in Response to the Court's January 7, 2011 Findings of Fact and Conclusions of Law.

DATED: March 11, 2011

Respectfully submitted,

HADSELL STORMER KEENY RICHARDSON & RENICK LLP

By / s/- Virginia Keeny
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FRED PIERCE

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MEMORANDUM IN OPPOSITION

I. INTRODUCTION

Plaintiffs commend the County of Orange for presenting a coherent and extensive Proposed Plan (hereafter the "Plan") to begin to remedy the ADA violations found by this Court to exist within the Orange County jails. The Plan goes far to address many of the inaccessible features in the jails and proposes reassignment of inmates which appears well-tailored to addressing immediate needs. The Plan remains deficient, however, in many critical respects: 1) the definition of the class is overly narrow and has previously been rejected by this Court; 2) it has no monitoring component to ensure timely compliance, provide reports and underlying data to the court and counsel, and allow for meaningful review; 3) it has insufficient training both in terms of number of trainings, detail regarding the type of training, who will be trained, how often, and by whom; 4) it omits any enforcement mechanism to permit swift recourse to the Court if compliance does not occur; 5) with respect to Theo Lacy, it sidesteps its obligation to retrofit the Module O facility, which was built after the passage of the ADA, to make it fully ADA compliant; 6) it leaves female class members in completely inaccessible housing units for an indefinite period of time; and 7) in various specific respects, it omits some of the relief ordered by the Court.

II. INADEQUATE COVERAGE OF PROPOSED PLAN

A. *Definition of Disability*

Defendant's Plan is fundamentally flawed because it narrows itself to only those who are "wheelchair bound."[1] This narrow interpretation of the class has never been used in the

[1] It should be noted that the term "wheelchair bound," is not used by the disabled community and has no accepted meaning. Is a person who must use a wheelchair for movement but who can use a stationary chair for seating "wheelchair bound?" Is a person who sometimes uses a wheelchair but in other instances uses a walker to maintain muscle strength (for example someone with multiple sclerosis) "wheelchair bound?" Many people with significant mobility impairments are not bound to a wheelchair but may resort to using one ove rthe course of the day.

case and was expressly rejected by the Court in response to Defendant's attempt at trial to argue that the class only applied to inmates who were *both* mobility and dexterity impaired. (Court Order, dated January 7, 2011, at 3.) Just as this Court rejected the attempt to limit the class to this small subset, the Court must reject this attempt. The class should cover *all detainees with mobility or dexterity impairments which limit walking, sitting, or using their arms or hands.* This would include all those who are required to use walkers, canes, crutches or prosthetics, not only those in wheelchairs. Defendant's attempt to provide relief to only those in wheelchairs, while leaving amputees, those in walkers or those on crutches in inaccessible and dangerous housing units, deprived of all program access, is, quite frankly, shocking.

Equally troubling, Defendant seeks to provide accessible housing and program access only to those individuals with a "permanent" mobility or dexterity impairment. This language is not in the federal statute nor in the state statute, California's Disabled Person's Act, Civil Code Section 54(c) and 54.1(d), which provides even broader relief.[2]

The ADA, as originally enacted, protected a "qualified individual with a disability" from discrimination. The ADA defined an individual as "disabled," and entitled to protection, if he had "a physical or mental impairment that substantially limit[ed] [him in] one or more … major life activities [MLAs]," i.e., was actually disabled, or if he was "regarded as having such an impairment." *Id. § 12102* (2)(A) & (C). There was no requirement in the language of the ADA that the impairment be "permanent." Numerous conditions are not "permanent," but may be very disabling when they exist. For example, many mental impairments are not "permanent" and even conversion disorders resulting in paralysis, can abate or disappear completely. Someone may have a badly broken leg, hip or back which may impede their walking for months or years, but ultimately recover from the injury. Nonetheless, some courts began to curtail the coverage of the Act by drafting

[2] The Ninth Circuit acknowledged and approved that Plaintiffs were pursuing claims under both the ADA and California's Disabled Persons Act. *Pierce v. Orange County*, 527 F.3d 1190, 1214 (9th Cir. 2008).

limiting language onto the definition of disability. See, e.g., *Sutton v. United Air Lines*, 527 U.S. 471, 119 S. Ct. 2139, 144 L. Ed. 2d 450 (1999)(a person whose physical or mental impairment was corrected by medication or other measures did not have an impairment that substantially limited a major life activity).

On September 25, 2008, Congress enacted the ADA Amendments Act of 2008 (ADAA) in order to "reinstat[e] a broad scope of protection" under the ADA and to "reject" the holdings in *Toyota Motor Mfg., Ky. v. Williams*, 534 U.S. 184, 122 S. Ct. 681, 151 L. Ed. 2d 615 (2002), and *Sutter*. ADAA § 2(b), Pub. L. No. 110-325, 122 Stat. 3553, 3554. Congress delayed the effective date of the ADAA to January 1, 2009. Id. § 8, 122 Stat. at 3559. As amended the new definition of disability includes all impairments unless they are "transitory or minor."[3] "Transitory or minor" is further

[3]

42 U.S.C. § 12102, as amended, provides the following "Definition of disability;" As used in this Act:
(1) Disability. The term "disability" means, with respect to an individual--
(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
(B) a record of such an impairment; or
(C) being regarded as having such an impairment (as described in paragraph (3)).
(2) Major life activities.
(A) In general. For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
(B) Major bodily functions. For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
(3) Regarded as having such an impairment. For purposes of paragraph (1)(C):
(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.
(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A

defined as likely to last for less than six months. Thus, Defendant's requirement of a "permanent" disability has no basis in the statute. *See Diaz v. Fed. Express Corp.*, 373 F. Supp. 2d 1034, 1046 (C.D. Cal. 2005) (pre-amendment case rejecting requirement of "permanent disability"). Furthermore, the regulations and the EEOC's interpretive guidelines clearly state that an impairment need not be permanent in order to rise to the level of a

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transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability. The definition of "disability" in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.

(B) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E) (I) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as--

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph--

(I) the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.

disability. See 29 C.F.R. § 1630.2(j) (2) (iii) (sic); EEOC Compliance Manual § 902.4(d), at 902-30.

In addition, the term disability also incorporates disabilities of temporary duration under Cal. Civ. Code § 54. *Ellis v. City of Reedley*, 2007 U.S. Dist. LEXIS 25333 *32 (E.D. Cal. 2007); Cal Civ Code § 54; Cal. Gov't Code 12926(k)(1)(B). Under Cal Civ Code § 54, "'[d]isability" means any mental or physical disability as defined in Section 12926 of the Government Code," which the California Supreme Court held "is intended to result in broader coverage under the law of this state than under that federal act." *Colmenares v. Braemar Country Club, Inc.*, 29 Cal. 4th 1019, 1027 (2003). Accordingly, in *Ellis*, the court found that "infrequent" migraine headaches constituted a disability as defined by Cal. Gov't Code 12926(k). *Ellis*, 2007 U.S. Dist. LEXIS 25333 at *32.

Furthermore, the class must also include all those who are "perceived as disabled." If a person is *perceived as disabled* from a mobility perspective, whether short or long term, they are placed by Defendant in one of these segregated housing units. If they are not perceived as disabled by the jail classification personnel, they are placed in general population. Thus, once a person is classified because they are perceived as having a mobility impairment and segregated from the general population in Ward C, or Module K or wherever the County wants to house people with impairments and assistive devices, they all should receive the same treatment and be placed in fully accessible cells.

Defendant is currently proposing an indefensible, unsafe, and, Plaintiffs contend, illegal system, wherein individuals who it concedes are permanently disabled are placed in accessible cells (which it is committing itself to build), while those who are considered disabled enough to be put in Ward C or Module K (but are not "wheel chair bound"), are required to continue to use inaccessible features and will not have access to programs and activities offered to non-disabled inmates. This two tier system if antithetical to the purposes of the ADA.

Thus, the class to be protected should include all those with disabilities as defined by the ADA, as amended. It should specify that this includes all those with impairments

expected to last six or more months, as well as all of those perceived to have conditions which impair their ability to use their arms or legs. Otherwise, defendant will continue to house individuals using casts, crutches and canes in cells without accessible features; and deny these same individuals access to programs and services. This would defeat the purposes of the recent amendments to the ADA to make the definition of disability and the protections of the Act as broad as possible. See, e.g *EEOC v. AutoZone, Inc.*, 630 F.3d 635 (7th Cir. 2010).

Additionally, Plaintiffs are concerned about the designation for Cat #2 inmates, which states that these inmates are "wheelchair bound" and "require extraordinary medical care." At trial, defendant explained that those who truly need extraordinary care are in a hospital associated with the jail. The single nurse who was on duty in Ward C to deal with all inmates placed there was hardly capable of providing "extraordinary medical care." Plaintiffs understand this designation, therefore, to designate nothing more than that these class members do not need *hospital care*, but require some access to nursing supervision. Thus, Plaintiffs do not want these Cat#2 inmates to be denied access to programs, visits and outdoor recreation, categorically, because they fall into this subclass. Each inmate must be assessed individually and on an ongoing basis to determine if he or she is capable of participating in such activities.

