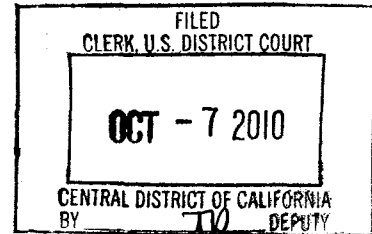


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18 IN THE UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

21 COMMUNITIES ACTIVELY LIVING
22 INDEPENDENTLY AND FREE, et al.,

23 Plaintiffs,

24 v.

25 CITY OF LOS ANGELES and
26 COUNTY OF LOS ANGELES,

27 Defendants.

Case No. CV 09-0287 CBM (RZx)

**STATEMENT OF INTEREST OF
THE UNITED STATES**

Date: October 12, 2010
Time: 12:00 Noon
Place: Courtroom 2
Judge: Hon. Consuelo B. Marshall

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I. INTRODUCTION

This class action lawsuit alleges that the County and City of Los Angeles, California discriminate against individuals with disabilities in their emergency management programs in violation of federal law, including Title II of the Americans with Disabilities Act of 1990 (“Title II” or “ADA”), 42 U.S.C. §§ 12131-12134, and Section 504 of the Rehabilitation Act of 1973 (“Section 504” or “Rehabilitation Act”), 29 U.S.C. § 794. Plaintiffs contend that Los Angeles has failed to conduct the planning required to meet the needs of individuals with disabilities and ensure access for these individuals across the full spectrum of its emergency programs, services, and activities. The City responds that it will meet the needs of individuals with disabilities during or after an emergency by providing *ad hoc* reasonable accommodations when individuals with disabilities request them.

The United States agrees with, and supports, the Plaintiffs’ Motion for Summary Judgment. Simply put, Los Angeles cannot afford individuals with disabilities an equal opportunity to survive and recover from emergencies unless it plans and prepares in advance to meet the disability-related needs of its residents and visitors. The evidence shows beyond dispute that Los Angeles has not performed the advance planning and preparations necessary to provide individuals with disabilities an equal opportunity to access and benefit from its emergency

1 management programs, services, and activities despite the receipt of large amounts
2 of federal funding that could have been used for this purpose. For example, the
3 City has not:

- 4 • Established a system to notify individuals who are deaf or hard of hearing
5 about the need to evacuate or shelter in place;
- 6 • Conducted outreach to determine who will need assistance evacuating their
7 homes or established mechanisms that individuals with disabilities can use
8 to obtain assistance;
- 9 • Made arrangements for accessible vehicles to be available to transport to
10 emergency shelters individuals who use wheelchairs and need evacuation
11 assistance;
- 12 • Surveyed its emergency shelters to identify inaccessible features such as
13 inaccessible entrances with steps and inaccessible toilet rooms and taken
14 corrective actions to eliminate such barriers or find substitute shelters that
15 are accessible;
- 16 • Made plans to provide life-sustaining medications, consumable medical
17 supplies, durable medical equipment, or assistance in eating, dressing, or
18 toileting for individuals with disabilities who will require these things to
19 survive in an emergency shelter; or
- 20 • Made plans, when a shelter-in-place response is executed, such as during a
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1 power-outage, to provide in-home assistance or sheltering options for
2 individuals with disabilities whose survival depends on electrically powered
3 equipment.
4

5 For this reason, the United States joins the Plaintiffs in asking the Court to grant
6 Plaintiffs' Motion for Summary Judgment and order the City of Los Angeles to
7 amend and supplement its planning preparations, and take all other steps necessary,
8 to ensure that individuals with disabilities are afforded an equal opportunity to
9 survive and recover from emergencies.
10

11 **II. LEGAL AUTHORITY FOR FILING STATEMENT OF INTEREST**

12 The U.S. Department of Justice enforces, regulates, implements,
13 coordinates, and provides technical assistance for the ADA and Section 504, which
14 includes the application of these laws to emergency management programs,
15 services, and activities. See, e.g., U.S. Dept. of Justice, ADA Best Practices Tool
16 Kit for State and Local Gov'ts, Chapter 7, Emerg. Mgmt. under Title II of the
17 ADA (2007), at www.ada.gov/pcatoolkit/toolkitmain.htm#pcatoolkitch7 (technical
18 assistance issued by Department of Justice on how to comply with the ADA and
19 Section 504 in emergency management programs, services, and activities)
20 ("Chapter 7, ADA Tool Kit").¹ The United States submits the instant Statement of
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26 ¹ See 42 U.S.C. §§ 12134(a), (c) (requiring Department of Justice to issue regulations, including
27 architectural standards, applicable to state and local governments); 42 U.S.C. § 12206
28 (authorizing the Department to issue technical assistance under Title II); 28 C.F.R. § 35.190

Interest pursuant to 28 U.S.C. § 517 because this litigation implicates the proper interpretation and application of the ADA, Section 504, and the related regulations and technical assistance materials that it has issued.

III. BACKGROUND

A. People with Disabilities Have Consistently Faced Discrimination in Emergencies and Disasters Because Emergency Managers Have Not Planned and Prepared to Meet Their Needs.

Advance planning and preparations are critical to ensuring that the rights and needs of individuals with disabilities are met during emergencies and disasters.

The National Council on Disability (“NCD”), an independent federal agency authorized by Title IV of the Rehabilitation Act of 1973, 29 U.S.C. § 780 et seq., to conduct research, prepare reports, and develop recommendations on disability

(authorizing the Department to issue policy guidance to ensure consistent interpretation of Title II and designating it as the agency responsible for Title II enforcement for state and local government programs and facilities); Exec. Order 12,250 (assigning leadership role to Department in the coordination and enforcement of federal civil rights laws applicable to federally assisted programs, including Section 504, and directing agencies to issue regulations and policy guidance implementing the same (pt. 1-402)); 28 C.F.R. pt. 41 (implementing Exec. Order 12,250, authorizing Department of Justice’s role in coordination of federal disability rights laws involving federal assistance, and requiring federal agency regulations under Section 504 to be consistent with this part); 28 C.F.R. pt. 42 subpt. G (Nov. 2, 1980) (establishing Section 504 requirements for recipients of Department of Justice financial assistance); Accommodating Individuals with Disabilities in the Provision of Disaster Mass Care, Housing, and Human Services, Reference Guide, Part III: FEMA Policy, at www.fema.gov/oer/reference/fema_policy.shtm (confirming obligations of, among others, recipients of federal financial assistance pursuant to Section 504).

