

DONALD SPECTER (SBN 83925)
KELLY KNAPP (SBN 252013)
PRISON LAW OFFICE
1917 Fifth Street
Berkeley, CA 94710
Telephone: (510) 280-2621
Fax: (510) 280-2704

MAUREEN P. ALGER (SBN 208522)
MONIQUE R. SHERMAN (SBN 227494)
COOLEY LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155
Telephone: (650) 843-5000

Attorneys for Plaintiffs
[Additional Counsel Listed on Next Page]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

QUENTIN HALL, et al.,

Plaintiffs,

v.

COUNTY OF FRESNO,

Defendant.

Case No.: 1:11-CV-02047-LJO-BAM

**JOINT NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CONSENT DECREE
AND NOTICE TO THE CLASS**

Date: July 10, 2015
Time: 9:00 a.m. Courtroom 8
Judge: Hon. Barbara McAuliffe

1 MARY KATHRYN KELLEY (SBN 170259)
2 SHANNON SORRELLS (SBN 278492)
3 COOLEY LLP
4 4401 Eastgate Mall
5 San Diego, CA 92121-1909
6 Telephone: (858) 490-6000

7 MELINDA BIRD (SBN 102236)
8 DISABILITY RIGHTS CALIFORNIA
9 350 South Bixel Street, Suite 209
10 Los Angeles, CA 90017
11 Telephone: (213) 213-8000
12 Fax: (213) 213-8001

13 Attorneys for Plaintiffs

14 MICHAEL G. WOODS (58683)
15 McCORMICK, BARSTOW, SHEPPARD,
16 WAYTE & CARRUTH LLP
17 5 River Park Place East
18 Fresno, CA 93720
19 Telephone: (559) 433-1300
20 Fax: (559) 433-2300

21 Attorneys for Defendant
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23
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25
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27
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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on July 10,, 2015, at 9:00 a.m. in Courtroom 8, located at 2500 Tulare Street, Fresno, California, Plaintiffs and Defendant will jointly move for preliminary approval of a Consent Decree agreed to by the parties that will, if ultimately approved by the Court, settle all claims for injunctive relief in this class-action lawsuit. The parties also move the Court for an order approving notice to the class of the proposed settlement and fairness hearing, and an order setting a schedule for the fairness hearing. This joint motion is based on this notice, the supporting memorandum of points and authorities, the Declaration of Donald Specter and all documents and pleadings in the record of this case.

Rule 23 does not require a hearing on a motion seeking preliminary approval of a class-action settlement, and the parties agree to forego a hearing unless the Court concludes that a hearing is necessary.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

After engaging in extensive discovery and protracted settlement negotiations, the parties entered into a Consent Decree to settle the injunctive-relief claims in this class-action suit concerning the conditions in the Fresno County Jail without any admission of liability. The Consent Decree, if approved by the Court, would dispose of all claims in the case. The parties now jointly seek preliminary approval of the Consent decree. Additionally, the parties seek an order approving notice to the class of a fairness hearing concerning the Consent Decree and an order setting a schedule for the fairness hearing.

The Court should grant preliminary approval of the Consent Decree because it is the product of arm's-length, serious, informed, and non-collusive negotiations between experienced and knowledgeable counsel who have actively prosecuted and defended this litigation. Additionally, the notice and fairness-hearing schedule proposed by the parties will allow an adequate opportunity for the class to review and comment on the Consent Decree, and is consistent with the parties' desire for prompt implementation of the terms of the Consent Decree.

BACKGROUND

Plaintiffs are prisoners who are or have been incarcerated in the Fresno County Jail and a class consisting of all prisoners who are now, or will in the future be, incarcerated in the Fresno County Jail (Jail). Defendant is the County of Fresno, which is responsible for the operation of the Jail.

This action was filed on December 13, 2011. The First Amended Complaint was filed on January 25, 2012. The First Amended Complaint alleged that the conditions in the Jail violated the constitutional and statutory rights of all prisoners who were or will be housed in the Jail. Specifically, the Complaint alleged that the Jail does not provide prisoners with access to adequate medical, mental health and dental care in violation of the Eighth and Fourteenth Amendments; prisoners are not reasonably protected from injury and violence from other prisoners in violation of the Eighth and Fourteenth Amendments; and that prisoners are not provided with reasonable accommodations for their disabilities in violation of the Americans with Disabilities Act and section 504 of the Rehabilitation Act. ECF. No. 8

On June 1, 2012, Defendant filed its answer to the amended complaint denying the material allegations and asserting affirmative defenses. The parties thereafter began class certification discovery. The parties subsequently agreed to suspend discovery for the purpose of settlement negotiations. On February 21, 2013, the parties agreed to a process whereby experts agreeable to both parties would inspect the Jail and issue reports and recommendations. Pursuant to that agreement, experts inspected the jail and provided the parties with their reports and recommendations. Based on those recommendations, the parties engaged in extensive settlement negotiations. In May 2015 the parties executed the proposed Consent Decree. (Decl. Specter ¶ 3, Ex. 1.) Defendant continues to deny plaintiffs allegations but have entered into this Consent Decree, without admitting liability, as a compromise resolution of the issues described in the amended complaint and the Consent Decree.

SUMMARY OF KEY PROPOSED SETTLEMENT TERMS

A complete copy of the proposed Consent Decree is attached as Exhibit 1 to the Declaration of Donald Specter, which is filed with this joint motion. The following are some of the key terms of the Consent Decree:

1. Based on the reports of the subject matter experts, the parties have agreed on a detailed Remedial Plan that Defendant will be responsible for implementing. The Remedial Plan provisions cover all the substantive areas in dispute: health care, personal safety, and disability discrimination. The twenty-two page Remedial Plan is attached to the Consent Decree as Appendix A. Among many other things, it requires the County to ensure that (1) prisoners with chronic illnesses continue to receive necessary medications, (2) pregnant inmates receive timely and appropriate prenatal care, postpartum care, counseling, and specialized obstetrical services when indicated, (3) sufficient numbers of dental staff to provide timely access to adequate dental care, (4) mental health clinical decisions, diagnoses, and treatment plans shall only be made by licensed mental health clinicians, (5) continuity of mental health care will be provided from admission to transfer or discharge from the facility, (6) psychiatric medications, including but not limited to antipsychotic medications, shall be prescribed to prisoners with mental illness in accord with nationally accepted professional standards for the treatment of serious mental illness, (7) mental health clinicians shall complete a comprehensive suicide risk assessment form for all prisoners who display signs of suicide risk to determine if the inmate presents a low, moderate, or high risk of suicide, (8) for prisoners with serious mental illness who are housed in unit 2D, correctional and mental health staff will ensure those inmates are offered to be taken out of their cells for recreation a minimum of 7 hours per week and mental health treatment will be offered 3 times per week, (9) prisoners with disabilities will be housed in the most integrated and appropriate housing possible, based on their disabilities, (10) a staffing plan will be designed to reduce inmate-on-inmate violence in the Jail, which includes the hiring of 127 new correctional officers.

2. Plaintiffs' counsel will be responsible for monitoring compliance with the Consent Decree and the Remedial Plan. Plaintiffs' counsel will be able to inspect the Jail twice per year

1 and the subject matter experts will prepare a report during the first year of monitoring and upon
2 request after the first year. In the event of a dispute, the parties have agreed on an informal
3 dispute resolution process, and the Court will retain jurisdiction to entertain motions to enforce
4 compliance if the dispute resolution process fails.

5 3. The County has agreed to pay Plaintiffs' Counsel \$900,000 for merits fees and
6 expenses and \$40,000 per year for monitoring fees and expenses.

7 4. The County does not admit liability and continues to deny the allegations in
8 Plaintiffs' complaint. Nothing in the Consent Decree shall constitute or be used as evidence of
9 any admission or wrongdoing or liability of County, its agents or employees.

10 PROPOSED NOTICE

11 The parties have agreed to a proposed notice to the class, which is attached as Exhibit 2 to
12 the Declaration of Donald Specter. This form of notice is adequate to provide the class with
13 notice of the proposed Consent Decree and fairness hearing, and complies with the due-process
14 requirements of Federal Rule of Civil Procedure 23.

15 Within seven days of the Court granting preliminary approval of the settlement and the
16 notice to the class attached as Exhibit 2, Defendant will: (1) post the notice to the class in English
17 and Spanish in housing units at the Jail in such a manner as to make the notice visible to all
18 general population prisoners, (2) hand deliver a copy of the notice to all prisoners in units 2D, FF
19 cells, A pods and any other housing unit on lockdown; and (3) provide to prisoners upon request a
20 copy of the Consent Decree with the Remedial Plan and a copy of Plaintiffs' motion for attorneys'
21 fees.

22 ANALYSIS

23 I. THE COURT SHOULD PRELIMINARILY APPROVE THE STIPULATED SETTLEMENT.

24 The Ninth Circuit maintains a "strong judicial policy" that favors the settlement of class
25 actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.1992). In reviewing
26 proposed class-action settlement agreements, a court first "conducts a preliminary approval or
27 pre-notification hearing to determine whether the proposed Settlement Agreement is 'within the
28 range of possible approval' or, in other words, whether there is 'probable cause' to notify the

class of the proposed Settlement Agreement.” *Horton v. Merrill Lynch*, 855 F. Supp. 825, 827 (E.D.N.C. 1994) (citing *Armstrong v. Board of School Directors*, 616 F.2d 305, 312 (7th Cir. 1980); see also *In re Tableware Antitrust Litigation*, 484 F. Supp. 2d 1078, 1079-80 (N.D. Cal. 2007); see also Manual for Complex Litigation (Fourth) § 21.632 (2004) (explaining that courts “must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.”). “Second, assuming that the court grants preliminary approval and notice is sent to the class, the court conducts a ‘fairness’ hearing, at which all interested parties are afforded an opportunity to be heard on the proposed settlement.” *Horton*, 855 F. Supp. at 827.

Preliminary approval entails an initial assessment of the fairness of the proposed settlement made by a court on the basis of written submissions and presentations from the settling parties. *Newberg on Class Actions* summarizes the preliminary approval criteria as follows:

If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice under Rule 23(e) be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.

4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11:25 (4th Ed. 2002) (“Preliminary Court Approval”).

The purpose of the preliminary approval process is to determine whether the proposed settlement is within the range of reasonableness and thus whether notice to the class of the terms and conditions and the scheduling of a formal fairness hearing is worthwhile. *Id.*; see also *Young v. Polo Retail, LLC*, 2006 WL 3050861, at *5 (N.D. Cal. Oct. 25, 2006). There is an “initial presumption of fairness when a proposed class settlement was negotiated at arm’s length by counsel for the class.” *Murillo v. Texas A&M Univ. Sys.*, 921 F. Supp. 443, 445 (S.D. Tex. 1996).

Other factors courts consider in making a final assessment of whether the settlement should be approved include: (1) the strength of the plaintiffs’ case; (2) the risk, expense,

1 complexity, and likely duration of further litigation; (3) the risk of maintaining class-action status
2 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed
3 and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
4 government participant; and (8) the reaction of the class members to the proposed settlement.
5 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *see also In re Oracle Sec. Litig.*,
6 829 F. Supp. 1176, 1179 (N.D. Cal. 1993). The district court must explore these factors
7 comprehensively to satisfy appellate review, but “the decision to approve or reject a settlement is
8 committed to the sound discretion of the trial judge.” *Hanlon*, 150 F.3d at 1026.

9 Furthermore, courts must give “proper deference to the private consensual decision of the
10 parties.” *Id.* at 1027. Settlement is the preferred means of dispute resolution, particularly in
11 complex class litigation. *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir.
12 1982) (class action suit challenging allegedly discriminatory employment practices by a police
13 department). “[T]he court’s intrusion upon what is otherwise a private consensual agreement
14 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a
15 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
16 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
17 adequate to all concerned.” *Hanlon*, 150 F.3d at 1027. Thus, a district court’s decision to
18 approve a class-action settlement may be reversed “only upon a strong showing that the district
19 court’s decision was a clear abuse of discretion.” *Id.*

20 Here, a preliminary review of the relevant considerations demonstrates a solid basis for
21 granting the conditional approval requested by this motion. The Consent Decree is fair and
22 adequate in that Defendant has agreed to detailed terms that directly address the class claims in
23 this case, including the hiring of additional custodial and mental health staff and provisions to
24 provide out-of-cell time for prisoners in segregation. The settlement was reached after almost
25 two years of negotiations between the parties, who were zealously represented by their
26 experienced counsel throughout this litigation. (Decl. Specter ¶¶ 2, 3.)