In discussions with individuals in the disabled rights community, Plaintiffs' counsel has heard concerns expressed about the low number of class members identified by defendant. Nine male class members and no female class members, as reported by the County, was considered highly unlikely given the number of people with disabilities in the general population and the prevalence of mobility impairments in older communities, and communities with high incidence of diabetes, among others. Plaintiffs share this concern that the County may be under- designating individuals as part of the class through improper medical classification. Therefore, Plaintiffs urge the Court to appoint Dr. Terry Hill to conduct a short term review (six months from date of entry of the order) of the following issues: 1) the classification process itself to ensure the County is placing detainees with

mobility and dexterity impairments in the protected class and not improperly excluding individuals by deeming them to be "impermanent;" and 2) the medical assessment used by the jails to determine whether class members can participate in programs or activities to ensure that they are not being excluded without medical basis. Dr. Terry Hill is a well respected expert on issues of inmate medical classification and has worked extensively with the receiver on the ongoing federal litigation challenging the medical care in California's prison system. Dr. Hill's curriculum vitae is attached hereto as Exhibit 1.

B. *Duration of Modification Process*

While Plaintiffs acknowledge that some barrier removal projects or remodeling will take more than a few weeks, and that there is value in distinguishing between short term and longer term remediation, the proposed categories are so imprecise as to be meaningless. According to Defendant, "short term" modification is a modification which can be completed within "weeks." This is too imprecise, as it could mean as few as two weeks or as many as 100 weeks. Short term is better defined as "within one month of the entry of the court order."

"Intermediate Term" modifications also should be recognized but again need a more precise measurement than "months." Intermediate Term modifications should be defined to be "completed within 6 months from entry of the order."

"Long term" project cannot be defined with the open-ended term of "one year or longer," as that could allow delays of many years. Plaintiffs propose that the long term modifications be completed within one year of entry of the order.

C. *Duration of Injunction*

Although Defendant has not set forth any proposed time limit for the injunction, Plaintiffs believe that a three year period is necessary. First, many of the repairs, by Defendant's own admission, will take some time, even up to a year, to complete. Many of the proposed procedures are brand new to the jails and will need time to be rolled out to deputies, reviewed and possibly adjusted. For a jail culture to actually internalize new procedures, there needs to be several years of uniform and monitored practices. Therefore,

a minimum of three years is required for any injunction.

III. PLAN OVERVIEW BY FACILITY

A. THEO LACY FACILITY

1. *Overall compliance*

Defendant cannot avoid its legal obligation to bring Module O of Theo Lacy, a building that was constructed entirely after the passage of the ADA, into full compliance with the ADA. (Court Order, ¶ 106, citing 28 C.F.R. Sect. 35.151(a).) While Defendant's current Plan in many respects is a satisfactory response to housing disabled inmates, Defendant has no long term plan for retrofitting this facility so that it is fully compliant. Defendant was under a *mandatory* duty to build the requisite number of cells and to make the facility fully accessible when it was first constructed. *Id.* It did not do so. *Id.* While it well may be the case that it may take more time to remedy the situation post-original construction, Defendant must initiate and complete those steps in a reasonable time frame.

The Court made very specific findings and orders regarding Module O at Theo Lacy which have been disregarded by Defendant. The Court found that Module O was built in 2001 and so must be deemed a "new facility" under the ADA regulations. As a whole, the Court found, it must be "readily accessible to and usable by individuals with disabilities." (Order ¶ 106, p. 29.) The Court found that none of the cells in Sector 41 (made up of single and two person cells) had been modified, although disabled detainees and inmates were housed there. (Order, ¶ 115, p. 31.) The Court also found that 2% of the cells in the five identical sectors in Module O could be made accessible. *Id.*, at 117. However, the court found that the evidence was insufficient to determine the total number of cells. *Id.*. Accordingly, the Court stated that "the County is ordered to provide Plaintiffs' counsel and the Court with the number of total cells in order to determine the two-percent figure. This must be included in the plan which the court has ordered." *Id.*, at ¶ 117. Based on the numbers which the County was to provide, the court ordered that at "least two percent of each type of cell in that facility[Module O] be made fully accessible." (Order, at p. 76, lns.

19-25.) This information was not provided in the Plan.[4]

Defendant's current proposal, making one open ward accessible by bringing its shower and toilet and phone up to code, does not comply with the ADA. New construction and every aspect of that construction must be accessible. The 2% requirement applies to each type of cell and is not met by clustering all inmates in one room. There well may be inmates with disabilities who need single cell, double cell or even four person cell configurations. The jail designed those different types of cells for a penological reason (isolation, discipline, moderated social interaction, bunking with similar types of people) – disabled persons are not excluded from that same analysis merely due to their disability.

Therefore, the Plan needs to be modified as follows: Defendant will produce the total number of cells (*and a breakdown by type of cells*) for each of the Sectors in Module O at Theo Lacy. This information will be provided to Plaintiff's counsel and the court within one week of the entry of this order.

Defendant will prepare a plan setting forth how 2% of each of these types of cells can be made accessible, time frame for completion of construction and when such construction will be commenced. The construction may take place on a staggered basis with a smaller percentage of cells being completed initially than the total goal of 2% for each cell type.

In completing this retrofitting, however, Plaintiffs have no objection to all of the accessible individual cells being grouped in one sector, either Sector 37 or another sector, since it will clearly be more economical to have only one accessible dayroom, shower, phone, etc., servicing all of those cells. In other words, Defendant does not need to make all of the Module O dayrooms accessible (shower, phone, tables, toilet, etc), as long as one such dayroom opening onto accessible cells (2% of total) is created.

2. *Sector 37, Module O*

Plaintiffs have no objection to Defendant's basic proposal to transfer Cat #1 inmates into Sector 37 of Module O (the open ward), as it appears that Defendant is committing to

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[4] Defendant did not break down the different types of cells by category, as requested by the court.

make that ward fully accessible. Plaintiffs agree with the proposed modifications to the phone, tables, shower, book shelf, mirrors, toilet flush button, intercom and jail rules (as outlined at 3.A.4.(a)-(h)). Defendant has committed to making those modifications "within weeks," and to accomplish the transfer within two weeks. Plaintiffs note that these modifications omit alterations to the shower control to make it accessible and that feature should be added to the order as follows:

3.A.4.c. "Adjust fixture height, add grab bars and bench seat for shower;*and modify controls so fully accessible*."

Plaintiffs do, however, object to the uncertain time frame for the transfer of Cat #2 inmates. No time frame is given and so those inmates apparently will remain in the inaccessible and problematic Ward C for an indefinite time period. Defendant must commit to the transfer of those inmates within 3 months of the entry of this order, or they may continue to languish there as they have for years despite findings by this court and the 9th circuit that Ward C's facilities are hazardous and unlawful. The Court will recall that it is Ward C where the shower posed an immediate threat to inmates with disabilities and was found by this Court to be irremediable and unusable without physical modifications.

3. *Classification Restrictions*

The provision of only one single person cell in Module O at Theo Lacy for all male inmates with disabilities who require separation from other inmates is entirely inadequate. The inmates who may need separation include those with 1) infectious diseases; 2) protective custody classifications where they may be hurt by others either due to the nature of their violation; gang ties; or law enforcement affiliation; 3) administrative segregation for those who could hurt others; and 4) disciplinary isolation for those who require discipline. *It is completely inadequate to provide only one cell for these purposes.* At least three other cells in Module O, Sector 37 need to be retrofitted in the short run to be fully accessible (prior to the longer term project of making 2% of all different types of cells accessible in Module O).

If those cells do not have adequate room for an in-cell shower, provisions need to be

made to transfer those inmates to an accessible and segregated shower area in one of the other Sector's in Module O. As this Court found when assessing similar situations in the dayroom area for Module K (where female detainees are housed in the IRC), the County could replace the inaccessible pre-fab shower currently used in these dayrooms with an accessible model, at a cost of approximately $11-$20,000. (Order, ¶ 74, p. 23.) Similarly, the dayroom for these segregated cells must be modified to install an accessible toilet, phone, table, bulletin board, mirror and other similar amenities. By installation of such accessible features, inmates requiring separation would be given the same day room and shower privileges as other inmates.

Finally, as to the proposed changes to Cell 3 of Sector 42, a negative pressure cell which presumably fulfills some purpose for containing disease, Plaintiffs have no objection. (Defs. Plan at 3.A.5, p. 4.) These simple changes to the shower height, grab bars and bench set and lowering of intercom unit are appropriate and should be made as short term modifications (a matter of weeks) as provided in the Plan.

4. *Outdoor recreation*

The barrier removal proposals in the Plan for the Green Sector and for the recreation area attached to Module are appropriate. A specific deadline for their completion must be set, however, as "Long Term" projects, according to Defendant, can take a year or more. The modifications to the water fountain and toilet in the Green Sector and the toilet in the outdoor Module Recreation area should be ordered completed within 9 months of the entry of this order to ensure timely completion.