1 rights issues, has time and again identified pervasive discrimination against
2 individuals with disabilities in emergency preparedness, response, recovery, and
3 mitigation, always emphasizing in its recommendations the importance of
4 inclusive *planning*.
5

6 In April 2005 – only a few months before Hurricanes Katrina, Rita, and
7 Wilma – NCD identified pervasive failures to include individuals with disabilities
8 in emergency preparedness and planning, failures to incorporate disability-related
9 lessons learned from prior disasters into emergency planning, and the resulting
10 unequal delivery of goods and services to people with disabilities during
11 emergencies. See NCD, Saving Lives: Incl. People w. Disabilities in Emerg.
12 Planning (2005) at
13 http://www.ncd.gov/newsroom/publications/2005/emergency_planning.htm. In the
14 aftermath of Hurricane Katrina, because of a lack of planning, NCD reported many
15 accounts of people with disabilities who were forced to abandon wheelchairs,
16 walkers, medical equipment, service animals, white canes, attendants for personal
17 assistance services, and medications. NCD on Hurricane Affected Areas I and II
18 (2005) at <http://www.ncd.gov/newsroom/publications/2005/katrina.htm> and
19 <http://www.ncd.gov/newsroom/publications/2005/katrina2.htm>. Because of a lack
20 of planning and preparations, NCD reported, emergency information was not
21 disseminated via broadcasts in accessible formats, inaccessible facilities were used,
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1 and persons with disabilities and organizations representing their rights were not
2 included in preparedness activities that could have mitigated many of the adverse
3 results. Id. NCD again emphasized the importance of preparation, that:

4 Relief and rescue operations must have the appropriate medical
5 equipment, supplies, and training to address the immediate needs of
6 people with disabilities. Affected individuals will require bladder
7 bags, insulin pumps, walkers, or wheelchairs. Relief personnel must
8 be equipped and trained in the use of such equipment. In addition,
9 relief personnel should provide training, particularly for personnel and
10 volunteers in the field, on how to support the independence and
11 dignity of persons with disabilities in the aftermath of Hurricane
12 Katrina.
13

14 Id.; see also NCD, Emerg. Mgmt. and People w. Disabilities, Cong'l Briefing
15 (Nov. 10, 2005) (same) at

16 http://www.ncd.gov/newsroom/publications/2005/transcript_emergencymgt.htm.
17

18 In 2009, NCD once again stressed that “[p]lanning is possibly the most
19 important, albeit the most difficult, stage in the emergency management process.
20 This is due, in part, to the unpredictable nature of disasters The generic, one-
21 size-fits-all approach to disaster planning does not work.” NCD, Effective Emerg.
22 Mgmt. (2009) at
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1 http://www.ncd.gov/newsroom/publications/2009/NCD_EmergencyManagement
2 [HTML/EffectiveEmergencyManagement.html](http://www.ncd.gov/newsroom/publications/2009/NCD_EmergencyManagement). NCD emphasized:

3 The challenges faced by persons with disabilities (physical, sensory,
4 cognitive, psychiatric, etc.) . . . in all disaster-threat situations have
5 been made even more clear through events such as September 11,
6 Hurricane Katrina, and the latest wildfires in Southern California.
7 Problems with warning transmission and receipt, transportation,
8 evacuation, shelter, and long-term recovery have been documented
9 through both research studies and government investigations
10 Lack of planning and lack of inclusion of persons with disabilities . . .
11 remains a problem across the nation, despite . . . the Nationwide Plan
12 Review, post-Katrina legislation, and U.S. Department of Justice
13 Shelter Guidance, to list but a few.

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19 Id.

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21 ***B. The ADA and Section 504 Prohibit Discrimination in Emergency***
22 ***Management Programs.***

23
24 The ADA, 42 U.S.C. §§ 12101 et seq., is a comprehensive civil rights law
25 enacted “to provide a clear and comprehensive national mandate for the
26 elimination of discrimination against individuals with disabilities.” 42 U.S.C.
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1 § 12101(b)(1). Its coverage is broad, prohibiting disability-based discrimination in
2 employment, state and local government programs and services, transportation
3 systems, telecommunications, commercial facilities, and the provision of goods
4 and services to the public by for-profit and nonprofit private entities. Title II of the
5 ADA was enacted to broaden the coverage of Section 504, which prohibits
6 discrimination under, exclusion from participation in, and the denial of benefits of
7 “any program or activity receiving federal financial assistance,” including
8 emergency management programs and activities of state and local governments.
9
10 29 U.S.C. § 794(a). Title II extends these protections to *all* state and local
11 government programs, services, and activities, including emergency management
12 and other programs receiving no federal funds. Title II provides that:

15 [N]o qualified individual with a disability shall, by reason of such
16 disability, be excluded from participation in or be denied the benefits
17 of the services, programs, or activities of a public entity, or be
18 subjected to discrimination by any such entity.
19
20

21 42 U.S.C. § 12132. The ADA and Section 504 are generally construed to impose
22 the same or similar requirements. Sanchez v. Johnson, 416 F.3d 1051, 1062 (9th
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1 Cir. 2005); Zukle v. Regents of Univ. of California, 166 F.3d 1041, 1045 n.11 (9th
 2 Cir. 1999).²

