

1 Stephen R. Smerek(SBN: 208343)  
ssmerek@winston.com  
2 Benjamin Gipson (SBN: 222830)  
bgipson@winston.com  
3 WINSTON & STRAWN LLP  
333 S. Grand Avenue  
4 Los Angeles, California 90071  
Tel: (213) 615-1700; Fax: (213) 615-1750

5 Shawna L. Parks (SBN: 208301)  
Shawna.Parks@lls.edu  
6 Matthew Strugar (SBN: 232951)  
Matthew.Strugar@lls.edu  
7 DISABILITY RIGHTS LEGAL CENTER  
919 Albany Street  
8 Los Angeles, California 90015  
9 Tel: (213) 736-1031; Fax: (213) 736-1428

10 Attorneys for Plaintiffs (continued on next page)

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 PETER JOHNSON, DONALD  
14 PETERSON, MICHAEL  
15 CURFMAN, ANDRE BUTLER, JOE  
GONZALEZ, COLUMBUS GRIGSBY,  
16 and DERRICK WHITE, on behalf of  
themselves and all others similarly  
17 situated,

18 Plaintiffs,

19 vs.

20 LOS ANGELES COUNTY SHERIFF'S  
21 DEPARTMENT, a public entity,  
22 LEROY BACA, as Sheriff of the County  
of Los Angeles, COUNTY OF LOS  
23 ANGELES, a public entity, MICHAEL  
D. ANTONOVICH, YVONNE B.  
24 BURKE, DON KNABE, GLORIA  
MOLINA, and ZEV YAROSLAVSKY,  
25 as supervisors of the County of Los  
Angeles,

26 Defendants.

Case No. CV 08-03515 DDP (JTLx)

**PLAINTIFFS' NOTICE OF  
MOTION AND MOTION FOR  
CLASS CERTIFICATION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

[Filed concurrently with  
(1) Compendium of Evidence; and  
(2) [Proposed] Order]

Date: December 13, 2010  
Time: 10:00 a.m.  
Judge: Hon. Dean Pregerson

1 (continued from previous page)

2 Melinda Bird (SBN: 102236)  
Melinda.Bird@disabilityrightsca.org  
3 Kevin Bayley (SBN: 218070)  
Kevin.Bayley@disabilityrightsca.org  
4 DISABILITY RIGHTS CALIFORNIA  
3580 Wilshire Blyd., Suite 902  
5 Los Angeles, California 90010-2512  
Tel: (213) 427-8747; Fax: (213) 427-8767

6 Peter Eliasberg (SBN: 189110)  
peliasberg@aclu-sc.org  
7 Hector Villagra (SBN: 177586)  
hvillagra@aclu-sc.org  
8 Jessica Price (SBN: 264053)  
jprice@aclu-sc.org  
9 ACLU FOUNDATION OF SOUTHERN CALIFORNIA  
10 1616 Beverly Boulevard  
Los Angeles, California 90026  
11 Tel: (213) 977-9500; Fax: (213) 250-3980

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 PLEASE TAKE NOTICE that on December 13, 2010, at 10:00 a.m., before the  
2 Honorable Dean Pregerson, in Courtroom 3 of the courthouse at 312 N. Spring Street,  
3 Los Angeles, plaintiffs will move for an order certifying the following class for  
4 purposes of injunctive and declaratory relief: "All detainees and inmates with mobility  
5 impairments who because of their disabilities, need appropriate accommodations,  
6 modifications, services, and/or physical access in accordance with federal and state  
7 disability laws." Plaintiffs have met the numerosity, commonality, typicality and  
8 adequacy of representation requirements of Fed. R. Civ. P. 23(a). In addition, this  
9 class is appropriate for certification under Fed. R. Civ. P. 23(b)(2) because defendants  
10 have acted or refused to act on a basis applicable to the whole class.

11 This Motion is based upon this Notice; the accompanying Memorandum of  
12 Points and Authorities; Plaintiffs' Compendium of Evidence, and all exhibits thereto;  
13 all pleadings and papers on file in this action, and upon any argument or evidence  
14 which may be presented at the hearing of this matter.

15 In accordance with Local Rule 7-3, plaintiffs' counsel met and conferred with  
16 defense counsel on numerous occasions, including September 24, 2010, regarding this  
17 motion for class certification. The parties were unable to resolve the matter  
18 informally.

19 DATED: November 12, 2010

Respectfully submitted,  
WINSTON & STRAWN LLP  
DISABILITY RIGHTS LEGAL CENTER  
DISABILITY RIGHTS CALIFORNIA  
ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA

25 By /s/ Stephen R. Smerek  
26 Stephen R. Smerek

27 Attorneys for Plaintiffs  
28

**TABLE OF CONTENTS**

Page

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. INTRODUCTION ..... 1

II. FACTS ..... 2

    A. The L.A. County Jails House Hundreds Of Detainees With  
    Mobility Impairments On Any Given Day. .... 2

    B. The Los Angeles County Jails Offer A Wide Array Of Programs,  
    Services And Activities To Detainees. .... 3

    C. Defendants’ Common Practices And Procedures Cause Detainees  
    With Disabilities To Face Pervasive Discrimination. .... 5

        1. The failure to appropriately identify people with disabilities  
        in need of accommodations and services and provide  
        suitable mobility aids. .... 5

        2. The failure to provide access to programs and services. .... 8

        3. The failure to remove multiple and pervasive architectural  
        barriers throughout the L.A. County jail system. .... 10

        4. The failure to modify policies and procedures for people  
        with disabilities. .... 11

    D. The Discrimination Faced By Detainees With Disabilities Is  
    Caused By The L.A. County Jails’ Policies And Procedures (Or  
    The Lack Thereof)..... 11

    E. Proposed Class Representatives..... 12

        1. Joe Gonzalez. .... 12

        2. Derrick White. .... 13

        3. Peter Johnson. .... 13

        4. Donald Peterson. .... 14

        5. Michael Curfman. .... 14

        6. Andre Butler. .... 15

        7. Columbus Grigsby. .... 15

III. ARGUMENT..... 16

    A. Legal Standards Governing Motions For Class Certification..... 16

    B. Plaintiffs Have Met the Requirements of Rule 23(a)..... 17

        1. Numerosity is satisfied because there are far too many class  
        members to make joinder practicable. .... 17

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2. Commonality is met because the lawsuit challenges system-wide practices and policies that affect all detainees with disabilities. .... 18

3. The Named Plaintiffs’ claims are typical of those of the class..... 20

4. The Named Plaintiffs and plaintiffs’ counsel will adequately protect the interests of the class. .... 22

C. Plaintiffs Meet the Requirements Of Rule 23(b)(2) Because They Challenge A Practice Of Discriminating Against Detainees With Disabilities..... 24

IV. CONCLUSION ..... 25

**TABLE OF AUTHORITIES**

**Page(s)**

**CASES**

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

*Access Now, Inc. v. Ambulatory Surgery Ctr. Group, Ltd.*,  
197 F.R.D. 522 (S.D. Fla. 2000).....25

*Anaya v. Campbell*,  
2009 WL 3763798 (E.D. Cal. Nov. 9. 2009) .....4

*Armstrong v. Davis*,  
275 F.3d 849 (9th Cir. 2001) .....passim

*Arnold v. United Artists Theatre Circuit, Inc.*,  
158 F.R.D. 439 (N.D. Cal. 1994) ..... 18, 21

*Baby Neal for & by Kanter v. Casey*,  
43 F.3d 48 (3d Cir. 1994) .....18, 21, 24, 25

*Cal. Rural Legal Assistance, Inc. v. Legal Servs. Corp.*,  
917 F.2d 1171 (9th Cir. 1990) .....21

*Californians for Disability Rights, Inc. v. Californians Dep’t of Transp.*,  
249 F.R.D. 334 (N.D. Cal. 2008) ..... 17, 18

*Cervantez v. Celestica Corp.*,  
253 F.R.D. 562 (C.D. Cal. 2008)..... 17

*Cnty. of Riverside v. McLaughlin*,  
500 U.S. 44 (1991).....22

*Crowder v. Kititgawa*,  
81 F.3d 1480 (9th Cir.1996) ..... 20

*Dukes v. Wal-Mart Stores, Inc.*,  
603 F.3d 571 (9th Cir. 2010) .....17, 19, 21

*Gen. Tel. Co. of Sw. v. Falcon*,  
457 U.S. 147 (1982).....21

*In re N. Dist. of Cal., Dalkon Shield IUD Prods. Liab. Litig.*,  
693 F.2d 847 (9th Cir. 1982) .....22

