

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into between the County of Alameda and Alameda County Behavioral Health Care Services (“ACBH”) (collectively, the “County”), Disability Rights California (“DRC”), and the United States (“United States”). DRC, the United States, and the County are hereinafter collectively referred to as “the Parties”.

RECITALS

- A. The United States and DRC contend that the County has violated Title II of the Americans with Disabilities Act as interpreted by *Olmstead v. L.C.*, 527 U.S. 581 (1999) (“*Olmstead*”), as set forth in the United States’ “Investigation of Alameda County, John George Psychiatric Hospital, and Santa Rita Jail” and accompanying Notice, both dated April 22, 2021 (collectively, the “April 22, 2021 Notice”) and DRC’s amended complaint in *Disability Rights California v. County of Alameda, et al.*, No. 3:20-CV-05256, ECF No. 52 (February 22, 2021).
- B. The County is committed to providing, and asserts it does provide, high-quality essential behavioral health services to the residents of Alameda County.
- C. The County asserts that it has always, and continues to, make significant efforts to expand community-based behavioral health services to disabled individuals. The County asserts that it expands community-based services in an effort to best serve the residents of Alameda County and irrespective of DRC’s complaint, DRC’s filing of an amended complaint, and the United States’ publication of its April 22, 2021 Notice.
- D. Following the District Court’s dismissal without prejudice of DRC’s complaint, DRC’s filing of an amended complaint, and the United States’ publication of its April 22, 2021 Notice, the Parties invested their efforts in identifying commitments to community-based behavioral health services that are mutually desirable.
- E. For good and valuable consideration, including the mutual covenants contained herein, the Parties, intending to be legally bound, hereby enter into this Agreement under the terms and conditions set forth below.

TERMS AND CONDITIONS

PART I. INTRODUCTORY TERMS

1. This Agreement settles the litigation in *Disability Rights California v. County of Alameda, et al.* and resolves the United States’ investigation under Title II of the Americans with Disabilities Act as interpreted by *Olmstead*, of the County’s mental health service system, as set forth in the United States’ April 22, 2021 Notice. This Agreement does not resolve the United States’ investigation of Santa Rita Jail, as described in the same April 22, 2021 Notice.
2. The County denies all violations alleged by DRC and the United States. By entering into this Agreement, the County does not admit the truth or validity of any claim or allegation

made against it by DRC or the United States. Nothing in this Agreement shall be construed as an acknowledgment, an admission, or evidence of liability in any civil or criminal proceeding, except proceedings to enforce or implement this Agreement.

3. To the extent this Agreement obligates the County to change its community-based behavioral health system, the Parties view these changes as mutually desirable. The County does not admit that any such change or alteration is required under the ADA or *Olmstead*.
4. The Parties acknowledge the County's commitment to compliance with its obligations pursuant to the ADA and *Olmstead*. This Agreement is intended to ensure that services, programs, and activities offered by the County to individuals with disabilities will be provided in the most integrated setting appropriate to meet their needs.
5. The County commits to provide the services described herein to Alameda County residents with serious mental illness as needed to avoid future or continued unnecessary institutionalization at John George Psychiatric Hospital ("John George") or an institution for mental disease ("IMD"),¹ and to avoid unnecessary criminal justice involvement.
6. The County may ensure provision of the services and supports described in this Agreement either by providing those services and supports directly or through contracted providers with County oversight.
7. The Effective Date is the date on which the Court enters an order of dismissal retaining jurisdiction over this Agreement.

PART II. SERVICE COMMITMENTS

1. Crisis Services

- a. The County will continue to offer a countywide crisis system and expand crisis intervention services as follows:
 - i. Maintain a 24/7 crisis hotline. The crisis hotline will provide screening and de-escalation services on a 24/7 basis. No later than eighteen (18) months after the Effective Date, the County will expand the 24/7 crisis hotline to provide triage and the identification of full service partnership ("FSP") clients on a 24/7 basis.
 - (1) Beginning no later than eighteen (18) months after the Effective Date, the crisis hotline will have a clinician available to support crisis hotline services 24/7.

¹ IMD, as used in this Settlement Agreement, refers to Villa Fairmont Mental Health Rehabilitation Center, Gladman Mental Health Rehabilitation Center, and Morton Bakar Center.

- (2) The County will coordinate with entities responsible for managing urgent and emergency care response lines, including but not limited to the crisis hotline, 911, FSP warmlines, and 988 (when and if such coordination is available), to ensure there is “no wrong door” for accessing appropriate crisis services. The County will have and will implement protocols for when to conduct warm handoffs from its crisis hotline to FSP warmline teams to provide appropriate services. The County will respond to 911-dispatch inquiries in order to facilitate an appropriate behavioral health response to crises.
 - (3) The County will implement protocols and education efforts to ensure appropriate deployment of County mobile crisis teams in response to calls received through emergency response lines.
- ii. Provide mobile crisis response services on a county-wide basis.
- (1) Mobile crisis teams will provide a timely in-person response to resolve crises as appropriate. When clinically appropriate, mobile crisis services may be provided through the use of telehealth.
 - (2) Mobile crisis services shall be provided with the purposes of reducing, to the greatest extent possible, interactions with law enforcement during a mental health crisis, reducing 5150 and John George psychiatric emergency services (“PES”) placement rates, and increasing use of voluntary community-based services (including diversion, care coordination, transportation, and post-crisis linkage to services).
 - (3) The County has recently expanded its mobile crisis capacity to nine (9) mobile crisis teams, and agrees to maintain this as a minimum capacity.
 - (4) The County shall complete an assessment of needs and gaps in mobile crisis coverage, no later than one year after the execution of this Agreement, that is designed to determine the amount and number of mobile crisis teams needed to provide mobile crisis services consistent with this Agreement (the “Mobile Crisis Assessment”). The Mobile Crisis Assessment will be informed by and will appropriately take into account (i) community and stakeholder input; and (ii) all necessary data and information sufficient to assess the need for crisis services in the County, which the County will collect and analyze as part of the Mobile Crisis Assessment process.
 - (5) The County will provide a draft of the design of the Mobile Crisis Assessment to the Independent Reviewer (see section III.1.a of this

Agreement) for review, feedback, and comment, and will appropriately take into account such feedback and comment before proceeding with the Mobile Crisis Assessment. As part of this review, the Independent Reviewer will provide the draft to, and consider input from, DRC and the United States. The assessment and conclusions in the final Mobile Crisis Assessment will promptly be made available to the public.