3 Congress explicitly delegated to the Department of Justice the authority to
 4 promulgate regulations under both statutes. See 42 U.S.C. § 12134(a); 28 C.F.R.
 5 pt. 35 (Title II); 29 U.S.C. § 794(a); 28 C.F.R. pt. 41 (Section 504 coordination
 6 regulation for federally assisted programs that sets the baseline for 504 rules issued
 7 by federal agencies). Congress also authorized the Department to issue technical
 8 assistance on compliance with the ADA. 42 U.S.C. § 12206. Accordingly, the
 9 Department's regulations and interpretation thereof are entitled to substantial
 10 deference. See Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc., 467 U.S.
 11 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984); Olmstead v. L.C., 527 U.S. 581,
 12 597-98, 119 S. Ct. 2176, 144 L. Ed. 2d 540 (1999) (“[T]he well-reasoned views of
 13 the agencies implementing a statute constitute a body of experience and informed
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 20 ² This principle applies not only because of the similar language and remedies
 21 shared by the two acts but also because of the Congressional directive that
 22 implementation and interpretation of the two acts “be coordinated to prevent[]
 23 imposition of inconsistent or conflicting standards for the same requirements under
 24 the two statutes.” Baird ex rel. Baird v. Rose, 192 F.3d 462, 468-69 (4th Cir.
 25 1999) (citing 42 U.S.C. § 12117(b)) (omission in original). Title II provides that
 26 “[t]he remedies, procedures, and rights” set forth under Section 504 shall be
 27 available to any person alleging discrimination in violation of Title II. 42 U.S.C. §
 28 12133; see also 42 U.S.C. § 12201(a) (ADA must not be construed more narrowly
 than Rehabilitation Act). See also Yeskey v. Com. of Penn. Dep’t of Corrections,
 118 F.3d 168, 170 (3d Cir. 1997) (“[A]ll the leading cases take up the statutes
 together, as we will.”), aff’d, 524 U.S. 206 (1998).

1 judgment to which courts and litigants may properly resort for guidance.”);
2 Armstrong v. Schwarzenegger, No. 09-17144, 13479-13483 (9th Cir. Sept. 7,
3 2010) (deference to Attorney General’s interpretation of Title II); cf. Bragdon v.
4 Abbott, 524 U.S. 624, 646, 118 S. Ct. 2196, 141 L. Ed. 2d 540 (1998) (citing same
5 for Title III of the ADA); see also Auer v. Robbins, 519 U.S. 452, 461, 117 S. Ct.
6 905, 137 L. Ed. 2d 79 (1977) (agency’s interpretation of its regulations
7 “controlling unless plainly erroneous or inconsistent with the regulation”).
8
9

10 ***C. The Department of Justice Has Issued Guidance to Help Eliminate***
11 ***Discrimination Against Individuals with Disabilities in Emergencies***
12 ***and Disasters.***
13

14
15 To assist emergency managers in evaluating and remediating emergency
16 plans to ensure inclusion of people with disabilities throughout the phases of
17 disasters, the U.S. Department of Justice has developed technical assistance. See
18 Chapter 7, ADA Tool Kit. Chapter 7 of the ADA Tool Kit guides emergency
19 managers through obligations under the ADA and Section 504, including planning;
20 preparation; testing of preparedness; notification; community evacuation and
21 transportation; emergency shelter programs; temporary lodging and housing; social
22 services and emergency- and disaster-related benefit programs; emergency medical
23 care and services; relocation programs, activities, and services; transition and
24 transportation back to the community following an emergency or disaster; recovery
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1 programs; and remediation of damage caused by emergencies and disasters.

2 Evaluation of an emergency management plan for inclusion of people with
3 disabilities throughout is a critical first step in delivering a successful, inclusive,
4 and nondiscriminatory emergency response. As discussed more fully in the
5 following sections, it is also required by law.
6

7 The ADA and Section 504 require equal opportunity, and prohibit
8 discrimination against individuals with disabilities. When, as in this case,
9 emergency management involves advance planning and preparation to meet the
10 needs of the general public but similar advance planning and preparation are not
11 undertaken to meet the readily identifiable needs of individuals with disabilities,
12 people with disabilities are subjected to disparate treatment and denied equal
13 opportunities to participate in – and benefit from – emergency management
14 programs. Disparate treatment, and denial of equal opportunities, are the very
15 types of discrimination that the ADA and Section 504 were enacted to prevent.
16
17 See, e.g., 28 C.F.R. § 35.130 (prohibiting various forms of discrimination in
18 programs, services, and activities, including unequal treatment in emergency
19 management planning for individuals with disabilities); 28 C.F.R. § 35.130(b)(4)(i)
20 (prohibiting public entities from determining the site or location of a facility that
21 has the effect of excluding individuals with disabilities or otherwise subjecting
22 them to discrimination).
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1 **IV. THE CITY OF LOS ANGELES HAS FAILED TO PLAN AND**
2 **PREPARE TO ENSURE THE RIGHTS OF INDIVIDUALS WITH**
3 **DISABILITIES DURING EMERGENCIES**
4

5 ***A. The City Plans and Prepares for Emergencies in General, but Fails to***
6 ***Do So for Persons with Disabilities.***
7

8 The California Emergency Services Act, 2 Cal. Gov't Code §§ 8550-
9 8899.24, and the Los Angeles Admin. Code §§ 8.21-8.87 establish the City's
10 emergency management program. The City's Emergency Management
11 Department ("LAEMD") coordinates the preparedness, planning, training, and
12 recovery activities of the City's Emergency Operations Organization ("EOO"). See
13 City of Los Angeles, Emerg. Mgmt. Dept., at
14 <http://emergency.lacity.org/epdepd2b.htm#Communications>; City of Los Angeles,
15 EOO Master Plan, at <http://emergency.lacity.org/epdp2a3a.htm>. The EOO Master
16 Plan sets out the authority, responsibility, and functions of various City agencies,
17 "[p]rovides a basis for the conduct and coordination of operations and the
18 management of critical resources during emergencies," and incorporates
19 responsibilities of non-governmental entities. See City of Los Angeles, EOO
20 Master Plan, Intro. at 1.2, at <http://emergency.lacity.org/epdp2a3a.htm>.
21 The EOO Master Plan reflects extensive planning and preparation to meet
22 23 24 25 26 27 28

1 the needs of the general population, including sheltering, temporary lodging, food,
2 portable toilets, shelter for pets, transportation, equipment, and personnel. By
3 contrast, it reflects no planning for accessible sheltering, toilets, transportation,
4 service animal support, or equipment and personnel to provide disability-related
5 assistance and support. Id. In fact, it is almost silent on meeting the rights and
6 needs of people with disabilities during disasters, as are its Division Plans and
7 Annexes, stating only:

10 DISABILITIES CONSIDERATIONS

11 During a disaster relief operation, the Logistics Section of the EOC is
12 responsible for the acquisition and deployment of resources for the
13 operations, both human and otherwise. The Department on Disability,
14 in pre-incident planning, will attempt to:

- 17 • Provide information on resources for people with disabilities so
18 that the Logistics Section can effectively and efficiently acquire
19 and deploy those resources.
- 21 • Provide information so that emergency workers and first
22 responders in a disaster can correctly identify and request
23 resources for people with disabilities.