27 The settlement was also reached during a stage in the litigation after discovery and the Jail
28 was evaluated by neutral experts. (Decl. Specter ¶ 3.) Thus, the parties had adequate information

1 to fully evaluate the parties' claims and defenses before engaging in settlement negotiations and
2 reaching an agreement.

3 Further, the outcome of the litigation and the extent of any relief that the class might be
4 awarded if the case went to trial is uncertain. Plaintiffs faced substantial burdens in
5 demonstrating a current and ongoing violation of inmates' constitutional rights on a system-wide
6 basis. And proceeding through pre-trial motions, trial, and probable appeal would impose risks,
7 costs, and a substantial delay in the implementation of any remedy in this matter. Given the relief
8 achieved and the risks and costs involved in further litigation, the Consent Decree represents a
9 fundamentally "fair, reasonable and adequate" resolution of the disputed issues and should be
10 preliminarily approved. *See* Fed. R. Civ. Pro. 23(e)(2).

11 **II. THE COURT SHOULD APPROVE THE CLASS NOTICE.**

12 Rule 23(e) requires notice to the class before the Court grants final approval to any
13 compromise of the case. The parties have agreed to the form and content of the notice to the class,
14 which is attached to the Specter declaration as Exhibit 2, and which provides reasonable notice of
15 the terms of the Consent Decree and Remedial Plan. The means of disseminating the notice will
16 allow an adequate opportunity for the class to review and comment on the settlement. The parties
17 respectfully request that the Court approve the notice and order its dissemination to the class
18 members.

19
20 **III. THE COURT SHOULD APPROVE THE PROPOSED SCHEDULING ORDER AND SET A DATE
FOR A FAIRNESS HEARING CONCERNING THE STIPULATED SETTLEMENT.**

21 The parties propose the following general time schedule to provide for notice, comment,
22 and final approval of the Consent Decree. The parties also submit a proposed scheduling order.

23 First, the parties request approximately seven days from the time of the preliminary
24 approval to publish the notice in the Jail. Second, the parties request a four-week period,
25 following the publishing of the notice, during which class members may file comments and
26 objections. Third, the parties request three weeks from the end of the comment period for the
27
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1 parties to respond to any objections. Fourth, the parties request that the fairness hearing be set
2 approximately two weeks after the deadline for responding to the objections.

3 **CONCLUSION**

4 For the reasons discussed above, Plaintiffs and Defendant request that the Court issue
5 preliminary approval of the Consent Decree, approve the form of the proposed notice and order
6 its publication to the class and issue the proposed scheduling order. The parties further request
7 final approval of the Consent Decree at the fairness hearing.

8
9
10 Dated: May 27, 2015

Respectfully submitted,

PRISON LAW OFFICE

11 /s/ Donald Specter

12 Donald Specter

13 Kelly Knapp

14 Attorneys for Plaintiffs Quentin Hall, Shawn Gonzales,
Robert Merryman, Brian Murphy, Dawn Singh and the
Plaintiff Class

15
16 Dated: May 27, 2015

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

17
18
19 By: /s/ Michael G. Woods

20 Michael G. Woods

Attorney for Defendant County of Fresno

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26
27
28

DONALD SPECTER (SBN 83925)
KELLY KNAPP (SBN 252013)
PRISON LAW OFFICE
1917 Fifth Street
Berkeley, CA 94710
Telephone: (510) 280-2621
Fax: (510) 280-2704

MAUREEN P. ALGER (SBN 208522)
MONIQUE R. SHERMAN (SBN 227494)
COOLEY LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155
Telephone: (650) 843-5000

ATTORNEYS FOR PLAINTIFFS
[ADDITIONAL COUNSEL LISTED ON NEXT PAGE]

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

QUENTIN HALL, SHAWN GONZALES,
ROBERT MERRYMAN, DAWN SINGH, and
BRIAN MURPHY, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

COUNTY OF FRESNO

Defendants.

Case No. 1:11-CV-02047-LJO-BAM

CLASS ACTION

**DECLARATION OF DONALD SPECTER
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT**

MARY KATHRYN KELLEY (SBN 170259)
SHANNON SORRELLS (SBN 278492)
COOLEY LLP
4401 Eastgate Mall
San Diego, CA 92121-1909
Telephone: (858) 490-6000

MELINDA BIRD (SBN 102236)
MONISHA COELHO (SBN 219233)
AGNES WILLIAMS (SBN 143532)
DISABILITY RIGHTS CALIFORNIA
350 South Bixel Street, Suite 209
Los Angeles, CA 90017
Telephone: (213) 213-8000
Fax: (213) 213-8001

**[ADDITIONAL COUNSEL LISTED ON
CAPTION PAGE]**

1
2 I, Donald Specter, declare:

3 1. I am attorney admitted to the Bar of this Court and lead counsel for Plaintiffs in this
4 matter.

5 2. Throughout the litigation of this case, Plaintiffs and Defendants have been zealously
6 represented by counsel.

7 3. After the Court denied Defendant's motion to dismiss, the parties engaged in substantial
8 discovery. On February 21, 2013, the parties agreed to vacate the dates for a motion for class
9 certification in favor of a process whereby experts agreeable to both parties would inspect the Jail
10 and issue reports and recommendations. Pursuant to that agreement, experts inspected the jail
11 and provided the parties with their reports and recommendations. Based on those
12 recommendations, the parties engaged in extensive settlement negotiations spanning almost two
13 years. In May 2015 the parties executed the proposed Consent Decree, a copy of which is
14 attached hereto as Exhibit 1. The Consent Decree, if approved, will resolve all claims for
15 injunctive and declaratory relief in Plaintiffs' First Amended Complaint.

16 4. The parties have agreed on a proposed notice to the class, and my office has prepared a
17 Spanish translation of that notice. A true copy of the proposed notice to the class (and a Spanish
18 translation) regarding preliminary approval of the Consent Decree is attached hereto as Exhibit 2.

19 I declare under the penalty of perjury that the forgoing is true and correct to the best of my
20 knowledge. Executed May 27, 2015, at Berkeley, California.

21
22 /s/
DONALD SPECTER

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HALL, et al. v. COUNTY OF FRESNO

Case No. 1:11-CV-02047-LJO-BAM

EXHIBIT 1

DONALD SPECTER (SBN 83925)
KELLY KNAPP (SBN 252013)
PRISON LAW OFFICE
1917 Fifth Street
Berkeley, CA 94710
Telephone: (510) 280-2621
Fax: (510) 280-2704

MAUREEN P. ALGER (SBN 208522)
MONIQUE R. SHERMAN (SBN 227494)
COOLEY LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155
Telephone: (650) 843-5000

ATTORNEYS FOR PLAINTIFFS
[**ADDITIONAL COUNSEL LISTED ON NEXT PAGE**]

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

QUENTIN HALL, SHAWN GONZALES,
ROBERT MERRYMAN, DAWN SINGH, and
BRIAN MURPHY, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

COUNTY OF FRESNO

Defendant.

Case No. 1:11-CV-02047-LJO-BAM

CLASS ACTION

CONSENT DECREE

MARY KATHRYN KELLEY (SBN 170259)
SHANNON SORRELLS (SBN 278492)
COOLEY LLP
4401 Eastgate Mall
San Diego, CA 92121-1909
Telephone: (858) 490-6000

MELINDA BIRD (SBN 102236)
MONISHA COELHO (SBN 219233)
DISABILITY RIGHTS CALIFORNIA
350 South Bixel Street, Suite 209
Los Angeles, CA 90017
Telephone: (213) 213-8000
Fax: (213) 213-8001

ATTORNEYS FOR DEFENDANT

MICHAEL G. WOODS (58683)
MCCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP
5 River Park Place East
Fresno, CA 93720
Telephone: (559) 433-1300
Fax: (559) 433-2300

**[ADDITIONAL COUNSEL LISTED ON
CAPTION PAGE]**

Introduction

1. The parties enter into this Consent Decree to address alleged deficiencies in conditions of confinement in the Fresno County Jail as pled in plaintiffs' amended complaint. The parties to this stipulated consent decree are plaintiffs Quentin Hall, Shawn Gonzales, Robert Merryman, Dawn Singh, and Brian Murphy, and the class of prisoners they represent, and the Defendant County of Fresno (Defendant).

2. The original complaint was filed by plaintiffs on December 13, 2011, and an amended complaint was filed on January 25, 2012. The amended complaint alleges that the County of Fresno is failing to provide minimally adequate health care and to reasonably protect prisoners from injury and violence from other prisoners as required by the Eighth and Fourteenth Amendments to the United States Constitution, as well as failing to provide reasonable accommodations to prisoners with disabilities in violation of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. On June 1, 2012, Defendant filed its answer to the amended complaint denying the material allegations and asserting affirmative defenses. The parties thereafter began class certification discovery. The parties subsequently agreed to suspend discovery for the purpose of settlement negotiations. Defendant continues to deny plaintiffs allegations but has entered into this Consent Decree, without admitting liability, as a compromise resolution of the issues described in the amended complaint and this Consent Decree. Plaintiffs and Defendant hereby stipulate and consent to the injunctive relief detailed below in order to compromise and settle the disputes between them relating to the facts and claims alleged in the amended complaint. Nothing herein shall constitute or be used as evidence of any admission or wrongdoing or liability of Defendant, its agents or employees.

3. Nothing in this Consent Decree prevents Defendant from temporarily suspending compliance with all or any part of the Consent Decree as may be necessary during an emergency.

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2 Defendant shall advise plaintiffs' counsel of any such suspension in writing within 10 days of the
3 temporary or permanent suspension, describing which portion(s) of this Consent Decree was/were
4 suspended and the reasons thereof. Plaintiff may object to any suspensions of this Consent
5 Decree and invoke the dispute resolution procedure set forth in paragraph 18.

6
7 4. To aid in settlement negotiations, the parties agreed to jointly hire three experts to
8 develop recommendations to remedy the alleged constitutional and statutory violations identified
9 by plaintiffs. Each of these experts conducted extensive tours and reviews of the jail facilities and
10 policies and procedures. They drafted reports that described their findings and recommendations.
11 The parties further agreed that plaintiffs' counsel would conduct a tour of the jail facilities and
12 review policies and procedures regarding accommodations for prisoners with disabilities.
13 Plaintiffs' counsel completed a report that described their findings and recommendations to
14 remedy alleged violations of the Americans with Disabilities Act ("ADA") and Section 504 of
15 the Rehabilitation Act that they identified during their tour and review. The parties agreed that
16 the experts' and plaintiffs' counsel's reports would establish a working framework for the
17 negotiation of this Consent Decree. Through this Consent Decree, Defendant agrees to implement
18 the measures set forth in the Remedial Plan attached as Appendix A subject to monitoring by
19 plaintiffs' counsel, evaluation by Court experts, negotiation between the parties, and if necessary,
20 enforcement by the Court as set forth in this Consent Decree.
21

22
23 5. Each party to this Consent Decree was represented by counsel during its
24 negotiation and execution.

25 **Terms and Conditions**

26 6. **Class and Definition:** The parties agree that this action meets the requirements of
27 Rule 23(a) and (b) of the Federal Rules of Civil Procedure and shall be treated for all purposes as
28 a class action. The plaintiff class consists of all prisoners who are now, or at some time in the

future during the terms of this Consent Decree are, incarcerated in the Fresno County Jail.

7. **Notice to Class Members:** Defendant shall post notices of this action in a manner agreed upon by the parties. Such notices shall include a brief description of plaintiffs' claims, the definition of the class, that the parties have entered into a Consent Decree to correct the alleged violation of the federal constitutional and statutory rights of the plaintiff class, and the contact information for the Prison Law Office should any prisoner wish to contact plaintiffs' counsel.