Defendant's decision to allow detainees with disabilities to use the Green Sector is appropriate and should impose little additional burden on defendant. Plaintiffs remain concerned, however, that deputies may discourage inmates from using the Green Sector (because it requires transport of inmates a longer distance) or by using the excuse of medical condition to deny outdoor recreation. Therefore, the ADA Compliance person for Theo Lacy should be charged with 1) conducting regular quarterly meetings with staff at Module O to explain the contents of this order and the need to provide equal access to recreation; 2)

meeting with inmates to ascertain whether they have been provided access; 3) review of request sheets and complaint forms from inmates (discussed further below); and reports to the monitor on a quarterly basis on compliance.

5. *Visits*

Plaintiffs have no objection to the proposed visiting plan. However, as with other plans which are dependent on deputy movement, it is essential that deputies are trained on these new rules and that compliance is enforced. Therefore, the ADA Compliance person for Theo Lacy should be charged with 1) conducting regular quarterly meetings with staff at Module O to explain the contents of this order and the need to provide equal access to visitation; 2) meeting with inmates to ascertain whether they have been provided access; 3) review of request sheets and complaint forms from inmates (discussed further below); and reports to the monitor on a quarterly basis of compliance

6. *Inmate Program Opportunities*

It is extremely problematic that Defendant has elected to close the only accessible program building it has constructed at Theo Lacy and to contract out that facility to ICE. Defendant's proposal to shift the programs to "designated alternative locations in the barracks area of the TLF" may be a suitable proposal but it is impossible to assess that plan until it is implemented. As long as the IPB is operational and used by inmates at TLF, defendant should be directed to offer class members full access to programs at that facility and document which classes have been offered, to whom and whether they have been accepted.

Once the IPB building closes, a new accessible building must be provided for inmates which offers the same range of classes as available at the other facilities, including Musick. It must have accessible classrooms with desks and chairs and equipment which is accessible to mobility and dexterity impaired individuals. There should be at least one accessible bathroom in the facility for disabled detainees to use. The County should be precluded from using the tiny and inferior "classrooms" at Module O, which have no desks, chairs, computers or training materials and which are large enough to hold only a few

inmates.

The proposed use of CPTs and a CPT supervisor to provide information on classes, to document all contacts with class members, to keep records of which inmate requested classes and which were provided is appropriate. This information must be maintained for three years (not two as Defendant proposes), and provided to the monitor each quarter to ensure compliance and to plaintiff's counsel upon request.

With respect to transportation to Musick, which is coordinated by deputies, the ADA Compliance officer will be responsible for training deputies about their obligations to explain transportation opportunities, to coordinate with CPT officials about class availability, to coordinate transportation, and to document contacts with classmembers relative to offers to transport to Musick or other facilities within TLF, if deputy escort is required. Documentation of training, contacts, offers of transport and classes taken will be maintained for three not two years and provided for inspection to the monitor on a quarterly basis or to plaintiff's counsel upon request.

7. *Policies and Procedures*

The proposed plan states that the TLF "will adjust its policies and procedures to accommodate" the various changes. These new procedures need to be in written form, prepared within a month of the entry of the Court's order, and provided to the monitor and class counsel within 45 days of entry for review to ensure that they are clear and complete. The ADA Compliance official for TLF will ensure that all deputies are trained on these new policies and procedures when the new rules go into effect and on an ongoing basis thereafter.

B. INTAKE RELEASE CENTER

1. *Proposed Changes to Booking Loop Counters*

Plaintiffs do not object to the special lift devices proposed as an alternative to lowering the counter heights.

2. *Proposed Changes to Cells in Booking Loop, Court Transfer and Release Cells*

Plaintiffs object to Defendant's plan to the extent that it ignores the Court's order that

it must make fully accessible both a court transfer cell and a release cell on the male side of the booking loop and the same on the female side. (Court Order, ¶ 21, p. 80.) While Defendant's Plan appears to create an accessible court transfer cell for female inmates, it omits such a cell for male inmates.[5] The Plan must include modifications to create a fully accessible cell for male inmates (separate from female inmates) in the court transfer area.

In addition, it does not appear that any plan has been made to create accessible *release* cells for male or female inmates despite this Court's order. As far as Plaintiffs can discern, the only proposal by the County is that they will try to "speed up" the release process. This is an insufficient response to the problem of holding disabled people in cells without accessible facilities for indefinite periods of time. The County needs to commit to modifying a release cell on the male and the female side which is separate from the booking cell and the court transport cell area. Inmates who are being released have either 1) been found not guilty; 2) charges have been dropped: 3) they have posted bail, or 4) they have served their time. There is no reason why they should continue to be housed even temporarily with inmates coming into the jail system facing serious charges or who are serving their sentences in the county jail.

3. *Module K and Female Class Members*

The County's current plan for females with mobility and dexterity impairments is entirely unacceptable as it apparently continues to house female detainees in entirely inaccessible cells in Module K at the IRC.

a. Individual Cells

First, Defendant asserts that as a "long term" modification, it intends to make only 3

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[5]The proposed modifications to TM13 (to create an accessible cell for female inmates in the IRC court transfer area) appear appropriate. (Defs' Plan, p. 7, Section 3.B.4. In the interim period before this cell is fully modified, the county will transfer female inmates directly to and from court without holding in a cell by taking them directly to transport vehicles. (Defs. Plan, at 7, n. 3.) Plaintiffs approve of this interim plan.

cells accessible for the entire female population in the Orange County Jail. This is an inadequate number as a matter of law and the facts presented. First, at the time the case was tried before this court, there were three women using wheelchairs (and possibly others with other assistive devices), which would have maxed out the number of cells available under the new Plan. While the County claims there are no class members as of the date the proposed plan was submitted, probably because of the narrow class definition to which Plaintiffs object, obviously the disabled jail population fluctuates all the time. The U.S. Census Bureau estimates that 25% percent of the population had a severe disability in 1991. Population Profile of the United States, U.S. Census Bureau. http://www.census.gov/population/www/pop-profile/disabil.html. In recognition of these numbers, this Court ordered that the jail make ten cells accessible for women. (Order at 68, lns. 10-11.) Defendant has presented no evidence or argument why three cells are sufficient or why it should not comply with the ten cells mandate by the Court. The Court should adhere to that initial order.

Equally problematic is that the modification of the cells for female inmates is deemed to be a "long term" modification, meaning that it will take at "least one year to complete." (Def's. Plan at p. 2, ln 3.) This means that the women currently housed in the IRC who have a covered disability, according to this proposal, will be housed in completely inaccessible cells for another year or longer. There is no outer limit placed by the County on how long it will take to make these changes. Since all that is required to make the cells accessible is installation of an accessible toilet and sink combination with properly affixed grab bars and flush equipment, it is inconceivable that these simple modifications should fall into the long term modification category. These are Short Term modifications which can be completed just as soon as the units are ordered and installed. The court has previously found that modification to an individual cell will cost no more than $7,000-8,000, and maybe considerably less. (Order, ¶ 66, p. 21.) The creation of three accessible cells immediately must be part of any final order.

/ / /

b. Accessible Dayroom and Shower

Defendant acknowledges that it has not come up with a feasible plan for creating an accessible shower and toilet in the day room associated with Module K. (Defs. Plan, 3.C.2.b, p. 8.) This means that any female with a mobility or dexterity impairment who is brought into the jail remains denied access to an accessible shower, the same situation which has existed now at the jail since the WCJ was closed in May 2009. (Court Order, ¶3, p. 8.) It is inexcusable that the County has not already remedied this obvious violation. The County further ignores findings of this Court, based on the evidence presented at trial, that portable shower units exist and can be installed in the current day room. (Order, p. 68, lns. 1-2.) The Court should order that such modifications be made within three months and disallow the nebulous plan proposed by defendant.

Plaintiffs have no objections to the other minor modifications to the day room in Module K proposed by Defendant: lowering of phones, jail rules and installation of an accessible table. (Defs' Plan, 3.C.2. c-e.) It is inconceivable, however, that the modification of a table and of the phone height should be deemed "long term" modifications, as Defendant proposes. These modifications could be done by a carpenter or even a skilled laborer, with some guidance, in a matter of days at the outside. These modifications should be classified as "short term" and ordered completed forthwith.

c. *Outdoor recreation*

Defendant proposes transporting female inmates who are low security (if their medical condition permits) to JAMF for outdoor activities. As with the proposed transfer of male inmates, there must be a process put into place to ensure they are being offered this opportunity, actually transferred there for three hours per week, and that they are not being discouraged from exercising this right or denied for non-existent medical reasons.