25 City of Los Angeles, Citywide Logistics Annex at 50 (Sept. 15, 2008) at
26 emergency.lacity.org/pdf/epa/Citywide_Logistics_Annex.pdf. At best, this is an
27

1 unimplemented plan to plan.

2 The City's Department on Disability ("DOD") is otherwise excluded from
3 the EOO and Master Plan and literally does not have a seat in the Emergency
4 Operations Center to coordinate disaster response for people with disabilities. The
5 City's DOD has itself admitted a serious lack of planning and preparedness to meet
6 the disaster-related needs of people with disabilities:
7

8 It is our belief that the City Emergency Management and Disaster
9 Preparedness Program is seriously out of compliance with the
10 Americans with Disabilities Act of 1990 (Title II), [t]he Rehabilitation
11 Act of 1973, as amended, Section 504 ... Although the Department on
12 Disability (DOD) is responsible for ensuring that City Department
13 programs, services and activities are accessible to persons with
14 disabilities, there appears to be continued resistance and a lack of
15 responsiveness relative to suggested emergency management
16 preparedness plan updates and changes. DOD's recommendations for
17 ensuring accessibility are often overlooked and not included in reports
18 unless DOD staff are actually present at meetings and bring attention
19 to the issues. ...

20 The DOD strongly believes that Angelinos with disabilities will
21 continue to be at-risk for suffering and death in disproportionate
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1 numbers, unless the City family drastically enhances the existing
2 disability-related emergency management and disaster planning
3 process and readiness as required by the ADA and other statutes. ...
4

5 Mem. from Regina Houston-Swain, Exec. Director, DOD to James Featherstone,
6 General Manager, Emergency Mgmt. Dept. (Aug. 27, 2008), Pl's M. Summ. J.,
7 Smith Decl., Ex L (Bates No. 4401). Indeed, having apparently reviewed the
8 technical assistance issued by the Department of Justice, the DOD itself
9 recommended that the City assess all emergency facilities for architectural
10 compliance with the ADA and Section 504 by using Chapter 7 of the ADA Tool
11 Kit, establish a memorandum of understanding with the Los Angeles Chapter of
12 the Red Cross to ensure personal assistance services during disasters, evaluate all
13 emergency plans, and "integrate people with disabilities, disability service
14 providers, and advocacy organizations into the planning process," and "all
15 emergency and disaster exercises." Id.
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20 ***B. The City Receives Large Amounts of Federal Funding that Could Have***
21 ***Been Used to Plan and Prepare for the Disaster-Related Needs of***
22 ***People with Disabilities***
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25 Since fiscal year 2000, the federal government, through its various agencies,
26 has allocated large amounts of federal financial assistance to the City. See
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1 www.transparency.gov, which is hosted by the U.S. Office of Management and
2 Budget.³ A search of this database reveals that the City has been allocated \$48.9
3 million in assistance directly from the Federal Emergency Management Agency
4 (“FEMA”) and a total of \$2.78 billion in assistance from the federal government as
5 a whole. These totals do not include funds that are first allocated to the State of
6 California before distribution to the City (much of FEMA’s funding for emergency
7 management first goes through states), nor do they account for potential assistance
8 distributed in response to particular emergencies or disasters. As discussed above,
9 the receipt of federal financial assistance requires compliance with the
10 nondiscrimination requirements of Section 504. Notwithstanding this extent of
11 federal funding, emergency planning and preparation for persons with disabilities
12 is absent and, as admitted by LAEMD’s Director, unequal to the planning for the
13 general population:
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18 Q.: Do you think you are as well prepared to deal with the needs of
19 people with disabilities in an emergency as you are with the general
20 population.
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22 A.: No.
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26 ³ This federal financial assistance database and website are developed pursuant to the Federal
27 Funding Accountability and Transparency Act of 2006, P.L. 109-282 (2006), 31 U.S.C. § 6101
28 note, and was launched in December 2007.

1 Dep. of James Featherstone, Director, LAEMD at 95:9-12 (Feb. 3, 2010), Smith
2 Decl., Ex A.

3 **V. THE ADA AND SECTION 504 REQUIRE MORE THAN**
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5 **THE CITY'S GENERAL ASSERTIONS OF THE ABILITY TO PROVIDE**
6 **AD HOC REASONABLE ACCOMMODATIONS UPON REQUEST**

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8 In response to Plaintiffs' allegations that Los Angeles has not planned or
9 prepared to meet the needs of individuals with disabilities, the City asserts that it
10 can nonetheless comply with the ADA and Section 504 by granting *ad hoc*
11 reasonable accommodations for individuals with disabilities, upon request, when
12 emergencies and disasters occur. While the ADA and Section 504 certainly
13 require the City to grant reasonable modifications of policies, practices, and
14 procedures that are necessary to avoid discrimination against individuals with
15 disabilities in emergencies and disasters, 28 C.F.R. § 35.130(b)(7); 28 C.F.R. pt.
16 41, both statutes require far more.