- (6) Based on the County’s Mobile Crisis Assessment, the County will reasonably expand² its mobile crisis services as needed in order to operate a sufficient number of mobile crisis teams to provide timely and effective mobile crisis responses.
- (7) FSPs will provide crisis intervention as set forth in section II.2.m in this Agreement.
- (8) Each mobile crisis team shall include at least one mental health clinician.

iii. Trained peer support specialists shall be part of the County’s crisis services team and shall be included in outreach and engagement functions.

b. The County will provide crisis residential services as follows:

- i. Maintain forty-five (45) crisis residential treatment (“CRT”) beds.
- ii. Within two years of the Effective Date of the Agreement, the County will make all reasonable efforts to contract with one or more community-based provider(s) to add a mixture of 25 additional CRT and/or peer-respite beds.
- iii. A purpose of CRT facilities and peer-respite homes is to promptly de-escalate or avoid a crisis and reduce unnecessary hospitalization. CRT facilities and peer-respite homes are intended to be used by people experiencing or recovering from a crisis due to their mental health disability for short-term stays and to provide support to avoid escalation of a crisis. CRT facilities and peer-respite homes are unlocked.

² A reasonable expansion, as used here, means an expansion that would constitute a reasonable modification, and not a fundamental alteration of the nature of the County’s services for people with disabilities, consistent with the Americans with Disabilities Act, as interpreted by *Olmstead*. Notwithstanding section III.1 of this Agreement, the Independent Reviewer will not render a legal conclusion as to whether the County’s expansion of its mobile crisis services is a “reasonable modification” or a “fundamental alteration”, and therefore will not render a compliance determination as to section II.1.a.ii.(6). If the Parties are unable to agree as to whether an expansion constitutes a reasonable modification or a fundamental alteration, the Parties will proceed through the dispute resolution process as set forth in sections III.2.b-c.

- iv. Peer staff will be on-site 24/7 at peer-respite homes. Peer-respite homes shall serve no more than six (6) individuals at a time.
 - v. Individuals shall not be required to have identified housing as a condition of admission to a CRT facility.
 - vi. CRT facilities and peer-respite homes shall be able to accept admissions directly from mobile crisis teams.
- c. The County’s crisis system will be designed to prevent unnecessary hospitalization, IMD admissions, law enforcement interactions, and incarceration.

2. Full Service Partnerships

- a. The County offers FSPs through community-based providers that provide services under the Community Services and Supports (“CSS”) service category, in accordance with 9 C.C.R. §§ 3620, 3620.05, and 3620.10.
- b. Within two years from the Effective Date, the County will add 100 FSP slots for adults and transition aged youth, for a total of 1,105 FSP slots for that population. The County will utilize the FSP slots that are added under this Agreement to serve individuals 16 and older who meet FSP eligibility criteria under 9 C.C.R. § 3620.05.
- c. Within one year from the Effective Date, the County will complete an assessment of needs and gaps in FSP services for individuals ages 16 years and older that is designed to determine the number of additional FSP slots needed to appropriately serve individuals ages 16 and older who meet FSP eligibility criteria under 9 C.C.R. § 3620.05 (the “FSP Assessment”).
- d. The FSP Assessment will be informed by and will appropriately take into account all necessary and appropriate data and information, which the County will collect and analyze as part of the FSP Assessment process, including but not limited to:
 - i. Community and stakeholder input, including from FSP and other contracted providers, from organizations who make referrals for FSP services or regularly come into contact with individuals who are likely eligible for FSP services, and from individuals who receive or may benefit from FSP services;
 - ii. Data regarding utilization of crisis services, psychiatric inpatient services, and FSP and other CSS services; indicators of eligibility for FSP; and numbers of individuals who have completed FSP eligibility assessments, outcomes following assessment, and length of time from identification to enrollment;
 - iii. Analysis of numbers and demographics of sub-populations who (a) were not connected to FSP services despite multiple visits/admissions to PES,

John George inpatient, and/or IMDs, (b) declined to consent to FSP services, or (c) stopped engaging with FSP services, and analysis of relevant barriers or challenges with respect to these groups; and

- iv. Research, literature, and evidence-based practices in the field that may inform the need for FSP services in Alameda County.
- e. The County will provide a draft of the design and methodology of the FSP Assessment to the Independent Reviewer for review, feedback, and comment, and will appropriately take into account such feedback and comment before proceeding with the FSP Assessment. As part of this review, the Independent Reviewer will provide the draft to, and consider input from, DRC and the United States. Following the FSP Assessment process, the County will provide a draft of the FSP Assessment report to the Independent Reviewer for review, feedback, and comment, and will appropriately take into account such feedback and comment before finalizing the County's FSP Assessment report. As part of this review, the Independent Reviewer will provide the draft to, and consider input from, DRC and the United States. The assessment and conclusions in the final FSP Assessment will promptly be made available to the public.
- f. Based on the County's FSP Assessment, the County will further reasonably expand³ its FSP program as necessary in order to appropriately serve individuals ages 16 and older who meet FSP eligibility criteria under 9 C.C.R. § 3620.05 consistent with their preferences.
- g. As used in this Agreement, one "slot" (such as an FSP slot or a Service Team slot) means the ongoing capacity to serve one individual at a given time.
- h. FSPs will provide services necessary to attain the goals identified in each FSP recipients' Individual Services and Supports Plan ("ISSP"), which may include the Full Spectrum of Community Services, as defined in 9 C.C.R. § 3620(a)(1).
- i. Consistent with 9 C.C.R. § 3620(a), (g), and (h), each FSP recipient will have an ISSP that is developed with the person and includes the person's individualized goals and the Full Spectrum of Community Services necessary to attain those

