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14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**

17 PETER JOHNSON, DONALD  
18 PETERSON, and MICHAEL  
CURFMAN, on behalf of themselves and  
19 all others similarly situated,

20 Plaintiffs,

21 vs.

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

27 Defendants.  
28

Case No.: CV 08-03515 DDP (JTLx)

**PLAINTIFFS' NOTICE OF  
MOTION AND MOTION FOR  
CLASS CERTIFICATION**

Date: June 30, 2008  
Time: 10:00 a.m.  
Judge: Hon. Dean Pregerson

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1 PLEASE TAKE NOTICE that on June 30, 2008, 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 purposes  
4 of injunctive and declaratory relief: “All detainees and inmates with physical disabilities  
5 and disabling medical conditions who because of those disabilities need appropriate  
6 accommodations, modifications, services, and/or physical access in accordance with  
7 federal and state disability laws.” Plaintiffs have met the numerosity, commonality,  
8 typicality and adequacy of representation requirements of Fed. R. Civ. P. 23(a). In  
9 addition, this class is appropriate for certification under Fed. R. Civ. P. 23(b)(2) because  
10 defendants 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 Points  
12 and Authorities; the Declarations of Peter Johnson, Donald Peterson, Michael Curfman,  
13 Shawna Parks, Dan Stormer, Mark Rosenbaum, John Ulin, and Logan Hopper, and all  
14 exhibits thereto; the concurrently-filed Motion for Preliminary Injunction and documents  
15 filed in support thereof; all pleadings and papers on file in this action, and upon any  
16 argument or evidence which may be presented at the hearing of this matter.

17 In accordance with Local Rule 7-3, plaintiffs’ counsel met and conferred with  
18 defense counsel on May 22, 2008 and June 2, 2008 regarding this motion for class  
19 certification. The parties were unable to resolve the matter informally.

20 DATED: June 9, 2008

Respectfully submitted,

HADSELL STORMER KEENY  
RICHARDSON & RENICK, LLP

ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA

DISABILITY RIGHTS LEGAL CENTER

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**I. INTRODUCTION**

1  
2 Plaintiffs Peter Johnson, Donald Peterson and Michael Curfman bring this case on  
3 behalf of a class of all current and future detainees and inmates in the Los Angeles  
4 County Jails with physical disabilities and disabling medical conditions who because of  
5 those disabilities need appropriate accommodations, modifications, services, and/or  
6 physical access in accordance with federal and state disability laws. The complaint in  
7 this action seeks only declaratory and injunctive relief on behalf of the putative class,  
8 and is therefore brought under Federal Rule of Civil Procedure 23(b)(2).

9 As alleged in the complaint, persons with disabilities in the Los Angeles County  
10 Jails face pervasive discrimination in the conditions of their confinement. Persons with  
11 disabilities are housed in the worst and oldest facilities within the jail system, in  
12 windowless cells with broken plumbing and no natural light. Detainees with disabilities  
13 are segregated from other detainees, and given no access to the more than one hundred  
14 programs offered to detainees who are not disabled. The L.A. County Jails have no  
15 comprehensive policies or procedures regarding the classification or treatment of persons  
16 with disabilities. The jails have failed to perform an appropriate self-evaluation for  
17 compliance with the Americans with Disabilities Act (“ADA”), and have failed to  
18 implement the transition plans that are required by the ADA.

19 Because the L.A. County Jails lack appropriate policies and procedures, the  
20 deputies who staff the jails are unaware of what is required by the ADA. Yet, these  
21 deputies make decisions about where persons with disabilities are housed, how many  
22 catheters they are given, what kind of bedding they receive, what accommodations and  
23 medical services they receive, what mobility aids they receive, and numerous other  
24 crucial decisions that implicate the health and safety of persons with disabilities. As  
25 described in the concurrently-filed Motion for Preliminary Injunction, the named  
26 plaintiffs and several other putative class members have suffered needless harm and  
27 indignities as a result of these practices.

28 By this motion, plaintiffs seek to certify a class of “all current and future detainees



1 and inmates in the Los Angeles County Jails with physical disabilities and disabling  
2 medical conditions who because of those disabilities need appropriate accommodations,  
3 modifications, services, and/or physical access in accordance with federal and state  
4 disability laws.” Plaintiffs easily meet the four requirements of Fed. R. Civ. P. 23(a):  
5 numerosity, commonality, typicality and adequacy of representation. In addition,  
6 plaintiffs seek only injunctive and declaratory relief, and the case is appropriate for  
7 certification under Fed. R. Civ. P. 23(b) because defendants have acted or refused to act  
8 on grounds applicable to the class as a whole.

9 Actions to enforce the civil rights of persons with disabilities are precisely the type  
10 of actions that are appropriate for class treatment. This case challenges systemwide  
11 practices of discrimination against and mistreatment of inmates and detainees with  
12 disabilities. Plaintiffs seek to have defendants make systemwide changes, and  
13 implement policies and procedures applicable to the class as a whole. For these reasons,  
14 plaintiffs respectfully request that the Court grant their motion for class certification.

## 15 II. FACTS

16 The following facts are taken from the class action complaint, and from the  
17 declarations and exhibits filed in support of this motion. For purposes of a class  
18 certification motion, the Court should take the allegations of the complaint as true.  
19 *Blackie v. Barrack*, 524 F.2d 891, 901, n.17 (9th Cir. 1975).