17
18 In enacting the ADA, Congress found that "historically, society has tended
19 to isolate and segregate individuals with disabilities, and, despite some
20 improvements, such forms of discrimination against individuals with disabilities
21 continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2).
22 Congress also found that:

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24 [I]ndividuals with disabilities continually encounter various forms of
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1 discrimination, including outright intentional exclusion, the
2 discriminatory effects of architectural, transportation, and
3 communication barriers, overprotective rules and policies, failure to
4 make modifications to existing facilities and practices, exclusionary
5 qualification standards and criteria, segregation, and relegation to
6 lesser services, programs, activities, benefits, jobs, or other
7 opportunities.
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11 42 U.S.C. § 12101(a)(6). Emergency management is one of these areas where
12 discrimination against individuals with disabilities continues to be a serious and
13 pervasive problem, as detailed in the numerous reports by NCD. See discussion
14 supra pp. 3-5. It is with this history of discrimination against individuals with
15 disabilities in emergency management that the Department of Justice issued
16 Chapter 7 of the ADA Tool Kit, providing emergency managers with authoritative
17 technical guidance they could use to avoid future disability discrimination.
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20 A primary responsibility of state and local governments is to protect
21 residents and visitors from harm, including assistance in preparing for, responding
22 to, and recovering from emergencies and disasters. See The California Emergency
23 Services Act, 2 Cal. Gov't Code §§ 8550-8899.24; Los Angeles Admin. Code §§
24 8.21-8.87 (both authorizing the City's emergency management program). When a
25 public entity conducts programs, services, and activities relating to emergency
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1 management, it must ensure nondiscrimination consistent with the ADA and,
2 where federal funds are involved, Section 504. 42 U.S.C. § 12132; 29 U.S.C.
3 § 794; see also Pa. Dept. of Corrs. v. Yeskey, 524 U.S. 206, 210, 118 S. Ct. 1952,
4 141 L. Ed. 2d 215 (1998) (Scalia, J.) (finding unanimously that state prisons and
5 their activities fit squarely and unmistakably as programs, services, and activities
6 under Title II). The civil rights of individuals with disabilities must be met
7 throughout all facets of disaster-related programs, services, and activities,
8 including planning, preparation, testing of preparedness, notification, community
9 evacuation and transportation, emergency sheltering, temporary lodging and
10 housing, social services and emergency- and disaster-related programs, emergency
11 medical care and services, and transitioning back to the community. See Chapter 7,
12 ADA Tool Kit. The first three activities – planning, preparation, and testing of
13 preparedness – are all part of a public entity’s emergency management program
14 that must occur *before* a disaster, and must address the needs of people with and
15 without disabilities. The remaining activities also require advance planning and
16 preparations. The City’s emergency plans fail to address the rights of individuals
17 with disabilities for any of these issues or phases of emergency management.

23 ***A. The Equal Opportunity Guarantees of the ADA and Section 504 in***

24 ***Emergency Management Cannot Be Met Without an Integrated Plan.***

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27 The Title II and Section 504 regulations provide a number of specific
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1 prohibitions of discrimination that apply across the spectrum of emergency
2 management. See generally 28 C.F.R. §§ 35.130, 35.149-151, 35.160; 28 C.F.R.
3 pt. 41. Of fundamental importance, however, is the integration mandate, which
4 requires public entities to “administer services, programs, and activities in the most
5 integrated setting appropriate to the needs of qualified individuals with
6 disabilities.” 28 C.F.R. § 35.130(d); see also 28 C.F.R. § 41.51(d) (same under
7 Section 504). Eleven years ago, the Supreme Court explained the integration
8 mandate of the ADA and Section 504: “Unjustified isolation, we hold, is properly
9 regarded as discrimination on the basis of disability.” Olmstead v. L.C., 527 U.S.
10 581, 597, 119 S. Ct. 2176, 144 L. Ed. 2d 540 (1999). This holding reaffirmed what
11 the Department had observed in the Preamble to its Title II Regulation:
12 “Integration is fundamental to the purposes of the Americans with Disabilities Act.
13 Provision of segregated accommodations and services relegates persons with
14 disabilities to second-class status.” 28 C.F.R. pt. 35, App. A; see also Arc of Wash.
15 State Inc. v. Braddock, 427 F.3d 615, 618 (9th Cir. 2005).

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21 Emergency management programs, services, and activities include the
22 affirmative provision of life-sustaining goods, services, information, and facilities
23 – including, *inter alia*, medical assistance, triage, food and other provisions, safety,
24 comfort, a sheltering environment, and case management. Under Title II and
25 Section 504, public entities are required to provide resources and services that
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1 individuals with disabilities can readily access and use. 28 C.F.R. §§ 35.130,
2 35.149-151. This includes disability-related services for individuals who do not
3 have access to their social support network (*e.g.*, transferring assistance, bowel and
4 bladder management, assistance in dressing, bathing, and wayfinding), necessary
5 “consumable medical supplies” (*e.g.*, sterile catheters, colostomy bags), and
6 “durable medical equipment” and other disability-related equipment (*e.g.*,
7 wheelchair battery charger, walkers, crutches, canes). See 28 C.F.R. § 35.130;
8 Chapter 7, ADA Tool Kit, add. 2; FEMA, Guidance on Planning for Integration of
9 Functional Needs Support Services in General Population Shelters (Interim 2010);
10 Goodman v. Georgia, 546 U.S. 151, 156, 126 S. Ct. 877, 163 L. Ed. 2d 650 (2006)
11 (noting medical services covered as programs, services, and activities under Title
12 II); Yeskey, 524 U.S. at 210 (finding Title II applies to essentially everything a
13 prison does with respect to inmates, regardless of whether it is voluntary).
14 Emergency management programs also involve the delivery of vital information,
15 which must include the use of auxiliary aids and services to achieve effective
16 communication with individuals who are deaf or hard of hearing, are blind or have
17 low vision, or have speech disabilities. 28 C.F.R. §§ 35.160-164. Facilities used
18 during disasters, such as emergency shelters, must also be physically accessible. 28
19 C.F.R. §§ 35.130, 35.149-151.
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26 Because of the exigent circumstances inherent in disasters, advance *planning*
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1 and *preparation* for these goods, services, auxiliary aids, and facilities are
 2 imperative. As FEMA's Administrator Craig Fugate recently explained at the
 3 2010 Inclusive Hurricane Conference: "[I]f we wait and plan for people with
 4 disabilities after we write the basic plan, we fail."⁴ An emergency management
 5 plan that integrates the rights of individuals with disabilities throughout is the
 6 cornerstone for a successful, nondiscriminatory emergency management response
 7 and recovery. As the evidence plainly shows, the City lacks this type of integrated
 8 plan and is unprepared to comply with the integration mandate of ADA and
 9 Section 504 in an emergency or disaster.