³ A reasonable expansion, as used here, means an expansion that would constitute a reasonable modification, and not a fundamental alteration of the nature of the County's services for people with disabilities, consistent with the Americans with Disabilities Act, as interpreted by *Olmstead*. Notwithstanding section III.1 of this Agreement, the Independent Reviewer will not render a legal conclusion as to whether the County's expansion of its FSP program is a "reasonable modification" or a "fundamental alteration", and therefore will not render a compliance determination as to section II.2.f. If the Parties are unable to agree as to whether an expansion constitutes a reasonable modification or a fundamental alteration, the Parties will proceed through the dispute resolution process as set forth in sections III.2.b-c.

goals. Each FSP recipient will receive the services identified in their ISSP, when appropriate for the individual.

- j. Services provided through FSPs will be flexible and the level of intensity will be based on the needs of the individual at any given time, including the frequency of service contacts and duration of each service contact. To promote service engagement, services will be provided in locations appropriate to individuals' needs, including in the field where clients are located, in office locations, or through the use of telephonic or other electronic communication when clinically appropriate.
- k. FSPs serve the individuals described in 9 C.C.R. § 3620.05. FSPs will provide their clients services designed to reduce hospitalization and utilization of emergency health care services, reduce criminal justice involvement, and improve individuals' ability to secure and maintain stable permanent housing in the most integrated setting appropriate to meet their needs and preferences.
- l. FSP programs will be implemented using high fidelity to the Assertive Community Treatment ("ACT") evidence-based practice, including that:
 - i. FSP programs are provided by a team of multidisciplinary mental health staff who, together, provide the majority of treatment, rehabilitation, and support services that clients need to achieve their goals.
 - ii. FSP teams operate at a 1:10 mental health staff to client ratio.
- m. FSPs will promptly provide crisis intervention 24/7, including, as appropriate, crisis intervention at the location of the crisis as needed to avoid unnecessary institutionalization, hospitalization, or interactions with law enforcement. Beginning no later than eighteen (18) months after the Effective Date, the County will ensure the prompt notification of the applicable FSP provider when an individual served by an FSP receives crisis intervention from another ACBH-contracted provider, such as mobile crisis teams, or other crisis programs, so that the FSP can respond to the crisis.
- n. FSPs will provide or arrange for appropriate Individual Placement and Support ("IPS") supported employment services for FSP clients based on their choice. IPS supported employment focuses on engaging a person in competitive employment based on their individualized interests, skills, and needs.
- o. Housing: The Parties recognize that permanent, integrated, stable housing with Housing First principles is critical to improving treatment engagement and supporting recovery.
 - i. FSP clients will receive a housing needs assessment, and will receive support and assistance to secure and maintain, as needed, affordable, (1) temporary housing, and (2) permanent housing, either directly from the FSP or by referral by the FSP to the County Health Care Services

Agency's Coordinated Entry System ("CES"), or through other County and community resources.

- ii. As individuals with serious mental illness, FSP clients who are referred to the CES will receive priority, with the goal of securing and maintaining permanent housing.
- iii. If an FSP client is waiting for permanent housing, the FSP will, as needed, promptly provide or secure temporary housing for the FSP client until permanent housing is secured. Temporary housing provided under this agreement shall be stable and shall not be at a congregate shelter, except on an emergency basis.
- iv. Permanent housing provided under this section II.2.o will be provided in the least restrictive and most integrated setting that is appropriate to meet individuals' needs and preferences.
- v. Nothing in this section II.2.o is intended to override an FSP client's preferences.

3. Service Teams (Intensive Case Management)

- a. The County will maintain 2,168 slots to provide intensive case management through Service Teams. The County will utilize these slots to serve individuals 18 and older who meet Service Teams eligibility criteria and may also use these slots for transitional age youth as appropriate.
- b. The County will explore community needs and opportunities for expanding Service Teams as appropriate.
- c. Service Teams will assist individuals in attaining a level of autonomy within the community of their choosing. Service Teams will provide mental health services, plan development, case management, crisis intervention, and medication support; and will be available to provide services in the field where clients are located, in office locations, and through the use of telephonic or other electronic communication when clinically appropriate.
- d. Service Team clients will receive support and assistance to access, as needed, temporary housing and permanent housing, through CES and other available programs.

4. Outreach, Engagement, Linkages, and Discharge Planning

- a. The County will maintain a 24/7 telephonic hotline (the ACCESS line or its successor) to aid in implementing the provisions below.
- b. The County will make meaningful efforts to create a system to provide real-time appointment scheduling, timely in-the-field assessments, and authorization of

services by ACCESS or its successor, in order to facilitate prompt and appropriate connection to services following an eligible individual's contact with ACCESS.

- c. When an individual with serious mental illness (1) is identified by the County through section II.4.e, or (2) contacts (or another individual does so on his or her behalf) the County (e.g., the ACCESS program or its successor) or an ACBH-contracted entity for behavioral health services, the County or an ACBH-contracted community provider will determine the person's eligibility for community-based behavioral health services and, unless the person can no longer be contacted or declines further contact, will provide a complete clinical assessment of the individual's need for community-based behavioral health services (an "assessment").
 - i. Following such assessment, individuals determined to be eligible for and in need of FSP or Service Team services will be assigned to an FSP or Service Team's caseload to commence the provision of services.
 - ii. This assessment and assignment process will be promptly completed and those services initiated in a prompt manner sufficient to reduce the risk of prolonged and future unnecessary institutionalization, hospitalization, or incarceration.
 - iii. Beginning no later than six (6) months after the Effective Date, the County will document all situations in which an eligible individual is assessed as in need of FSP or Service Team services but such FSP or Service Team services were not immediately available and will conduct regular quality reviews to identify such situations. Following a quality review, the County will take appropriate action, if any is indicated, based on the results of the quality review, and the results will inform the County's FSP Assessment under Section II.2.c.
- d. Within two (2) years of the Effective Date of the Agreement, the County will develop, implement, and staff a System Coordination Team to improve linkages to community-based services across the County's behavioral health system. The System Coordination Team will coordinate system care and improve transitions of care.
- e. The County will implement a system to identify and provide proactive outreach and engagement to individuals with serious mental illness who are, for reasons related to their serious mental illness, at risk of unnecessary institutionalization, hospitalization, or incarceration. In order to do so, this system will focus on factors that include, among others, whether individuals with serious mental illness have had frequent contacts with crisis services (including PES), frequent hospitalizations for mental health reasons, and/or frequent incarcerations (and, in the case of incarcerations, received behavioral health services during an incarceration). The County will connect such individuals, as needed, to FSPs, Service Teams, or other community-based services. The County will use a