### 20 A. The L.A. County Jails House Thousands of Detainees With Disabilities Every 21 Year

22 The Los Angeles County Jail system is the largest in the nation, processing more  
23 than 180,000 people per year. The system is comprised of a number of facilities,  
24 including Men’s Central Jail, Twin Towers and the Inmate Reception Center which are  
25 located in downtown Los Angeles; the North County Correctional Facility and Pitchess  
26 Detention Center, both located in Northern Los Angeles County; and the Central  
27 Regional Detention Facility, located in Lynwood. The entire County Jail system houses  
28 approximately 19,000 people at any given time. Complaint ¶ 34; Declaration of Logan

1 Hopper (“Hopper Decl.”) ¶ 15 & Exh. D.

2 Based on available census and other demographic data, plaintiffs’ expert Logan  
3 Hopper estimates that there are between 500 and 1000 persons with disabilities  
4 incarcerated in the L.A. County Jails at any given time. He further estimates that  
5 between 5,000 and 12,000 persons with disabilities are processed by the jails in any  
6 given year. Hopper Decl. ¶¶ 16-18.

7 **B. The Los Angeles County Jails Offer a Wide Array of Programs, Services and**  
8 **Activities to Detainees**

9 The L.A. County Jails offer a wide variety of “programs, services and activities” to  
10 detainees, as those terms are used in Title II of the ADA and Section 504 of the  
11 Rehabilitation Act of 1973. *See* 42 U.S.C. § 12132; 29 U.S.C.S. § 794. As explained by  
12 Mr. Hopper, the word “services” is often misunderstood in the correctional context.  
13 Even though detainees are incarcerated, they are still provided with “services.” These  
14 “services” generally include all of the daily activities that are required to assure humane  
15 treatment of detainees, including sanitary needs and hygiene, food service, recreation,  
16 necessary medical care, religious services, visitation, and other similar and necessary  
17 activities. Hopper Decl. Exh. B at 7.<sup>1</sup> *See also Pennsylvania Dep’t of Corrections v.*  
18 *Yeskey*, 524 U.S. 206, 211 (1998) (holding that Title II of the ADA applies to  
19 correctional facilities, and explaining that “prisons provide inmates with many  
20 recreational ‘activities,’ medical ‘services,’ and educational and vocational ‘programs,’”  
21 as those terms are used in the ADA”); *Pierce v. County of Orange*, — F.3d —, 2008  
22 U.S. App. LEXIS 10454, \*91 n.44 (9th Cir. 2008) (“Providing inmates with appropriate  
23 and adequate bedding and bathroom facilities are ‘services’ of the jail.”).

24 “Programs” generally refer to more specialized activities that are provided for  
25

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26  
27 <sup>1</sup>Mr. Hopper inspected the L.A. County Jails in November and December  
28 2007. Hopper Decl. ¶ 12. His findings are encompassed in a report, which is  
authenticated in his declaration at paragraph 11, and which is attached to his  
declaration as Exhibit B.

1 effective incarceration and potential rehabilitation, including regular and vocational  
 2 education, drug and alcohol counseling, and work experience programs. Hopper Decl.  
 3 Exh. B at 7.

4 The LASD provides many programs and services to detainees. One reference  
 5 document provided by the Jails entitled “Inmate Programs” was 13 pages long and  
 6 included almost 100 programs and services. Hopper Decl. Exh. B at 7.<sup>2</sup> In addition,  
 7 many detainees are given the opportunity to serve as “trustees.” Trustees assist the  
 8 deputies with tasks within the jails, and are given privileges and benefits in return.  
 9 Serving as a trustee also constitutes a “program” offered by the L.A. County Jails. *Id.*

10 **C. Detainees With Disabilities Face Pervasive Discrimination Within the L.A.**  
 11 **County Jails**

12 As documented in Mr. Hopper’s report, and as alleged in the complaint, detainees  
 13 with disabilities throughout the L.A. County Jails face significant problems with respect  
 14 to classification, housing, access to programs and services, and physical access barriers.  
 15 Defendants systemically fail to effectively evaluate the needs of people with disabilities  
 16 within the jails, and to meet those needs through appropriate accommodations and  
 17 physical access. Complaint ¶ 35; Hopper Decl. Exh. B.

18 Some of the most significant issues are: (1) the failure to appropriately identify  
 19 people with disabilities in need of accommodations and services, resulting in  
 20 inappropriate placement of people with disabilities; (2) the failure to provide appropriate  
 21 mobility aids, such as wheelchairs, walkers and crutches; (3) the failure to accommodate  
 22 the needs of people with disabilities, including by failing to establish reliable methods  
 23 for administration of medication, medical supplies and other disability accommodations;  
 24 (4) the failure to modify policies and procedures for people with disabilities; (5) the

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26 <sup>2</sup>On August 6, 2007, the Disability Rights Legal Center (“DRLC”)  
 27 submitted a California Public Records Act Request regarding the L.A. County  
 28 Jails’ treatment of detainees with disabilities. The DRLC received about 250  
 pages in response to the request, which DRLC then provided to Mr. Hopper.  
 Declaration of Shawna Parks (“Parks Decl.”) ¶¶ 19-20, 24; Hopper Decl. ¶ 14.