8. **Implementation of Remedial Plan:** Defendant shall make all reasonable efforts subject to the availability of resources to fully implement all of the remedial measures, according to the specified timeframes, set forth in the Remedial Plan attached as Appendix A. Defendant shall make all reasonable efforts to secure the funding necessary to implement the Remedial Plan. The Consent Decree and Remedial Plan are designed and intended to meet the minimum level of health care and safety and security necessary to fulfill Defendant's obligations under the Eighth and Fourteenth Amendments to the United States Constitution, as well as to ensure reasonable accommodations are provided to remedy the specific alleged violations of the ADA and Section 504 of the Rehabilitation Act set forth in the amended complaint. Nothing in this Consent Decree shall be construed to require more of the Defendant than is minimally necessary to enforce the Eighth and Fourteenth Amendments, and to comply with the requirements of the ADA and Section 504 of the Rehabilitation Act.

9. Defendant shall develop and implement appropriate and adequate plans, policies, and practices to ensure compliance with the Remedial Plan. Defendant will submit any new health care plans or policies developed to meet the terms of the Remedial Plan to Plaintiffs' counsel for their review and comments at least 15 days before implementation. Defendant will submit all other new plans or policies developed to meet the terms of the Remedial Plan to Plaintiffs' counsel for their review within 10 days of the effective date of each such plan or

1
2 policy. Plaintiffs' counsel may provide comments, if any, on each such plan or policy within 10
3 days of receipt.

4 10. **Experts:** The parties agree to jointly request the appointment of three Court
5 experts pursuant to rule 706 of the Federal Rules of Evidence to advise the Court on the adequacy
6 of the implementation of the Remedial Plan. During the first year of this Consent Decree, the
7 three experts shall each complete one comprehensive review and report to advise the Court on
8 Defendant's progress in implementing the Remedial Plan. For the remaining duration of this
9 Consent Decree, the Court experts shall complete comprehensive reviews and reports as he/she
10 determine to be necessary, or as jointly requested by the parties, but not more than once a year to
11 advise the parties and the Court on the adequacy of Defendant's implementation of the Remedial
12 Plan. The Court experts shall also complete evaluations and reports upon request as described in
13 the dispute resolution process detailed in Paragraph 18. The experts' duties specified in
14 Appendix B shall be provided to the experts pursuant to Rule 706(b).

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17 11. The Court experts shall be entitled to reasonable compensation in an amount
18 approved by the Court, which shall be paid by Defendant. The Court experts shall have access to
19 all parts of any County jail facility, with adequate notice provided in advance of the same to
20 ensure appropriate security is provided, all relevant budgetary, custody, and health care
21 documents, persons (including confidential interviews with consenting staff and consenting
22 prisoners) and institutional meetings, proceedings, and programs to the extent the experts
23 reasonably determine such access is needed to fulfill their obligations. The Court experts will not
24 have access to personnel files, including records and information deemed confidential pursuant to
25 California Penal Code § 832.7. Attorneys shall not have ex parte contact with experts regarding
26 their preliminary and proposed opinions to be presented to the parties.
27
28

12. The parties shall attempt to agree on who shall be appointed as the Court experts.

1
2 If the parties do not agree, Defendant and plaintiffs shall nominate and submit potential experts to
3 be chosen and appointed by the Court pursuant to Rule 706.

4 **13. Status Reports:** Within 180 calendar days of the effective date of this Consent
5 Decree, Defendant shall provide to plaintiffs a status report describing the state of compliance
6 with the terms of this Consent Decree and Remedial Plan. This report shall include a description
7 of the steps that Defendant has taken to implement the Remedial Plan. At the end of each
8 subsequent 180-day period within four years from the date this Consent Decree is entered unless
9 the Consent Decree is earlier terminated Defendant shall provide to plaintiffs a status report
10 addressing each item of the Remedial Plan and shall specify each and every item with which it is
11 not in compliance.
12

13 **14. Monitoring and Access to Information:** Plaintiffs shall reasonably monitor
14 Defendant's compliance with the Remedial Plan. Such monitoring shall be limited to issues
15 related to the Consent Decree and the Remedial Plan and consist of touring the jail, interviewing
16 staff and prisoners, reviewing and commenting on policies and procedures revised or added after
17 the effective date of this Consent Decree as provided for in paragraph 9, negotiating with county
18 personnel and their counsel, corresponding with prisoners, reviewing relevant documents,
19 communicating with the Court experts and all other duties and obligations specifically set forth
20 herein, including but not limited to those set forth in paragraphs 15-18. This provision is not
21 intended to and does not supersede the Inmate Grievance Procedure. If plaintiffs reasonably
22 believe that Defendant is not complying with the measures set forth in the Remedial Plan, they
23 shall notify Defendant in writing of the alleged noncompliance. Defendant shall investigate
24 allegation(s) and use its best efforts to provide plaintiffs with a response in writing within 30
25 calendar days. If plaintiffs are not satisfied with Defendant's response, the parties shall engage in
26 the dispute resolution process described in Paragraph 18.
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2 15. Defendant shall provide plaintiffs, upon advance written notice, with access to
3 information, including all jail facilities, documents, records, and staff, that plaintiffs reasonably
4 believe in good faith is necessary to monitor Defendant's compliance with the Remedial Plan,
5 subject where applicable to a protective order agreed to by the parties and attached as Appendix
6 C. Plaintiffs shall not be entitled to personnel records, including records and information deemed
7 confidential pursuant to Penal Code § 832.7. From the date this Consent Decree is entered by the
8 Court, Defendant shall provide plaintiffs with access to such information within 30 calendar days
9 of any request. If Defendant believes that the information requested by plaintiffs is not
10 reasonably necessary to monitor compliance with the Remedial Plan, the parties shall engage in
11 the dispute resolution process described in Paragraph 18.
12

13 16. Plaintiffs' counsel and their consultants (whose consultant fees shall be the sole
14 responsibility of Plaintiffs) may conduct no more than two tours of the jail facilities per calendar
15 year not to exceed a maximum of 40 hours total for all institutions each calendar year. Notice of
16 any jail tour pursuant to this paragraph must be given in writing at least 7 days before the
17 proposed tour. Scheduling of any requested tour is subject to jail operational and/or security
18 concerns. Tours by plaintiffs' counsel and/or their consultants shall include reasonable access to
19 all of the County jail facilities, including all housing units, facilities where health care services are
20 provided, and any other facilities where services are provided pursuant to the Remedial Plan.
21 Plaintiffs' counsel shall identify in their notice of any jail tour issues for discussion and
22 Defendant shall provide appropriate personnel to address those issues. During the tours,
23 Defendant shall make reasonable efforts to make available for interview management, clinical,
24 custodial, and program staff that have direct or indirect responsibility for healthcare, disability
25 accommodations, and the safety and security of prisoners. Defendant shall direct institution staff
26 to reasonably cooperate with plaintiffs' counsel in obtaining necessary information they request
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2 during the tours. During the tours, Defendant shall permit and facilitate plaintiffs counsel having
3 reasonable brief confidential discussion with any consenting prisoner identified by plaintiffs'
4 counsel. Upon two week's notice and request by Plaintiffs' counsel and pursuant to the
5 protective order, Defendant shall make available for inspection and/or copying the health care
6 and/or custodial information in Offendertrak of specified prisoners. At the reasonable request of
7 plaintiffs' counsel jail personnel shall provide individual prisoners reasonable access consistent
8 with jail security and staff availability to confidential telephone calls with plaintiffs' counsel.
9

10 17. In the event that Defendant fails to make an employee or an agent available for an
11 interview, and the parties agree, plaintiff may depose the employee or agent who has not been
12 made available. If the parties are unable to agree, the Court may order such deposition of the
13 employee or agent if such deposition is reasonably necessary to the enforcement of the Consent
14 Decree.
15

16 18. At the reasonable request of any party, the parties shall conduct good faith
17 negotiations to resolve informally any dispute regarding Defendant's compliance with the
18 measures set forth in the Remedial Plan, which shall not include any issue relating to an
19 individual prisoner that is subject to the Inmate Grievance Procedure until after that process has
20 been exhausted. Any party may begin this dispute resolution process by written notice to the
21 opposing party. If the parties are unable to resolve informally the dispute within 30 days
22 following the Defendant's written response to plaintiffs' counsel pursuant to paragraph 14, or
23 within 30 days following Defendant's initial written notice to plaintiffs' counsel of a dispute, the
24 party initiating the process may inform the Court's expert(s) of the area of disagreement and
25 request that the expert(s) evaluate the issue and prepare a report. If either party believes that a
26 request for an evaluation and report from an expert is beyond the scope of the Consent Decree or
27 the Remedial Plan they may apply to the Court for an order vacating the request. Unless such a
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2 motion is made within 10 days of the request or the Court vacates the request, the expert(s) shall
3 devote his or her best efforts to provide his or her report regarding the area of disagreement
4 within 45 days of the request. Defendant will pay the experts' reasonable fees for time incurred
5 and any reports prepared by a Court expert about a disputed issue, as contemplated by this
6 paragraph. Any report prepared by a Court expert about a disputed issue, as contemplated by this
7 paragraph, shall be admissible as evidence at the request of any party in any judicial proceeding
8 in this case. While the report may be admissible, it may be disputed or contested by any party
9 with testimonial or extrinsic evidence, including expert testimony. The report shall not be
10 admissible in any other action. If within 30 calendar days of receipt of the Court's expert's
11 report, the parties are unable to reach a mutually satisfactory resolution of the dispute, any party
12 may file a motion for relief to the Court.
13
14

15 **Enforcement**

16 19. The Court shall retain jurisdiction to enforce the terms of this Consent Decree, and
17 shall have the power to enforce the agreement through specific performance and all other
18 remedies permitted by law throughout the duration of this Consent Decree.
19

20 **Duration**

21 20. The duration of this Consent Decree is four years from the date this Consent
22 Decree is entered by the Court, unless the court earlier determines that Defendant is in substantial
23 compliance with the Remedial Plan or, subject to the dispute resolution process in Paragraph 18
24 that this time period shall be extended as to any provision of this Consent Decree with which
25 parties or the Court's expert(s) reasonably determine that Defendant is not in substantial
26 compliance for so long as substantial non-compliance persists. The parties have the right by
27 motion to the Court to contest the determinations made by the Court's experts with testimonial or
28 extrinsic evidence, including expert testimony.

Costs and Fees

21. **Costs and Fees For Enforcement:** Defendant agrees to pay Plaintiffs' counsel \$40,000 per calendar year, or a pro rated portion thereof, for all fees and expenses related to monitoring the implementation of the Consent Decree and the Remedial Plan. The monitoring period shall begin the day after the Consent Decree is approved by the Court. Defendant shall deliver payment within 60 days of the beginning of the monitoring period for each of the first three years. For the duration of the Consent Decree, Defendant shall pay a pro rata share within 30 days of each calendar quarter of monitoring. The limitation on fees and expenses for monitoring shall not include any litigation to enforce or defend this Consent Decree or the Remedial Plan before the Court.

Effect of Consent Decree in Other Actions

22. Neither the fact of this Consent Decree nor any statements of claims contained herein shall be used in any other case, claim, or administrative proceedings, except that Defendant and its employees and agents may use this Consent Decree and any statement contained herein to assert issue preclusion or *res judicata*.

23. Nothing in this Consent Decree is intended to and does not modify, revise or change any existing orders or consent decrees applicable to Defendant, operations at the Fresno County Jail or prisoners in the Fresno County Jail, including, but not limited to Orders and Consent Decrees in John B. Cruz, et al. v. County of Fresno, et al., United States District Court Eastern District of California Case No. 1:93-cv-05070-MCE.

24. **Costs and Fees Prior to Entry of the Consent Decree:** In the interest of resolving this dispute, Defendant agrees to pay plaintiffs' counsel \$900,000 as payment for all reasonable attorneys fees and costs through the date the Court approves this Consent Decree. Defendant shall deliver payment within 60 days of the date the Court approves this Consent

Decree. Payment of these fees and costs represents full satisfaction of all claims for fees and costs through the date upon which the Consent Decree is approved.

IT IS SO AGREED AND STIPULATED.