culturally responsive, peer driven approach that builds on the person’s strengths and goals and seeks to address the individual’s concerns regarding treatment (including service refusals). Outreach and engagement will include frequent, in-person contact in the field in locations convenient to the person. Outreach and engagement will include using the Familiar Faces program to identify and connect with individuals who do not follow up regarding services after experiencing a crisis. Beginning no later than six (6) months after the Effective Date, the County will track progress in connecting individuals to needed services.

- f. The County will explore, collaborate with, and support as appropriate programs that provide connection to community-based services as alternatives to incarceration. The County will provide information and education to prosecutors, public defenders, courts, and law enforcement about available community-based services that can provide alternatives to incarceration, arrest, and law enforcement contact, and will coordinate with these entities to rapidly connect individuals to those services as appropriate.
- g. The County will provide information and education to ACBH-contracted behavioral health providers about available community-based services that can provide alternatives to unnecessary institutionalization and hospitalization and reduce risk of unnecessary law enforcement contact, and will coordinate with these entities to rapidly connect individuals to those services as appropriate.
- h. The County will work with law enforcement to direct referrals to the In-Home Outreach Team (“IHOT”).
- i. The County will ensure that people with co-occurring substance use disorder (“SUD”) can access and receive services, including through the development of two (2) substance use mobile outreach teams, within two (2) years of the Effective Date.
- j. In-Reach to, and Discharges to Community-Based Services from, IMDs⁴
 - i. “IMD” as used in this Settlement Agreement, refers to Villa Fairmont Mental Health Rehabilitation Center, Gladman Mental Health Rehabilitation Center, and Morton Bakar Center.
 - ii. Within twelve (12) months of the Effective Date of this Agreement, the County will begin initial implementation of a utilization review (“UR”) pilot program. The UR pilot program will be designed to ensure that individuals are transitioned to and live in the most integrated setting appropriate to the individual’s needs and to reduce the length of IMD stays where appropriate. As part of the UR pilot program the County will review clinical records and engage in peer-to-peer meetings to assess

⁴ This section does not apply to individuals under Murphy conservatorships.

appropriateness for discharge in light of community-based services appropriate to the individual.

- iii. Promptly after an individual eligible for ACBH services is admitted to an IMD in the County, the individual will begin receiving discharge planning services. The individual's discharge plan will include transitioning the individual to the most integrated setting appropriate to the individual's needs, consistent with the individual's preferences. As part of assisting individuals to transition to the most integrated setting appropriate, appropriate community-based services will be identified. Where applicable and with the individual's (and, when relevant, his or her legal representative's) consent, FSP and Service Team providers will participate in the discharge planning process.
 - iv. If the unavailability of FSP or Service Team services is preventing discharge from an IMD to a community setting, then the director of ACBH (or designee) will be notified, and the County will work to arrange such services as promptly as possible.
 - v. The County will promptly notify ACBH-contracted FSP and Service Team providers when their clients are receiving care at an IMD, to ensure that the provider promptly resumes services upon discharge, as appropriate.
- k. Linkages for Services Following Discharge from John George PES and Inpatient
- i. The Parties understand that John George is required to provide discharge planning to and effectuate safe discharges of patients at John George PES and John George inpatient in compliance with applicable laws, regulations, and contractual obligations, including, but not limited to, 42 C.F.R. § 482.43 and California Health & Safety Code §§ 1262 and 1262.5.
 - ii. The County will collaborate with John George to support John George's safe and effective discharges of eligible individuals from John George PES and John George inpatient to community-based services as appropriate, including through ACBH's critical care managers and contracted community-based providers, with the goal of increasing the prompt connection to community-based services for patients that are eligible and appropriate for community-based services. The County will request that John George promptly notify the County when it identifies someone who may be eligible for any such services. Beginning no later than eighteen (18) months after the Effective Date, the County's role in this collaboration will include, to the fullest extent reasonably practicable: (1) using available data to promptly identify individuals registered by John George who are both (a) likely to be, for reasons related to their serious mental illness, at risk of unnecessary institutionalization, hospitalization, or incarceration, and (b) likely to be eligible for and in need of FSP or

Service Team services; (2) upon identification, to the extent that the individual has not yet been discharged, promptly coordinate with John George to determine whether the individual is eligible for and in need of any such services; and (3) if the individual is eligible for and in need of any such services and to the extent that the individual has not yet been discharged, promptly connecting the individual to an FSP or Service Team to commence engagement, which may include participation in discharge planning and commencement of services upon the individual's discharge.