For those who elect to remain in Module K, and to use the outdoor area associated with that facility, however, they are denied the same access to a toilet and sink as non-disabled inmates. While Defendant states that it will redesign this area, it again describes it as a long term modification. Defendant has presented no evidence or explanation as to

why the modification of one toilet area will take more than a year to accomplish. It should be ordered completed within 3 months.

d. *Visiting*

Defendant states that a lift will be installed on the stairway to accommodate Cat#1 and Cat # 2 females who need visitation and are not allowed "no barrier" visitation rights due to their higher security classification. (Def's. Plan. 3.C.4.) No time frame is placed on this planned modification. Thus, under the County's Plan, this lift could be installed at some uncertain time in the future, even several years in the future. Until that time, female inmates who do not qualify for non-barrier visits (e.g. higher security inmates) have no opportunity for visitation. Therefore, the lift must be ordered installed within one year. In the interim, alternative plans must be made for visitation for those detainees who do not qualify for low-security non-barrier visits at JAMF or MCJ.

With respect to low-security detainees, who otherwise qualify for non-barrier visits, the County has committed to transporting them to JAMF or MCJ. This is appropriate, complies with the Court's order (Order, ¶ 19, p. 79), and should be instituted immediately.

The County must be ordered to document all requests for visits for inmates with disabilities, where the visit was provided and whether the visit was denied due to inability to accommodate the inmate. The inmate must be informed in writing that they are entitled to non-barrier visitation at JAMF or MCJ if they request it. Notice that they have been informed of these rights, whether they requested transport to those facilities for visitation, and whether such transport occurred, should be maintained for three years by the ADA compliance officer.

e. *Inmate Program Activities*

As recommended by plaintiffs' expert, Defendant has agreed to provide a full range of courses in the Chapel/ Classroom area at Module K, which is largely accessible. The Court ordered that the chapel area had to be modified to accommodate desks, computers, sewing machines and other equipment. This portion of the court's order is not mentioned in the proposed plan, but should be reiterated in a final order. Any additional courses only

offered at JAMF will be made available to female classmembers upon their request. Plaintiffs find these proposals acceptable.

f. *Policies and Procedures*

The proposed plan states that the CJX (where Module K is located) "will adjust its policies and procedures to accommodate" the various changes. These new procedures need to be in written form, prepared within a month of the entry of the Court's order, and provided to the monitor and class counsel within 45 days of entry for review to ensure that they are clear and complete. The ADA Compliance official for CJX will ensure that all deputies are trained on these new policies and procedures when the new rules go into effect and on an ongoing basis thereafter.

4. *Module L*

Defendant ignored the Court's order to bring Module L (which houses the mentally ill) into compliance with the ADA. The Court's order provides that: "the day room area's shower, bathroom phone, and tables and the recreation area's toilet and sink and the visiting area on the second floor are identical to those in Module K and are inaccessible in the same ways as those areas in Module K." (Order at ¶ 90, p. 26.) The Court further ordered that Module L should be made accessible in all of these aspects. (Order at p. 68, lns. 12-18.)

Defendant's response to this order violates that law. Defendant states that it will not house class members in Module L, but Module L is the only specialized mental health treatment module in the entire jail. Under the Plan, class members with mental health issues and disabilities will be deprived of the services provided in Module L. This is exactly the response that is not permitted by federal law. If a program is being offered, and a mental health program is certainly a program with in the meaning of the ADA, it must be made accessible to individuals with disabilities.

Thus, Defendant should be ordered to install an ADA compliant toilet and sink unit in the day room servicing Module L within 3 months; that the phones be lowered to the proper height; that at least one ADA compliant table to installed in the day room; and that the recreation areas's toilet and sink area by modified to be fully accessible. All of these

modifications should be accomplished within three months of the effective date of the order.

C. Central Women's Jail (CWJ)

The basic premise behind the proposed reutilization of the CWJ is faulty, since it does not mandate that the areas for the housing of class members will be accessible *at the time women are again housed there*. Therefore, at a minimum the Court should order that if CWJ is repopulated with female detainees and any class member is to be housed there, all architectural modifications will have to be completed prior to the transfer of any women to that facility.

1. *Housing of Women in Tank 13*

Plaintiffs are not opposed to housing of all Cat#1 and CAT#2 female inmates in tank 13 on the first floor, provided that the physical modifications outlined at D.1(a)-(e) are completed prior to use. Further, the county must commit to making a fully accessible bathroom and day room, as well as the more minor modifications listed therein.

2. *Separation Cells*

The court ordered that three cells be made accessible. (Order at page 80, lns 21-22.) Defendant proposes to meet that requirement by housing women in an open ward or tank, to which plaintiffs are not opposed, and by modifying three existing cells to make them fully accessible: Sheltered Living Cells 1 and 2 and Isolation Cell 3. This appears to meet the requirements of the court order.

3. *Shower area for Women in Tank 13*

Again, Defendant's proposal regarding the shower for Tank 13 is problematic because it suggests that the changes will not be made *prior* to reuse of the jail by female class members. Prior to any use of the shower area, the county must be ordered to make it compliant by widening the doorway, adjusting the shower fixtures and modifying the grab bars, as proposed.

4. *Infirmary Area Cell 10 of the infirmary*

The Court determined that many aspects of the infirmary are not ADA-compliant and that if the jail was to be reopened, all such physical barriers had to be remedied. (Order at

p. 68, lns. 19-24.) It is unclear, as written, whether defendant's plan will fully remedy those violations. For example, the infirmary dayroom was found to have numerous inaccessible features: the toilet and the sink were not usable by any of the class members. (Order, at ¶ 94, p. 27.) The Court held that there is no evidence that the room is too small to accommodate an accessible toilet and sink. Defendant's proposal at D.4.a, to "redesign and construct[] to enlarge the toilet/sink area" does not make it explicit that the toilet and sink will be redesigned to be fully accessible. This should be clarified in a final order. As with all of the changes to the WCJ, the Court should order that all modifications be made prior to any move to rehouse female inmates in the WCJ.

The other modifications proposed for the day room appear reasonable and in conformity with the Court's order, e..g. with respect to phones, intercom and mirror. Again, however, it should be specified that such modifications must be made prior to placement of disabled inmates in this jail.

5. *Outdoor recreation*

The court ordered that if the jail is reopened, female detainees should be allowed outdoor recreation on the roof with the other female detainees and that the restroom should be modified to create an accessible toilet and sink. Defendant's proposal avoids this order by stating that it will instead close the restroom to all inmates. This is a drastic and unnecessary step which penalizes all of the inmates without justification. The Court should order defendant to allow access to an ADA specialist/contractor to determine the cost of reconfiguring this area to make it accessible so that it can be repaired. Otherwise, what will likely occur is that when the monitor and court are no longer actively involved in ensuring accessibility to the jail, the deputies will again allow female inmates to use the restroom area and disabled inmates will again be excluded from that area. This is the time to require the County to come to "grips" with its obligations to disabled community and make its public buildings (even its jails) fully accessible into the future for their use.

With respect to the other modifications, lowering a phone, lowering a bulletin board and modifying the water fountain, it is inconceivable that these changes would really take

"months." Nonetheless, the county has classified two of these modification as "intermediate term" modification projects. The court should order that these simple modifications be undertaken prior to any reuse of the WCJ.

6. *Visitation*

As with other proposals to allow visits at JAMF or other non-barrier visitor areas, the key question is whether the County will actually offer and make available these visitation opportunities, which require transport, or whether they will discourage or punish inmates who avail themselves of these visitation opportunities. The Court should require the same documentation, reporting and monitoring obligations as with other transport-dependent program offerings.

7. *Program offerings*

As stated above, the court should require the same documentation, reporting and monitoring obligations as with other transport-dependent program offerings.

D. CENTRAL MEN'S JAIL (CMJ)

1. *Ward C*

Defendant indicates that it intends to continue to house class members in Ward C. Ward C was identified by plaintiffs and this Court as having an inaccessible and dangerous shower area in the open ward itself. The Court noted that there was unrefuted evidence that inmates were being forced to lift each other over a large barrier, that it was dangerous, and that it had to be remedied immediately. Instead of confirming that it would remedy this shower area immediately, defendant states that this will be a "long term" redesign effort. Under its own definition of "Long Term," repairing the clear and present danger posed to disabled inmates by the shower area could take a year or longer. The time table is completely indefinite. Defendant has known that this shower presents a clear and present danger since the Ninth Circuit described it in its 2008 opinion. Defendant has not taken the smallest step to remedy this violation. The Court should order the County to immediately begin redesign and repair of this shower area and present evidence of complete repair and accessability within six months of the entry of this order. Any other result is

unconscionable.

Defendant's time table for other minor repairs to these areas serving Ward C are also of great concern. The proposed completion dates should raise a red flag for the Court about the County's commitment to improving the conditions for disabled detainees. For example, the Plan states that "lowering a mirror, lowering posting of jail rules, and lowering the phone" are all "intermediate term" projects which could take "months." Putting an accessible table in the dayroom is listed, amazingly, as being a "Long term" project, taking more than a year. It is obvious that most of these changes could be done by the average carpenter/handyman in a matter of hours. The Court should order that all of these other changes be completed within one month of entry of the final order.