PRISON LAW OFFICE

Dated: May 27, 2015

By: /s/ Donald Specter
Donald Specter
Attorneys for Plaintiffs

COOLEY LLP

Dated: May 27, 2015

By: /s/ Maureen Alger
Maureen Alger
Attorneys for Plaintiffs

DISABILITY RIGHTS CALIFORNIA

Dated: May 27, 2015

By: /s/ Melinda Bird
Melinda Bird
Attorneys for Plaintiffs

1
2 Dated: May 27, 2015

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

3
4 By: /s/ Michael G. Woods
5 Michael G. Woods
6 Attorneys for Defendant

7 The Court recognizes that the Plaintiffs allege various violations of Federal law and the
8 Defendant County of Fresno denies those allegations. Having reviewed the reports of the joint
9 experts, the Court hereby finds that the remedy set forth herein is narrowly drawn, extends no
10 further than necessary to correct the violation of Federal constitutional and statutory rights of the
11 Plaintiffs' class, and is the least intrusive means necessary to correct the violation of federal
12 rights.

13 Therefore, and good cause appearing, the Court approves the Consent Decree, and orders
14 the parties to comply with all its terms, and orders Defendant to implement the Remedial Plan
15 pursuant to the schedule set forth therein.

16 IT IS SO ORDERED.

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19 Dated:

JUDGE OF THE UNITED STATES DISTRICT COURT

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HALL, et al. v. COUNTY OF FRESNO

Case No. 1:11-CV-02047-LJO-BAM

**APPENDIX A,
REMEDIAL PLAN**

Hall, et. al. v. County of Fresno

REMEDIAL PLAN

May 27, 2015

Pursuant to the Consent Decree entered on _____, 2015, the County of Fresno agrees to implement the following measures.

I. MEDICAL CARE

A. Organizational Structure and Leadership

1. The County shall ensure that jail health care staff and the Sheriff's Office implement an interagency agreement that addresses mutual responsibilities in the provision of health care.
2. The Jail Medical Director shall be Board Certified or Board eligible in Internal Medicine or Family Practice.
3. Jail health care staff shall meet with Sheriff's Office staff during monthly administrative meetings that shall include an agenda and minutes.
4. Jail health care staff and the Sheriff's Office shall develop and implement standardized procedures that provide coordination between correctional and medical staff such that patients receive safe and timely access to care and medications.
5. The County shall require that jail health care staff are appropriately credentialed according to the licensure, certification, and registration requirements for the State of California.
6. Jail health care staff shall participate in mock fire drills conducted by the Sheriff's Office once a year.

B. Staffing

1. The County shall deliver adequate health care to comply with this Remedial Plan.
2. The County shall employ adequate numbers of correctional staff to assist with medication administration and the movement of patients to receive health care services.

3. The County will provide a budget for jail health care services sufficient to finance adequate health care and correctional staff to comply with this Remedial Plan.

C. Clinic Space

1. The County will provide an adequate number of clinic examination rooms to deliver adequate health care and comply with this Remedial Plan.
2. Clinic examination rooms shall have standardized equipment and par levels of supplies in a standardized presentation.

D. Policies and Procedures

1. The County's policies and procedures regarding medical intake shall require completion of a Medical Intake Screening form that includes the following:
 - a. Questions on the history of HIV/AIDS, Tuberculosis, and Kidney Disease; and
 - b. Questions regarding legal and illegal drug use (e.g., type, time of last use and quantities.)
2. The County's policies and procedures shall include that inmates with chronic illness are identified and seen after intake based on acuity (on the day of arrival for patients with high acuity and not to exceed 14 days for all others), and for follow-up appointments in intervals that do not exceed 90 days unless such inmates are clinically stable on at least two consecutive encounters, in which case not to exceed intervals of 180 days.
3. The County's policies and procedures regarding Individualized Treatment Plans shall include the following:
 - a. The minimum time period between intake screening and the first history and physical examination shall be specified and based on acuity (not to exceed 14 days for all inmates);
 - b. Continuity of medications shall occur within 24 hours for inmates with chronic illness, unless there are extenuating circumstances that prevent the prescription of such medications, in which case the inmate shall be evaluated by a physician or mid-level practitioner within 24 hours to determine an alternative treatment plan; and

- c. The minimum time period between physician evaluations shall be specified based on acuity.
4. The County's policies and procedures shall include that prescription medications shall only be prescribed by licensed physicians, physician's assistants, or nurse practitioners, within the scope of their licensures.
5. The County's policies and procedures regarding detoxification shall include the following:
 - a. Detoxification shall occur only under medical supervision in accordance with local, state, and federal laws;
 - b. Detoxification from alcohol, opiates, hypnotics, other stimulants, and sedative hypnotic drugs shall be conducted under medical supervision when performed at the facility;
 - c. Inmates being detoxified shall be monitored by a physician;
 - d. Specific guidelines shall be followed for the treatment and observation of inmates manifesting mild or moderate symptoms of intoxication or withdrawal from alcohol and other drugs;
 - e. Monitoring shall be structured and documented in accordance with the Clinical Institute Withdrawal Assessment or the Clinical Opiate Withdrawal Scale; and
 - f. Inmates experiencing severe, life threatening intoxication (an overdose) or withdrawal shall be transferred under appropriate security conditions to a facility where specialized care is available.
6. The Sheriff's Office policies and procedures regarding Safety Cells shall include that inmates may not be housed in safety cells for medical reasons.
7. The Sheriff's Office policies and procedures regarding disciplinary diets shall include that physicians assess whether a disciplinary diet will affect a prisoner's medical condition.
8. The County's policies and procedures regarding health records shall include the following:
 - a. All medical records must comply with state and federal regulations pertaining to access, disclosure and/or use of health information; and
 - b. Health record and health information, both oral and documented, is confidential protected health information. The minimum necessary health information is to be disclosed to health care staff providing health care or to

jail authorities when necessary for the protection of the welfare of the inmate or others, management of the jail, or maintenance of jail security and order.

9. The County's policies and procedures shall separately identify the following pharmaceutical procedures:
 - a. Procurement of pharmaceuticals;
 - b. Controlled substances;
 - c. Storage of medication;
 - d. Use of methadone;
 - e. Ordering and dispensing medication;
 - f. Medication administration;
 - g. Documentation of medication administration; and
 - h. Medication renewal.
10. The County's policies and procedures shall include that all tuberculosis screening and management shall be conducted in accordance with the American Correctional Association (ACA) and the National Commission on Correctional Health Care (NCCHC), "Standards for Health Services", as endorsed under recommendations of the Center for Disease Control (CDC) guidelines.
11. The County's policies and procedures shall include an Infection Prevention Plan that includes procedures for identification, treatment, isolation, surveillance, immunization (when applicable), prevention, education and follow-up related to infectious diseases.
12. The County's policies and procedures shall include Nursing Encounter Protocols /Tools that are appropriate to the level of skill and preparation of the nursing personnel who will carry them out and comply with the relevant state practice acts.
13. The County's policies and procedures shall require that pregnant inmates receive timely and appropriate prenatal care, postpartum care, counseling, and specialized obstetrical services when indicated.
14. The Sheriff's Office policies and procedures shall include a procedure to monitor temperatures in the facilities for the purpose of ensuring that inmates prescribed psychotropic medications are not at risk of malignant hyperthermia from extremely hot conditions, after consultation with medical/mental health staff, and that inmates are provided with extra blankets as needed in extremely cold conditions.

15. The County's policies and procedures regarding restraints shall include the following:

- a. Restraints shall not be used for medical purposes or during any medical procedures;
- b. Medical staff shall not participate in decisions to initiate use of restraints by correctional staff;
- c. Medical staff shall take all necessary measures to maintain proper peripheral circulation during the use of restraints; and
- d. A registered nurse or LVN under the supervision of a RN shall document vital signs, mental status, and sensation of limbs within the first hour of placement, and by medical staff at least every 60 minutes thereafter.

16. The County's policies and procedures shall be revised, as necessary, to reflect all of the health care remedial measures described in the Remedial Plan, and the County shall deliver healthcare pursuant to these revised policies and procedures.

E. Medical Intake and Screening

1. Tuberculosis screening shall include the following:

- a. Screenings provided in accord with Centers for Disease Control and Prevention guidelines;
- b. Inmates shall receive either Mantoux skin testing or Interferon-gamma release assays (IGRAs) within five days of intake;
- c. Inmates who present with an initial positive tuberculosis screening result shall receive a chest radiograph.

2. All inmates shall receive a thorough nursing intake screening to include vital signs, capillary blood glucose testing for persons with diabetes, peak expiratory flow rate for persons with asthma, and oxygen saturation for persons with emphysema.

F. Access to Care

1. Correctional officers shall make blank health service request forms available to inmates, and only health care staff shall collect completed health service request forms. Locked boxes shall be available in dorm and open-cell housing units for inmates to submit health service request forms. Health care staff shall pick up completed health service request forms directly from inmates in lockdown units during medication passes twice a day.

2. The following procedures regarding completed health service request forms and nursing triages shall be followed:
 - a. Health care staff shall collect and triage completed health service request forms at least twice a day to determine the urgency based on the complaint;
 - b. All inmates with emergent issues shall be seen immediately, urgent issues within 24 hours, and routine requests shall be scheduled within 72 hours;
 - c. All inmates experiencing symptoms shall have vital signs taken during their face-to-face evaluations; and
 - d. Nurses shall review the charts of the inmates being evaluated during all triages.
3. All nursing sick call encounters shall occur in a room with an examination table, sink, proper lighting, proper equipment, and with a medical record.
4. When a nurse determines clinician follow-up is necessary for diagnosis and treatment of an inmate's condition, the inmate shall be referred to a physician, physician's assistant, or nurse practitioner for a face-to-face evaluation that takes place immediately for emergent concerns, within 24 hours for urgent concerns, and within 14 days for non-emergent or non-urgent concerns.

G. Outpatient Housing Unit (OHU)

1. The following procedures for inmates housed in the OHU for medical treatment shall be followed:
 - a. Physicians, Nurse Practitioners, or Physician's Assistants shall sign an admittance order for patients housed in the OHU; to be followed by a complete history and exam within 72 hours;
 - b. Inmates admitted to the OHU shall receive daily checks to include review of symptoms and vital signs by RNs; to be documented in the inmate's medical record;
 - c. Physicians shall examine patients housed in the OHU no less frequently than every 14 days; and
 - d. Correctional officers shall notify medical staff immediately when an inmate in the OHU is requesting medical assistance.
2. The OHU shall be made compliant with Americans for Disabilities Act regulations.

H. Chronic Care

1. Health care services shall include a chronic disease management program.
2. The chronic disease management program shall conform to contemporary standards of care such as the National Health Lung and Blood Institute and asthma, hypertension, and lipid guidelines and American Diabetes Association guidelines.
3. All inmates with chronic illness shall be tracked on a chronic illness roster.
4. The chronic disease management program shall measure the number of inmates with chronic illness who receive their medication within a day of incarceration.

I. Specialty Care

1. Specialty care appointments shall be tracked in a log that identifies the referral date, the date the referral was sent to the clinic, the date the appointment is confirmed, and, if the appointment is rescheduled or canceled, the reason it was rescheduled or canceled.
2. Inmates whose specialty appointment exceeds three months should be examined by a physician, physician's assistant, or nurse practitioner monthly and evaluated to determine if urgent evaluation is indicated.
3. Specialty consultant arrangements for pulmonology and ophthalmology shall be developed.

J. Pharmacy and Medication Administration

1. Nursing staff shall observe patients taking medications, especially when Direct Observation Therapy is required by the physician's order.
2. Nursing staff shall deliver medications with the lights on in administrative segregation areas and observe patients ingest their medications.
3. Medication administration shall be documented immediately after administration, with the exception of inmates housed on the second tier of the administrative segregation areas. For those inmates housed on the second tier in the lockdown areas, the nurses shall follow the following procedure:

- a. Prior to the start of each pill pass, while in the pharmacy, the nurse will put the medications inside pill envelopes labeled with the patient's name and Jail Identification Number;
 - b. Nurses will push the medication carts into the pods;
 - c. After entering the pod, the nurse will carry the envelopes in his/her hands or pockets and will go cell door to cell door to administer the medications; and
 - d. Once the entire pill pass is completed, the nurse will return to the medication cart and push the cart outside the housing unit to complete charting.
4. All hygiene practices while dispensing and administering medications shall conform to nationally accepted professional standards.
5. All methadone treatment services for inmates shall conform with state and federal regulations.
6. Access to pharmacy keys shall be limited only to health care staff assigned to work in the pharmacy and the Director of Nursing. The pharmacy door shall remain closed and locked when pharmacy staff is not present. All medication cabinets shall remain locked at all times. Nursing Supervisors and Director of Nursing shall monitor control of the pharmacy daily by direct observation.