- iii. The County will request that John George invite and actively include representatives of an individual's FSP or Service Team (if any) in the discharge planning process and, with respect to patients determined eligible for an in need of such services under section II.4.k.ii above, invite and actively include representatives of the County or a County-contracted community-based service provider in the discharge planning process. To the fullest extent reasonably practicable and within the direct control of the County and its community-based service providers, and with the individual's consent, the County will ensure that: (1) representatives of the FSP or Service Team are included in the discharge planning process for those individuals who are assigned to or are clients of a County FSP or Service Team; and (2) representatives of the County or a County-contracted community-based service provider are included in the discharge planning process for those individuals who are not assigned to an FSP or Service Team but who have been identified as eligible for an FSP or Service Team under section II.4.k.ii above. To the extent that John George routinely does not include such representatives in the discharge planning process, the County will seek to identify and reasonably address barriers to John George's inclusion of such representatives in discharge planning.
- iv. Beginning no later than eighteen (18) months after the Effective Date, the County will use electronic health record and registration information provided to the County by John George to promptly identify individuals with serious mental illness who are discharged to the community and who are, for reasons related to their serious mental illness, at risk of unnecessary institutionalization, hospitalization, or incarceration in accordance with section II.4.e. and will comply with its obligations under section II.4.c.
- v. The County will use programs designed to reach individuals who do not follow up regarding services, consistent with section II.4.e.
- vi. The County will collaborate with John George to ensure that John George promptly notifies FSP and Service Team providers when their clients are registered or admitted to receive John George PES or John George inpatient care, to facilitate the FSP's or Service Team's prompt resumption of services upon discharge.

1. Linkages for Services Following Release from Santa Rita Jail
 - i. This Agreement does not govern the provision of mental health services or treatment at Santa Rita Jail and does not duplicate, modify, or override any provisions in the *Babu v. County of Alameda* Consent Decree (including section III.I, “Discharge Planning,” page 49:13-51:18). The County will ensure that ACBH collaborates with the County Sheriff’s office and will use its best efforts to identify and implement appropriate strategies to improve warm handoffs of Behavioral Health Clients (as defined in the *Babu* consent decree) who are eligible for ACBH services.
 - ii. Beginning no later than eighteen (18) months after the Effective Date, the County will periodically (at least every six (6) months) evaluate FSPs’ and Service Teams’ (a) participation in discharge and reentry planning for their clients following notification of incarceration, (b) participation in discharge and reentry planning for incarcerated individuals referred to such provider, and (c) success in re-engaging or newly engaging their client upon release. This evaluation will include analysis of timeliness, trends, and causes of identified problem areas. The Parties understand that FSP and Service Team participation in discharge and reentry planning may be provided through the use of telephonic or other electronic communication when clinically appropriate or as necessary to respond to public health considerations.
 - iii. Beginning no later than six (6) months after the Effective Date, the County will document all situations in which an individual identified by ACBH as eligible and in need of FSP or Service Team Services and such FSP or Service Team services were not immediately available upon release and will conduct regular quality reviews to identify such situations.
 - iv. With the goal of reducing risk of unnecessary institutionalization, incarceration, and law enforcement contacts, the County will take appropriate action, if any, based on the results of the evaluation in section II.4.1.ii and the quality reviews in section II.4.1.iii. Where appropriate, the results of the quality reviews under section II.4.1.iii will inform the County’s FSP Assessment under section II.2.c.
 - v. The County will use programs designed to reach individuals who do not follow up regarding services, consistent with section II.4.e.

5. Culturally Responsive Services

- a. The County will continue its ongoing efforts to ensure that all services provided under this Agreement are culturally responsive and are person-centered. The County will continue to provide and expand culturally responsive behavioral health services, including through community-based and peer-run organizations, and will continue to identify and implement culturally and linguistically

appropriate and affirming strategies and practices to help reduce behavioral health disparities across racial, ethnic, cultural, and linguistic groups.

- b. The County will continue to operate the Office of Health Equity within ACBH, and the Division Director of the Office of Health Equity will continue to serve as the departmental Health Equity Officer, reporting to the Director of ACBH, and will oversee the existing Office of Ethnic Services. The Health Equity Officer will continue to work in collaboration with community stakeholders to promote social and behavioral health equity reform and inclusion, and to ensure clients receive high quality and client-centered care that considers the whole person and all their needs.
 - i. No later than fifteen (15) months after the Effective Date of this Agreement, the Health Equity Officer will host a stakeholder and community input meeting. In order to deepen meaningful community stakeholder engagement, no later than one (1) month before the stakeholder and community input meeting, the Office of Health Equity will make a dashboard publicly available on the Office of Health Equity's public internet website setting forth aggregated data metrics on the populations served by ACBH (including individual racial and ethnic groups broken down by geographic area within the County) and various communities' service needs (including racial and ethnic groups' needs for FSP, Service Team, and IHOT services in geographic areas within the County).
 - ii. The Health Equity Officer will thoroughly review the feedback from the stakeholder/community input meeting on how to improve culturally responsive services in the County. The Health Equity Officer will periodically make recommendations to the Director of ACBH on how to improve culturally responsive services in the County and coordinate with the County's other diversity, equity, and inclusion programs and activities.
- c. The County will continue to support the African American Wellness Hub capital facilities project, with the goal of aligning culturally relevant and community-focused services for Black/African American residents within the County's service delivery system. The African American Wellness Hub facility will serve as a hub and coordinating center for a variety of behavioral health services, community-based supports, and linkages for the Black/African American community in the County. The County will provide opportunities for community and stakeholder engagement over the course of this project to further the project's focus on providing culturally inclusive, respectful, and relevant supports to the County's Black/African American clients and community.
- d. The County has implemented and will continue to provide periodic and ongoing trainings to all ACBH staff and ACBH-contracted community-based providers regarding: culturally responsive services; trauma-informed care; inequities across race, ethnicity, sex, sexual orientation, gender identity, and disability; anti-racism

and implicit bias. A primary intent of such trainings is to ensure the delivery of culturally responsive services and to increase engagement across historically underserved populations.