2. *Sheltered Living Cells and Day room*

The Court has ordered that the Sheltered Living shower not be used for class members. The reason for this is that the evidence demonstrated that deputies did not take class members to that shower area but instead required detainees to try to shower themselves in the Ward C shower area. This untenable situation has existed for years, and has continued to exist for years after the Ninth Circuit's decision pointing out this hazardous and unlawful situation. The court should order the repairs commence to the Ward C shower and be completed within 6 months. In the interim, while those repairs are undergoing and when the shower in Ward C is not usable and fully accessible (and class members are still housed in Ward C), they must rely on guards to transport them to the Sheltered Living Shower. That shower and dayroom area will need to be remedied completely and immediately (not as an intermediate modification to take months as proposed by defendant). Those repairs should be ordered completed within one month of the entry of the order. The training orders to deputies will need to be drafted within one month and provided to the monitor for review. In addition, the court should order that all transfers to and from the Dayroom Shower and Ward C should be documented, maintained and provided to the monitor for review as part the monitor's review.

/ / /

3. *Recreation*

The new recreation plan is entirely dependenton transport of detainees to TLF or the JAMF. As with other transportation-depe ndent programming options, this proposal will need to be carefully m onitored to ensure that deputies are offering the program , not discouraging detainees from accessing it, and doc umenting all compliance for review by the monitors.

4. *Visitation*

As with other proposals to allow visits atJAMF or other non-barrier visitor areas, the key question is whether the County will actually offer and make available these visitation opportunities, which require transport, or wh ether they will discourage or punish inm ates who avail themselves of these visitation opportunities. The Court should require the same documentation, reporting and m onitoring obligations as with other transport-dependent program offerings.

5. *Program offerings*.

As stated above, the court should requi re the sam e documentation, reporting and monitoring obligations as with other transport-dependent program offerings.

E. JAMES A. MUSICK FACILITY

1. *Programming*

Defendant's plan is unclear with respect toprogramming. Defendant cannot be stating that the only vocational classes at JAMF are "cabinety, sewing, stained glass, welding, Mothers of Preschoolers; job development and Sew Much Comfort." (Defs. Plan, 3.F.3.) This would m ean that it has discontinued scor es of classes at JAMF, all of which were offered as of the trial in this matter, including computer training, GED classes, food service skills and many more.

If what defendant intended to state is thatcertain vocational programs – listed at 3.F.3 – were offered but are being discontinued for all inmates, then plaintiffs have no objection to those programs also not being offered to class m embers. The final order should m ake clear that all programs offered at JAMF must bemade fully available to class members either

through offering them at JAMF (and transport thereto), or by offering those classes in accessible classrooms in their housing areas.

IV. NOTICE OF RIGHTS UNDER THE ADA

Plaintiffs generally approves of the provisions set forth under "Notice of Rights Under the ADA." However, the following additional provisions should be included:

Because this Court determined that deputies have not received any instruction regarding the handling or processing of "requests for accommodation," the section should be expanded to include grievances and requests for accommodation.

V. TRAINING

The proposed Plan will affect each of Orange County's jail facilities and require deputies to change how they view individuals with disabilities; how they process their requests for outdoor recreation, visitation, showers and other dayroom related services, and programming, and how they handle requests for accommodations and grievances. It contemplates interim plans effecting deputies and non-sworn staff as the various barriers are removed and different areas remodeled. It contemplates a permanent change in how class members are housed, treated, and how documentation is maintained about their access to programs and services. This will require a shift in how deputies perceive disabled inmates and their responsibilities to them, to ADA Compliance officers and to the monitor. To ensure that this new system is successful, meaningful training will need to be made part of the plan.

In the first instance, a training program will need to be devised and put into place for the ADA Compliance Officers at the various facilities. Such training should include at a minimum, the following areas:

- training on the ADA law in the jail context;
- significant legal developments relating to the application of the ADA to correctional facilities;
- the findings of this court;
- the implementation of the injunctive relief plan to correct the violations;

- the barrier removal plan and the purpose behind that plan;
- the interim plans for providing programs and services to inmates before the barrier removal is completed;
- their obligation to provide equal access to inmate with disabilities to all programs and recreational services;
- the procedure for documenting all contacts and offers of programs and services;
- the obligation to coordinate and transport inmates between the different facilities;
- how to ensure that inmates are not discouraged from taking advantage of such services or retaliated against if they do take them;
- how to process requests for accommodations;
- how to process complaints and grievances;
- and how to document and maintain documentation on all efforts to accommodate and provide equal treatment to individuals with disabilities.

The training should be provided first to the ADA compliance officers, and then to all of the deputies working in the individual facilities. At a minimum, the ADA compliance officers should be required to undergo six hours of training on these issues once a year. All deputies who would have any contact with class members should receive at least 4 hours of training on these issues once a year.

Unfortunately, Defendant County has demonstrated that it has no commitment to performing this training function. Until just before the trial of this matter, it had no ADA compliance officer designated, as admitted by Officer Toledo, despite the fact that public entities were required to designate ADA compliance officers upon the first passage of the ADA. (Tr. 8:18-9:1 (Toledo).)Officer Toledo, who was produced at trial as the person most knowledgeable by the County on the handling of grievance and requests for accommodation by detainees, admitted that there was no training for any of the people handling such complaints or for deputies. (Tr. 10: 6-16 (Toledo).) The Court found that the County had failed to notify jail personnel that they had an ADA coordinator, had failed to provide any training regarding processing requests for accommodation, had failed to provide any training

to those involved with appeal process on what to do with requests for accommodation; and did not review the grievance materials they had received from inmates. (Court Order, ¶ 234-245.)

Plaintiffs urge this Court to designate an outside entity to develop and provide such training to the ADA Compliance officers. In addition, the same entity should be required to develop training materials developed for subsequent trainings and sit in on a least the initial four hour training session given to deputies by the Compliance officers.

As explained below, it is most appropriate that such entity also be designated as the monitor so that there can be continuity between training and follow-up. There are numerous organizations located in Southern California which are experienced in training and monitoring in the correctional setting. In no event should the County be permitted to undertake unsupervised, unmonitored internal training. It would only perpetuate the errors and non-compliance of the past.

Issues arising as to the adequacy or appropriateness of such training or curricula should be addressed in the first instance by the monitor. As with all compliance issues, discussed below, Plaintiffs' counsel may seek correction through the meet and confer process and, if not resolved, through an enforcement procedure before this court.

VII. MONITOR

When courts order defendants to remedy unlawful jail conditions, special monitors "play a necessary and beneficial role in monitoring and assisting the [defendant] 's compliance efforts." *Benjamin v. Fraser*, 343 F.3d 35, 44 (2nd Cir. 2003), abrogated in other part by *Caiozzo v. Koreman*, 581 F.3d 63, 70 (2d Cir.2009). Monitors assist the court in monitoring the defendant's compliance with its obligations, advise and assist defendants in achieving compliance with court orders, and in formally assist the parties in resolving disputes as to compliance with such orders. See *Benjamin*, 343 F.3d at 43. To this extent, monitors may gather information, assess the extent to which defendants are complying with court orders, and provide the court and counsel with periodic reports identifying areas of non-compliance and recommending further modifications.

A monitor serves a different function than a special master, which exercises quasi-judicial power. *Benjamin*, 343 F.3d at 45-46. For this reason, the PLRA does not prevent courts from using monitors. *Id.* See also *Pierce v. County of Orange*, --- F.Supp.2d ---, 2011 WL 68843 (C.D. Cal. 2011). In contrast to the special master, the monitor's sole authority is to gather information, assess the extent to which defendants are complying with the decree, report to the court, and offer assistance in resolving minor disputes. If the monitor reports that defendants are not complying with portions of the order, Plaintiffs can bring this information to the court's attention.

Monitors are especially important where the ability to observe the defendants' conduct is restricted. *Cobell v. Norton*, 392 F.3d 461, 477 (2004). "When the defendant is a closed institution, such as a prison or mental hospital, observing compliance may be difficult, and then monitors will be appropriate." Robert E. Buckholz et al., The Remedial Process in Institutional Reform Litigation, 78 Colum. L. Rev. 784, 829 (1978) (footnotes omitted). Indeed, courts have long utilized and approved of appointed monitors and other third parties to monitor compliance with court orders or settlements in the prison context. *See, e.g., Plata v. Schwarzenegger*, 603 F.3d 1088 (9th Cir. 2010); *Benjamin v. Fraser*, 343 F.3d 35, 44 (2nd Cir. 2003); *Toussaint v. McCarthy*, 597 F. Supp. 1388 (N.D. Cal. 1984), overruled on other grounds, 801 F.2d 1080 (9th Cir. 1986) ("Courts have not hesitated to appoint a monitor or other similar officer when required to secure effective relief for unconstitutional jail or prison conditions."); *Morales Feliciano v. Romero Barcelo*, 672 F. Supp. 591, 623 (D. Puerto Rico 1986) ("The appointment of agents to supervise the implementation of remedial decrees in institutional reform litigation involving prisons and jails is well precedented.").

Given the closed nature of the Orange County jails, observing compliance with this Court's orders will be difficult as it is largely removed from public scrutiny. This is the exact scenario that compels a court appointed third party monitor. Moreover, the ADA violations found by this Court are difficult to observe so that assessing compliance will be challenging as well. For example, the availability and accessibility of programs, services, and activities for disabled detainees is more easily measured by a monitor with court mandated access to

the jails than by the Plaintiffs or this Court, which would have to undertake continuous and extensive evidence gathering and evaluation to make the same assessment.