1 *In re United Energy Corp.*,  
2 122 F.R.D. 251 (C.D. Cal. 1988).....22

3 *Jordan v. Cnty. of L.A.*,  
4 669 F.2d 1311 (9th Cir. 1982) .....23

5 *L.H. v. Schwarzenegger*,  
6 No. CIV. S-06-2042, 2007 WL 662463 (E.D. Cal. 2007).....18

7 *Lovely H. v. Eggleston*,  
8 235 F.R.D. 248 (S.D.N.Y. 2006).....18

9 *McGary v. City of Portland*,  
10 386 F.3d 1259 (9th Cir. 2004) .....20

11 *Neff v. VIA Metro. Transit Auth.*,  
12 179 F.R.D. 185 (W.D. Tex. 1998).....17

13 *Pa. Dep’t of Corr. v. Yeskey*,  
14 524 U.S. 206 (1998).....4

15 *Pierce v. Cnty. of Orange*,  
16 526 F.3d 1190 (9th Cir. 2008) .....4, 19, 20

17 *Raymond v. Rowland*,  
18 220 F.R.D. 173 (D. Conn. 2004) .....25

19 *Riker v. Gibbons*,  
20 No. 3:08-CV-00115-LRH-RAM, 2009 U.S. Dist. LEXIS 35449 (D. Nev.  
21 Mar. 31, 2009) .....19

22 *Rodde v. Bonta*,  
23 357 F.3d 988 (9th Cir. 2004) .....20

24 *Von Colln v. Cnty. of Ventura*,  
25 189 F.R.D. 583 (C.D. Cal. 1999).....24, 25

26 *Walters v. Reno*,  
27 145 F.3d 1032 (9th Cir. 1998) .....24

28 **CALIFORNIA STATUTES**

California Government Code §11135.....1

California Government Code §12926.....passim

1 California Civil Code §51..... 1, 3, 20  
2 California Civil Code §54..... 1, 3, 20  
3  
4 **FEDERAL STATUTES**  
5 29 U.S.C. §705.....passim  
6 29 U.S.C. §794..... 4  
7 42 U.S.C. §12131.....passim  
8 42 U.S.C. §12132..... 4  
9 **OTHER AUTHORITIES**  
10 Fed. R. Civ. P. Rule 23 .....passim  
11 28 C.F.R. §35.130 ..... 20  
12 28 C.F.R. §35.150..... 20  
13 1 Conte & Newberg, Newberg on Class Actions § 3.5 (4th ed. 2006) ..... 17  
14 5 Moore's Federal Practice, § 23.22(3)(a) (3d ed. 2003)..... 17  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs brought this case to address the systemic failure of the County of  
4 Los Angeles to provide accommodations, modifications, services and physical access  
5 for people with mobility impairments who are housed within the Los Angeles County  
6 jail system. These failures violate federal and state laws prohibiting disability-based  
7 discrimination, are pervasive and longstanding, and are precisely the sort of  
8 widespread discrimination that Rule 23(b)(2) class actions were designed to address.

9 As alleged in the First Amended Complaint, persons in the L.A. County jails  
10 with mobility impairments face pervasive discrimination in the conditions of their  
11 confinement. Common issues regarding this discrimination include:

- 12 • The failure to appropriately identify people with mobility impairments, and  
13 otherwise provide appropriate mobility aids (“classification” and  
14 “declassification” issues, failure to provide appropriate wheelchairs, crutches  
15 and prosthetic limbs);
- 16 • The failure to provide access to programs and services (educational and  
17 vocational programs, exercise opportunities, physical therapy, educational  
18 and religious activities, access to counsel, and transportation);
- 19 • The failure to modify policies and procedures for people with disabilities  
20 (failure to provide accommodations and failure to provide procedures for  
21 requesting accommodations); and
- 22 • The failure to remove multiple and pervasive architectural barriers  
23 (inaccessible facilities throughout the jails).

24 Litigation of the claims asserted in this action involve numerous questions of  
25 law and fact common to the class, the core issue being whether defendants’ practices  
26 and procedures, as well as physical barriers within the jail system, violate the  
27 Americans with Disabilities Act (“ADA”), §504 of the Rehabilitation Act of 1973,  
28 California Civil Code §§51 and 54, *et seq.*, and California Government Code §11135.

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 By this Motion, plaintiffs seek to certify a class of “all detainees and inmates  
2 with mobility impairments who, because of their disabilities, need appropriate  
3 accommodations, modifications, services, and/or physical access in accordance with  
4 federal and state disability laws.” Plaintiffs readily meet the four requirements of Fed.  
5 R. Civ. P. 23(a). Thousands of people with disabilities have been housed at L.A.  
6 County jails during the relevant class period, and will continue to be housed in the  
7 jails in the future (numerosity); there are common practices or procedures affecting  
8 persons with disabilities and common legal claims at issue in this suit (commonality);  
9 the named plaintiffs have claims typical of those raised by other persons with  
10 disabilities in the L.A. County jail system (typicality); and the named plaintiffs have  
11 chosen counsel who can adequately represent the proposed class (adequacy). In  
12 addition, plaintiffs seek only injunctive and declaratory relief, and the case is  
13 appropriate for certification under Fed. R. Civ. P. 23(b)(2) because defendants have  
14 acted or refused to act on grounds applicable to the class as a whole.

15 Actions to enforce the civil rights of persons with disabilities are precisely the  
16 types of actions that are appropriate for class treatment. This case challenges the  
17 system-wide practices of discrimination against, and mistreatment of, detainees and  
18 inmates and detainees with disabilities. Plaintiffs seek to have defendants make  
19 systemic changes, and implement policies applicable to the class as a whole. For these  
20 reasons, plaintiffs respectfully request that the Court grant their motion for class  
21 certification.

## 22 II. FACTS

### 23 A. The L.A. County Jails House Hundreds Of Detainees With Mobility 24 Impairments On Any Given Day.

25 The L.A. County jail system processes 150,000 to 180,000 people per year. The  
26 system comprises a number of facilities, including Men’s Central Jail, Twin Towers,  
27 and the Inmate Reception Center, all located in downtown Los Angeles; the North  
28 County Correctional Facility and Pitchess Detention Center, both located in Northern

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 Los Angeles County; and the Central Regional Detention Facility, located in  
2 Lynwood. The entire County jail system houses approximately 19,000 people at any  
3 given time. First Amended Complaint (“FAC”) ¶ 32; “Education Based Incarceration”  
4 at 12, Exh. D to Declaration of Shawna L. Parks (“Parks Decl.”) (Plaintiffs’  
5 Compendium of Evidence (“Compendium”) Exh. H).

6 Defendants, through their own count sheets, identify roughly 200 people with  
7 mobility impairments on any given day. For example, on September 24, 2010, the  
8 8100 unit, designated for wheelchair users, housed 85 people; the 7000 unit,  
9 designated for people who use crutches or prostheses, housed 66 people; another 16 in  
10 7202, designated for 7000 overflow; as well as 41 additional people in the 7100 unit,  
11 another unit which houses individuals who use wheelchairs, walkers, or crutches. *See*  
12 Men’s Central Jail Housing and Count Sheet, Exh. E to Parks Decl.; *see also* Count  
13 Sheet from October 12, 2010, Exh. F to Parks Decl. (showing 198 individuals in these  
14 same units). These numbers alone establish numerosity in this matter.<sup>1</sup>

15 Census data further supports numerosity. Plaintiffs’ expert, Logan Hopper,  
16 notes that census data shows that approximately 2.9% of the population use a  
17 wheelchair or similar device, cane, crutches or a walker. Using this number, one  
18 would expect that roughly 500 out of the 19,000 detained at any given time have a  
19 mobility impairment. Declaration of Logan Hopper (“Hopper Decl.”) ¶ 18  
20 (Compendium Exh. G); *see also* Hopper Decl. ¶ 20 (census data shows that 13.9% of  
21 population in adult correctional facilities report having a physical disability).

22 **B. The Los Angeles County Jails Offer A Wide Array Of Programs, Services**  
23 **And Activities To Detainees.**

24 The L.A. County jails offer a wide variety of “programs, services and activities”  
25 to detainees and inmates, as those terms are used in Title II of the ADA and §504 of  
26

27 <sup>1</sup> Because the claims in this matter involve “declassification” out of units for people  
28 with mobility impairments and/or failure to provide appropriate mobility aids,  
Plaintiffs believe that these numbers actually underestimate the numbers of people  
with mobility impairments in the jail. The census data supports this conclusion.