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 13 ***B. The City's Defenses Are Not Supported by the Facts or the Law.***

14 1. *Ad Hoc* "Reasonable Accommodations" During a Disaster Are, by
 15 Themselves, Inadequate.
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17 The City contends that it can meet the needs of individuals with disabilities
 18 during the exigent circumstances of emergencies by granting "reasonable
 19 accommodations" when individuals with disabilities request them. See Defs.'
 20 Mem. Opp. Summ. J. 3. It is true that localities are required to provide reasonable
 21 modifications of policies, practices, and procedures – often referred to as
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25 ⁴ See Prepared Testimony Before the House Comm. on Homeland Security, Subcomm. on
 26 Emergency Comm., Prep., and Response (June 15, 2010) (Marcie Roth, Director, Off. of
 27 Disability Integr. and Coord., FEMA, Dept. of Homeland Security) at
 28 http://www.fema.gov/txt/about/odc/written_statement_roth.txt.

1 “reasonable accommodations” – during emergencies when they requested. For
2 example, if a public entity has a policy of providing certain types of assistance to
3 the general public only at emergency shelters (e.g., assistance in applying for
4 emergency financial assistance), the ADA and Section 504 may require a
5 reasonable modification of that policy in which people with disabilities can receive
6 such assistance, upon request, in their homes. However, general assurances to
7 individuals with disabilities of an *ad hoc* response during the exigencies of an
8 emergency are not equal to the access being afforded to individuals without
9 disabilities, for whom planning and preparations have already occurred. See City
10 of Los Angeles, EOO Master Plan, at <http://emergency.lacity.org/epdp2a3a.htm>. It
11 is simply unrealistic to assume that physically accessible shelters, wheelchair-
12 accessible transportation, and the ready availability of disability-related
13 medications, medical supplies, equipment, and disability-related support services
14 can be provided in an *ad hoc* manner when requested, without advance planning
15 and preparations. See Chapter 7, ADA Tool Kit. For example, ensuring
16 emergency shelters have backup generators for charging and operating assistive
17 technology, e.g., Plaintiff Audrey Harthorn’s wheelchair (Compl. ¶ 16), and
18 communications devices for persons who are deaf, and air conditioning for people
19 with disabilities who cannot independently regulate their body temperature cannot
20 be met with an *ad hoc* approach that lacks advance planning and preparation.
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1 2. The Outlay of Funds is not Tantamount to a Fundamental
2 Alteration or Undue Financial and Administrative Burden.
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4 In general, the ADA does not require any action that would result in a
5 fundamental alteration in the nature of a service, program, or activity or that would
6 impose undue financial and administrative burdens. 28 C.F.R. §§ 35.130(b)(7),
7 35.150(a)(3), 35.164. However, the fact that public entities are already planning to
8 provide and fund life-sustaining goods and services to the public generally belies
9 such arguments in the emergency management context. The entire purpose of
10 emergency management programs is to provide life-sustaining goods and services.
11 See, e.g., City of Los Angeles, EOO Master Plan, at
12 <http://emergency.lacity.org/epdp2a3a.htm> (objectives of the LAEMA EOO Master
13 Plan are to, among others, save lives, protect property, repair and restore essential
14 systems and services, and provide for the protection, use, and distribution of
15 resources). The Ninth Circuit has explained that “policy choices that isolate the
16 disabled cannot be upheld solely because offering integrated services would
17 change the segregated way in which existing services are provided.” Townsend v.
18 Quasim, 328 F.3d 511, 516 (9th Cir. 2003).
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24 Further, “[i]f every alteration in a program or service that required the outlay
25 of funds were tantamount to a fundamental alteration, the ADA’s integration
26 mandate would be hollow indeed.” Fisher v. Oklahoma Health Care Auth., 335
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1 F.3d 1175, 1183 (10th Cir. 2003). Congress was aware that integration “will
2 sometimes involve substantial short-term burdens, both financial and
3 administrative,” but the long-term effects of integration “will benefit society as a
4 whole.” *Id.* Integrating individuals with disabilities into all phases of emergency
5 management will not only benefit society but will also save lives.

7 Defendants bear the burden of proving that an activity results in an undue
8 financial and administrative burden. This burden cannot be met absent a written
9 analysis, signed by a high ranking official of the public entity asserting this
10 defense, which includes a consideration of *all* resources available for use in the
11 funding and the operation of the service, program, or activity, including non-profit,
12 for-profit, federal, state, neighboring locality, and volunteer assistance and
13 donations. 28 C.F.R. §§ 35.150(a)(3), 35.164. The evidence is clear: That burden
14 has not been – and cannot be – met in this case, particularly where the City is
15 allocated very large amounts of funding for emergency management and many
16 other activities.

21 3. Integrated Emergency Management Can Have Fiscal Benefits.

22 While some emergency managers may focus on the costs of ADA and
23 Section 504 compliance, they often neglect to consider the integration mandate’s
24 practical consequence of maximizing available resources. As FEMA explains in
25 its Section 689 Guidelines, which were promulgated in response to Congressional
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1 directives: “The provision of services such as sheltering, information intake for
2 disaster services, and short-term housing in integrated settings keeps individuals
3 connected to their support system and caregivers and avoids the need for disparate
4 service facilities.” FEMA, Section 689 Guidelines, Nondiscrim. Principles of the
5 Law, at <http://www.fema.gov/oer/reference/index.shtm>. The Supreme Court
6 reached a comparable conclusion in Olmstead: “Rejecting the State’s
7 ‘fundamental alteration’ defense, the [district] court observed that existing state
8 programs provided community-based treatment of the kind for which [the
9 plaintiffs] qualified, and that the State could ‘provide services to plaintiffs in the
10 community at considerably *less* cost than is required to maintain them in an
11 institution.’” 527 U.S. at 594-95.