The County's long history of refusing to comply with the ADA also attests to the need for external monitoring. See *Benjamin*, 343 F.3d at 49 (holding that appointment of external monitor was a necessary and minimal burden where defendant failed to comply with its responsibilities). Given that this litigation began ten years ago and the County has largely failed to address the violations found by this Court demonstrates that the County's internal measures for assessing and remedying ADA violations are inadequate. In addition to providing the court with assessments of the defendant's compliance efforts, a monitor will facilitate the County's own awareness of its compliance with the court's directives. See *Benjamin*, 343 F.3d at 45.

In the instant case, therefore, both the law and the facts strongly support the Court appointing a monitor to ensure compliance with the proposed plan (and any additional requirements), to report back to the court on that compliance and to review and analyse the various records the County is committing itself to gather and maintain.

To ensure that the monitoring is done in an efficient, impartial and expedient fashion, there are several requirements which must be imposed on the County and the monitor:

1) The monitor should be selected by the Court or by mutual agreement of the parties. If the parties cannot agree on a monitor within 15 days of the entering of the final order of the court, the court should appoint a monitor selected from a nominations list of two proposed monitors submitted by each of the parties within 20 days of entry of the order.

2) The monitor should have full access to all records and data maintained by the County in response to the Court's order, including but not limited to: a) all grievances and responses thereto as part of the new grievance procedure to which the County has committed itself; b) all requests for accommodation and responses thereto; 3) all communications to class members about their rights to programming and services; 4) all contact records between CPT and deputies with class members regarding access to programs and services; 5) documentation regarding classes offered, refused and taken by class members; 6)

documentation of recreation offered, refused and taken by class members; 7) documentation of transport of class members from MCJ, IRC, WCJ to other facilities for recreation; 8) documentation of transport of inmates from MCJ, IRC, WCJ and Theo Lacy for non-barrier visits; 9) documentation of transport of inmates from MCJ, IRC and WCJ to other facilities for vocational and educational programming.

3) The monitor should make four annual inspections the first year and two each of the following years of all facilities effected by the Order;

4) The monitor should have the ability to meet with and talk to class members about compliance issues upon request by the monitor and consent by the inmate;

5) The monitor shall prepare quarterly reports for each of the three years of the injunction to present to counsel and to the court, detailing compliance and non-compliance findings.

6) The monitor shall review all training materials, conduct the initial training of the ADA compliance officers, and participate in the initial training of deputies.

7) The monitor shall review all policy and procedure manual amendments.

8) The monitor shall receive reasonable compensation for these services, as determined by the court. In addition, the monitor shall have the right to subcontract with experts or consultants to assist in the monitoring process (for example, a specialist in architectural modification), if such person is required. Again, the monitor shall be compensated for these additional consultants, as determined by the court.

VIII. ENFORCEMENT PROCEDURES

The Court will retain jurisdiction to ensure that the parties fulfill their obligations under the injunction and to resolve disputes and/or fashion relief so as to carry out the injunctive relief provisions.

Plaintiffs' counsel will have an ongoing role to review the reports of the monitor, make reasonable inspection of the jail facilities, to communicate with class members and to seek enforcement of the injunctive relief order if non-compliance is found, as more full set forth below:

1. Plaintiffs' counsel will beprovided copies of the quarterly reports prepared by the monitor.

2. Plaintiffs' counsel will be granted the ability to fully participate in at least two of the on-site inspections conducted by the monitor the first year of the decree.

3. Plaintiffs' counsel will have the ability to conduct further inspections of the jail, upon reasonable notice to the County, for the following two years.

4. Plaintiffs' counsel will have the ability to review, upon reasonable request, all compliance documentation maintained by the County for a period for three years.

5. Plaintiffs' counsel will be provided copies of the policy and procedure manuals and training materials, as set forth more fully above.

6. Plaintiffs' counsel will have the opportunity to meet with class members upon reasonable notice to the County.

If Plaintiffs; counsel has reasonable cause to believe that the County has failed to perform in accordance with the order of the court, or if any party has reasonable cause to believe that one or more provisions of the injunction need to be revised, the party shall provide the other party with notice and opportunity to correct the non-compliance or to make modification. The parties shall then endeavor in good faith to resolve the reported dispute informally.

If the issue is not corrected or modified to the satisfaction of the requesting party within 30 days of providing notice, the party may apply to the Court for a hearing regarding the issue. The moving party shall have the burden of proof. The dispute, including legal briefing, will be submitted to Judge Collins, who may require additional briefing and/or any other remedy within her jurisdiction, including reference to a special master and/or mediator.

Plaintiffs' counsel will be entitled to reimbursement for all reasonable attorneys fees and costs incurred in reviewing the quarterly reports or other compliance documents, communications with the monitor, conducting inspections, meeting with class members to ensure compliance, and bringing enforcement proceedings.

IX. COMPLIANCE RECORDS

The County shall maintain sufficient records to document its compliance with all terms of the injunction. These records shall be provided to Plaintiffs' counsel, or made available to Plaintiffs' counsel, at no cost, within a reasonable time period, upon request.

DATED: March 11, 2011

Respectfully submitted,

HADSELL STORMER KEENY RICHARDSON & RENICK, LLP

By /s/-Virginia Keeny
Virginia Keeny
Attorneys for Plaintiffs

EXHIBIT 1

Terry Eli Hill, MD, CMD, FACP

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PROFESSIONAL POSITIONS

2010-present	Co-chair, Reliable Healthcare Organizing Network (RhoNet), a multi-university collaborative hub initiated by the Center for Catastrophic Risk Management and sponsored by the Haas School of Business and the School of Public Health at UC Berkeley
2009-present	Healthcare consultant and writer
2008-2009	Chief Executive Officer for Medical Services, California Prison Healthcare Receivership
2006-2008	Chief Medical Officer, California Prison Healthcare Receivership
2004-2006	Medical Director, then Senior Medical Director for Quality Improvement, Lumetra
1999-2004	Medical Director, Laguna Honda Hospital and Rehabilitation Center, San Francisco
1994-1999	Private practice geriatrician; medical director of long-term care organizations
1993-1994	Medical director of hospitalist physician group, Summit Medical Center, Oakland

ACADEMIC AFFILIATIONS

2000-present	Assistant Clinical Professor, Department of Medicine, UC San Francisco
2009-present	Center for Catastrophic Risk Management, UC Berkeley
2004-present	Northern California Geriatric Education Center
2002-2007	California Geriatric Education Center
1993-2006	Stanford Geriatric Education Center
1994-1999	Clinical Assistant Professor, Department of Medicine, Stanford University

EDUCATION AND TRAINING

1993-1994	NIH Postdoctoral Research Fellow, Stanford University
1991-1993	Fellow in Geriatrics, Stanford University, Palo Alto VA Medical Center
1990-1991	Chief Resident in Internal Medicine, Highland General Hospital, Oakland
1987-1990	Resident in Primary Care Internal Medicine, Highland General Hospital, Oakland
1987	M.D., University of California, San Francisco
1974	B.A. in Literature, Reed College, Portland

CERTIFICATIONS

Diplomate, American Board of Internal Medicine (1991, recertified 2002)
Certificate of Added Qualifications in Geriatrics (1994, recertified 2004)
Certified Medical Director, American Medical Directors Association (1996, recertified 2002, 2009)
Certified Correctional Health Professional; NCCHC surveyor (2009-2010)

SELECTED PROFESSIONAL AND COMMUNITY SERVICE

California Association of Long Term Care Medicine
President, 2002-2005
American Medical Directors Association
Committee Member of Public Policy 1999-2001, Membership 2004-2006, Communications 2004-2006, Ethics 2005-2007

SELECTED PROFESSIONAL AND COMMUNITY SERVICE – continued

California Medical Association
Consultant to Committee on Quality Care, 2006
Member of Long Term Care and Aging Technical Advisory Committee, 1997-1999; Committee on Long Term Care, 1992-1994; Council on Quality Care, 1989-1992
American College of Physicians/American Society for Internal Medicine
Fellowship status, 2010
Founding Member, 1990-1994, of Northern California Council of Associates
American Geriatrics Society
Society of Correctional Physicians
American Public Health Association
American College of Physician Executives
American Society for Bioethics and Humanities

Selected Past Organizations

California Institute for Health Systems Performance
Member of Board of Directors, 2006-1010
San Francisco Adult Day Services Network
Chair of Board of Directors, 2006-2008; Member of Board of Directors, 2002-2008
Center for Elders Independence (PACE project, Oakland)
Member of Board of Directors, 1998-2008
California Coalition for Compassionate Care (www.finalchoices.org)
Co-Chair, 1999-2006
National Quality Forum Palliative and Hospice Care Review Committee, 2005-2007
See: *A National Framework and Preferred Practices for Palliative and Hospice Care Quality*, 2007.