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 the Rehabilitation Act of 1973. *See* 42 U.S.C. §12132; 29 U.S.C. §794. “Programs”  
2 generally refer to more specialized activities that are provided for effective  
3 incarceration and potential rehabilitation, including regular and vocational education,  
4 drug/alcohol counseling, and work programs. Hopper Decl. Exh. B at 7. As explained  
5 by Mr. Hopper, the word “services” is often misunderstood in the correctional context.  
6 Although detainees and inmates are incarcerated, they are still provided with  
7 “services.” These “services” generally include all of the daily activities required to  
8 assure humane treatment, including sanitary needs and hygiene, food service,  
9 recreation, necessary medical care, religious services, visitation, and other similar and  
10 necessary activities. Hopper Decl. Exh. B at 7. *See also Pa. Dep’t of Corr. v. Yeskey*,  
11 524 U.S. 206, 211 (1998) (holding that Title II of the ADA applies to correctional  
12 facilities, and explaining that “prisons provide inmates with many recreational  
13 ‘activities,’ medical ‘services,’ and educational and vocational ‘programs,’” as those  
14 terms are used in the ADA); *Pierce v. Cnty. of Orange*, 526 F.3d 1190, 1224 n.44 (9th  
15 Cir. 2008) (“Providing inmates with appropriate and adequate bedding and bathroom  
16 facilities are ‘services’ of the jail.”); *see also Anaya v. Campbell*, No. CIV S-07-0029,  
17 2009 WL 3763798, \*7 (E.D. Cal. Nov. 9. 2009) (a wheelchair is a reasonable  
18 accommodation in situations where access to services would not be possible  
19 otherwise).

20 The LASD provides many services and programs to detainees. Indeed, a recent  
21 publication produced by the Sheriff’s Department details numerous educational and  
22 vocational programs offered at the jail. *See generally* Education Based Incarceration,  
23 Exh. D to Parks Decl. In addition to basic education programs, this includes, but is not  
24 limited to, numerous other programs, such as veterans programs, drug and alcohol  
25 programs (some of which are court ordered) and the MERIT program, which is  
26 essentially an honor program in the jail. *See, e.g.*, Deposition of Sergeant Christina  
27 Baker at 55:14-57:17 (drug and alcohol program), 74:10-25 (MERIT program), 76:21-  
28 77:16 (veterans’ program), Ex. H to Parks Decl. Many detainees are also given the

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 opportunity to serve as “trustees.” Trustees assist the deputies with tasks within the  
2 jails, and are given privileges and benefits in return. Serving as a trustee also  
3 constitutes a “program” offered by the L.A. County jails. Hopper Decl. Exh. B at 7.

4 **C. Defendants’ Common Practices And Procedures Cause Detainees With**  
5 **Disabilities To Face Pervasive Discrimination.**

6 As alleged in the First Amended Complaint, and documented consistently over  
7 the last few years, detainees with mobility impairments throughout the L.A. County  
8 jails face significant problems with respect to classification, housing, access to  
9 programs and services, and physical access barriers. Defendants systemically fail to  
10 effectively evaluate the needs of people with disabilities, and to meet those needs with  
11 appropriate accommodations and physical access. FAC ¶ 33. These failures manifest  
12 daily in very real and dramatic ways for people with disabilities.<sup>2</sup>

13 **1. The failure to appropriately identify people with disabilities in need**  
14 **of accommodations and services and provide suitable mobility aids.**

15 Defendants fail to appropriately identify and accommodate persons with  
16 mobility impairments both at intake and during the course of their stay in jail. Many  
17 people who require the use of mobility aids are denied those aids and removed from  
18 the “disability” units through a process that the County calls “declassification.”<sup>3</sup> See,  
19 e.g., Declaration of Named Plaintiff Donald Peterson (“Peterson Decl.”) ¶¶ 4-8  
20 (Compendium Exh. B) (Mr. Peterson was in a wheelchair unit, a walker unit, and  
21 general population during his time in MCJ); Declaration of Willie Ezell ¶¶ 6-15  
22 (Compendium Exh. D) (Mr. Ezell was originally classified as needing a mobility aid,  
23 then moved to general population, then reclassified as needing a mobility aid, only to  
24 be declassified again); Declaration of Shawn Meyers (“Meyers Decl.”) ¶¶ 5-7, 11-14

25 <sup>2</sup> In addition, plaintiffs have compiled a chart that illustrates the pervasive  
26 discrimination faced by inmates with disabilities in L.A. County jails. (Compendium  
27 Exh. A). This chart highlights just some of the most egregious examples of failures to  
accommodate persons with disabilities identified to date.

28 <sup>3</sup> When inmates are moved out of the wheelchair unit to other units, those units are  
sometimes referred to as “step down” units.

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 (Compendium Exh. C) (Mr. Meyers was originally classified with a disability but later  
2 declassified despite the fact that Mr. Meyers has no feeling in his right leg and  
3 shooting pains in his left leg); Declaration of Giovanni Ceballos ¶¶ 2, 4, 7, 8, 13, 15  
4 (Compendium Exh. E) (Mr. Ceballos was moved ten times between January and May  
5 of 2008, being classified with a disability at some points and declassified at others  
6 despite having doctor’s orders for a wheelchair, medication, and lower bunk to  
7 accommodate a fractured disc in his lower back); Declaration of Named Plaintiff  
8 Derrick White (“White Decl.”) ¶¶ 12-22, 28-29 (Compendium Exh. B) (Mr. White  
9 was constantly moved between the wheelchair unit, step-down unit, and general  
10 population). While the County may argue that these declassifications were based on  
11 medical judgment, the pattern of problems, as well as the well-documented nature of  
12 the inmates’ and detainees’ disabilities, belies this explanation.

13 In some circumstances, individuals are severely disciplined for failing to  
14 comply with orders to give up their mobility aids and/or leave the disability units,  
15 even when they are unable to do so as a result of their disability. *See, e.g.*, Declaration  
16 of Tashami Sims ¶¶ 8-12, 15 (Compendium Exh. D) (Mr. Sims has been sent to the  
17 “hole” for disobeying order when he was unable to walk on command, even though he  
18 has occasional paralysis); Declaration of Named Plaintiff Columbus Grigsby  
19 (“Grigsby Decl.”) ¶¶ 14-16 (Compendium Exh. B) (Mr. Grigsby was placed in  
20 solitary confinement, and not given the physical therapy that was ordered by an  
21 independent doctor, because he questioned why he was being declassified from the  
22 wheelchair unit); Declaration of Named Plaintiff Andre Butler (“Butler Decl.”) ¶ 15  
23 (Compendium Exh. B) (Mr. Butler spent nearly four months in disciplinary  
24 segregation for refusing to surrender his mobility aid); White Decl. ¶¶ 22-28 (Mr.  
25 White spent approximately four months in disciplinary segregation for refusing to  
26 surrender his mobility aid).

27 These problems occur even when an individual has a long history of mobility  
28 impairment and/or use of mobility aids. For example, Named Plaintiff Andre Butler

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 was declassified on numerous occasions while at the jail, and was placed in the “hole”  
2 when he refused to give up his wheelchair. Mr. Butler spent more than 70 days in  
3 disciplinary segregation in late 2009 for refusing to give up his wheelchair, was then  
4 reclassified as needing a wheelchair by a different jail doctor only to be declassified  
5 again a week later. Butler Decl. ¶¶ 16-22. Earlier, Mr. Butler was provided a  
6 wheelchair in the state prison system, and, as of 2008, classified as a “full time  
7 wheelchair user,” by the California Department of Corrections and Rehabilitation.  
8 *See, e.g.*, CDC Disability Placement Program Verification, 11/5/08, 6/3/08 and  
9 8/14/03, Exh. I to Parks Decl. Despite this prior certification, Mr. Butler has been  
10 faced with “declassification” throughout his time at the jail.<sup>4</sup>