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15 Often, individuals with disabilities seek shelter with their family, friends,
16 neighbors, and co-workers – all individuals who may provide disability-related
17 assistance in shelters and, thereby, reduce demands on public resources.
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19 Segregating individuals with disabilities away from their family, friends, and the
20 rest of the population has the adverse effect of stressing precious resources. It
21 forces individuals with disabilities to seek assistance in facilities intended to
22 address acute medical needs, such as emergency rooms, hospitals, and medical
23 shelters – even if those facilities lack the capacity to admit, or in fact will not
24 admit, such individuals because they lack acute medical needs. See, e.g., NCD,
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1 The Needs of People with Psychiatric Disabilities During Hurricanes Katrina and
2 Rita (2006) at <http://www.ncd.gov/newsroom/publications/2006/peopleneeds.htm>
3 (discussing segregated emergency management response). During disasters,
4 medical facilities typically experience a surge that exceeds their capacity.
5 Localities have improperly directed individuals with disabilities to these facilities
6 even if they do not require medical services, exacerbating those surges and
7 unnecessarily taxing medical resources. As the NCD reports make clear, there
8 have been circumstances where these medical facilities would not admit
9 individuals with disabilities because they did not have medical conditions – just
10 disability-related needs that emergency managers had neglected to plan to meet in
11 mass care emergency shelters. As a result, individuals with disabilities have been
12 left without facilities in which to shelter. There have also been many
13 circumstances where individuals with disabilities were unjustifiably
14 institutionalized simply because emergency managers had not planned to meet
15 their disability-related needs in emergency shelters, in complete contravention of
16 the integration mandate and Olmstead. 527 U.S. 581, 587; 28 C.F.R. § 35.130(d).
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18 4. The Personal Devices and Services Exemption Does Not Apply in
19 the Emergency Management Context.
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21 In its Opposition brief, the City of Los Angeles contends that it is not
22 obligated to provide personal assistive devices or medications to individuals with
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1 disabilities during disasters, relying erroneously on 28 C.F.R. § 35.135. Defs.’
2 Mem. Opp. Summ. J. 1. While Section 35.135 of the Title II regulation provides a
3 *general* exclusion from providing such items in programs where provision of
4 goods and services is not part of the program, this regulatory provision is not
5 applicable to all programs. 28 C.F.R. pt. 35, App. A (noting that the § 35.135
6 restrictions only apply to those areas *where relevant*). When the purpose of a
7 program is to sustain life by providing goods (e.g., food, cots, blankets), services
8 (e.g., first-responder and medical response and stabilization, triage, case
9 management, security), and facilities (e.g., transportation vehicles, sheltering, toilet
10 facilities, showers) in response to a disaster, the restrictions in Section 35.135 do
11 not apply. As the Department of Justice’s Title II Technical Assistance Manual
12 explains: “Of course, if personal services or devices are customarily provided to
13 the individuals served by a public entity, such as a hospital or nursing home, then
14 these personal services should also be provided to individuals with disabilities.”
15 Title II Technical Assistance Manual § II-3.6200; 28 C.F.R. pt. 36, App. A at 704
16 (providing same with respect to senior center in the context of Title III of the
17 ADA, which applies to private entities). As the Department of Justice explained in
18 1991 in the Preamble to its Title II regulation:

24 [P]ublic entities may not require that a qualified individual with a
25 disability be accompanied by an attendant. A public entity is not,
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1 however, required to provide attendant care, or assistance in toileting,
2 eating, or dressing to individuals with disabilities, *except in special*
3 *circumstances, such as where the individual is an inmate of a*
4 *custodial or correctional institution.*

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6 28 C.F.R. pt. 35, App. A (emphasis added); Stinson v. United States, 508 U.S. 36,
7 45, 113 S. Ct. 1913, 123 L. Ed. 2d 598 (1993) (Preambles and commentaries
8 accompanying regulations, like the regulations themselves, are entitled substantial
9 deference as both are part of a department's official interpretation of legislation);
10 Auer, 519 U.S. at 461 (Department's interpretation of its own regulations and
11 technical assistance merits substantial deference).

12 Emergency management is another example of special circumstances.
13
14 Medical services, individualized assistance by first-responders, life-sustaining
15 food, medication, medical care, durable medical equipment, and a sheltering
16 environment are central to the City of Los Angeles' emergency response. See, e.g.,
17 City of Los Angeles, EOO Master Plan, Public Welfare and Shelter Division, at
18 <http://emergency.lacity.org/epdp2a3a4a.htm>. The entire purpose of the program is
19 to support people with goods, services, and facilities necessary for basic human
20 functioning. Los Angeles and other localities must provide the goods, services,
21 and facilities that will ensure equal opportunities and integration for individuals
22 with disabilities. 28 C.F.R. §§ 35.130, 35.130(d); Olmstead, 527 U.S. at 587.

1 5. Integrated Emergency Planning Cannot Be Delayed.

2 Plaintiffs' challenge to the City's emergency management plan – and,
3 specifically, to the City's failure to integrate the rights and needs of individuals
4 with disabilities throughout its plan – need not wait for an emergency to strike in
5 order for the Court to find that ADA and Section 504 violations have already
6 occurred. The ADA and Section 504 do not require individuals with disabilities to
7 experience discrimination during a disaster before they can challenge a public
8 entity's discriminatory emergency planning and preparations. The Title II
9 regulation required localities to evaluate programs, services, and activities close to
10 twenty years ago, and to ensure these activities were not discriminatory. See 28
11 C.F.R. §§ 35.105, 35.130. Furthermore, the Title II regulation affirmatively
12 requires that a public entity's programs, services, and activities be readily
13 accessible to and usable by individuals with disabilities, 28 C.F.R. §§ 35.149-151,
14 and prohibits a public entity from determining the site or location of a facility or
15 making selections that "have the effect of excluding individuals with disabilities
16 from, denying them the benefits of, or otherwise subjecting them to
17 discrimination." 28 C.F.R. § 35.130(b)(4)(i).