K. Dental Care

1. The County shall employ sufficient numbers of dental staff to provide timely access to adequate dental care.
2. A qualified or appropriately trained clinician shall triage dental care requests to identify emergent or urgent issues that require treatment of pain or infection.

L. Medical Records

1. The County, through Corizon, shall implement an electronic health record for inmates within the first year of Corizon's contract.
2. All paper medical records shall be controlled via a sign-out procedure, and paper files shall be centrally located to increase accountability.
3. Medical records paperwork shall be filed in a timely manner.
4. Correctional staff shall not have access to the completed intake screening form.

M. Self-Monitoring, Quality Improvement, and Reviews

1. The County shall train all nurses on appropriate nursing protocols during new employee orientation, and Nurse Supervisors shall review nursing competencies annually.
2. Any unorthodox treatment provided by physicians shall be subject to peer review.
3. Physicians shall be evaluated annually by peer review, and nurses shall be evaluated annually by their supervisors.
4. A Medical/Behavioral Quality Improvement Committee that includes the Medical Director, psychiatrist, registered nurse, pharmacy representative, Department of Public Health representative, and correctional representative shall meet quarterly for the purpose of peer review and systematically analyzing and improving processes and the quality of medical care.
5. Each quarter, the Quality Improvement Committee shall monitor several of the following key processes of care:
 - a. Numbers of inmates who missed intake screening;
 - b. Numbers of inmates who missed TB screening at intake;
 - c. Numbers of inmate health requests submitted daily, numbers triaged within 24 hours, and the numbers who received face-to-face evaluations within 72 hours;
 - d. The percent of inmates who received their first dose of medication within 24 hours of prescription;
 - e. The number of medical records that could not be located upon request;
 - f. The length of time to specialty appointment by service;
 - g. The number of inmates with chronic illnesses who received their medications within a day of incarceration; and
 - h. The number of inmates with chronic illnesses who received a history and physical examination by a provider within two weeks of incarceration.
6. The Medical Director shall ensure that any corrective action recommended by the Medical/Behavioral Health Quality Improvement Committee is implemented and completed within 30 days of the report making such recommendations, unless there are extenuating circumstances preventing implementation and completion within such timeframe in which case it shall occur as soon as reasonably practical.

N. Mortality Reviews

1. Mortality reviews shall include a written report.
2. Mortality reviews shall include identification of problems for which corrective action is undertaken.
3. Autopsies shall be performed for all deaths, except for those caused by suicide or homicide, or where the cause of death can be conclusively determined from the facts known before the death.

II. MENTAL HEALTH CARE

A. Staffing

1. Clinical decisions, diagnoses, and treatment plans shall only be made by licensed mental health clinicians (psychiatrists, psychologists, therapists, clinical social workers, psychiatric nurses). Licensed mental health clinicians shall review and cosign record entries made by Licensed Psychiatric Technicians (LPTs) and Licensed Vocational Nurses (LVNs) when the LVNs and LPTs are providing behavioral health services.
2. The County shall employ the number of mental health care providers necessary to provide adequate mental health care and supervision.
3. The total psychiatrist time provided shall be a minimum of 50 to 55 hours per week.
4. In the event group sessions are conducted by unlicensed mental health staff, the group shall be strictly educational, and staff shall provide participants with a handout specifying that no discussion of personal issues may occur.

B. Continuity of Care

1. The County shall provide continuity of care from admission to transfer or discharge from the facility, including referral to community-based providers, when indicated. Jail health care staff shall provide discharge planning for sentenced inmates with serious mental health disorders, including connecting such inmates to community health care providers, community social services, community-based housing, and/or appropriate services per the individual's need. The same services will be provided to unsentenced inmates provided adequate time is available prior to a legally mandated release.

2. The County shall develop and implement a system that allows patients who are prescribed psychiatric medications to have access to these medications as soon as possible following their release from jail.
3. The Department of Behavioral Health (DBH) shall collaborate with mental health staff to provide continuity of care with psychiatric medications and referrals to DBH services, and mental health staff shall have access to the DBH computerized information database to facilitate such care.
4. The County shall coordinate transportation, as necessary, with outside agencies and applicable community resources for inmates with serious mental illness who are released from custody.

C. Psychiatry Services

1. Psychiatric medications, including but not limited to antipsychotic medications, shall be prescribed to inmates with mental illness in accord with nationally accepted professional standards for the treatment of serious mental illness.
2. Physicians shall “bridge” all verified, valid prescriptions for inmates who enter the facility currently on psychiatric medications. Inmates who receive such bridge medications shall receive a face-to-face evaluation with a psychiatrist within seven days of initiation of the medication. Follow-up face-to-face evaluations shall occur as needed, but within 30 days following the initial visit. Subsequent face-to-face evaluations by the psychiatrist shall occur as needed, but at intervals of no more than 90 days.
3. Inmates who are prescribed psychiatric medications by the psychiatrist (i.e., not “bridge” medications) shall receive follow-up face-to-face evaluations with a psychiatrist as needed depending on their clinical status, but no later than 30 days following the initial visit. Subsequent visits shall occur as needed but at intervals of no more than 90 days.

D. Intake

1. The Health Care Screening Form shall include a question regarding any history of mental health problems or treatment, hospitalizations, and/or current or previous thoughts of self-harm.

E. Suicide Prevention

1. Mental health clinicians shall complete a comprehensive suicide risk assessment form for all inmates who display signs of suicide risk to determine if the inmate presents a low, moderate, or high risk of suicide. Mental health clinicians shall complete a new form if there are indications of any modification of risk factors, including but not limited to any suicide attempts or expressions of suicidal ideation.
2. Inmates displaying signs of suicide risk shall be referred to a mental health clinician for an evaluation.
3. The Sheriff's Office and health care staff shall develop and implement policies and procedures for housing and monitoring inmates that present a low or moderate risk of suicide. Low-risk inmates shall be monitored at least monthly by mental health staff and shall be housed with other inmates or, if they cannot be housed with other inmates, in housing where they can be frequently monitored by correctional staff. Moderate-risk inmates shall be monitored at least weekly by mental health staff and shall be housed with other inmates unless they pose a safety and security threat to other inmates. Moderate-risk inmates shall also be housed in locations that allow custody staff to observe and communicate with these inmates on a daily basis.
4. Sentenced inmates who have been identified as a moderate or high level of suicide risk on their most recent comprehensive suicide risk assessment form shall receive an evaluation by a mental health clinician prior to their release to the community for appropriate referrals or initiation of an involuntary psychiatric hold pursuant to Welfare and Institutions Code Section 5150. The same services will be provided to unsentenced inmates provided adequate time is available prior to a legally mandated release.
5. All health care staff shall receive training regarding suicide prevention during new employee orientation, and updated training annually. Correctional officers shall receive suicide awareness and prevention training annually. All such training shall be provided by a licensed clinician having expertise in correctional suicide prevention and the use of a suicide risk assessment form.

F. Behavior Management

1. The Sheriff's Office shall assist jail mental health staff in the development and implementation of behavior management plans for inmates with serious mental illness who engage in repeated acts of misconduct with the goal of reducing their placements, or shortening the length of time they spend, in lockdown administrative segregation housing.

2. Correctional staff assigned to Population Management who are familiar with the housing of inmates with serious mental illness shall be included in administrative meetings where behavior management plans are developed and reviewed.

G. Administrative Segregation

1. The Sheriff's Office shall adopt and implement a policy of leaving open all of the cell door portal coverings in 2D of the South Annex Jail from 7:00 a.m. to 10:00 p.m. unless an inmate requests that it remain closed or it is necessary to temporarily close the portal for exigent circumstances related to jail security.
2. The Sheriff's Office and jail mental health staff shall collaborate to adopt and implement a policy of housing no inmates with serious mental illness in 2D of the South Annex Jail or the A Pods and FF Units in the Main Jail unless those inmates demonstrate a current threat to jail security, inmate and/or officer safety, as documented by correctional staff, that prevents them from being safely housed in less restrictive locations.
3. In the event any inmates with serious mental illness (SMI) must be housed in 2D, correctional and mental health staff shall ensure those inmates are offered to be taken out of their cells for recreation a minimum of 7 hours per week and mental health treatment shall be offered 3 times per week.
 - a. Inmates with SMI who are placed in isolation in 2D cells for more than 48 hours are to have their cases reviewed by a multidisciplinary team consisting of corrections and mental health staff every two weeks. Decisions for an individual's continued housing in isolation includes input from a licensed mental health clinician.
 - b. Out-of-cell structured behavioral health services for individuals with SMI held in isolation in 2D cells will be offered:
 - i. A minimum of three out-of-cell mental health contacts per week consisting of structured individual or group therapeutic/educational treatment and programming, each lasting approximately one hour with appropriate duration to be determined by a mental health clinician.
 - ii. At a minimum, one one-to-one structured therapeutic contact session will be offered by a mental health clinician. The remaining two contacts per week may either be additional one-to-one structured therapeutic contacts or group therapeutic/educational contact sessions.
 - c. Mental health contacts are to be documented indicating type and duration of activity.

4. In the event any inmates with serious mental illness must be housed in FF Units, correctional and mental health staff shall ensure those inmates are offered to be taken out of their cells for recreation a minimum of 7 hours per week and mental health treatment shall be offered 3 times per week.
 - a. Inmates with SMI who are placed in isolation in FF cells for more than 48 hours are to have their cases reviewed by a multidisciplinary team consisting of corrections and mental health staff every two weeks. Decisions for an individual's continued housing in isolation includes input from a licensed mental health clinician.
 - b. Out-of-cell structured behavioral health services for individuals with SMI held in isolation in FF cells will be offered:
 - i. A minimum of three out-of-cell mental health contacts per week consisting of structured individual or group therapeutic/educational treatment and programming, each lasting approximately one hour with appropriate duration to be determined by a mental health clinician.
 - ii. At a minimum, one one-to-one structured therapeutic contact session will be offered by a mental health clinician. The remaining two contacts per week may either be additional one-to-one structured therapeutic contacts or group therapeutic/educational contact sessions.
 - c. Mental health contacts are to be documented indicating type and duration of activity.
5. Medical staff shall complete health checks on all inmates in 2D of the South Annex Jail and the A Pods and FF Units in the Main Jail at least three times a week and document the checks to include any verbal exchange allowing inmates to report any health or mental health needs or concerns.
6. The Sheriff's Office shall adopt and implement a policy of reviewing the status of inmates with serious mental illness housed in A Pods in the Main Jail at least once every 30 days to determine if the inmate can be moved to less restrictive housing. Jail mental health staff shall assess SMI inmates' housing requirements, which shall be discussed at monthly administrative meetings with custody and health care staff. This provision is not intended to and does not require a new mental health assessment of all inmates with serious mental illness every 30 days so long as jail mental health staff have adequate information to make an informed and meaningful recommendation about whether SMI inmates should continue to be housed in that unit.

H. Quality Improvement

1. The quality improvement committee that meets quarterly shall collect and manage data to develop corrective action plans in response to mental health program weaknesses that are identified. Areas that require recurrent review include, but are not limited to, the following:
 - Timely continuity of verified community prescriptions for psychiatric medications;
 - Continuity of care for inmates with serious mental illness leaving custody;
 - Timely triage of health care service request forms describing mental health symptoms; and
 - Health checks of inmates in 2D of the South Annex Jail and the A Pods and FF cells in the Main Jail.

III. ACCOMMODATIONS FOR INMATES WITH DISABILITIES

A. Housing

1. The Sheriff's Office shall house inmates with disabilities in facilities that accommodate their disabilities no later than 24 months from issuance of the consent decree. In the interim, the Sheriff's Office shall house inmates with disabilities in the most integrated and appropriate housing possible, based on their disabilities.
2. The County shall provide accessible toilets and showers in units where inmates requiring special accommodations for access are housed no later than 24 months from issuance of the consent decree. Accessible toilets and showers shall have such physical features as grab bars, shower seats, no shower curbs, no stairs, and pathways wide enough to permit wheelchair/walker access, etc. In the interim, the Sheriff's Office shall house inmates with disabilities in the most integrated and appropriate housing possible, based on their disabilities.
3. The Sheriff's Office and medical staff shall communicate to determine appropriate housing for inmates with disabilities. Medical staff shall make available all information needed to make adequate housing decisions.
4. The Sheriff's Office shall create and implement the use of a centralized list of housing placements with accessible features to simplify housing decisions and identify gaps in placement options. This list shall separately identify each cell in the Outpatient Housing Unit, since these vary in their accessible features.