11 Similarly, the L.A. County jails fail to provide mobility aids that actually serve  
12 their purpose. People with mobility impairments are often given clearly inappropriate  
13 mobility aids considering their condition. *See, e.g.*, Declaration of Edward Turner ¶ 4,  
14 7 (Compendium Exh. F) (Mr. Turner’s wheelchair was taken away and replaced with  
15 crutches, which he cannot use because of an arm injury. As a result, he had to crawl  
16 and hop around the unit); Declaration of Named Plaintiff Michael Curfman (“Curfman  
17 Decl.”) ¶¶ 4-7 (Compendium Exh. B) (Mr. Curfman’s wheelchair was taken away and  
18 he was issued a walker missing a rubber bottom); Declaration of Named Plaintiff Joe  
19 Gonzalez (“Gonzalez Decl.”) ¶¶ 9, 17, 21-13 (Compendium Exh. B) (Mr. Gonzalez’s  
20 personal wheelchair was taken away and he was provided one without removable  
21 armrests. This was later taken away and Mr. Gonzalez was forced to use crutches,

22 <sup>4</sup> Many inmates and detainees report that the California state prison system provides  
23 much better accommodations for persons with disabilities, creating perverse  
24 incentives for jail inmates to move to that system quickly. *See, e.g.*, Supplemental  
25 Declaration of Michael Curfman ¶¶ 2-10 (Compendium Exh. B) (Mr. Curfman is now  
26 housed in North Kern State Prison, where he has access to physical therapy (provided  
27 off-site), has a functioning walker, goes to church once a week, and sees a librarian  
28 once a month. Because of these accommodations, Mr. Curfman’s condition has  
improved); Peterson Decl. ¶ 2, 5-6 (Mr. Peterson is now housed at California State  
Prison, Corcoran, where he has access to the yard twice a day where he can practice  
walking and regain strength in his legs and can access the dayroom twice a day); and  
White Decl. ¶ 30 (jail conditions make it difficult to mount a legal defense and Mr.  
White considers taking a plea deal just to obtain better treatment in state prison  
system).

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 which caused his legs to swell and become bruised).

2 Even when aids are provided, they are often not in proper working order. For  
3 example, many inmates receive wheelchairs without footrests. *See, e.g.*, Grigsby Decl.  
4 ¶¶ 9-10 (Mr. Grigsby was given a wheelchair with no foot or armrests, causing him to  
5 drag his feet and run over them on multiple occasions. Mr. Grigsby was forced to  
6 trade this wheelchair with another inmate for a chair that had a seat stretched so thin  
7 that he sits on the metal frame of the chair); Declaration of Johnny Gonzalez ¶¶ 5-6  
8 (Compendium Exh. D) (Mr. Gonzalez was given a wheelchair without footrests  
9 causing his legs to drag on the floor until a trash bag was attached to the bottom);  
10 Declaration of Francis Tribble (“Tribble Decl.”) ¶ 7 (Compendium Exh. E) (Mr.  
11 Tribble was given a wheelchair without a footrest, causing his feet to drag).

12 **2. The failure to provide access to programs and services.**

13 People with mobility impairments in the jail are denied access to much of the  
14 educational, vocational and rehabilitative programming at the jail. Individuals are  
15 denied access to virtually all of the educational and vocational programming within  
16 the jail system, often do not go outside, do not have access to simple things like the  
17 library or commissary, and do not have access to safe transportation.

18 Further, detainees with disabilities are segregated into the worst facilities in the  
19 L.A. County jail system, a fundamental problem in itself. According to Mr. Hopper,  
20 due in part to this segregation, “[i]nmates with disabilities have no access at all to the  
21 vast majority of programs and services of the L.A. County jail system.” Hopper Decl.  
22 Exh. B at 8. He further opines:

23 The degree of segregation of persons with disabilities that I observed  
24 throughout the L.A. County Jail system is unparalleled in my experience.  
25 I have never visited any facility, correctional or otherwise, that segregates  
26 residents with disabilities to the degree I observed in the LA County Jail.  
27 And nowhere were the segregation policies more profound than in the  
28 context of extreme disparity of program and service availability between

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 disabled and non-disabled inmates. *Id.* at 9.

2 This issue has not changed since Mr. Hopper first issued his report in 2008. *See*  
3 Hopper Decl. ¶ 14. People with mobility impairments continue to be housed in a  
4 single part of a single facility, without access to programs and services available at  
5 other facilities. *See, e.g.*, Hopper Decl. ¶ 14; Count Sheet, Exhs. E & F to Parks Decl.  
6 For example, Sergeant Christina Baker from the Inmate Services Unit of the Offender  
7 Services Bureau testified that inmates with mobility impairments would not be able to  
8 participate in the veterans program because it is at a facility where those inmates are  
9 not allowed to go. Baker Depo. at 102:10-19, Exh. H to Parks Decl. Similarly, inmates  
10 with disabilities would not be allowed to participate in programs offered in program  
11 specific units, including the MERIT program and the trustee program. Baker Depo. at  
12 99:20-100:9, Exh. H to Parks Decl. No evaluation of physical accessibility has been  
13 conducted for these programs. Baker Depo. at 99:4-8, Exh. H to Parks Decl.

14 As a result, inmates and detainees with mobility impairments are denied most,  
15 if not all, programming within the jails. *See, e.g.*, Johnson Decl. ¶¶ 8, 14-15 (While  
16 housed in the wheelchair unit, Mr. Johnson was not allowed access to the roof or  
17 allowed to buy food and drinks from the jail store, unlike other inmates); Declaration  
18 of Kenneth Mills ¶ 12 (Compendium Exh. D) (Mr. Mills is not provided any  
19 educational or vocational programs and is denied access to outdoor recreation on the  
20 roof). Meyers Decl. ¶ 20-21 (Mr. Meyers has not been given the opportunity to  
21 participate in any jail sponsored educational activities or physical therapy). Further,  
22 inmates in wheelchairs cannot be trustees in L.A. County jails. *See, e.g.*, Johnson  
23 Decl. ¶¶ 3-4, 7 (Mr. Johnson was not able to become a trustee because deputies do not  
24 allow prisoners with wheelchairs to serve in this capacity).

25 In addition, when individuals who cannot walk are classified incorrectly, they  
26 miss out on numerous programs. *See, e.g.*, Declaration of William Holt ¶¶ 4-6, 8-10  
27 (Compendium Exh. D) (Mr. Holt was declassified and accordingly his wheelchair was  
28 taken away despite being unable to walk. Because he could not walk, Mr. Holt did not

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 shower, could not attend church services, could not meet with his attorney, and could  
2 not make it to pill call). Some individuals have even missed court appearances,  
3 because of their inability to independently move around the jail. *See, e.g.*, Declaration  
4 of Ricky Williams ¶ 7 (Compendium Exh. D) (Mr. Williams missed several court  
5 appearances because he had no ability to move around the jail independently);  
6 Declaration of Wade Wilson ¶ 8 (Compendium Exh. D) (Mr. Wilson missed his court  
7 appearance because he was denied a wheelchair despite a doctor’s order for use of a  
8 wheelchair for court appearances).

9 The County’s lack of appropriate transportation for people with disabilities has  
10 also resulted in completely avoidable injuries during transportation. *See, e.g.*,  
11 Declaration of Raymond McPheters ¶ 13 (Compendium Exh. D) (Mr. McPheters was  
12 not secured on the lift while getting into a bus, causing him to fall and sustain head  
13 injuries during transport); Meyers Decl. ¶ 6 (Mr. Meyers’ wheelchair is never secured  
14 during transport often because of broken or missing locking devices). One inmate  
15 even broke his jaw during transportation because his wheelchair was taken away and  
16 he was not secured to the vehicle when it was involved in an accident. Butler Decl. ¶¶  
17 3-6.

18 **3. The failure to remove multiple and pervasive architectural barriers**  
19 **throughout the L.A. County jail system.**

20 There can be no dispute that there are numerous architectural barriers in the  
21 L.A. County jails. For example, there are often no grab bars around the toilets and/or  
22 showers, making it difficult for people with mobility issues to use them. *See, e.g.*,  
23 Declaration of Ronald Eaten ¶ 5 (Compendium Exh. D) (Mr. Eaten cannot use the  
24 toilets in his unit because there are no grab bars, causing him to fall at least three times  
25 and injure his back); Curfman Decl. ¶ 12 (Mr. Curfman’s shower had no grab bars,  
26 making it difficult to steady himself and leading to at least one fall). Likewise, there  
27 are often physical barriers blocking access to shower facilities. *See, e.g.*, Declaration  
28 of Christian Reyes ¶ 4-5 (Compendium Exh. D) (Mr. Reyes cannot enter the shower

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 in his wheelchair).