PART III. PROCESS, ENFORCEMENT, AND GENERAL TERMS

1. Independent Reviewer

- a. The Parties have jointly selected an independent expert reviewer, Dr. Karen Baylor (“Independent Reviewer”). The Independent Reviewer will have responsibility and authority to review relevant facts and assess and report on the County’s progress in implementing this Agreement for its duration.
- b. The Parties will cooperate fully with the Independent Reviewer as the Independent Reviewer carries out their responsibilities specified herein. The Independent Reviewer will pursue a problem-solving approach so that disagreements can be amicably resolved when possible and the Parties’ energies can be devoted to implementation.
- c. Reasonable fees, costs, and expenses of the Independent Reviewer, including the cost of any consultants or staff hired by the Independent Reviewer, during the term of the Agreement shall be borne by the County up to (a) a maximum of \$100,000 for reasonable fees, costs, and expenses for the period leading up to, and including the preparation of, the first Reviewer Report (as defined in section III.1.i of this Agreement), (b) a maximum of \$125,000 for reasonable fees, costs, and expenses for the period leading up to, and including the preparation of, the second Reviewer Report, (c) a maximum of \$85,000 per Reviewer Report for reasonable fees, costs, and expenses for the period leading up to, and including the preparation of, each of the third, fourth, and fifth Reviewer Reports, and (d) a maximum of \$32,000 for the time period following the completion of the final Reviewer Report and until the termination of the Agreement. The Independent Reviewer shall provide an accounting justifying their reasonable fees, costs, and expenses monthly, and the County will pay such reasonable fees, costs, and expenses monthly, except that the County may withhold up to 40% of the maximum for each reporting period, with any remainder to be paid after the Reviewer Report is completed.
- d. Within the budget described in section III.1.c above, the Independent Reviewer may retain or utilize staff and consultants, in consultation and subject to reasonable objections by the County to assist in their evaluations of the County’s compliance with this Agreement.

- e. The Independent Reviewer will have reasonable access to all non-privileged information, individuals, programs, services, documents,⁵ and facilities within the County's custody or control and reasonably necessary to assess the County's progress and implementation of the Agreement. Access will include departmental records, and other records, unless not permitted under applicable California and Federal privacy and confidentiality laws, including but not limited to, the California Constitution, article I, section 1; the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), and their respective implementing guidance and regulations as they currently exist and as may be amended or adopted; California Civil Code § 56.10; California Welfare and Institution Code § 5328; and 42 C.F.R. Part 2.
- f. To the extent reasonably necessary to assess the County's progress and implementation of the Agreement, the Independent Reviewer may also, in their discretion:
 - i. review any publicly-available information and attend any public meetings relevant to the County's progress and implementation of the Agreement, including but not limited to public meetings of the County Mental Health Advisory Board and its committees; and
 - ii. meet with individuals who receive or may need services contemplated by this Agreement, to the extent consistent with the individual's preference.
- g. The Independent Reviewer may have *ex parte* communications at any time with the Parties, including counsel for the Parties, and employees, agents, contractors, and all others working for or on behalf of the County or the United States to implement the terms of this Agreement. All Parties will have access to any information considered by the Independent Reviewer, except for *ex parte* communications with other Parties or where such access is not permitted under applicable California or Federal law. Neither DRC nor the United States is a monitor or reviewer, but the Parties nonetheless agree that DRC and the United States may make reasonable requests for information not otherwise produced to the Independent Reviewer, provided the requests are not unduly burdensome to the County and are relevant to the implementation of this Agreement. The County will not unreasonably withhold information in response to requests that are not unduly burdensome and are relevant to implementation. Nothing in this Agreement is intended to limit any Party's authority under federal and state law to access information and documents.

⁵ The word "documents" as used here includes individual medical and mental health records. At present, the Parties disagree as to whether access to individual medical and mental health records will be reasonably necessary to assess the County's progress and implementation of the Agreement. The Parties will ensure that appropriate mechanisms are in place to allow the Independent Reviewer to have access to relevant records should such access be necessary.

- h. Access is not intended, and will not be construed, as a waiver, in litigation with third parties, of any applicable statutory or common law privilege associated with such information.
- i. During the term of this Agreement, the Independent Reviewer will draft and finalize comprehensive public reports on the County's progress and implementation of this Agreement including recommendations, if any, to facilitate or sustain substantial compliance (each a "Reviewer Report") as follows:
 - i. The first Reviewer Report will be completed and submitted no later than six (6) months after the Effective Date of this Agreement.
 - ii. Each of the subsequent Reviewer Reports will be completed and submitted no later than fourteen (14), twenty (20), twenty-five (25), and thirty-one (31) months, respectively, after the Effective Date of the Agreement.
 - iii. The Independent Reviewer will complete five (5) Reviewer Reports. Notwithstanding the foregoing, the Parties may agree in writing to one or more full or partial additional Reviewer Report(s). No Party will unreasonably deny another Party's request for such additional Reviewer Report(s), but cost may be a reasonable consideration with respect to such a request.
 - iv. At least thirty (30) days prior to the finalization of any Reviewer Report, the Independent Reviewer will provide the complete draft Reviewer Report to the Parties. The Parties may submit comments and responses to the draft Reviewer Report no later than fifteen (15) days after receipt of the complete draft Reviewer Report, and the Independent Reviewer will consider and address the Parties' timely comments and responses when finalizing the Reviewer Report. The finalized Reviewer Report will be submitted to the Parties and made public, with any redactions necessary under California or Federal law.
- j. The Independent Reviewer, and any staff or consultants retained by the Independent Reviewer:
 - i. Will not be liable to the Parties for any claim, lawsuit, or demand arising out of their activities under this Agreement and will not be subject to formal discovery propounded by the Parties in any litigation involving the services or provisions reviewed under this Agreement, including, but not limited to, depositions, requests for documents, and requests for admissions, interrogatories, or other disclosures. This paragraph does not apply to any proceeding related to alleged privacy violations, payment or non-performance of services under contracts into which they have entered in connection with their work under the Agreement.
 - ii. May provide their findings in any mediation under section III.2.b-c and may testify in *Disability Rights California v. County of Alameda, et al.*

regarding any matter relating to the implementation, enforcement, or termination of the Agreement, including the Independent Reviewer's observations, findings, and recommendations in this matter.