5. The Sheriff's Office and medical staff shall collaborate to implement the use of a system that reflects an assessment of an inmate's functional limitations and restrictions, including but not limited to:
 - a. The need for an accessible shower and toilet;
 - b. The need for ground floor housing;
 - c. The need for no stairs in the path of travel;
 - d. The need for level terrain; and
 - e. The need for and description of assistive devices and the conditions in which they are to be used (e.g., use of a wheelchair full time, for all distances greater than 50 feet, whenever out of cell/bed area, etc.).
6. The following information shall be included in Offendertrak:
 - a. The need for an accessible shower or toilet;
 - b. The need for a lower bunk;
 - c. The need for assistive devices;
 - d. The need for ground floor housing;
 - e. The need for level terrain;
 - f. The need for no stairs in the path of travel.
7. The Sheriff's Office shall not place inmates with disabilities in the OHU unless they are receiving medical care or treatment, or there is no other housing location where they can be reasonably accommodated. Inmates with disabilities who are housed in the OHU because they cannot be reasonably accommodated in other locations shall receive equal access to services, programs, and activities.

B. Assistive Devices

1. The Sheriff's Office and jail health care staff shall collaborate to develop standardized procedures for the prescription, ordering, retention, and confiscation of assistive devices. Policies shall be developed in a manner that is protective of the safety and security of inmates and staff while affording equal access to jail programs, services, and activities for inmates with disabilities.
2. An inmate who arrives at the jail with an assistive device shall be allowed to retain the device, or shall be provided with a jail-issued equivalent device, so long as it does not constitute an immediate risk of bodily harm or threaten the security of the facility, unless a jail physician documents that the device is not medically necessary or reasonable to allow equal access to jail programs, services, or activities.
3. The Sheriff's Office shall provide assistive devices prescribed by a jail physician to inmates as soon as reasonably practical, so long as the device does not constitute an

immediate risk of bodily harm to inmates or staff, or threatens the security of the facility.

4. The Watch Commander shall be responsible for determining if an assistive device constitutes an immediate risk of bodily harm or threatens the security of the facility. If the Watch Commander makes such a determination, correctional staff shall consult with medical staff to determine an appropriate alternative accommodation that shall be provided. Assistive devices shall not be confiscated if another inmate is the source of the security threat.

C. Training and Management

1. American with Disabilities Act (ADA) training shall be provided to all new health care staff and correctional staff, and to all other existing staff as needed on an ongoing basis.
2. The Sheriff's Office ADA Coordinator shall confer with medical staff monthly to review whether accommodations for inmates with disabilities continue to be appropriate and necessary.

D. Grievances

1. The Sheriff's Office shall provide an inmate grievance system that inmates with disabilities may use to contest any disability-based discrimination or violations of the ADA, and will provide a prompt and equitable resolution to each issue raised.
2. The Sheriff's Office shall train all correctional staff assigned to screen or review grievances to identify requests for reasonable accommodations and allegations of disability-based discrimination or violations of the ADA.
3. The Sheriff's Office ADA coordinator shall review all ADA related complaints, assign an ADA trained officer to investigate the complaints and provide substantive responses.

E. Notice and Effective Communication

1. The inmate handbook shall be revised at the next printing (2016) to include additional information regarding the "Americans with Disabilities Act," "Disabilities," and how to request "Reasonable Accommodations." The contact information of the jail's designated ADA coordinator and the disability complaint procedures shall be made available in the inmate handbook. Inmates shall be provided jail inmate handbooks during the intake booking process. Until the handbook can be updated and printed, an addendum shall be provided inside each handbook distributed.

2. The Sheriff's Office shall post and disseminate ADA notices in alternative formats to promote effective communication, and make available grievance forms to address ADA related complaints.
3. The Sheriff's Office shall develop and implement policies such that inmates with communication deficits are provided with reasonable accommodations (e.g., reading and writing assistance). This shall include both communications to the inmates (Jail rules, policies, notices, etc.) and addressing needs for the inmate to communicate with jail staff.

IV. JAIL SAFETY AND SECURITY

A. Staffing

1. The County shall employ adequate numbers of qualified correctional officers to comply with this Remedial Plan as outlined in the Staffing Plan with the hiring of 127 Correctional Officers over a three year period, or as soon thereafter as the labor pool permits.
2. The Sheriff's Office shall implement a staffing plan designed to reduce inmate-on-inmate violence in the jails. This plan includes the hiring of 127 new correctional officers spread over three years, or as soon thereafter as the labor pool permits. These 127 Correctional Officer positions shall be formally added to the County's Salary Resolution upon Court approval of the Consent Decree.
3. Correctional staff shall conduct appropriate rounds with sufficient frequency to provide inmates with adequate supervision and reasonable safety. More frequent rounds shall be conducted for inmates requiring more intensive supervision for safety and security reasons.

B. South Annex Jail

1. The South Annex Jail is an antiquated facility, and shall be considered for being taken off-line as soon as practicable.
2. While the South Annex Jail remains in use, there shall be assigned adequate numbers of correctional officers to protect inmates from an unreasonable risk of harm from violence and injury from other inmates and physical plant deficiencies.

C. Use of Force and Quality Assurance

1. The Sheriff's Office shall reintroduce de-escalation tactics and techniques into the annual training plan to reinforce the importance of communication skills in relationship to a correctional facility environment. This training shall be introduced to staff in fiscal year 2014/2015.
2. The Sheriff's Office shall document all incidents (including those that are serious) involving inmates that include suicides, suicide attempts, inmate-on-inmate violence, use of force by staff, fires, escapes and deaths.
3. All documented incidents of the use of force shall be reviewed by the Jail Sergeant and Watch Commander within 24 hours of the report being submitted, and by facility commanders on a monthly basis.
4. All pre-planned uses of force shall be video recorded.
5. Jail Command Staff shall conduct quality assurance reviews on a monthly basis of all documented incidents involving suicides, suicide attempts, inmate on inmate violence, use of force by staff, sexual assaults, fires, escapes, and deaths, and information developed during those reviews shall be incorporated into improving policies, procedures, and practices to remedy any deficiencies identified.
6. Quality Assurance criteria, policies and procedures shall be developed to guide the protocols of the Jail Command staff's monthly meetings and review, to include assaults, fights, deaths, fires, use of force, escapes, sexual assaults, physical plant safety concerns, control of flammables/caustics, emergency preparedness, emergency key testing, facility sanitation compliance and contract oversight. This group shall also examine systems of control, Jail policies and procedures, incident trends, and make appropriate recommendations for corrective action to the Jail Administrator.
7. Uses of force incidents shall be reviewed by the Jail Sergeant and Watch Commander as provided herein. Violations of use-of-force policies shall be properly addressed via the chain of command and necessary Supervisor Incident Reports. Remedial training shall be directed by supervisory/management staff if it is determined to be necessary and/or appropriate. As appropriate, incidents shall be directed to Sheriff's Internal Affairs for possible policy violations, or to the District Attorney's Office if investigation determines such referral is appropriate.
8. The Jail Command Staff (Captains and Lieutenants) shall evaluate the appropriateness of all uses of force as a part of their scheduled agenda during their

monthly meetings. A Jail Sergeant shall be assigned the collateral duty as Use of Force Review Coordinator and be responsible to produce the reports, data and necessary videos for review at these meetings. The findings of this group shall be forwarded up the chain of command to the Sheriff, with any use of force suspected to be outside of law and/or policy directed to Internal Affairs for additional investigation, as necessary.

D. Classification

1. The Sheriff's Office shall maintain an appropriate classification system to protect inmates from unreasonable risk of harm. Inmates shall be timely classified and placed in housing appropriate for security and safety. The system shall include consideration of an inmate's security level, suicide risk, and past behavior.

E. Inmates with Mental Illness

1. The Sheriff's Office shall gather statistical and comparative data on the uses of force involving inmates with serious mental illness.
2. The County shall conduct initial and periodic training for all correctional staff on how to recognize symptoms of mental illness and respond appropriately. Such training shall be conducted by a registered nurse and shall include instruction on how to recognize and respond to mental health emergencies.

F. Restraint Chairs

1. Inmates shall not be placed in restraint chairs unless there is sufficient justification for such placement that is documented in an incident report.
2. Correctional staff shall review whether the inmate can be removed from the restraint chair no later than two hours after the time of initial placement in the chair.
3. Inmates shall not be held in restraint chairs for longer than four hours.
4. Correctional staff shall notify the on-duty charge nurse of the use of a restraint chair at the time of initial placement.
5. Correctional staff shall provide proper nutrition, hydration, and toileting as safely as possible during the duration of restraint chair placements.
6. Correctional staff shall observe inmates placed in restraint chairs at least two times each successive half hour after the time of initial placement.

G. Physical Plant

1. The County shall maintain the physical plant of the facility, with special emphasis on security door maintenance. All security doors and locks shall be in proper working order in a manner that maintains appropriate security and safety for jail staff and inmates.
2. The Sheriff's Office shall maintain in working order all cameras, alarms and other monitoring equipment at the jail.

H. Fire, Emergency, and Tool Safety

1. The County's Internal Services Department Facility Services Division shall maintain the jail in a manner that provides adequate fire safety. The Sheriff's Office shall take all reasonable measures to provide that: (a) inmates can be evacuated in a safe and timely manner during an emergency; (b) emergency exit routes are free of obstacles, maintained in a safe manner, and available for use; (c) emergency keys are readily available to staff; and (d) fire exit plans are posted and clearly labeled.
2. The Sheriff's Office shall develop and implement a written comprehensive fire and safety emergency/disaster plan and appropriately train staff in implementing the plan. Mock fire drills shall also be conducted to make staff familiar with safety procedures and evacuation methods.
3. All emergency keys shall be appropriately marked and identified, consistently stored in a quickly accessible location, tested annually, and staff shall be adequately trained in the use of these keys.
4. All correctional staff shall receive basic Fire and Life Safety training during their first year of training in the Basic Correctional Officer Core Course Academy. The Sheriff's Training Unit shall conduct supplemental Fire Suppression and Evacuation Procedure training during the 2014/2015 fiscal year training cycle. Additional Fire and Life Safety/evacuation procedures shall be conducted on each shift, by shift supervisors on an as-needed basis.
5. The County's Internal Services Department Facility Services Division shall develop and implement written policies and procedures for the introduction and control of tools in all Jail facilities subject to review and approval by the Sheriff's Office.

I. Policies and Procedures

1. The Sheriff's Office shall develop and implement new policies, procedures and post orders as needed to comply with the provisions of this Remedial Plan, including but not limited to the implementation of proper policies, procedures, post orders and corrective action plans to address problems uncovered during the course of quality assurance review activities.
2. Upon Court approval of the Consent Decree, appropriate training shall be formulated and conducted with all staff regarding the requirements of the Consent Decree and Remedial Plan, as well as changes to policies, procedures and/or post orders.
3. The Sheriff's Office will review and update all facility policies and post orders as appropriate to reasonably provide adequate safety and security in the jails.

HALL, et al. v. COUNTY OF FRESNO

Case No. 1:11-CV-02047-LJO-BAM

**APPENDIX B,
EXPERTS' DUTIES**

Hall, et. al. v. County of Fresno

EXPERTS' DUTIES

April 30, 2015

1. Pursuant to rule 706 of the Federal Rules of Evidence, the Courts' experts shall advise the Court on the adequacy of the implementation of the Remedial Plan.
2. During the first year of the Consent Decree, the three Court experts shall each complete one comprehensive review and report to advise the Court on defendant's progress in implementing the Remedial Plan. For the remaining duration of the Consent Decree, the Court experts shall complete comprehensive reviews and reports as they determine to be necessary, or as jointly requested by the parties, but not more than once a year, to advise the parties and the Court on the adequacy of defendant's implementation of the Remedial Plan. To form the basis of their reports, the Court experts shall have access to all parts of any County jail facility, with adequate notice provided in advance of the same to ensure appropriate security is provided, all relevant budgetary, custody, and health care documents, persons (including confidential interviews with consenting staff and consenting prisoners) and institutional meetings, proceedings, and programs to the extent the experts reasonably determine such access is needed to fulfill their obligations. The Court experts shall not have access to personnel files, including records and information deemed confidential pursuant to California Penal Code § 832.7. Attorneys shall not have ex parte contact with experts regarding their preliminary and proposed opinions to be presented to the parties.