2 While some improvements have been made to certain discrete areas since this  
3 lawsuit was first filed, pervasive barriers continue to exist throughout the rest of the  
4 jail system, including the 7000 unit (where people in wheelchairs are also housed),  
5 single man cells, paths of travel, the law libraries, visiting rooms, and facilities other  
6 than Men’s Central Jail, i.e. Twin Towers and Pitchess Detention Center. Hopper  
7 Decl. ¶ 14.

8 **4. The failure to modify policies and procedures for people with**  
9 **disabilities.**

10 The County has consistently refused to modify its procedures to accommodate  
11 individuals with disabilities. Curfman Decl. ¶ 17 (denied ability to replace soiled  
12 sheets after soiling bed, and denied extra clothing after soiling); Declaration of  
13 Bernard Ward ¶ 5 (Compendium Exh. F) (Mr. Ward has requested a bottom bunk, and  
14 even received a court order for one to accommodate his spinal cord injury, but was not  
15 given one, and therefore had to sleep on the cement floor); White Decl. ¶ 10 (unable  
16 to get a bottom bunk, he took the mattress down and slept on the floor).

17 **D. The Discrimination Faced By Detainees With Disabilities Is Caused By The**  
18 **L.A. County Jails’ Policies And Procedures (Or The Lack Thereof).**

19 The problems faced by detainees and inmates with disabilities are caused by the  
20 L.A. County jails’ common policies and procedures, or lack thereof. Defendants have  
21 not identified any ADA coordinator for the jails, nor does staff appear to be aware of  
22 any such coordinator. Baker Depo. at 25:21-26:2, Exh. H to Parks Decl.; and  
23 Defendants’ Initial Disclosures, Exh. G to Parks Decl.

24 Significantly, there is no comprehensive set of policies or procedures for  
25 identifying detainees with disabilities and determining appropriate accommodations,  
26 modifications or services. FAC ¶ 35; Hopper Decl. ¶ 14 and Exh. B at 6 (“I did not see  
27 a comprehensive manual or set of policies and procedures for identifying inmates with  
28 disabilities and determining appropriate accommodations for these individuals.”).

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 Further, common, compliant training is not provided to the staff within the L.A.  
2 County jails regarding the housing and classification of detainees with disabilities.  
3 Housing and classification decisions are made in an extremely cursory manner,  
4 relying mainly on the simplest and quickest observations by staff which is often led by  
5 nothing more than stereotypes and misconceptions. FAC ¶ 35. This classification  
6 system results in, among other things, a failure to recognize that persons who do not  
7 rely exclusively on wheelchairs may have significant physical restrictions requiring  
8 accommodation. *Id.*; Hopper Decl. Exh. B at 6 (“[M]ost staff did not appear to have a  
9 working knowledge of the broad range of disabilities that are covered by the ADA or  
10 the range of accommodations that may be appropriate. For example, there did not  
11 appear to be an awareness that many persons with physical disabilities do not require  
12 wheelchairs, but have equally critical disability-related needs for accommodation,  
13 which the ADA requires be provided to them.”); and Hopper Decl. ¶ 14 (noting that  
14 his opinions have not changed since his initial report).

15 **E. Proposed Class Representatives.**

16 **1. Joe Gonzalez.**

17 Joe Gonzalez is a “qualified person with a disability” within the meaning of all  
18 applicable statutes, including 42 U.S.C. §12131(2), 29 U.S.C. §705(20)(B), and  
19 California Government Code §12926. FAC ¶ 20. Mr. Gonzalez was the victim of a  
20 violent crime in October of 2006. Since then his left leg has been paralyzed and his  
21 right leg is very weak. *See id.* at ¶ 69. Mr. Gonzalez, like many other inmates with  
22 mobility disabilities, was forced to hop around on one leg during his in-processing,  
23 and was berated when he followed a nurses instructions and elevated his leg to reduce  
24 swelling. *Id.* at ¶ 71. Mr. Gonzalez was also moved in and out of the wheelchair unit  
25 several times once he was processed – and was threatened with discipline if he did not  
26 get out of his wheelchair and use crutches. *Id.* at ¶¶ 73-75. Mr. Gonzalez has had great  
27 difficulty accessing the visiting room, and has fallen in the shower, due to the  
28 existence of physical barriers and lack of grab bars in the LA County jail. *Id.* at ¶ 75.

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1           **2. Derrick White.**

2           Derrick White is a “qualified person with a disability” within the meaning of all  
3 applicable statutes, including 42 U.S.C. §12131(2), 29 U.S.C. §705(20)(B), and  
4 California Government Code §12926. FAC ¶ 22. Mr. White is partially paralyzed on  
5 the left side of his body, with little grip in his left hand, and osteoporosis, and has  
6 been in L.A. County jail since February of 2009. *See id.* at ¶ 85. Since Mr. White has  
7 been housed at the jail, he has been forced to participate in the “declass line  
8 approximately once a week, where inmates are lined up and told to try and walk.” *Id.*  
9 at ¶ 88. He has been told that he is “faking” his inability to work in this line, and  
10 based on that has been declassified and placed in general population. *Id.* at ¶ 89. After  
11 Mr. White was placed in general population, he was forced to crawl because he had no  
12 mobility aids. *Id.* at ¶ 90. He was finally examined by a doctor and placed back in the  
13 wheelchair unit. *Id.* at ¶ 90. Despite this medical evaluation and determination, he was  
14 again placed in general population one week later, without his wheelchair, and again  
15 was forced to crawl around the jail. *Id.* at ¶ 91. After being placed back in the  
16 wheelchair unit Mr. White was declassified again, and when he questioned this third  
17 arbitrary decision he was put in disciplinary segregation for four months. *Id.* at ¶ 92.

18           **3. Peter Johnson.**

19           Peter Johnson is a “qualified person with a disability” within the meaning of all  
20 applicable statutes, including 42 U.S.C. §12131(2), 29 U.S.C. §705(20)(B), and  
21 California Government Code §12926. FAC ¶ 16. Mr. Johnson is 38 years old, and is a  
22 paraplegic who was in L.A. County jail from October of 2007 to January of 2009. *Id.*  
23 at ¶ 38. During his time in L.A. County jail, Mr. Johnson was given a broken  
24 wheelchair, was placed in cells without adequate grab bars by toilets and which  
25 contained lips at the shower entrance, making it difficult (and, indeed, dangerous) to  
26 basic personal hygiene. *Id.* at ¶¶ 41-42, 45-46. Further, despite his disability Mr.  
27 Johnson was at times given a top bunk, and had his catheter taken away causing him  
28 to wet his bed. *Id.* at ¶ 50. Due to his disability, Mr. Johnson was also forced to spend

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 almost 24 hours a day in his cell, and was unable to participate in many programs  
2 offered at the jail. *Id.* at ¶ 43.

3 **4. Donald Peterson.**

4 Donald Peterson is a “qualified person with a disability” within the meaning of  
5 all applicable statues, including 42 U.S.C. §12131(2), 29 U.S.C. §705(20)(B), and  
6 California Government Code §12926. FAC ¶ 17. Plaintiff Donald Peterson is a U.S.  
7 military veteran with diabetes and significant mobility limitations. *Id.* at ¶ 47. During  
8 the six months he spent at L.A. County jail, Mr. Peterson was never allowed to the  
9 roof for exercise, and never participated in vocational or educational programs. *Id.* at  
10 ¶ 48. Further, despite being provided a wheelchair when he first arrived, Mr. Walker  
11 was moved to a unit for persons with walkers and crutches, despite the fact that Mr.  
12 Walker had never used these mobility devices before. *Id.* at ¶ 49. Not surprisingly, Mr.  
13 Peterson’s lack of familiarity with the walker he was given in this unit caused him to  
14 fall. *Id.* at ¶ 49. Despite his mobility limitations, Mr. Peterson was even given a top  
15 bunk, and at the same time had his catheter bag taken away from him, further  
16 exacerbating that problem. *Id.* at ¶ 50. In addition, Mr. Peterson has no teeth due to  
17 his disabilities, and was not provided a soft-food diet while in jail – nor was he  
18 regularly provided medication to control his blood sugar, adding to the problems he  
19 faced due to the jail’s failure to accommodate his mobility disabilities. *See id.* at ¶ 52.