1 failure to remove multiple and pervasive architectural barriers throughout the jails; (6)  
2 the failure to allow people with disabilities access to vocational, educational and other  
3 programs and services; (7) the failure to provide safe and accessible transportation for  
4 people with disabilities; (8) the failure to have an emergency and/or evacuation policy  
5 for people with disabilities; and (9) the failure to provide an effective complaint  
6 procedure for disability related complaints. Complaint ¶ 36.

7 The complete segregation of detainees with disabilities into the worst facilities in  
8 the L.A. County jail system is a fundamental problem in itself. According to Mr.  
9 Hopper, due in part to this segregation, “[i]nmates with disabilities have no access at all  
10 to the vast majority of programs and services of the L.A. County jail system.” Hopper  
11 Decl. Exh. B at 8. He further opines:

12 The degree of segregation of persons with disabilities that I observed  
13 throughout the L.A. County Jail system is unparalleled in my experience. I  
14 have never visited any facility, correctional or otherwise, that segregates  
15 residents with disabilities to the degree I observed in the LA County Jail. And  
16 nowhere were the segregation policies more profound than in the context of  
17 extreme disparity of program and service availability between disabled and  
18 non-disabled inmates. The poor conditions in Men’s Central Jail, including  
19 broken plumbing, lack of any natural light and limited access to outdoor  
20 recreation, also contribute to the disparity in service access.

21 *Id.* at 9.

22 **D. The Discrimination Faced By Detainees With Disabilities is Caused By the**  
23 **L.A. County Jails’ Policies and Procedures (or the Lack Thereof)**

24 The problems faced by detainees with disabilities are caused by the L.A. County  
25 Jails’ policies and procedures, or lack thereof. Significantly, there is no comprehensive  
26 set of policies or procedures for identifying detainees with disabilities and determining  
27 appropriate accommodations, modifications or services for them. Complaint ¶ 37;  
28 Hopper Decl. Exh. B at 6 (“In the documents produced by the Los Angeles Sheriff’s

1 Department, I did not see a comprehensive manual or set of policies and procedures for  
 2 identifying inmates with disabilities and determining appropriate accommodations for  
 3 these individuals.”); *see also* Parks Decl. ¶¶ 19-21 (in response to Public Records Act  
 4 request seeking documents related to policies and procedures for accommodating  
 5 detainees with disabilities, the Disability Rights Legal Center received very limited  
 6 documentation of policies and procedures related to the ADA issues in this case).

7 The staff within the L.A. County Jails are not appropriately trained to make  
 8 decisions about housing and classification of detainees with disabilities. Housing and  
 9 classification decisions are made based on stereotypes and misconceptions, and in an  
 10 extremely cursory manner, relying mainly on the simplest and quickest observations by  
 11 staff. Complaint ¶ 37. This classification system results in, among other things, a failure  
 12 to recognize that persons who do not rely exclusively on wheelchairs may have  
 13 significant physical restrictions requiring accommodation. *Id.*; Hopper Decl. Exh. B at 6  
 14 (“[M]ost staff did not appear to have a working knowledge of the broad range of  
 15 disabilities that are covered by the ADA or the range of accommodations that may be  
 16 appropriate. For example, there did not appear to be an awareness that many persons  
 17 with physical disabilities do not require wheelchairs, but have equally critical disability-  
 18 related needs for accommodation, which the ADA requires be provided to them.”).

19 **E. The Named Plaintiffs**

20 **1. Peter Johnson**

21 Peter Johnson is 38 years old, and is paralyzed from the lower chest down. Mr.  
 22 Johnson has no feeling or mobility in his legs, and uses a wheelchair. Declaration of  
 23 Peter Johnson Decl. ¶ 2 (Compendium Exh. A).<sup>3</sup> Mr. Johnson has been in jail since  
 24 October 16, 2007, when he was brought to the Inmate Reception Center (“IRC”), where  
 25 the jail processes new detainees. The bathroom in the IRC is not wheelchair accessible,  
 26

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27 <sup>3</sup>All of the detainee declarations are attached to the Compendium of  
 28 Detainee Declarations in Support of Motions for Preliminary Injunction and Class  
 Certification.

1 but Mr. Johnson was left in the IRC for approximately 8-10 hours. Mr. Johnson was left  
2 sitting in his own feces for around 6-8 hours, even though he notified the staff that he  
3 needed help. *Id.* ¶ 3. Mr. Johnson was unable to use the drinking fountain or phones in  
4 the IRC because they are not accessible to people in wheelchairs. When Mr. Johnson  
5 tried to use the phone, he transferred from his wheelchair onto a metal bench, but fell off  
6 the bench because it was too slippery. *Id.* ¶ 4.

7 The deputies in the IRC took away Mr. Johnson's wheelchair and replaced it with  
8 a jail-issued chair, which had numerous problems. The wheelchair made it difficult for  
9 Mr. Johnson to transfer to the toilet, and also lacked footrests. As a result, Mr. Johnson's  
10 feet dragged on the floor. The wheelchair would also flip forward if Mr. Johnson did not  
11 carefully maintain his balance. *Id.* ¶ 5. Approximately three weeks later, the jail  
12 returned Mr. Johnson's original chair to him but insisted on replacing the wheels with  
13 jail-issued wheels. However, these new wheels did not fit his wheelchair. As a result,  
14 on Mr. Johnson's next court trip, one of the wheels fell off and he fell out of the chair,  
15 injuring himself. *Id.* ¶ 6.