3. At the request of either party, the Court experts shall participate in the dispute resolution process, as described in Paragraph 18 of the Consent Decree, by evaluating the issue in dispute and preparing a report, including but not limited to whether defendant is in substantial compliance with the terms of the Remedial Plan. The expert(s) shall devote his or her best

efforts to provide his or her report regarding the area of disagreement within 45 days of the request.

4. The Court experts shall be available to meet jointly with the parties in person or by telephone in a manner that is reasonable and convenient for the purpose of resolving disputes between the parties.

5. At the request of the Court, the Court experts shall attend any negotiations, mediation sessions, or court hearings.

6. The Court experts shall be entitled to reasonable compensation in an amount approved by the Court, which shall be paid by Defendant, for time incurred to prepare reports, resolve disputes, or attend hearings or meetings as requested by the Court. The Court experts shall provide defendant with a detailed written itemization of the claimed fees and costs, itemized by date, amount of time spent, and task, as well as records and bills evidencing the costs claimed, on a quarterly basis.

HALL, et al. v. COUNTY OF FRESNO

Case No. 1:11-CV-02047-LJO-BAM

**APPENDIX C,
(PROPOSED) PROTECTIVE ORDER**

DONALD SPECTER (SBN 83925)
KELLY KNAPP (SBN 252013)
PRISON LAW OFFICE
1917 Fifth Street
Berkeley, CA 94710
Telephone: (510) 280-2621
Fax: (510) 280-2704

MAUREEN P. ALGER (SBN 208522)
COOLEY LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155
Telephone: (650) 843-5000

ATTORNEYS FOR PLAINTIFFS
[**ADDITIONAL COUNSEL LISTED ON NEXT PAGE**]

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

QUENTIN HALL, SHAWN GONZALES,
ROBERT MERRYMAN, DAWN SINGH, and
BRIAN MURPHY, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

COUNTY OF FRESNO

Defendant.

Case No. 1:11-CV-02047-LJO-BAM

CLASS ACTION

**[PROPOSED]
PROTECTIVE ORDER**

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MARY KATHRYN KELLEY (SBN 170259)
COOLEY LLP
4401 Eastgate Mall
San Diego, CA 92121-1909
Telephone: (858) 490-6000

MELINDA BIRD (SBN 102236)
AGNES WILLIAMS (SBN 143532)
DISABILITY RIGHTS CALIFORNIA
350 South Bixel Street, Suite 209
Los Angeles, CA 90017
Telephone: (213) 213-8000
Fax: (213) 213-8001

**[ADDITIONAL COUNSEL LISTED ON
CAPTION PAGE]**

1 WHEREAS the parties, through counsel, agree that a protective order is necessary to
2 protect the confidentiality of documents and other information produced or disclosed in this
3 action; and

4 WHEREAS, the parties agree that good cause exists for the entry of this Protective Order
5 because certain records produced or disclosed in this action contain Protected Health Information
6 and/or security information of prisoners detained in the Fresno County Jail.

7 NOW, THEREFORE, IT IS HEREBY STIPULATED by and between the parties hereto,
8 through their respective counsel of record, that the following provisions shall apply:

9 1. "Protected Health Information" (hereinafter "PHI") is defined by the Health
10 Insurance Portability and Accountability Act, 45 CFR §160.103.

11 2. "Security information" is defined as any records maintained in an individual
12 prisoner's custody file, including but not limited to incident reports and housing classification
13 documents, as well as any records that are designated by defendant as threatening jail safety
14 and/or security if disclosed without protective conditions.

15 3. "Proprietary Information" is defined as any information that constitutes trade
16 secret or is otherwise competitively or commercially sensitive.

17 4. All PHI, security information, or proprietary information produced by defendant in
18 this action shall be regarded as confidential and subject to the Protective Order. Such material is
19 hereinafter referred to as "confidential material."

20 5. Any party that produces documents containing confidential material, shall mark
21 the document, or portions thereof containing confidential material as "Confidential Material –
22 Subject to Protective Order."

23 6. The designation of material as confidential shall be made by placing or fixing on
24 the first page of the material, in a manner that will not interfere with the material's legibility, the
25 words "Confidential Material" – Subject to Protective Order."

26 7. Any confidential information filed with the Court shall be filed under seal, labeled
27 with a cover sheet bearing the case name and number along with the following statement: "This
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document is subject to a protective order issued by the Court and shall not be copied or examined except in compliance with that order.” Documents so labeled shall be kept by the Clerk of the Court under seal and shall be made available only to the Court or counsel. Upon failure of the filing party to file confidential information under seal, any party may request that the Court place the document under seal. The procedures of Local Rule 141 shall be followed.

8. Confidential information shall be used solely in connection with this action, and shall not be used or shown, disseminated, copied, or in any way communicated, orally, in writing, or otherwise, by the parties, their counsel, or any of the representatives, agents, expert witnesses, or consultants, for any other purpose without agreement between the parties, except that PHI may be used without limitation with the consent of the prisoner concerned. All confidential information shall be stored in a secure location. Access to confidential information shall be limited to those persons designated as “qualified persons” in paragraph 9 below.

9. Confidential information received from the opposing party may be disclosed only to the following persons (hereinafter referred to as “qualified persons”):

- a. Fresno County Counsel and counsel of record for the parties, and any of their employees, representatives, or agents who are assisting such counsel in this action;
- b. The Court and court personnel;
- c. The Court’s experts appointed in this action pursuant to Rule 706 of the Federal Rules of Evidence;
- d. Stenographic reporters engaged in any proceedings;
- e. All experts and consultants retained by the parties;
- f. Witnesses to whom confidential information may be disclosed during a deposition taken in this action. Such witnesses may not leave the deposition with copies of any confidential information unless it is their own confidential information; and
- g. Any person expressly named and agreed to in writing by counsel for the parties.

10. Except to the extent otherwise permitted by this Protective Order, every qualified person provided copies of or access to confidential information pursuant to this Order shall keep

1 all such materials and information, and any copies, notes, extracts, summaries, or descriptions of
2 such material, within their exclusive possession and control, shall treat all such copies, notes,
3 extracts, summaries, or descriptions of such material as confidential, shall take all necessary and
4 prudent measures to maintain the confidentiality of all such materials or information, and shall
5 not disseminate such confidential information, except as permitted by this Order.

6 11. If any counsel of record distributes copies of material containing confidential
7 information to one or more qualified persons, all such materials, and all copies, notes, extracts,
8 summaries, or descriptions of such material, shall be returned to that counsel of record at the
9 completion of a qualified person's consultation or representation in this case. That counsel of
10 record shall, upon request by opposing counsel or the Court, provide written confirmation that all
11 materials containing confidential information, and all copies, notes, extracts, summaries, or
12 descriptions of any such material have, to the best of counsel's knowledge, been returned as
13 required.

14 12. After the termination of this action by entry of a final judgment or order of
15 dismissal, and any appeal, the provisions of this Protective Order shall continue to be binding.
16 The terms of this Order constitute and shall be deemed to be an enforceable agreement between
17 the parties (and their agents and attorneys, to the extent permitted by Rules of Professional
18 Conduct in this jurisdiction). The terms of this Protective Order may be enforced by specific
19 performance in the United States District Court for the Eastern District of California (Fresno
20 Division). Within 90 calendar days of the final conclusion of this litigation (including all time for
21 appeals, or the expiration or dissolution by the Court of any consent decree, order or judgment,
22 whichever is later), each party shall destroy all documents or parts thereof designated as
23 confidential information, and all copies thereof in its possession, including documents in the
24 possession of all persons hired or retained by plaintiff to assist in connection with this litigation.

25 13. Nothing in this order is intended to prevent Defendant or its employees or agents
26 from having access to confidential information to which they have access in the normal course of
27 their official duties.
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1 14. If a party inadvertently produces confidential information without the required
2 label, the producing party shall inform the receiving party in writing and the specific material at
3 issue immediately upon discovering the inadvertent production. Likewise, if a receiving party
4 contends that confidential information was produced without the required label, the receiving
5 party shall inform the producing party in writing and the specific material at issue upon
6 discovering the failure to label the information. Upon receipt of notice, all parties shall treat the
7 material identified in the notice as confidential unless and until this Court enters an order stating
8 that the document shall not be treated as confidential information.

9 15. If a receiving party contends that any document has been erroneously or
10 improperly designated confidential, it shall treat the document as confidential unless and until this
11 Court enters an order stating that the document shall not be treated as confidential information.

12 16. The inadvertent or unintentional disclosure by the producing party of information
13 subject to the attorney-client privilege or work-product doctrine or any other applicable privilege
14 or immunity shall not be deemed a waiver in whole or in part of the party's claim of privilege or
15 work-product immunity, either as to the specific information disclosed or as to any other
16 information relating thereto or on the same or related subject matter. If a party has inadvertently
17 produced information subject to a claim of immunity or privilege, the receiving party, upon
18 request, shall return or destroy the inadvertently produced materials within five (5) Court days of
19 the request, and all copies of those materials that may have been made and any notes regarding
20 those materials shall be destroyed. The party returning such information may move the Court for
21 an order compelling production of such information including on the grounds that such
22 production was not inadvertent or unintentional. However, the inadvertent production of
23 privileged or otherwise protected materials cannot be a basis for seeking production.

24 17. The substance of an individual's written or oral testimony, or the fact that an
25 individual has testified to or provided information during the discovery process, may not be used
26 against the person for disciplinary purposes or to otherwise intimidate or retaliate against the
27 individual. This applies to all persons, including but not limited to current and former Fresno
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1 County Sheriff's Department and Fresno County Department of Public Health staff and
2 contractors, and prisoners in the Fresno County Jail.

3 18. This Protective Order shall be binding on the parties, their attorneys, and the
4 parties' and their attorneys' successors, executors, personal representatives, administrators, heirs,
5 legal representatives, and other persons or organizations over whom or which the parties have
6 control.

7 19. By producing documents for review and inspection, the parties do not waive any
8 objections to relevance to the admissibility at trial of any such document or of any information
9 contained in any such document.

10 20. The provisions of this order are without prejudice to the right of any party: a) to
11 apply to the Court for a modification of this order or further protective orders relating to
12 discovery in this litigation; b) to apply to the Court for an order removing the confidential
13 information designation from any document; c) to object to a discovery request; or d) to apply to
14 the Court for an order compelling production of documents or compelling an answer to a
15 discovery request.

16 21. By stipulating to this Protective Order, no party waives any right it may have to
17 withhold or redact information protected from disclosure by the attorney client privilege or other
18 applicable privilege, the work product doctrine, relevance, or any other protection, law, or
19 regulation, or to seek appropriate protective orders respecting documents asserted to be subject to
20 any such privilege, doctrine, protection, law, or regulation.

21 22. This order does not govern trial or other public proceedings. The parties shall
22 address the court at a later date on appropriate procedures for trial and other public proceedings.

23 23. The provisions of this order shall remain in full force and effect until further order
24 of this Court.

25 IT IS SO ORDERED.
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1 **DATED:** _____

2 THE HONORABLE BARBARA A. MC AULIFFE
3 United States District Court
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EXHIBIT A

I, _____, have read the Protective Order in *Hall v. County of Fresno*, Case No. 1:11-CV-02047-LJO-BAM). I understand and agree to be bound by and abide by its terms. I agree that all information provided to me in this matter is to be treated as confidential. I further consent to be subject to the jurisdiction of the United States District Court for the Eastern District of California for the purposes of any proceeding relating to the enforcement of this Order, including, without limitation, any proceeding for contempt.