20 **5. Michael Curfman.**

21 Michael Curfman is a “qualified person with a disability” within the meaning of  
22 all applicable statues, including 42 U.S.C. §12131(2), 29 U.S.C. §705(20)(B), and  
23 California Government Code §12926. FAC ¶ 18. Mr. Curfman has partial paralysis  
24 and traumatic brain injury, and accordingly has significant difficulty with walking,  
25 balance and stability due to his disability. *Id.* at ¶ 54. In total, he spent approximately  
26 22 months in L.A. County jail, during which time he was denied the use of a mobility  
27 aid, was placed in units with no grab bars, and was only allowed out of his cell to  
28 shower. *Id.* at ¶¶ 56-60. Due to his disabilities, Mr. Curfman also has a hard time

1 controlling his bladder, and despite repeated accidents he was not allowed to change  
2 his soiled sheets or clothes, or even shower if it was not his turn. *Id.* at ¶ 59.

3 **6. Andre Butler.**

4 Andre Butler is a “qualified person with a disability” within the meaning of all  
5 applicable statutes, including 42 U.S.C. §12131(2), 29 U.S.C. §705(20)(B), and  
6 California Government Code §12926. FAC ¶ 19. Andre Butler has partial paralysis on  
7 his left side, severe arthritis, and a spinal injury, and has been housed in L.A. County  
8 jail since January of 2009. *Id.* at ¶ 61. Mr. Butler was forced to hop around on one leg  
9 after his wheelchair was taken away during the intake procedure; broke his jaw in five  
10 places, injured his neck, and broke several ribs when he was unsecured in a bus that  
11 was involved in an accident; was given non-functioning wheelchairs; and spent most  
12 of four months in disciplinary segregation when he was retaliated against for  
13 questioning a decision to move him to a unit designed for people with walkers and  
14 crutches. *Id.* at ¶¶ 62-67. Indeed, Mr. Butler has been “declassified” and “reclassified” in  
15 and out of the wheelchair unit approximately five times, despite the fact that his  
16 condition has not changed. *Id.* at ¶ 68. As noted above, when Mr. Butler was in state  
17 prison, he was classified as a permanent wheelchair user.

18 **7. Columbus Grigsby.**

19 Columbus Grigsby is a “qualified person with a disability” within the meaning  
20 of all applicable statutes, including 42 U.S.C. §12131(2), 29 U.S.C. §705(20)(B), and  
21 California Government Code §12926. FAC ¶ 121. Mr. Grigsby has been partially  
22 paralyzed in his left arm and left leg since September of 2008, and has been in L.A.  
23 County jail since November of 2009. *Id.* at ¶ 77. When Mr. Grigsby arrived at the  
24 jail, his quad-cane was taken away and he was given a series of non-functioning  
25 wheelchairs that either lacked footrests or did not have adequate seating. *Id.* at ¶ 79.  
26 Mr. Grigsby has spent substantial time in solitary confinement when he questioned  
27 decisions to move him out of the wheelchair unit. *See id.* at ¶ 80. While in solitary  
28 confinement Mr. Grigsby was not allowed to purchase sweets he needed to maintain

1 his blood sugar levels, and denied access to the outside world through television and  
2 telephones exacerbating the depression caused by his Post-Traumatic Stress Disorder.  
3 *Id.* at ¶ 81.

### 4 III. ARGUMENT

5 Plaintiffs filed a Complaint on May 29, 2008 and a First Amended Complaint  
6 on June 11, 2010. Based on that First Amended Complaint, Plaintiffs here seek to  
7 certify a class consisting of all detainees and inmates with mobility impairments who  
8 because of those disabilities need appropriate accommodations, modifications,  
9 services, and/or physical access in accordance with federal and state disability laws.<sup>5</sup>  
10 This proposed class meets the requirements of Rule 23(a) and 23(b)(2).

#### 11 A. Legal Standards Governing Motions For Class Certification.

12 Rule 23 of the Federal Rules of Civil Procedure governs motions for class  
13 certification. Under Rule 23(a), a party seeking class certification must show: (1) the  
14 class is so numerous that joinder of all members is impracticable, (2) there are  
15 questions of law or fact common to the class, (3) the claims or defenses of the  
16 representative parties are typical of the claims or defenses of the class, and (4) the  
17 representative parties will fairly and adequately protect the interests of the class. Fed.  
18 R. Civ. P. 23(a); *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001).

19 In addition to the requirements of Rule 23(a), a plaintiff must also meet one of  
20 the requirements of Rule 23(b), which imposes different requirements depending on  
21 the type of class action a party seeks to certify. Here, plaintiffs seek to certify a class  
22 for injunctive and declaratory relief only. Accordingly, plaintiffs must meet the  
23 requirements of Rule 23(b)(2), which requires plaintiffs to show that “the party  
24 opposing the class has acted or refused to act on grounds that apply generally to the  
25 class, so that final injunctive relief or corresponding declaratory relief is appropriate  
26 respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2); *Armstrong*, 275 F.3d at 868.

27  
28 <sup>5</sup> Plaintiffs have modified the class definition from that contained in the original  
complaint in order to focus the matter on the most significant issues.

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 The decision whether to certify a class is committed to the district court’s  
2 discretion. *Armstrong*, 275 F.3d at 871 n.28. “[W]hen considering class certification  
3 under Rule 23, district courts . . . must, perform a rigorous analysis to ensure that the  
4 prerequisites of Rule 23 have been satisfied, and this analysis will often, though not  
5 always, require looking behind the pleadings to issues overlapping with the merits of  
6 the underlying claims.” *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 594 (9th Cir.  
7 2010). However, “Rule 23 gives neither party the right to turn the certification  
8 decision into a trial.” *Id.* at 591. In the present case, the requirements for class  
9 certification under this standard are clearly satisfied.

10 **B. Plaintiffs Have Met the Requirements of Rule 23(a).**

11 **1. Numerosity is satisfied because there are far too many class members**  
12 **to make joinder practicable.**

13 Under the numerosity requirement, plaintiffs must show that the class is so  
14 numerous that joinder of all members is impracticable. Plaintiffs may meet this  
15 requirement even if the exact number of potential class members is unknown. *Neff v.*  
16 *VIA Metro. Transit Auth.*, 179 F.R.D. 185, 193 (W.D. Tex. 1998) (certifying class of  
17 persons with disabilities who used public transit) (citation omitted). “While there is no  
18 bright-line rule as to how many class members are required to be sufficiently  
19 numerous, various courts have found that the numerosity factor is satisfied if the class  
20 comprises 40 or more members and have found it not satisfied when the class  
21 comprises 21 or fewer.” *Californians for Disability Rights, Inc. v. Californians Dep’t*  
22 *of Transp.*, 249 F.R.D. 334, 346 (N.D. Cal. 2008) (citation omitted); *see also* 1 Conte  
23 & Newberg, Newberg on Class Actions § 3.5 (4th ed. 2006) (class of 40 or greater  
24 should satisfy Rule 23(a)(1)); 5 Moore's Federal Practice, § 23.22(3)(a) (3d ed. 2003)  
25 (classes with more than 40 members generally held sufficient to establish numerosity);  
26 *Cervantez v. Celestica Corp.*, 253 F.R.D. 562, 569 (C.D. Cal. 2008). Courts may  
27 appropriately consider statistical and census data in determining whether the  
28 numerosity requirement has been met. *Californians for Disability Rights*, 249 F.R.D.

1 at 347-48 (citing *Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 448  
2 (N.D. Cal. 1994); *Moeller v. Taco Bell Corp.*, 220 F.R.D. 604, 608 (N.D. Cal. 2004)).

3 In this case, defendants own documents demonstrate that approximately 200  
4 people fall within the class definition at any given time. Plaintiffs' expert Logan  
5 Hopper estimates that there could be as many as 500 people with mobility  
6 impairments in the jail based on census data. Hopper Decl. ¶¶ 15-21. These numbers  
7 are sufficient to meet the numerosity requirement.