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"How Clinicians Make (or Avoid) Moral Judgments of Patients: Implications of the Evidence for Relationships and Research." Terry Hill. *Philosophy, Ethics, and Humanities in Medicine*, July 2010.

"The Current State of Quality of Care Measurement in the California Department of Corrections and Rehabilitation." Teleki S, Damberg C, Shaw R, Hiatt L, Williams B, Hill TE, Asch SM. *Journal of Correctional Health Care*. Forthcoming.

"Selecting Performance Indicators for Prison Healthcare." Asch SM, Damberg C, Hiatt L, Teleki S, Shaw R, Hill TE, Benjamin-Johnson R, Eisenman DP, Kulkarni SP, Wang E, Williams B, Yesus A, Grudzen CR. *Journal of Correctional Health Care*. Forthcoming.

"Caregiving Behind Bars: Correctional Officer Reports of Disability Among Geriatric Prisoners." Brie Williams B, Karla Lindquist, Terry Hill, Jacques Baillargeon, Jeff Mellow, Robert Greifinger, Louise Walter. *Journal of the American Geriatrics Society*, July 2009.

"Death Certification in Long Term Care." Terry Hill, Cheryl Phillips, John Franklin Randolph. *Journal of the American Medical Directors Association*, September 2005.

"Improving End-of-Life Care in Nursing Facilities: Reflections from the California Coalition for Compassionate Care." Terry Hill, Mary Cadogan, Marjorie Ginsburg, Judy Citko. *Journal of Palliative Medicine*, 2005 April; 8: 300-312.

"Influenza Deaths in Spite of Immunization and Prophylaxis." Terry Hill, Angela Platzer, Cristina Reyes. Letter to editor: *Clinical Infectious Diseases*, 2005 February 1; 40: 492-493.

"Mommy Dearest: A Medical Director's Analysis" and "Professional Promises in the 'Real' World: A Medical Director's Analysis." In *Moral Dilemmas in Community Health Care: Cases and Commentaries*. Becky Cox White and Joel Zimbelman, eds. Old Tappan, NJ: Longman, 2004.

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"The Last Transfer." Terry Hill, Mathy Mezey, Ethel Mitty. Letter to the editor: *Hastings Center Report*, March 2003.

"Guidelines for End-of-Life Care in Nursing Homes: Principles and Recommendations." Linda Farber Post, Ethel Mitty, Melissa Botrell, Nancy Dubler, Terry Hill, Mathy Mezey, and Gloria Ramsey. NAELA *Quarterly* (National Association of Elder Law Attorneys *Quarterly*), 2001 Spring; 14(2):24-30. Also published as monograph by New York University and Montefiore.

"Aging and Mental Health." Terry Hill and Cynthia L. Henderson. *"Aging and Mental Health"* (journal review). *JAMA*. 1998; 280:100-101.

"Barriers to Effective Communication in Skilled Nursing Facilities: Differences in Perception Between Nurses and Physicians." Mary Cadogan, Cheryl Franzi, Dan Osterweil, and Terry Hill. *Journal of the American Geriatrics Society*. 1998; 47:71-75.

"The ER Incident." *Annals of Internal Medicine*. 1992; 116: 867-868. Regarding race, class, and cynicism in a public hospital. Republished in *On Being a Doctor*, Philadelphia: ACP, 1995.

OTHER WRITING AND RESEARCH

"Aging Inmates: Challenges for Healthcare and Custody: A Report for the California Department of Corrections and Rehabilitation"

Terry Hill, Brie Williams, Gail Cobe, Karla Lindquist, under CDCR-Lumetra contract. May 2006.

"Physician Notification of Laboratory Results"

John Franklin Randolph and Terry Hill. California HealthCare Foundation *FastFacts* for nursing home professionals, May 2006 (see www.chcf.org).

"Lighting the Way to Quality Improvement"

Southern California Physician, July 2005.

"Elder Mistreatment Feeds Liability Crisis"

San Francisco Medicine. March 2004 (see www.sfms.org/sfm).

"Surrogate Decision-Making, Public Guardianship, and Advance Care Planning in Long-Term Care"

Jonathan Evans, Lisa Boult, Terry Hill, Ladislav Volicer, writing for the Ethics Committee of the American Medical Directors Association. Published as white paper (see www.amda.com).

"Laguna Honda Hospital, Past Into Future"

San Francisco Medicine. April 2002 (see www.sfms.org/sfm).

"Life and Death Choices"

San Francisco Chronicle, December 21, 2001.

"Providing Quality Care to Chronically Ill Ethnic Elders"

Terry Hill and Levanne Hendrix. *San Francisco Medicine*. November/December 2000).

"Recommendations for Improving End-of-life Care for Persons Residing in California Skilled Nursing and Intermediate Care Facilities"

Monograph by statewide ECHO task force (Extreme Care, Humane Options) January 2000.

"Health Care for Ethnic Elders: Health Status, Communication, and Ethics. A Curriculum in Ethnogeriatrics for Physicians in Training"

Monograph by the Stanford Geriatric Education Center, 1996.

"What Difference Does a Life Make? Life Histories and Personhood in Nursing Homes"

Research project as Hartford Scholar, Hartford Center of Excellence in Geriatrics at Stanford, 1992-94. Presented as poster, American Geriatrics Society, May 1994.

"What Does the American College of Physicians Really Want?"

Winner of health policy essay contest, California chapter of ACP, March 1992.

"Trends in Birth Outcomes at San Francisco General Hospital, 1980-83"

Found adverse changes after implementation of 1982 Medi-Cal reforms, using analysis of covariance to control for eight maternal risk factors in 5000 births.

PRESENTATIONS AND CONFERENCES

"The Medical Crisis in California Prisons: A Cautionary Case Study"
Third International Biannual Conference of High Reliability Researchers and Practitioners, University of New Orleans, January 2010

"Standardizing Standardized Assessment: Goals and Tradeoffs"
Society of Correctional Physicians Annual Conference: Aging Inmates, Orlando, October 2009

"Symptoms and Care Near End of Life"
Markkula Center for Applied Ethics at Santa Clara University, conference for deputy public guardians, San Jose, May 2009

"The Promise and Politics of Quality Measurement"
National Conference on Correctional Health Care, Chicago, October 2008

"Turning Around Prison Medical Care" and "Public Health Benefits of the California Prison Receivership"
American Public Health Association Annual Meeting, San Diego, October 2008

"Bioethics and Morality Behind Bars"
Academic and Health Policy Conference on Correctional Health, Quincy, MA, March 2008

"Bioethical Discussion Sounds Different Behind Bars"
National Conference on Correctional Health Care, Nashville, October 2007
Annual Ethics Symposium, Kaiser Permanente Northern California, San Ramon, March 2007

"The Challenges of Aging Inmates"
NCCHC Updates in Correctional Health Care, Orlando, May 2007

"The California Plan: From Backwater to Mainstream"
National Conference on Correctional Health Care, Atlanta, October 2006

"Quality Vision, Relationships, and Reliability"
National Hospice and Palliative Care Association, Clinical Team Conference and Scientific Symposium, San Diego, April 2006.

"Quality 2006: Reliability Depends on Relationships"
VHA West Coast conference, Entering a New Quality Era, March 2006

"Medication Safety in Older Patients"
California Medical Facility, Vacaville, January 2006.

"Depression Matters: Screening and Assessment"
Lumetra teleconference, November 2005, and Nursing Home Collaboratives, January 2006.

"The Space Between Knowledge and Practice Change"
NorCal Geriatric Education Center Geriatrics Faculty Scholars course, UCSF, June 2005 and April 2006.

"Palliative Care Cases, Practice, Policy: Deciding What We're Doing Right and What We're Not Doing"
Kaiser Permanente Oakland Medical Center conference, May 2005.

"Culture Change in the Nursing Home"
California Association of Long Term Care Medicine annual seminar, Anaheim, May 2005.

"Reducing the Threat of Influenza and Other Seasonal Viruses"
Geriatric grand rounds, UCSF, November 2004. Also at American Medical Directors Association annual seminar, New Orleans, March 2005.

"Finding the Ethical Moment: Ethical Issues in Skilled Nursing Facilities"
With Joan King-Angell and Neal Snyder, case-based workshop at 2005 Ethics Symposium, Kaiser Permanente Northern California, Berkeley, March 2005.

"Promising Practices in End-of-Life Care"
At California Association of Health Facilities Director of Nurses Conference, Reno, January 2005.

"Continuity of Care Collaborative"
As part of CMS session on transformational change at Institute for Healthcare Improvement National Forum, Orlando, December 2004.

PRESENTATIONS AND CONFERENCES – continued

"The Nursing Home Quality Initiative Update" and "Reducing Influenza's Threat in Nursing Facilities"
At California Association of Health Facilities Institute, Lake Tahoe, August 2004.

"Influenza Prevention and Treatment in Nursing Facilities"
At California Adult Immunization Summit, Sacramento, May 2004.

"Minimizing the Threat of Influenza and Other Winter Viruses"
California Association of Long Term Care Medicine annual seminar, Anaheim, May 2004.