Date:

Signature

Printed Name

3424846.1

HALL, et al. v. COUNTY OF FRESNO

Case No. 1:11-CV-02047-LJO-BAM

EXHIBIT 2

PROPOSED SETTLEMENT OF CLASS ACTION REGARDING CONDITIONS IN FRESNO COUNTY JAIL

Hall v. County of Fresno, 1:11-CV-02047-LJO-BAM

A proposed settlement has been reached in a federal civil rights class action lawsuit regarding certain conditions in the Fresno County Jail. The *Hall v. County of Fresno* class action lawsuit claims that prisoners in the Jail are subject to conditions that violate the Eighth and Fourteenth Amendments to the United States Constitution and that the Jail did not comply with the Americans with Disabilities Act. The Court has preliminarily approved a settlement of this matter. This notice explains the proposed settlement, how you can read it, and how you can tell the court about whether you think it is fair.

The settlement is set forth in a document called the Consent Decree. You can read the Consent Decree by completing the Inmate Request Form and requesting the documents from the Inmate Programs Manager. Key terms of the settlement agreement include the following:

1. The County has agreed to a 22-page Remedial Plan that requires the County to make sure that prisoners get the medical care, mental health care, and dental care required by the Constitution, that the County provides reasonable accommodations to prisoners with disabilities and that prisoners are protected from being harmed by other prisoners. A copy of the Remedial Plan is available for review by completing the Inmate Request Form and requesting the documents from the Inmate Programs Manager.
2. The Prison Law Office and experts selected jointly by the parties or appointed by the Court will monitor the County's compliance with all of the measures in the Remedial Plan.
3. The Court will be able to resolve any disputes about whether the County is complying with the Remedial Plan and the Consent Decree.
4. The County has agreed to pay Plaintiffs' counsel \$900,000 for their work to this point and \$40,000 per year to monitor compliance with the Consent

Decree. You can read Plaintiffs' counsels' motion for fees by completing the Inmate Request Form and requesting the documents from the Inmate Programs Manager.

This case does not seek money damages for the class and none will be awarded.

The lawyers for the prisoners are the Prison Law Office. If you have any questions about the settlement, you can contact the Prison Law Office, General Delivery, San Quentin, CA 94964.

The Court will hold a hearing on the fairness of the settlement on _____, 2015 at _____, at the United States Courthouse in Fresno, Courtroom ____.

Prisoners can write to the federal court about whether the settlement is fair. The federal court will consider written comments when deciding whether to approve the settlement. Comments regarding the fairness of the settlement must include at the top of the first page the case name (Hall v. Fresno) and the case number (Case No. 1:11-CV-02047-LJO-BAM). Comments must be received by _____, 2015, and must be sent to the following address:

Clerk of the Court
United States District Court
Eastern District of California
2500 Tulare Street, Room 1501
Fresno, CA 93721

PROPUESTA DE ARREGLO DE UNA DEMANDA COLECTIVA CON RESPETO A CONDICIONES EN LA CARCEL DEL CONDADO DE FRESNO

Una propuesta de arreglo se ha alcanzado en una demanda federal de acción colectiva de derechos civiles con respecto a ciertas condiciones en la cárcel del condado de Fresno. La demanda colectiva *Hall v. County of Fresno* alega que los presos en la cárcel están sujetos a condiciones que violan las Enmiendas VIII y XIV de la Constitución de los Estados Unidos y que la cárcel no cumplió con el Americans with Disabilities Act. El Tribunal ha aprobado preliminarmente un arreglo de este asunto. Este aviso explica la propuesta de arreglo, cómo se puede leerla, y cómo usted puede decirle al tribunal acerca de si usted piensa que es justo.

El arreglo se expone en un documento llamado el Decreto de Consentimiento. Usted puede leer el Decreto de Consentimiento completando un formulario de solicitud de preso (“Inmate Request Form”) solicitando los documentos del Inmate Programs Manager. Términos claves del arreglo incluyen los siguientes:

1. El Condado ha acordado un Plan de Remediación de 22 páginas que requiere que el Condado asegure de que los presos reciban la atención médica, servicios de salud mental, y el cuidado dental requerido por la Constitución, que el Condado ofrezca adaptaciones razonables a los presos con discapacidad y que los presos sean protegidos de daño por otros presos. Una copia del Plan de Remediación está disponible para su revisión completando un formulario de solicitud de preso (“Inmate Request Form”) y solicitar los documentos del Inmate Programs Manager.
2. The Prison Law Office y los expertos seleccionados conjuntamente por las partes o designados por la Corte supervisarán el cumplimiento del Condado con todas las medidas del Plan de Remediación.
3. El Tribunal podrá resolver cualquier disputa acerca de si el Condado está cumpliendo con el Plan de Remediación y el Decreto de Consentimiento.
4. El Condado ha acordado pagar a los abogados de los demandantes \$900,000 por su trabajo a este punto y \$40,000 por año para supervisar el cumplimiento del Decreto de Consentimiento. Usted puede leer el moción de los abogados de los demandantes para los honorarios completando un formulario de solicitud de preso (“Inmate Request Form”) solicitando los documentos del Inmate Programs Manager.

Este caso no busca indemnizaciones monetarias por daño para la clase y ninguno será otorgado

Los abogados de los presos son The Prison Law Office. Si usted tiene alguna pregunta sobre el

arreglo, puede ponerse en contacto con The Prison Law Office, General Delivery, San Quentin, CA 94964.

El Tribunal celebrará una audiencia sobre la equidad del arreglo en _____, 2015 a _____, en el Palacio de Justicia de Estados Unidos en Fresno, Sala de justicia ____.

Los presos pueden escribir a la corte federal sobre si el arreglo es justo. El tribunal federal tendrá en cuenta los comentarios escritos al decidir si aprueba o no el arreglo. Comentarios respecto a la imparcialidad del arreglo deben incluir en la parte superior de la primera página el nombre del caso (Hall v Fresno.) y el número de caso (Caso No. 1: 11-CV-02047-LJO-BAM). Los comentarios deben ser recibidos antes del _____ de 2015, y deberán ser enviados a la siguiente dirección:

Clerk of the Court
United States District Court
Eastern District of California
2500 Tulare Street, Room 1501
Fresno, CA 93721

DONALD SPECTER (SBN 83925)
KELLY KNAPP (SBN 252013)
PRISON LAW OFFICE
1917 Fifth Street
Berkeley, CA 94710
Telephone: (510) 280-2621
Fax: (510) 280-2704

MAUREEN P. ALGER (SBN 208522)
MONIQUE R. SHERMAN (SBN 227494)
COOLEY LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155
Telephone: (650) 843-5000

ATTORNEYS FOR PLAINTIFFS
[ADDITIONAL COUNSEL LISTED ON NEXT PAGE]

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

QUENTIN HALL, SHAWN GONZALES,
ROBERT MERRYMAN, DAWN SINGH, and
BRIAN MURPHY, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

COUNTY OF FRESNO

Defendants.

Case No. 1:11-CV-02047-LJO-BAM

CLASS ACTION

[Proposed] **ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

MARY KATHRYN KELLEY (SBN 170259)
SHANNON SORRELLS (SBN 278492)
COOLEY LLP
4401 Eastgate Mall
San Diego, CA 92121-1909
Telephone: (858) 490-6000

MELINDA BIRD (SBN 102236)
MONISHA COELHO (SBN 219233)
AGNES WILLIAMS (SBN 143532)
DISABILITY RIGHTS CALIFORNIA
350 South Bixel Street, Suite 209
Los Angeles, CA 90017
Telephone: (213) 213-8000
Fax: (213) 213-8001

[ADDITIONAL COUNSEL LISTED ON
CAPTION PAGE]

1
2 Plaintiffs in this action, Quentin Hall, et al., and a class consisting of all prisoners who are
3 now, or will in the future be, confined in the Fresno County Jail allege that conditions in the Jail
4 violate the Eighth and Fourteenth Amendments of the United States Constitution and the
5 Americans with Disabilities Act. Plaintiffs claim that they are entitled to injunctive relief to
6 address their claims.

7 The parties have entered into a Consent Decree that was filed with their Joint Motion
8 for Preliminary Approval of Class Action Settlement, which would settle all claims in this case.
9 The parties have submitted a proposed Notice to the Class, as well as a proposed order regarding
10 the distribution of the notice to the plaintiff class.

11 This Court has presided over the proceedings in the above-captioned action and has
12 reviewed all of the pleadings, records, and papers on file. The Court has reviewed the Joint
13 Motion for Preliminary Approval of Class Action Settlement, along with the Consent Decree and
14 supporting documents, and has considered the parties' arguments concerning the proposed
15 settlement of this class action. The Court has determined that inquiry should be made regarding
16 the fairness and adequacy of this proposed settlement.

17 Accordingly, good cause appearing, IT IS ORDERED AS FOLLOWS:

18 1. A court should preliminarily approve a class action settlement if it "appears to be
19 the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does
20 not improperly grant preferential treatment to class representatives or segments of the class, and
21 falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d
22 1078, 1079 (N.D. Cal. 2007). The Court finds that this standard is met in this case, as the
23 proposed settlement is the product of arms-length, serious, informed, and non-collusive
24 negotiations between experienced and knowledgeable counsel who have actively prosecuted and
25 defended this litigation. The Court further finds that the Consent Decree meets the requirements
26 of 18 U.S.C. § 3626(a)(1). The Consent Decree attached hereto is granted preliminary approval
27 and incorporated by reference herein, subject to the right of class members to challenge the
28 fairness, reasonableness, or adequacy of the Consent Decree.

2. Under Federal Rule of Civil Procedure 23(e)(1), the Court approves the substance,

1
2 form and manner of the Notice of Proposed Class Action Settlement (the "Notice") filed by the
3 parties, and finds that the proposed method of disseminating the Class Notice meets all due
4 process and other legal requirements and is the best notice practicable under the circumstances.

5 3. Within three days of this Order, the parties are directed to prepare a final version
6 of the Notice, incorporating the dates set forth in this Order.

7 4. Within ____ days of this Order, the County is directed to post the Notice in English
8 and Spanish in all housing units in such a manner as to make the notice visible to all prisoners.
9 The County shall hand deliver a copy of the Notice to each prisoner in restricted housing, which
10 shall include 2D, FF cells, A pods and any other housing unit on lockdown. The Notice shall be
11 posted and delivered until the date of the fairness hearing.

12 5. Until the date of the fairness hearing the County is also directed to provide a copy of
13 this Order, the full Consent Decree, the Remedial Plan and Plaintiffs' motion for attorney fees to
14 prisoners who complete an inmate request form and request the documents from the Inmate
15 Programs Manager. Defendant must file and serve on Plaintiffs' counsel a declaration affirming
16 that notice was published as required in this order.

17 6. A Fairness Hearing shall take place at ____ a.m. on _____ at the
18 United States District Court for the Eastern District of California, United States Courthouse, 2500
19 Tulare Street, Courtroom __, Fresno, CA 93721, to determine whether the proposed settlement of
20 this action on the terms and conditions provided for in the Consent Decree is fair, reasonable,
21 and adequate and should be finally approved by the Court. The hearing may be continued from
22 time to time without further notice to the class. Any further briefing from the parties in advance
23 of the hearing shall be filed no later than _____.

24 6. Any member of the class may enter an appearance on his or her own behalf in this
25 action through that class member's own attorney (at their own expense), but need not do so.
26 Class members who do not enter an appearance through their own attorneys will be represented
27 by class counsel. Alternatively, any member of the class may write to the federal court about
28 whether the settlement is fair. The federal court will consider written communications when
deciding whether to approve the settlement. Comments regarding the fairness of the settlement

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2 must include at the top of the first page the case name (Hall v. Fresno.) and the case
3 number 1:11-CV-02047-LJO-BAM. A written comment must contain the author's full name
4 and must include all objections and the reasons for them, must include any and all supporting
5 papers (including, without limitation, all briefs, written evidence, and declarations), and must be
6 signed by the Class Member. A Class Member who desires to comment but who fails to comply
7 with the above objection procedure and timeline shall be deemed to have not objected and the
8 objection shall not be heard or considered at the hearing. Comments must be postmarked by
9 _____ and must be sent to the following address:

10
11 Clerk of the Court
12 United States District Court
13 Eastern District of California
2500 Tulare Street, Room 1501
Fresno, CA 93721

14
15 IT IS SO ORDERED.

16 DATED: _____

17 THE HONORABLE BARBARA A. MC AULIFFE
United States District Court

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