16 Since being assigned housing, Mr. Johnson has been housed in the 8100 block at  
17 Men's Central Jail, which is the unit designated for wheelchair users. Detainees housed  
18 in this unit receive little, if any, outdoor exercise. In the nearly seven months that Mr.  
19 Johnson has been in this unit, he has only been allowed outside for exercise on two  
20 occasions that he can remember. Other than those two times that he went to the roof for  
21 exercise, the only time that Mr. Johnson has been let outside is to go to court. Other than  
22 those events, and Sunday visits to the jail chapel, Mr. Johnson remains in his jail cell  
23 twenty-four hours per day, seven days per week. *Id.* ¶ 8-9. Mr. Johnson also has not had  
24 any physical therapy during the entire time he has been in jail, even though he regularly  
25 did physical therapy to improve his movement before he became incarcerated. *Id.* ¶ 10.

26 Although the bathroom in Mr. Johnson's cell was designed to be wheelchair  
27 accessible, there is a barrier to the shower area, which Mr. Johnson cannot get over in his  
28 wheelchair. One time, in maneuvering himself over the barrier, Mr. Johnson fell and



1 hurt his hip. *Id.* ¶ 11.

2 In early 2008, Mr. Johnson was disciplined and moved to the 8000 floor for about  
3 a month. There were few accommodations in the cell to which Mr. Johnson was  
4 transferred. Although the cell was supposed to be handicap accessible, the rail on the  
5 side of the toilet was broken and Mr. Johnson fell several times when he attempted to  
6 transfer from his wheelchair to the toilet. In addition, the handicap rail in the cell was  
7 too high for Mr. Johnson to reach in his wheelchair, and was meant for someone  
8 standing. *Id.* ¶ 12.

9 Mr. Johnson was supposed to be able to shower every other day, but many times,  
10 he was not allowed to shower for days at a time. This was a problem because the food  
11 often did not agree with his stomach and he had accidents. Mr. Johnson would have to  
12 sit in his feces for days at a time, and the deputies refused to give him access to showers  
13 or clean clothes when he told them that he'd had an accident. *Id.* ¶ 13. Moreover,  
14 detainees housed on the 8000 floor were not allowed to buy any food and drinks from the  
15 store, reportedly because a diabetic had died after buying food from the store. Detainees  
16 on other floors are allowed to buy many food and drink items, like tuna and coffee, to  
17 supplement their jail food. Mr. Johnson could not substitute store food for the jail food  
18 that did not agree with him and he had more accidents. *Id.* ¶ 14.

19 In February 2008, Mr. Johnson was moved back to the 8100 floor. He still does  
20 not have access to outdoor exercise or the roof, and he basically spends all of his time in  
21 his cell. Mr. Johnson has no access to vocational or educational programs of any kind.  
22 *Id.* ¶ 15. Moreover, because Mr. Johnson is in a wheelchair, he is not permitted to be a  
23 jail trustee and is therefore deprived of the benefits and privileges that accompany being  
24 a trustee. *Id.* ¶ 16.

## 25 **2. Donald Peterson**

26 Plaintiff Donald Peterson, a veteran of the United States military. Mr. Peterson  
27 was diagnosed with diabetes when he was 13 years old, and continues to suffer from  
28 diabetes to this day. Mr. Peterson also has a significant mobility limitation. He has no

1 feeling in his right leg going all the way up to his mid-torso. He also has chronic pain in  
2 his right arm such that he cannot make a fist with his hand. The loss of mobility in his  
3 right side makes it difficult for him to walk and balance unaided. He needs either  
4 crutches or a wheelchair for mobility. Declaration of Donald Peterson ¶¶ 2-3  
5 (Compendium Exh. B).

6 Mr. Peterson has been in the Men's Central Jail for approximately four months.  
7 When he first arrived at the jail, he was provided a wheelchair and placed in the 8100  
8 block. While on that floor, other than church on Sunday, he spent nearly all of his time in  
9 his cell. He was never allowed access to the roof for exercise, and never participated in  
10 any vocational or educational programs. *Id.* ¶ 4.

11 About three months after his arrival, a deputy moved Mr. Peterson to the 6050  
12 unit, which is the unit at Men's Central Jail designated for people with walkers or  
13 crutches. When Mr. Peterson was moved, the deputies took away his wheelchair and he  
14 was given a walker. Mr. Peterson had never used a walker before and he fell over when  
15 he tried to use it. *Id.* ¶ 5.

16 Despite his disability, Mr. Peterson was given a top bunk in the 6050 unit. It was  
17 very difficult for him to get up and down from the top bunk. The deputies also took  
18 away his catheter bag, which Mr. Peterson used to urinate at night without getting out of  
19 bed. Without the catheter bag, Mr. Peterson either had to get out of his top bunk or wet  
20 the bed. Mr. Peterson has fallen a number of times trying to get out of his top bunk when  
21 needing to go to the bathroom. *Id.* ¶¶ 6-8.

22 After a few days in 6050, Mr. Peterson was moved again, this time to the general  
23 population. The deputies took away his walker and he was not provided any other  
24 mobility aid. In the general population, he fell down three times and had to drag himself  
25 around and hold onto the walls when he attempted to move. After three days, he was  
26 finally provided with a pair of crutches. After receiving the crutches, he was moved  
27 back to 6050. *Id.* ¶¶ 9-11.