- iii. While serving as the Independent Reviewer, will not contract with any Party (other than for purposes of serving as the Independent Reviewer) and will not voluntarily serve as an expert witness against any Party in any other administrative or civil proceeding of whatever nature brought before any federal or state court or other administrative or judicial tribunal. This limitation shall be a required term in the County's contract with the Independent Reviewer.

- k. In the event that the Independent Reviewer resigns or the Parties agree to replace the Independent Reviewer (each a "Replacement Event"), the Parties will meet and confer in good faith within ten (10) business days of the Replacement Event to select a qualified individual to serve as an Independent Reviewer. An individual is qualified if they have expertise in the provision of community-based behavioral health services to persons with serious mental illness in California, including experience with Federal, California, and local programs, funding, and laws regarding the provision of services to individuals with serious mental illness, and is free of conflicts of interest with any Party. Individuals who were previously interviewed by all Parties in connection with the role of the independent reviewer are not qualified individuals under this paragraph. Candidates with experience as a county behavioral health director for a California county will be given priority consideration. If the Parties are unable to agree on a replacement Independent Reviewer, the County will and the United States and DRC will, within thirty (30) days of the Replacement Event, nominate up to two qualified individuals and will jointly engage the services of a mutually agreed-upon mediator. The Parties will thereafter participate in good faith in one or more mediation session(s) to select a replacement Independent Reviewer. If the Parties are unable to agree upon a replacement Independent Reviewer within sixty (60) days of the Replacement Event, each Party may file a motion for administrative relief under Local Civil Rule 7-11 requesting the Court to select the replacement Independent Reviewer from among those qualified individuals nominated by the Parties.

2. Enforcement, Dispute Resolution, and Termination

- a. No later than ten (10) days after the Agreement is fully executed, (i) the United States will file a motion to intervene in *Disability Rights California v. County of Alameda, et al.*; (ii) the Parties will file a joint motion asking the Court to waive the pleading requirements under Federal Rule of Civil Procedure ("FRCP") 24(c); and (iii) the Parties will file a joint motion for an order conditionally dismissing the United States' and DRC's action pursuant to FRCP 41(a)(2), subject to reinstatement for the purpose of enforcing the Agreement and will file this Agreement as an exhibit to this joint motion for dismissal. The joint motion for conditional dismissal will request that the dismissal order state that the Court will retain jurisdiction over the Agreement for the purpose of enforcing the Agreement

until the Agreement terminates. If the Court does not grant the United States' motion to intervene or the Parties' motion for conditional dismissal, the Parties will meet and confer to seek to resolve the Court's concerns. Absent an agreement by the Parties, after thirty (30) days of the Court's denial of the motion or subsequent related motion (*e.g.*, a motion for reconsideration), this Agreement will become null and void, and all Parties will have the right to revive any claims or defenses otherwise barred by operation of this Agreement.

- b. The Parties agree to work collaboratively to achieve the purpose of this Agreement. In the event of any dispute over the Agreement's language, requirements, or construction, the Parties will meet and confer in an effort to achieve a mutually agreeable resolution. If such meet and confer efforts are unsuccessful, the Parties will further participate in good faith in mediation, as outlined in section III.2.c, in a further effort to achieve a mutually agreeable resolution.
- c. **Dispute Resolution and Enforcement Actions**
 - i. If DRC or the United States believes that the County has not substantially complied with an obligation under this Agreement, it will notify the County and the Independent Reviewer in writing and include reasonably specific information regarding the alleged substantial noncompliance ("Notice of Noncompliance").
 - ii. The Parties will meet and confer within thirty (30) days of the Notice of Noncompliance to negotiate in good faith to resolve informally any dispute. If the Parties are unable to agree on a resolution within sixty (60) days of the Notice of Noncompliance or following meet and confer efforts under Section III.2.b, the Parties shall engage the services of a mutually agreed-upon mediator and in good faith engage in mediation for a period to last no more than thirty (30) days.
 - iii. Any Party may request that the Independent Reviewer participate in meet and confer discussions and/or mediation sessions to provide their findings.
 - iv. If the Parties are unable to agree on a resolution following a thirty (30) day mediation period under section III.2.c.ii above, any Party may bring a motion before the Court seeking appropriate relief.
- d. The Parties may agree in writing to extend any deadlines specified in this Agreement. The Parties will not unreasonably deny requested extensions.
- e. This Agreement will terminate either (1) on the date that is the later of three (3) years and three (3) months after the Effective Date or five (5) months after the final Reviewer Report, or (2) upon the County's demonstration of sustained substantial compliance with the provisions set forth herein, whichever is sooner, subject to section III.2.f.

- f. If the United States duly files or joins a motion to enforce the Agreement pursuant to section III.2.c.iv., the Agreement will not terminate until the Court has ruled on such motion or such motion has been withdrawn. On such a motion or any other motion to enforce the Agreement pursuant to section III.2.c.iv., the Court may extend or further extend the Agreement and order additional partial or full Reviewer Reports by the Independent Reviewer, as appropriate.
- g. For the purposes of this Agreement, substantial compliance will mean something less than strict or literal compliance. Substantial compliance is achieved if (1) any violations of the Agreement are minor or occasional and are not systemic, and (2) substantial compliance is sustained or otherwise demonstrated to be durable. Sustained substantial compliance refers to substantial compliance for a period of no less than six (6) months. Non-compliance with or due to mere technicalities, or isolated or temporary failure to comply during a period of otherwise sustained substantial compliance, will not constitute failure to sustain substantial compliance.

3. Attorney's Fees

- a. The County agrees to pay DRC to cover its reasonable attorneys' fees, expenses, and costs incurred in connection with this matter (including, but not limited to, DRC's investigation, litigation, and settlement of this matter) before or after the Effective Date in the amount of \$1,800,000, except that this amount does not include fees or costs to which DRC may become entitled upon the Court's determination that DRC is a prevailing party in an enforcement action under section III.2.c.iv. Payment will be transmitted to be received by Goldstein, Borgen, Dardarian & Ho by the date that is 45 days from the Effective Date or December 29, 2023, whichever is later.
- b. DRC shall be entitled to reasonable attorneys' fees, costs, and expenses incurred in an enforcement action under section III.2.c.iv to the extent that the Court determines that (1) the County is not in substantial compliance with this Agreement as that term is defined in section III.2.g, (2) DRC is a prevailing party with respect to such enforcement action as that term is used in 42 U.S.C. § 12205 and relevant case law, and (3) DRC participated in good faith in dispute resolution processes as set forth in section III.2.c.