8 **2. Commonality is met because the lawsuit challenges system-wide**  
9 **practices and policies that affect all detainees with disabilities.**

10 Rule 23(a)(2) requires plaintiffs to show that there is "at least one question of  
11 fact or law" that is common to the class. *Baby Neal for & by Kanter v. Casey*, 43 F.3d  
12 48, 56 (3d Cir. 1994). In the context of civil rights lawsuits, the Ninth Circuit has held  
13 that "commonality is satisfied where the lawsuit challenges a system-wide practice or  
14 policy that affects all of the putative class members. . . . In such circumstance,  
15 individual factual differences among the individual litigants or groups of litigants will  
16 not preclude a finding of commonality." *Armstrong*, 275 F.3d at 868 (affirming  
17 certification of a class of California state prisoners and parolees with mobility, sight,  
18 hearing, learning and developmental disabilities) (citations omitted).<sup>6</sup>

19 The general practice in civil rights suits is to find that "commonality is satisfied  
20 where the lawsuit challenges a system-wide practice or policy that affects all of the  
21 putative class members." *Id.*; *Arnold*, 158 F.R.D. at 448 (commonality requirement is  
22 "met by the alleged existence of common discriminatory practices."). Further, actions  
23 for injunctive relief are generally considered to present common questions. *See Baby*

24 <sup>6</sup> *See also L.H. v. Schwarzenegger*, No. CIV. S-06-2042, 2007 WL 662463, \*11-12  
25 (E.D. Cal. 2007) (commonality satisfied where a broad class of juvenile parolees with  
26 disabilities challenged system-wide discriminatory practices); *Californians for*  
27 *Disability Rights*, 249 F.R.D. at 345 ("Cases challenging an entity's policies and  
28 practices regarding access for the disabled represent the mine run of disability rights  
class actions certified under Rule 23(b)(2)."); *Lovely H. v. Eggleston*, 235 F.R.D. 248,  
254 (S.D.N.Y. 2006) (certifying a broad class of public assistance recipients "who  
have a physical, mental or medical impairment within the meaning of [state law]"  
whose cases were transferred to various sites).

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 *Neal*, 43 F.3d at 57 (“[B]ecause they do not also involve an individualized inquiry for  
2 the determination of damage awards, injunctive actions ‘by their very nature often  
3 present common questions satisfying Rule 23(a)(2)’”) *quoting* 7A Charles Alan  
4 Wright et al., Federal Practice and Procedure § 1763, at 247 (2d ed. 1986); *see also*  
5 *Riker v. Gibbons*, No. 3:08-CV-00115-LRH-RAM, 2009 WL 910971 (D. Nev. Mar.  
6 31, 2009).

7 As the Ninth Circuit recently explained, “[t]he commonality test is ‘qualitative  
8 rather than quantitative’ – one significant issue common to the class may be sufficient  
9 to warrant certification.” *Dukes*, 603 F.3d at 599. Moreover, what matters is plaintiffs’  
10 theory, not whether the theory will ultimately succeed on the merits. *Id.* at 614-15.  
11 Because of this focus on theories presented, “a full inquiry into the merits of a putative  
12 class’s legal claims is precisely what both the Supreme Court and [the 9th Circuit  
13 Court of Appeals] have cautioned is not appropriate for a Rule 23 certification  
14 inquiry.” *Id.* at 590 (citing *United Steel Works v. ConocoPhillips Co.*, 593 F.3d 802,  
15 808-809 (9th Cir. 2010)).

16 Here, plaintiffs easily meet the commonality requirement because they are  
17 challenging a system-wide failure by the L.A. County jails to provide programs,  
18 services and activities to detainees and inmates with disabilities. This legal challenge  
19 will require the Court to address a number of factual and legal questions that are  
20 common to the class. This is a quintessential civil rights class action, in that it  
21 revolves around the County’s illegal system-wide policies and practices, and its  
22 systemic failures to take necessary action, which have affected all class members in  
23 the same manner. As the Ninth Circuit recently held in a similar class action lawsuit  
24 on behalf of detainees with disabilities in the Orange County jails, “[a]ny type of  
25 educational, vocational, rehabilitative, or recreational program, service, or activity  
26 offered to nondisabled detainees should, when viewed in its entirety, be similarly  
27 available to disabled detainees who, with or without reasonable accommodations,  
28 meet the essential eligibility requirements to participate.” *Pierce*, 526 F.3d at 1222. In

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 addition, defendants here have an obligation to modify policies and procedures where  
2 necessary to avoid discrimination, as well as remove physical barriers to ensure that  
3 people with disabilities may access programs and services. *See generally*, 28 C.F.R.  
4 §35.130(b)(7), and §35.150; *see also Pierce*, 526 F.3d at 1214-1216 (outlining  
5 requirements for removal of physical barriers); and *Crowder v. Kitagawa*, 81 F.3d  
6 1480 (9th Cir. 1996) (action that uniquely burdens people with disabilities violates  
7 ADA); *Rodde v. Bonta*, 357 F.3d 988, 998 (9th Cir. 2004) (same); and *McGary v. City*  
8 *of Portland*, 386 F.3d 1259, 1265-67 (9th Cir. 2004) (explaining reasonable  
9 modification requirement).

10 Here, common issues abound, including: (1) the failure to provide accessible  
11 facilities throughout the jail; (2) the systemic failure to identify and classify persons  
12 with disabilities, and provide appropriate mobility aids; (3) the failure to provide  
13 access to programs and services; and (4) the failure to provide reasonable  
14 accommodations to persons with disabilities.<sup>7</sup> The Court will need to make common  
15 factual findings on these issues, as well as common legal determinations whether the  
16 L.A. County jails are violating Title II of the Americans with Disabilities Act (42  
17 U.S.C. §12131), §504 of the Rehabilitation Act (29 U.S.C. §794), the United States  
18 Constitution, and California disability laws. Because the putative class members share  
19 a number of legal and factual issues, commonality is certainly met.

20 **3. The Named Plaintiffs' claims are typical of those of the class.**

21 Under Rule 23(a)(3), plaintiffs must show that the claims of the representative  
22 parties are typical of the claims of the class. To satisfy the requirement of typicality,  
23 “a class representative must be part of the class and possess the same interest and  
24

25 <sup>7</sup> Defendants cannot make vague arguments about penological interests preventing it  
26 from accommodating inmate disabilities – instead, defendants will have to make a  
27 specific proffer about why specific accommodations are not available – another  
28 common question. *See Pierce*, 562 F.3d at 1220 (vague assertions are not a legitimate  
basis for failing to comply with the ADA); *see also Armstrong*, 275 F.3d at 873.  
Further, defendants' failure to review accommodation requests made by a class of  
individuals, in and of itself, creates a common issue of law and fact that the Court can  
certify here.

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 suffer the same injury as the class members.” *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S.  
2 147, 156 (1982) (internal citations and quotation marks omitted). To satisfy typicality,  
3 the Ninth Circuit “do[es] not insist that the named plaintiffs’ injuries be identical with  
4 those of the other class members, only that the unnamed class members have injuries  
5 similar to those of the named plaintiffs and that the injuries result from the same,  
6 injurious course of conduct.” *Armstrong*, 275 F.3d at 869 (citation omitted); *see also*  
7 *Baby Neal*, 43 F.3d at 58 (“Where an action challenges a policy or practice, the named  
8 plaintiffs suffering one specific injury from the practice can represent a class suffering  
9 other injuries, so long as all the injuries are shown to result from the practice.”); *Cal.*  
10 *Rural Legal Assistance, Inc. v. Legal Servs. Corp.*, 917 F.2d 1171, 1175 (9th Cir.  
11 1990) (Rule 23 “does not require the named plaintiffs to be identically situated with  
12 all other class members,” only that their situations be “sufficiently parallel to insure a  
13 vigorous and full presentation of all claims for relief.”) (citations omitted).

14 In order to satisfy typicality, the named plaintiffs’ claims need not be identical  
15 to the claims of the class. Claims are typical under the rule’s permissive standards if  
16 they are “reasonably coextensive with those of absent class members.” *Dukes*, 603  
17 F.3d at 613 *quoting Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). It  
18 is sufficient for plaintiffs’ claims to “arise from the same remedial and legal theories”  
19 as the class’s claims. *Arnold*, 158 F.R.D. at 449.

20 Here, the named plaintiffs – Peter Johnson, Donald Peterson, Michael Curfman,  
21 Andre Butler, Joe Gonzalez, Columbus Grigsby, and Derrick White – are all persons  
22 with disabilities who have been or are detained in the L.A. County jails. They each  
23 allege that defendants have failed to make the programs, services and activities  
24 offered by the L.A. County jails accessible to persons with disabilities, and have failed  
25 to adopt appropriate policies and procedures for housing, accommodating and caring  
26 for persons with disabilities. Between the seven of them, they have suffered injuries  
27 similar to the injuries suffered by the class, including the seemingly arbitrary and  
28 capricious classification and declassification decisions, inappropriate mobility aids,

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 the failure to accommodate their disabilities, segregation into the inappropriate  
2 facilities within the jail that contain systemic architectural barriers, and/or denial of  
3 access to programs and services. *See, e.g.*, Gonzalez Decl. ¶¶ 19-23 (capricious  
4 classification and declassification decisions); White Decl. ¶¶ 7-8 (same); Grigsby  
5 Decl. ¶¶ 11-13, 26 (same); Johnson Decl. ¶¶ 5-6 (inappropriate mobility aids); White  
6 Decl. ¶¶ 9, 13 (same); *see* Peterson Decl. ¶ 8 (failure to accommodate disabilities);  
7 Curfman Decl. ¶ 12 (segregation into facilities with physical barriers); White Decl. ¶  
8 10 (same); Johnson Decl. ¶¶ 8, 14-15 (denial of access to programs and services);  
9 Grigsby Decl. ¶¶ 12, 16-21, 23 (same).<sup>8</sup> Plaintiffs challenge the same course of  
10 conduct on the same legal grounds as would be challenged by the class. Therefore,  
11 typicality is established.