"Pain Management and the Lumetra Nursing Home Quality Initiative: Essential Physician Roles"
An evening program of the California Association of Long Term Care Medicine and Lumetra, presented several times throughout California, 2003-2004.

"Maintaining Dignity Towards the End of Life"
For residents and staff in long-term care facilities at annual meeting of the California Association of Homes and Services for the Aging, Pasadena, May 2004; San Jose, May 2005.

Lumetra Nursing Home Collaboratives
Chaired Bay Area and Sacramento year-long collaboratives to improve pain and pressure sore prevention and management. Multiple presentations on these topics and organizational change, 2003-2004. Modified into one-day Quality in Action workshops, multiple locations, 2004-2005.

Commitment to Compassionate Care: Addressing End-of-Life Issues
Course director for this two-day curriculum for nursing facilities, sponsored by California Coalition for Compassionate Care, March 2000, June 2001, June 2002. Modified for day-long workshops for American Society on Aging, San Francisco, June 2003, June 2004 and September 2005.

"End-of-Life Care: Making Decisions, Managing Symptoms"
California Department of Health Services Physicians Educational Meeting, Sacramento, November 2003.

"Symptom Management at End of Life" and "Creating Institutional Change"
At symposium sponsored by California Association of Long Term Care Medicine, San Diego, November 2003.

"Symptom Management at End of Life"
Cypress Foundation Conference sponsored by Monterey and Santa Cruz County Medical Societies, Seaside, October 2003.

"Influenza and Pneumonia Prevention in Nursing Facilities"
At California Adult Immunization Summit, Pasadena, May 2003.

"Artificial Nutrition and Hydration: Assessment, Evidence, and Ethical Issues"
Kaiser Oakland Medical Center, October 2002.

"Improving End-of-Life Care in Nursing Facilities"
Association of Health Facility Survey Agencies annual seminar, Williamsburg, October 2002.

"Who Has the Capacity to Decide What, When? Legal and Practical Considerations"
California Association of Long Term Care Medicine annual seminar, May 2002 and April 2005.

Achieving Excellent End-of-Life Care in Nursing Facilities: Advanced Topics
Organized this conference with sponsorship by the California Geriatric Education Center, the California Association of Long Term Care Medicine, and the California Coalition for Compassionate Care, Anaheim, May 2002, repeated Napa, November 2002. Gave presentation on practical quality improvement strategies in end-of-life care.

"Beyond Cultural Chaos to Successful Communication in Long Term Care"
American Medical Directors Association annual seminar, San Diego, March 2002.

"What It Takes to Change Practice in Nursing Facilities: Expertise, Consensus, Persistence"
California Association of Long Term Care Medicine annual seminar, Anaheim, May 2001.

"Chronic Pain, Aging, and the Processes of Care"
At Practical Geriatrics conference, Stanford, November 2000.

PRESENTATIONS AND CONFERENCES – continued

"Community-Based Elder Care: Assessment and Referral"
Organized conference on the role of the physician in community-based long-term care co-sponsored by seven local and state organizations, San Francisco, October 2000. Also gave above presentation. Repeated presentation at California Academy of Family Physicians annual seminar, February 2001.

"Surveyor Drug Review: New Guidelines and Investigative Protocols"
Presentation at conference on HCFA's Quality Indicators and Survey Process sponsored by California Department of Health Services, California Association of Homes and Services for the Aging, and California Healthcare Association, August 1999.

"Negotiating Dying: Communication is the First Great Divide"
Kaiser Oakland, 1998; Long Term Care Bioethics Consortium of the East Bay, 1999; Kaiser Permanente statewide videoconference, 1999; California Association of Adult Day Services, Long Beach, 1999; Practical Geriatrics conference, Stanford, 1999; Alta Bates Hospital, 2000; Cypress Foundation Conference, Seaside, 2000; Laguna Honda Hospital, 2000; Santa Teresa Hospital, 2000; American Society on Aging Summer Series, San Francisco, 2000; Kaiser/UCSF End-of-Life Care Conference, 2002; and multiple sessions with medical and nurse practitioner trainees.

"Advance Care Planning in Nursing Facilities: New California Breakthroughs"
At California Association of Medical Directors annual seminar, May 1999, and at annual meeting of California Association of Homes and Services for the Aging, May 1999.

"Geriatrics: Beyond Team Sport to Organizational Sport"
Presentation to UCSF Division of Geriatrics, March 1999.

"Processes for Decision-Making at the End of Life: A California Update"
Presentation at New York University conference, April 1998, and at Gerontological Society of America preconference, November 1998.

"Death, Decisions, and Documentation: What's at Stake, Who's at Risk in End-of-Life Care"
Summit Medical Center, July 1998.

"Urinary Incontinence: Primary Care Responsibilities"
Medical Staff conference, Summit Medical Center, May 1998.

"Collaboration to Improve Care: Trust is a Two-Way Street"
American Medical Directors Association annual seminar, San Antonio, March 1998.

"Clinical Issues in Caring for Ethnic Elders: Culture, Communication, and Ethics"
Workshop at Ethnogeriatrics and Managed Care conference, Stanford, January 1998.

"Adverse Drug Reactions in the Elderly: How to Steer Clear of Mishaps and Disasters"
San Ramon Regional Medical Center, June 1996, and Summit Medical Center, October 1997.

"End-of-life Decision-making" and "Nursing Homes, Moral Spaces: Encouraging Everyday Ethics"
Keynote addresses, Stanislaus Long Term Care Bioethics Forum, October 1997, and at American Baptist Homes of the West Annual Meeting, January 1998.

"Ethics, Power, and Data Management in Managed Care"
Workshop at Institute '97, sponsored by California Association of Health Facilities and Quality Care Health Foundation, August 1997.

"Psychotropic Medication and Behavior Management in Long Term Care: Dementia, Delirium, Depression, Anxiety, Psychosis, Distress"
Presentations at series of statewide conferences on restraint reduction, September 1996.

"Psychotropic Medication and Behavior Management" and "Interdisciplinary Team Building"
California Healthcare Association conferences, Irvine and Oakland, May 1997.

PRESENTATIONS AND CONFERENCES – continued

"Getting to Teamwork: Improving Communication in Long Term Care."
California Association of Medical Directors annual seminar, May 1997. Repeated to UCSF Division of Geriatrics, August 2002.

"Risk and Control of Cooties in Long Term Care: Scabies and Herpes Zoster"
San Ramon, May 1997.

"The Ethnic Elderly, Families, and Health Care Teams: Pathways to Effective Partnerships."
Course leader and presenter within this 40-hour training program of the Stanford Geriatric Education Center, Summit Medical Center, and Samuel Merritt College. Feb-April 1997.

"Growing Concerns in Gerontology"
Medical Staff conference, San Ramon Regional Medical Center, April 1997.

"Who's Fit to Be Tied? Fall Prevention and Restraint Reduction"
Medical Staff conference, San Ramon Regional Medical Center, March 1997.

"Psychotropic Medications for Agitated Behaviors in Dementia"
Presentations at a series of statewide conferences on restraint reduction sponsored by six organizations, September 1996.

"Improving Care for the Frail Elderly: A Team Approach to Common Problems"
Presented sessions on team-building, cognitive impairments, falls, restraints, and communication, San Ramon Regional Medical Center, August 1996.

"Phone Calls and Protocols: Trust Is a Two-way Street"
Presentation on nursing standardized procedures at conferences sponsored by the Long Term Care Communication Coalition; September 1995 and May 1996.

"Medical Treatment of Stroke"
San Ramon Regional Medical Center, May 1996.

"Chronic Cardiac Conditions and Revolving Door Admissions: Proactive Case Management"
Golden State Rehabilitation Hospital, May 1996.

"Outreach to Ethnically Diverse Older Adults"
TriCities Elder Coalition, Union City, May 1996.

"'Agitation' in Subacute and Long Term Care"
Organized, moderated, and wrote syllabus for this conference at Summit Medical Center, July 1995, co-sponsored by eight organizations; gave presentation on team-building.

"Physician-Patient Communication Amidst Cultural Chaos: Muddling Toward Excellence"
Brookside Hospital, April 1995.

"Cultural Competence as a Quality Improvement Project in Health Care Institutions"
Presentation to American Baptist Homes of the West corporate leadership, April 1995.

"Are Hospitals Really Necessary? How to Provide Good Care for Sick Patients in Nursing Homes"
Lectures at Highland Hospital and Stanford Medical School, February 1995.

"Midlife: A Life Course Perspective"
At conference, "Crossing the Middle Years," Summit Medical Center, December 1994.

"Communications among Nursing Home, Physician, and Acute Hospital"
Panel discussion at Western Scientific Assembly of CMA, March 1994.

"Improving Nurse-Physician Communication in Long-Term Care"
Panel discussion at annual session of American Society on Aging, March 1994.

"Physician-Patient Communication"
Workshop, Stanford Medical School, multiple dates 1993-95.

"Racism in Medicine"
Presentation at symposium of California Physicians' Alliance, July 1992.

"Death"
Highland General Hospital, May 1991. Repeated Alta Bates Hospital, January 2000.