4. General Provisions

- a. The Agreement is binding on all successors, assignees, employees, agents, and all others working for or on behalf of the County to implement the terms of this Agreement.
- b. During the term of this Agreement, the United States and DRC are barred from bringing any action against the County for any claim or allegation under Title II of the Americans with Disabilities Act as interpreted by *Olmstead*, in any way related to those set forth in the United States' "Investigation of Alameda County,

John George Psychiatric Hospital, and Santa Rita Jail” and accompanying Notice, both dated April 22, 2021, and in *Disability Rights California v. County of Alameda, et al.* However, this provision does not bar action by the United States against the County for claims or allegations under the Americans with Disabilities Act or other laws relating to conditions in Santa Rita Jail, including those described in Sections V to VII of the United States’ April 22, 2021 Investigation of Alameda County, John George, and Santa Rita Jail.

- c. Nothing in this Agreement shall be read to alter the right of an individual to notice, to grieve or to appeal, using the County’s current procedures and by exercising their due process rights under federal and state Medicaid or other law. Such grievance, appeal or fair hearing shall not be limited by any provisions in this Agreement.
- d. The use of the future tense in a term or provision of the Agreement does not imply that the County does not currently comply with such term or provision.
- e. This Agreement does not obligate the County to provide any individual with any service that is not appropriate for that individual or that is inconsistent with the individual’s preferences after the individual has been offered the opportunity to learn of services appropriate for that individual.
- f. No amendment to this Agreement shall be effective unless it is in writing and signed by all Parties to this Agreement. Notwithstanding the prior sentence, to the extent this Agreement incorporates existing laws and regulations, the Parties understand and agree that this Agreement should be interpreted consistent with such laws and regulations, including interpretive guidance relating thereto. To the extent a change in the law necessitates a change to any term in the Agreement, the County will provide written notice of such change, and the Parties will confer.
- g. Failure by any Party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein will not be construed as a waiver, including of its right to enforce other deadlines and provisions of this Agreement.
- h. The Parties will promptly notify each other of any court or administrative challenge to this Agreement or any portion thereof.
- i. The Parties represent and acknowledge this Agreement is the result of extensive, thorough, and good faith negotiations. The Parties further represent and acknowledge that the terms of this Agreement have been voluntarily accepted, after consultation with counsel. Each Party to this Agreement represents and warrants that the person who has signed this Agreement on behalf of a Party is duly authorized to enter into this Agreement and to bind that Party to the terms and conditions of this Agreement. All Parties to this Agreement have participated in its drafting; consequently, any ambiguity shall not be construed for or against any Party.

- j. This Agreement may be executed in counterparts, each of which will be deemed an original, and the counterparts will together constitute one and the same Agreement, notwithstanding that each Party is not a signatory to the original or the same counterpart.
- k. The performance of this Agreement will begin immediately upon the Effective Date.
- l. DRC and the County have agreed upon a joint public statement regarding the Agreement, which both parties shall use in announcing the settlement.
- m. “Notice” under this Agreement will be provided by overnight courier, or by any other agreed upon method, to the signatories below or their successors:

On Behalf of the United States

Date: 11/03/2023

KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division

STEVEN H. ROSENBAUM
Chief
Special Litigation Section

REGAN RUSH
Principal Deputy Chief
Special Litigation Section

Alexandra Shandell

ALEXANDRA L. SHANDELL
CATHERINE YOON
Trial Attorneys
United States Department of Justice
Civil Rights Division
Special Litigation Section
950 Pennsylvania Avenue, NW – 4CON
Washington, DC 20530
Tel: 202-598-9606
Fax: 213-894-7819
Alexandra.Shandell@usdoj.gov

On Behalf of Disability Rights California

Date: 11/03/2023

Andy J. Imperato

ANDY IMPARATO
Executive Director

On Behalf of County of Alameda

Date: Nov 2 - 2023

Nate Miley

NATE MILEY
President, Board of Supervisors

On Behalf of Alameda County Behavioral Health Care Services Department

Date: 11/2/2023

DocuSigned by:


DR. KARYN TRIBBLE
Director

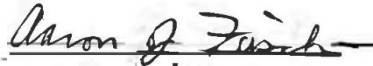
Approved as to Form

Date: 11/03/2023



JENNIFER STARK
Disability Rights California
Attorneys for Disability Rights California

Date: 11/03/2023



AARON J. FISCHER
Law Office of Aaron J. Fischer
Attorney for Disability Rights California

Date: 11/03/2023



LINDA M. DARDARIAN
Goldstein, Borgen, Dardarian & Ho
Attorneys for Disability Rights California

Date: 11/03/2023



IRA A. BURNIM
Bazelon Center for Mental Health Law
Attorneys for Disability Rights California

Date: 11/03/2023



CLAUDIA CENTER
Disability Rights Education and Defense Fund
Attorneys for Disability Rights California


Approved as to Form

Date: 10/31/2023



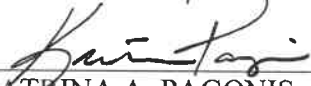
DONNA ZIEGLER
County Counsel for the County of Alameda
Attorney for County of Alameda and Alameda County Behavioral Health Care Services Department

Date: 10/31/23



RAYMOND LARA
Senior Deputy County Counsel
*Attorney for County of Alameda and Alameda County
Behavioral Health Care Services Department*

Date: October 30, 2023



KATRINA A. PAGONIS
Hooper, Lundy & Bookman, P.C.
*Attorneys for County of Alameda and Alameda County
Behavioral Health Care Services Department*