12 **4. The Named Plaintiffs and plaintiffs’ counsel will adequately protect**  
13 **the interests of the class.**

14 The final requirement of Rule 23(a) is that the representative parties will fairly  
15 and adequately protect the interests of the class. “Adequacy of representation depends  
16 on the qualifications of counsel for the representatives, an absence of antagonism, a  
17 sharing of interests between representatives and absentees, and the unlikelihood that  
18 the suit is collusive.” *In re N. Dist. of Cal., Dalkon Shield IUD Prods. Liab. Litig.*, 693  
19 F.2d 847, 855 (9th Cir. 1982) (citations omitted); *see also In re United Energy Corp.*,  
20 122 F.R.D. 251, 257 (C.D. Cal. 1988).

21 As set forth above in the discussion of the commonality and typicality  
22 requirements, plaintiffs share the same interests of declaratory and injunctive relief as  
23 the proposed class members. None of the plaintiffs is currently seeking damages as a  
24  
25

26 <sup>8</sup> Those plaintiffs who are no longer detained within the jail may properly represent  
27 the class in light of the fact that the claims of most people within the jail are  
28 “inherently transitory.” *See, e.g., Cnty. of Riverside v. McLaughlin*, 500 U.S. 44  
(1991); and “Education Based Incarceration” at 828 (average length of stay in 2009  
was 54 days). However, even were this not the case, two named Plaintiffs, Joe  
Gonzalez and Derrick White, are currently detained in the Los Angeles County Jail.

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 result of defendants’ unlawful conduct, and there is no basis on which to argue that  
2 their interests are antagonistic to those of the class.

3 The putative class is represented by the highly experienced legal team of the  
4 Disability Rights Legal Center (“DRLC”), the American Civil Liberties Union of  
5 Southern California (“ACLU”), Disability Rights California (“DRC”) and Winston &  
6 Strawn. The list of counsels’ qualifications is too long to recite here, but are fully set  
7 forth in counsel’s declarations accompanying this motion. Named Plaintiffs and their  
8 attorneys are well-qualified to litigate their claims against Los Angeles County. *See*  
9 Parks Decl.; Declarations of Melinda Bird (“Bird Decl.”); Stephen Smerek (“Smerek  
10 Decl.”); Hector Villagra (“Villagra Decl.”); *Jordan v. Cnty. of L.A.*, 669 F.2d 1311,  
11 1323 (9th Cir. 1982) (holding that adequacy of counsel can be met by showing that  
12 the named plaintiffs’ attorneys are qualified, experienced, and generally able to  
13 conduct litigation).

14 Plaintiffs’ counsel also meets the requirements of Rule 23(g), and should  
15 therefore be appointed class counsel.<sup>9</sup> Under Rule 23(g), in appointing class counsel, a  
16 court must consider: “(i) the work counsel has done in identifying or investigating  
17 potential claims in the action; (ii) counsel’s experience in handling class actions, other  
18 complex litigation, and the types of claims asserted in the action; (iii) counsel’s  
19 knowledge of the applicable law; and (iv) the resources that counsel will commit to  
20 representing the class.” Counsel has done extensive work in identifying and  
21 investigating the claims in this action. Counsel’s declarations further establish that  
22 they have substantial experience handling class actions, and other complex litigation,  
23 including with respect to jail conditions and persons with disabilities. Counsel is well-  
24 versed in disability and constitutional law, which will apply in this case, and they have  
25 more than sufficient resources to vigorously prosecute this case. *See generally*; Parks  
26 Decl.; Bird Decl.; Smerek Decl.; Villagra Decl.

27  
28 <sup>9</sup> Rule 23(c) requires that an order certifying a class action “must appoint class counsel under Rule 23(g).”

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 **C. Plaintiffs Meet the Requirements Of Rule 23(b)(2) Because They Challenge**  
2 **A Practice Of Discriminating Against Detainees With Disabilities.**

3 Plaintiffs must also satisfy at least one of the three requirements of Rule 23(b).  
4 Here, plaintiffs seek to certify a class for injunctive relief under Rule 23(b)(2), which  
5 requires plaintiffs to show that defendants have “acted or refused to act on grounds  
6 that apply generally to the class, so that final injunctive relief or corresponding  
7 declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P.  
8 23(b)(2). For a class to be certified under Rule 23(b)(2), “[i]t is sufficient if class  
9 members complain of a pattern or practice that is generally applicable to the class,”  
10 even if all not all class members have been injured by the challenged practice.  
11 *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998); *Baby Neal*, 43 F.3d at 57 (Rule  
12 23(b)(2) certification is appropriate when a “defendant’s conduct is central to the  
13 claims of all class members irrespective of their individual circumstances and the  
14 disparate impact of the conduct.”). The requirements of Rule 23(b) are also “almost  
15 automatically satisfied in actions primarily seeking injunctive relief.” *Baby Neal*, 43  
16 F.3d at 58 (citation omitted); *see also Von Colln v. Cnty. of Ventura*, 189 F.R.D. 583,  
17 592 (C.D. Cal. 1999) (“If the Rule 23(a) prerequisites have been met and injunctive  
18 relief has been requested, the action should be allowed to proceed under subdivision  
19 (b)(2).”) (citation omitted).

20 L.A. County jails should be operated in compliance with federal and state  
21 disability laws and the U.S. Constitution. The basis for plaintiffs’ claims is that the  
22 County has violated these laws by failing to make the programs, services and activities  
23 offered by the L.A. County jails accessible to persons with disabilities, and has failed  
24 to adopt appropriate policies and procedures for housing, accommodating and caring  
25 for persons with disabilities. Because plaintiffs’ central claim is that the County has  
26 “acted or refused to act on grounds that generally apply to the class” of detainees with  
27 disabilities in the L.A. County jails, plaintiffs have satisfied Rule 23(b)(2).

28 Suits brought to vindicate civil rights are precisely the type of suits for which

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

1 Rule 23(b)(2) was designed. *See Access Now, Inc. v. Ambulatory Surgery Ctr. Group,*  
2 *Ltd.*, 197 F.R.D. 522, 524 n.1 (S.D. Fla. 2000) (listing disability rights class action  
3 cases certified under Rule 23(b)(2)); *see also Raymond v. Rowland*, 220 F.R.D. 173,  
4 181 (D. Conn. 2004) (certifying broad class of persons with disabilities and stating  
5 that “[c]ases of this nature, alleging systemic failure of governmental bodies to  
6 properly fulfill statutory requirements, have been held to be appropriate for class  
7 certification under Rule 23(b)(2).”).

8 Indeed, the requirements of Rule 23(b) are also “almost automatically satisfied  
9 in actions primarily seeking injunctive relief.” *Baby Neal*, 43 F.3d at 58 (citation  
10 omitted); *see also Von Colln v. Cnty. of Ventura*, 189 F.R.D. 583, 592 (C.D.Cal. 1999)  
11 (“If the Rule 23(a) prerequisites have been met and injunctive relief has been  
12 requested, the action should be allowed to proceed under subdivision(b)(2).”) (citation  
13 omitted).

14 **IV. CONCLUSION**

15 For all of the foregoing reasons, plaintiffs respectfully request that the Court  
16 certify the proposed class pursuant to Rule 23(b)(2) of the Federal Rules of Civil  
17 Procedure. Plaintiffs have submitted a proposed order concurrently herewith.

18 DATED: November 12, 2010

Respectfully submitted,  
WINSTON & STRAWN LLP  
DISABILITY RIGHTS LEGAL CENTER  
DISABILITY RIGHTS CALIFORNIA  
ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA

19  
20  
21  
22  
23  
24  
25 By /s/ Stephen R. Smerek  
Stephen R. Smerek

26 Attorneys for Plaintiffs  
27

28 LA:279501.13