28 Mr. Peterson also has no teeth, in part due to his diabetes, and does not have his



1 dentures in the jail. He is supposed to be on a soft diet, meaning his food is mashed up,  
2 but he is only provided regular food. Mr. Peterson tries to make food soft enough by  
3 swishing it around with water in his mouth. He has sores all over his mouth because he  
4 cannot chew his food. *Id.* ¶ 12.

5 Mr. Peterson takes medication to control his blood sugar levels as a result of his  
6 diabetes. This medication is not provided regularly at the jail, and has gone as many as  
7 three days without his medication. His blood sugar is also not regularly screened, even  
8 though Mr. Peterson screens his own blood sugar level three times a day when he is not  
9 in jail. In the approximately four months he has been in jail, his blood sugar has been  
10 screened only approximately twelve times. *Id.* ¶¶ 13-14.

### 11 **3. Michael Curfman**

12 Plaintiff Michael Curfman has partial paralysis and traumatic brain injury,  
13 disabilities he developed shortly before being arrested. Declaration of Michael Curfman  
14 Decl. ¶ 2 (Compendium Exh. C). He has significant difficulty with walking, balance and  
15 stability due to his disability. He has been in Los Angeles County jail since January  
16 2007, and has been at Men's Central Jail for approximately the last nine or ten months.  
17 *Id.* ¶ 3. Mr. Curfman has had a number of disability-related problems, including but not  
18 limited to, denial of accommodations and mobility aids for his disability, and pervasive  
19 architectural barriers.

20 Before residing at Men's Central, Mr. Curfman was at Twin Towers in the medical  
21 unit where he was provided a wheelchair for mobility. When he was moved to Men's  
22 Central, Mr. Curfman's wheelchair was taken away despite his partial paralysis and  
23 traumatic brain injury. Mr. Curfman was also initially denied the use of any mobility  
24 aid, including a walker. This made standing or walking extremely difficult for him.  
25 Even when he was eventually provided a walker, the walker had a broken tip causing it  
26 to be extremely unsteady. *Id.* ¶ 9-11.

27 The toilet in Mr. Curfman's unit has no grab bars for accessibility. Mr. Curfman  
28 must attempt to steady himself by attempting to hold on to the wall or the sink.

1 Similarly, Mr. Curfman's shower has no grab bars, which makes it very difficult for him  
2 to steady himself while taking a shower. On at least one occasion, he has fallen while  
3 showering. *Id.* ¶ 12. Mr. Curfman has asked for a wheelchair to assist in his mobility  
4 but has been told that because he can stand he cannot have a wheelchair.

5 Mr. Curfman, who developed his disabilities shortly before being admitted to the  
6 jail, and who has now been in jail for more than sixteen months, receives no physical  
7 therapy to improve his mobility or his speech. He has attempted to learn how to walk  
8 and speak again on his own. Mr. Curfman has asked to see a doctor many times, but was  
9 told that he could only see the doctor if he's "bleeding or dying." *Id.* ¶¶ 13, 16.

10 As a result of his disability, Mr. Curfman has a hard time controlling his bladder.  
11 Because of his bladder control problems, he has accidents in his bed but is not allowed to  
12 replace his soiled sheets or clothes. He is not allowed to shower if it is not his turn. He  
13 sometimes has to use soiled sheets for almost a week before they are replaced. *Id.* ¶¶ 17-  
14 20.

15 Mr. Curfman is only allowed out of his cell to shower. He has rarely been  
16 permitted to go outside for exercise. The only program he has access to is a Friday visit  
17 by a chaplain. Otherwise, he does not have any access to programs at the jail. *Id.* ¶¶ 22-  
18 23.

### 19 III. ARGUMENT

20 Plaintiffs filed a class action complaint on May 29, 2008. As alleged in the  
21 complaint, plaintiffs seek to certify the following class: "All detainees and inmates with  
22 physical disabilities and disabling medical conditions who because of those disabilities  
23 need appropriate accommodations, modifications, services, and/or physical access in  
24 accordance with federal and state disability laws." Because this proposed class meets the  
25 requirements of Rule 23, the Court should grant plaintiffs' motion for class certification.

#### 26 A. Legal Standards Governing Motions for Class Certification

27 Rule 23 of the Federal Rules of Civil Procedure governs motions for class  
28 certification. Under Rule 23(a), a party seeking class certification must show: (1) the

1 class is so numerous that joinder of all members is impracticable, (2) there are questions  
2 of law or fact common to the class, (3) the claims or defenses of the representative  
3 parties are typical of the claims or defenses of the class, and (4) the representative parties  
4 will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a);  
5 *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001).

6 In addition to the requirements of Rule 23(a), a plaintiff must also meet one of the  
7 requirements of Rule 23(b), which imposes different requirements depending on the type  
8 of class action a party seeks to certify. *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1176  
9 (9th Cir. 2007). Here, plaintiffs seek to certify a class for injunctive and declaratory  
10 relief only, and do not seek to certify a damages class. Accordingly, plaintiffs must meet  
11 the requirements of Rule 23(b)(2), which requires plaintiffs to show that “the party  
12 opposing the class has acted or refused to act on grounds that apply generally to the  
13 class, so that final injunctive relief or corresponding declaratory relief is appropriate  
14 respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2); *Armstrong*, 275 F.3d at 868.