18 Emergency planning and preparations to respond, mitigate, and recover are
19 constant obligations. Planning and preparations to meet the emergency- and
20 disaster-related needs of citizens generally, without regard to the rights and needs
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1 of individuals with disabilities, is plain and simple discrimination. 42 U.S.C.
2 § 12132; 29 U.S.C. § 794(a). See also Townsend, 328 F.3d at 516 (holding by
3 Ninth Circuit that individual with diabetic peripheral vascular disease and
4 amputation of both legs who was at risk of losing, *but had not yet lost*, community-
5 based assistance, could still prevail on his Title II disability discrimination claim).
6 In the emergency management context – in light of the exigencies, the
7 unpredictability and likelihood of disasters, and the numerous obligations to ensure
8 equal opportunity that cannot be met without advance planning – individuals with
9 disabilities (and consequently the Plaintiffs in this case) are “threatened with a
10 ‘concrete and particularized’ legal harm, coupled with ‘a sufficient likelihood that
11 [they] will again be wronged in a similar way.’” Bird v. Lewis & Clark College,
12 303 F.3d 1015 (9th Cir. 2002) (quoting Lujan v. Defenders of Wildlife, 504 U.S.
13 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992) and City of Los Angeles v.
14 Lyons, 461 U.S. 95, 111, 103 S. Ct. 1660, 75 L. Ed. 2d 675 (1983)).

19
20 6. Equal Opportunity Under Title II Requires Compliance with the
21 Regulation.

22 Some discussion is raised by the parties concerning the “meaningful access”
23 requirement, a concept formulated in case law by the Supreme Court in Alexander
24 v. Choate, 469 U.S. 287, 83 L. Ed. 2d 661, 105 S. Ct. 712 (1985), under Section
25 504 before the ADA became law and several years before the Department’s
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1 regulations implementing Title II of the ADA were issued. While the parties agree
2 that “meaningful access” must be afforded under Title II and Section 504, their
3 memoranda devote relatively little discussion to the regulatory provisions that
4 plainly must inform the meaning of this term. Equal opportunity and
5 nondiscrimination in the emergency management context require compliance with
6 Title II requirements, including those set out in the Department’s Title II regulation
7 at 28 C.F.R. pt. 35, subpt. A.
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10 In addition to the integration mandate and the general obligation to not
11 discriminate on the basis of disability in programs, services, and activities, the Title
12 II regulation provides numerous other specific prohibitions of discrimination that
13 also apply to emergency planning. For example, the Title II regulation prohibits
14 the outright denial of the benefits of emergency management programs, services,
15 and activities, 28 C.F.R. § 35.130(b)(1), as well as unequal, different, or separate
16 opportunities to participate in programs, services, and activities, 28 C.F.R. §§
17 35.130(b)(ii)-(iv), (vii). Furthermore, public entities may not employ eligibility
18 criteria that screen out or tend to screen out people with disabilities from program
19 benefits or participation, 28 C.F.R. § 35.130(b)(8). In addition to the previously
20 discussed obligation to make reasonable modifications (sometimes referred to as
21 reasonable accommodations) in rules, policies, practices, or procedures, 28 C.F.R.
22 § 35.130(b)(7), public entities must also provide sign language interpreters,
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1 provide accessible websites, furnish written materials in Braille and other
2 alternative formats, and provide other auxiliary aids and services necessary to
3 ensure effective communication with individuals with disabilities. Nor may public
4 entities avoid these responsibilities by seeking to delegate or contract with third
5 parties. See 28 C.F.R. § 35.130(b)(3); Chapter 7 of the ADA Tool Kit (“Th[ese]
6 requirement[s] appl[y] to programs, services, and activities provided directly by
7 state and local governments as well as those provided through third parties, such as
8 the American Red Cross, private nonprofit organizations, and religious entities.”);
9 42 U.S.C. §§ 12181-12189 (prohibiting discrimination by private entities).
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13 In the emergency management context, for example, the Title II regulatory
14 provisions would prohibit a public entity from:

- 15 • Denying an individual who uses a wheelchair the opportunity to
16 evacuate because of a lack of accessible transportation;
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- 18 • Excluding an individual from accessing a general population shelter
19 and its toilet facilities because he or she requires transferring or
20 toileting assistance;
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- 22 • Denying an individual with diabetes sustenance from a food service
23 program because the food and drink made available do not provide
24 any items he or she can safely consume;
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- 26 • Providing sleeping accommodations in shelters that accommodate the
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1 general public but do not provide stable, accessible cots that are at the
2 right height to allow individuals with disabilities to transfer from
3 wheelchairs;

- 4 • Providing services and facilities at a mass care shelter that are
5 essential for daily living, in general, but requiring people who need
6 disability-related assistance (“DRA”), consumable medical supplies
7 (“CMS”), or durable medical equipment (“DME”) (collectively
8 known as functional needs support services, “FNSS”) to bring their
9 own or else go to a “special needs” or separate evacuation shelter; and
10 • Providing emergency management services through contractual or
11 other arrangements with entities that do not comply with ADA
12 requirements.

13 These are but a few examples of the types of disability discrimination that
14 can occur in emergency management. The Department has provided a much fuller
15 explanation of the ADA’s nondiscrimination obligations applicable to emergency
16 management in Chapter 7 of the ADA Tool Kit, together with checklists that can
17 be used by a public entity to achieve ADA compliance. Obviously, meeting these
18 responsibilities *ad hoc* during disaster response is not possible without having
19 planned, tested, trained, and prepared to meet them in advance. For this reason,
20 Plaintiffs’ Motion for Summary Judgment should be granted and the City should
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1 be ordered to amend and supplement its emergency management plan, and take all
2 other steps required, to comply with ADA and Section 504 requirements, including
3 those described in Chapter 7 of the ADA Tool Kit.
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VI. CONCLUSION

For the reasons stated herein, the United States respectfully requests consideration of this Statement of Interest in rendering any decisions in this litigation.

Respectfully submitted, this 7th day of October 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2010, a copy of the foregoing Statement of Interest of the United States was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System. Counsel for the parties served through the Court's CM/ECF System include:

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