15 The decision whether to certify a class is committed to the district court’s  
16 discretion. *Armstrong*, 275 F.3d at 871 n.28. In deciding whether to certify a class,  
17 “[t]he court is bound to take the substantive allegations of the complaint as true . . . .”  
18 *Blackie*, 524 F.2d at 901 n.17. While the court must determine that plaintiffs have  
19 alleged facts sufficient to meet the Rule 23 requirements, the court does not consider  
20 whether plaintiffs will ultimately prevail on their claims. *Eisen v. Carlisle & Jacquelin*,  
21 417 U.S. 156, 178 (1974) (citation omitted); *Jordan v. Los Angeles County*, 669 F.2d  
22 1311, 1321 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810 (1982).

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

### 24 **1. Numerosity is Satisfied Because There are Far Too Many Class** 25 **Members to Make Joinder Practicable**

26 Under the numerosity requirement, plaintiffs must show that the class is so  
27 numerous that joinder of all members is impracticable. Plaintiffs may meet this  
28 requirement even if the exact number of potential class members is unknown, and the

1 class members cannot be identified individually. *Neff v. VIA Metro. Transit Auth.*, 179  
2 F.R.D. 185, 193 (W.D. Tex. 1998) (certifying class of persons with disabilities who used  
3 public transit) (citation omitted). “While there is no bright-line rule as to how many  
4 class members are required to be sufficiently numerous, various courts have found that  
5 the numerosity factor is satisfied if the class comprises 40 or more members and have  
6 found it not satisfied when the class comprises 21 or fewer.” *Californians for Disability  
7 Rights, Inc. v. Californians Dep’t of Transp.*, 2008 U.S. Dist. LEXIS 19766, \*41 (N.D.  
8 Cal. 2008) (citation omitted). Courts may appropriately consider statistical and census  
9 data in determining whether the numerosity requirement has been met. *Id.*, at \*42-46  
10 (citing *Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 448 (N.D. Cal.  
11 1994); *Moeller v. Taco Bell Corp.*, 220 F.R.D. 604, 608 (N.D. Cal. 2004)).

12 In this case, based on available census and other demographic data, plaintiffs’  
13 expert Logan Hopper estimates that there are between 500 and 1000 detainees with  
14 disabilities in the L.A. County Jails at any given time. He further estimates that between  
15 5,000 and 12,000 detainees with disabilities are processed by the jails in any given year.  
16 Hopper Decl. ¶¶ 16-18. These estimates are sufficient to meet the numerosity  
17 requirement. It would not be practicable to join 500 or more plaintiffs in this action, and  
18 the class action mechanism is therefore appropriate.

19 **2. Commonality is Met Because the Lawsuit Challenges Systemwide**  
20 **Practices and Policies That Affect All Detainees with Disabilities Within**  
21 **the L.A. County Jails**

22 Rule 23(a)(2) requires plaintiffs to show that there is “at least one question of fact  
23 or law” that is common to the class. *Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 56  
24 (3d Cir. 1994). In the context of civil rights lawsuits, the Ninth Circuit has held that  
25 “commonality is satisfied where the lawsuit challenges a system-wide practice or policy  
26 that affects all of the putative class members. . . . In such circumstance, individual factual  
27 differences among the individual litigants or groups of litigants will not preclude a  
28 finding of commonality.” *Armstrong*, 275 F.3d at 868 (affirming district court’s

1 certification of a class of present and future California state prisoners and parolees with  
2 mobility, sight, hearing, learning and developmental disabilities) (citations omitted).

3 *See also L.H. v. Schwarzenegger*, 2007 WL 662463, \*11-12 (E.D. Cal. 2007)  
4 (commonality satisfied where a broad class of juvenile parolees with disabilities  
5 challenged systemwide discriminatory practices); *Californians for Disability Rights*,  
6 2008 U.S. Dist. LEXIS 19766, at \*38-39 (“Cases challenging an entity’s policies and  
7 practices regarding access for the disabled represent the mine run of disability rights  
8 class actions certified under Rule 23(b)(2)”); *Lovely H. v. Eggleston*, 235 F.R.D. 248,  
9 254 (S.D.N.Y. 2006) (certifying a broad class of public assistance recipients “who have a  
10 physical, mental or medical impairment within the meaning of [state law]” whose cases  
11 were transferred to various sites).

12 Here, plaintiffs easily meet the commonality requirement because they are  
13 challenging a systemwide failure by the L.A. County Jails to provide programs, services  
14 and activities to detainees with disabilities. This legal challenge will require the Court to  
15 address a number of factual and legal questions that are common to the class. As the  
16 Ninth Circuit recently held in a similar class action lawsuit on behalf of detainees with  
17 disabilities in the Orange County jails, “Any type of educational, vocational,  
18 rehabilitative, or recreational program, service, or activity offered to nondisabled  
19 detainees should, when viewed in its entirety, be similarly available to disabled detainees  
20 who, with or without reasonable accommodations, meet the essential eligibility  
21 requirements to participate.” *Pierce*, 2008 U.S. App. LEXIS 10454 at \*84. Here, the  
22 Court will be required to make both factual and legal findings about whether programs,  
23 services or activities offered to non-disabled detainees in the L.A. County Jails are being  
24 offered on a similar bases to detainees with disabilities.

25 Other examples of system-wide practices challenged in this lawsuit include: the  
26 failure to provide accessible facilities throughout the jail; the failure to provide detainees  
27 with adequate bedding, bathroom facilities and other “services” related to health and  
28 hygiene; the failure to provide appropriate mobility aids; the failure to establish reliable

1 methods for providing medication and medical supplies; the failure to remove  
2 architectural barriers; and the failure to provide physical therapy and other necessary  
3 medical care required by detainees with disabilities so that they can participate in  
4 programs and services on a similar basis as non-disabled detainees.

5 The Court will need to make common factual findings on these issues, as well as  
6 common legal determinations whether the L.A. County Jails are violating Title II of the  
7 Americans with Disabilities Act (42 U.S.C. § 12131), Section 504 of the Rehabilitation  
8 Act (29 U.S.C. § 794), the United States Constitution, and California disability laws.  
9 Because the putative class members share a number of legal and factual issues,  
10 commonality is easily met.

### 11 **3. The Named Plaintiffs' Claims Are Typical of Those of the Class**

12 Under Rule 23(a)(3), plaintiffs must show that the claims of the representative  
13 parties are typical of the claims of the class. To satisfy the requirement of typicality, “a  
14 class representative must be part of the class and possess the same interest and suffer the  
15 same injury as the class members.” *General Telephone Co. of Southwest v. Falcon*, 457  
16 U.S. 147, 156 (1982) (internal citations and quotation marks omitted). To satisfy  
17 typicality, the Ninth Circuit “do[es] not insist that the named plaintiffs’ injuries be  
18 identical with those of the other class members, only that the unnamed class members  
19 have injuries similar to those of the named plaintiffs and that the injuries result from the  
20 same, injurious course of conduct.” *Armstrong*, 275 F.3d at 869 (citation omitted); *see*  
21 *also Baby Neal*, 43 F.3d at 58 (“Where an action challenges a policy or practice, the  
22 named plaintiffs suffering one specific injury from the practice can represent a class  
23 suffering other injuries, so long as all the injuries are shown to result from the  
24 practice.”); *California Rural Legal Assistance, Inc. v. Legal Services Corp.*, 917 F.2d  
25 1171, 1175 (9th Cir. 1990) (Rule 23 “does not require the named plaintiffs to be  
26 identically situated with all other class members,” only that their situations are  
27 “sufficiently parallel to insure a vigorous and full presentation of all claims for relief”)  
28 (citations omitted).



1 Here, the named plaintiffs – Peter Johnson, Donald Peterson and Michael Curfman  
2 – are all persons with disabilities detained in the L.A. County Jails. They each allege  
3 that defendants have failed to make the programs, services and activities offered by the  
4 L.A. County Jails accessible to persons with disabilities, and have failed to adopt  
5 appropriate policies and procedures for housing, accommodating and caring for persons  
6 with disabilities. Between the three of them, they have suffered injuries similar to the  
7 injuries suffered by the class, including segregation into the worst facilities in the jails;  
8 the denial of access to programs and services; inadequate medical care; inappropriate  
9 classification and declassification; inappropriate mobility aids; and the failure to  
10 accommodate their disabilities in various ways. Plaintiffs challenge the same course of  
11 conduct on the same legal grounds as would be challenged by the class. Therefore, the  
12 typicality requirement is met.

13 **4. The Named Plaintiffs and Plaintiffs’ Counsel Will Adequately Protect**  
14 **the Interests of the Class**

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

22 As set forth above in the discussion of the commonality and typicality  
23 requirements, plaintiffs share the same interests of declaratory and injunctive relief as the  
24 proposed class members. None of the plaintiffs is currently seeking damages as a result  
25 of defendants’ unlawful conduct, and there is no basis on which to argue that their  
26 interests are antagonistic to those of the class.

27 The putative class is represented by the highly experienced legal team of the  
28 Disability Rights Legal Center (“DRLC”), the American Civil Liberties Union of

1 Southern California (“ACLU”), Heller Ehrman, and Hadsell Stormer Keeny Richardson  
2 & Renick (“Hadsell Stormer”). The list of counsels’ qualifications are too long to recite  
3 here, but are fully set forth in counsel’s declarations accompanying this motion.

4 Briefly, the DRLC has been counsel in numerous class action lawsuits involving  
5 persons with disabilities, and has obtained settlements that have benefitted large groups  
6 of persons with disabilities. *See Parks Decl.* ¶¶ 2-16; Exhs. A-C. Mark Rosenbaum and  
7 Melinda Bird of the ACLU have substantial experience in civil rights class action  
8 lawsuits, and the ACLU is one of the most storied civil rights organizations in the  
9 country. *See Declaration of Mark Rosenbaum.* Hadsell Stormer is a private civil rights  
10 firm whose attorneys have successfully litigated numerous class action public interest  
11 cases, including a case on behalf of detainees with disabilities in the Orange County  
12 jails. *See Declaration of Dan Stormer.* Heller Ehrman’s attorneys, John Ulin, Helen  
13 Eckert and Amanda Walker, have extensive litigation experience. Mr. Ulin, a  
14 shareholder, has served as pro bono counsel on numerous cases focusing on civil rights  
15 issues, voting rights and political reform. *See Declaration of John Ulin.* Given the  
16 extensive experience of plaintiffs’ counsel, the “adequacy of representation” prong of  
17 Rule 23(a) is easily met.

18 Plaintiffs’ counsel not only meet the “adequacy” prong of Rule 23(a), but they also  
19 meet the requirements of Rule 23(g), and should therefore be appointed class counsel.<sup>4</sup>  
20 Under Rule 23(g), in appointing class counsel, a court must consider: “(i) the work  
21 counsel has done in identifying or investigating potential claims in the action; (ii)  
22 counsel’s experience in handling class actions, other complex litigation, and the types of  
23 claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the  
24 resources that counsel will commit to representing the class.”

25 As demonstrated by this motion and the concurrently-filed Motion for Preliminary  
26 Injunction, counsel have done extensive work in identifying and investigating the claims  
27

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28 <sup>4</sup>Rule 23(c) requires that an order certifying a class action “must appoint class counsel under Rule 23(g).”



1 in this action. Counsel’s declarations establish that they have substantial experience in  
2 handling class actions and complex litigation, including with respect to jail conditions  
3 and persons with disabilities. Counsel are well-versed in disability and constitutional  
4 law, which will apply in this case, and they have more than sufficient resources to  
5 vigorously prosecute this case. *See generally* Stormer Decl.; Rosenbaum Decl.; Parks  
6 Decl. & Ulin Decl. For these reasons, plaintiffs respectfully request that, pursuant to  
7 Rule 23(c), the Court issue an order that plaintiffs’ counsel be appointed class counsel.

8 **C. Plaintiffs Meet the Requirements of Rule 23(b)(2) Because They Challenge a**  
9 **Systemwide Practice of Discriminating Against Detainees With Disabilities**

10 In addition to the four requirements of Rule 23(a), plaintiffs must also satisfy at  
11 least one of the three requirements of Rule 23(b). Here, plaintiffs seek to certify a class  
12 for injunctive relief under Rule 23(b)(2), which means that plaintiffs must show that  
13 defendants have “acted or refused to act on grounds that apply generally to the class, so  
14 that final injunctive relief or corresponding declaratory relief is appropriate respecting  
15 the class as a whole.” Fed. R. Civ. P. 23(b)(2).

16 As set forth in the concurrently-filed Motion for Preliminary Injunction, plaintiffs  
17 seek an injunction that would require defendants to bring the L.A. County Jails into  
18 compliance with federal and state disability laws and the U.S. Constitution. The basis  
19 for plaintiffs’ motion is that the County has violated these laws by failing to make the  
20 programs, services and activities offered by the L.A. County Jails accessible to persons  
21 with disabilities, and has failed to adopt appropriate policies and procedures for housing,  
22 accommodating and caring for persons with disabilities. Because plaintiffs’ central  
23 claim is that the County has “acted or refused to act on grounds that generally apply to  
24 the class” of detainees with disabilities in the L.A. County Jails, plaintiffs have satisfied  
25 the requirements of Rule 23(b)(2).

26 Suits brought to vindicate civil rights are precisely the type of suits for which Rule  
27 23(b)(2) was designed. *See Access Now, Inc. v. Ambulatory Surgery Ctr. Group, Ltd.*,  
28 197 F.R.D. 522, 524 n.1 (S.D. Fla. 2000) (listing disability rights class action cases

1 certified under Rule 23(b)(2)); *see also Raymond v. Rowland*, 220 F.R.D. 173, 181 (D.  
2 Conn. 2004) (certifying broad class of persons with disabilities and stating that “[c]ases  
3 of this nature, alleging systemic failure of governmental bodies to properly fulfill  
4 statutory requirements, have been held to be appropriate for class certification under  
5 Rule 23(b)(2)”). For these reasons, the Court should certify the proposed class under  
6 Rule 23(b)(2).

#### 7 **D. Pre-Certification Class Notice is Not Required**

8 Rule 23(c)(2)(A) gives the Court discretionary power to direct appropriate notice  
9 to the class. Rule 23(d) gives the Court discretion to order that notice be given to class  
10 members in the interest of protecting the rights of the members and to ensure fair  
11 conduct in the action. Such notice is not generally necessary in a Rule 23(b)(2) class  
12 action where named plaintiffs are adequate class representatives with experienced  
13 counsel. *See Elliott v. Weinberger*, 564 F.2d 1219 (9th Cir.1977), *aff'd in relevant part*,  
14 *rev'd in part sub nom. Califano v. Yamasaki*, 442 U.S. 682 (1979); *Stolz v. United*  
15 *Brotherhood of Carpenters and Joiners, Local No. 971*, 620 F. Supp. 396, 408 (D. Nev.  
16 1985) (notice unnecessary for injunctive relief class where named plaintiffs are adequate  
17 representatives).

18 Because plaintiffs are adequate class representatives represented by experienced  
19 counsel, there is no need for notice to be given before the proposed class is certified.  
20 Accordingly, plaintiffs respectfully request that this Court exercise its discretion to  
21 certify the class without requiring any notice to absent class members, at least at this  
22 stage of the litigation.

#### 23 **IV. CONCLUSION**

24 For all of the foregoing reasons, plaintiffs respectfully request that the Court  
25 certify the following class: “All detainees and inmates with physical disabilities and  
26 disabling medical conditions who because of those disabilities need appropriate  
27 accommodations, modifications, services, and/or physical access in accordance with  
28

1 federal and state disability laws.” Plaintiffs have submitted a proposed order  
2 concurrently herewith.

3 DATED: June 9, 2008

Respectfully submitted,

4 HADSELL STORMER KEENY  
5 RICHARDSON & RENICK, LLP

6 ACLU FOUNDATION OF SOUTHERN  
7 CALIFORNIA

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10  
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