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17 UNITED STATES DISTRICT COURT

18 FOR THE EASTERN DISTRICT OF CALIFORNIA

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

23 Plaintiffs,

24 v.

25 COUNTY OF FRESNO

26 Defendant.

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

**CLASS ACTION**

**CONSENT DECREE**

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**Introduction**

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

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

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

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

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

25 **Terms and Conditions**

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

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

3           7.       **Notice to Class Members:** Defendant shall post notices of this action in a manner  
4 agreed upon by the parties. Such notices shall include a brief description of plaintiffs' claims, the  
5 definition of the class, that the parties have entered into a Consent Decree to correct the alleged  
6 violation of the federal constitutional and statutory rights of the plaintiff class, and the contact  
7 information for the Prison Law Office should any prisoner wish to contact plaintiffs' counsel.  
8

9           8.       **Implementation of Remedial Plan:** Defendant shall make all reasonable efforts  
10 subject to the availability of resources to fully implement all of the remedial measures, according  
11 to the specified timeframes, set forth in the Remedial Plan attached as Appendix A. Defendant  
12 shall make all reasonable efforts to secure the funding necessary to implement the Remedial Plan.  
13 The Consent Decree and Remedial Plan are designed and intended to meet the minimum level of  
14 health care and safety and security necessary to fulfill Defendant's obligations under the Eighth  
15 and Fourteenth Amendments to the United States Constitution, as well as to ensure reasonable  
16 accommodations are provided to remedy the specific alleged violations of the ADA and Section  
17 504 of the Rehabilitation Act set forth in the amended complaint. Nothing in this Consent Decree  
18 shall be construed to require more of the Defendant than is minimally necessary to enforce the  
19 Eighth and Fourteenth Amendments, and to comply with the requirements of the ADA and  
20 Section 504 of the Rehabilitation Act.  
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23           9.       Defendant shall develop and implement appropriate and adequate plans, policies,  
24 and practices to ensure compliance with the Remedial Plan. Defendant will submit any new  
25 health care plans or policies developed to meet the terms of the Remedial Plan to Plaintiffs'  
26 counsel for their review and comments at least 15 days before implementation. Defendant will  
27 submit all other new plans or policies developed to meet the terms of the Remedial Plan to  
28 Plaintiffs' counsel for their review within 10 days of the effective date of each such plan or

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

4           10.     **Experts:** The parties agree to jointly request the appointment of three Court  
5 experts pursuant to rule 706 of the Federal Rules of Evidence to advise the Court on the adequacy  
6 of the implementation of the Remedial Plan. During the first year of this Consent Decree, the  
7 three experts shall each complete one comprehensive review and report to advise the Court on  
8 Defendant's progress in implementing the Remedial Plan. For the remaining duration of this  
9 Consent Decree, the Court experts shall complete comprehensive reviews and reports as he/she  
10 determine to be necessary, or as jointly requested by the parties, but not more than once a year to  
11 advise the parties and the Court on the adequacy of Defendant's implementation of the Remedial  
12 Plan. The Court experts shall also complete evaluations and reports upon request as described in  
13 the dispute resolution process detailed in Paragraph 18. The experts' duties specified in  
14 Appendix B shall be provided to the experts pursuant to Rule 706(b).  
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17           11.     The Court experts shall be entitled to reasonable compensation in an amount  
18 approved by the Court, which shall be paid by Defendant. The Court experts shall have access to  
19 all parts of any County jail facility, with adequate notice provided in advance of the same to  
20 ensure appropriate security is provided, all relevant budgetary, custody, and health care  
21 documents, persons (including confidential interviews with consenting staff and consenting  
22 prisoners) and institutional meetings, proceedings, and programs to the extent the experts  
23 reasonably determine such access is needed to fulfill their obligations. The Court experts will not  
24 have access to personnel files, including records and information deemed confidential pursuant to  
25 California Penal Code § 832.7. Attorneys shall not have ex parte contact with experts regarding  
26 their preliminary and proposed opinions to be presented to the parties.  
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12.     The parties shall attempt to agree on who shall be appointed as the Court experts.

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

4           **13. Status Reports:** Within 180 calendar days of the effective date of this Consent  
5 Decree, Defendant shall provide to plaintiffs a status report describing the state of compliance  
6 with the terms of this Consent Decree and Remedial Plan. This report shall include a description  
7 of the steps that Defendant has taken to implement the Remedial Plan. At the end of each  
8 subsequent 180-day period within four years from the date this Consent Decree is entered unless  
9 the Consent Decree is earlier terminated Defendant shall provide to plaintiffs a status report  
10 addressing each item of the Remedial Plan and shall specify each and every item with which it is  
11 not in compliance.  
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13           **14. Monitoring and Access to Information:** Plaintiffs shall reasonably monitor  
14 Defendant's compliance with the Remedial Plan. Such monitoring shall be limited to issues  
15 related to the Consent Decree and the Remedial Plan and consist of touring the jail, interviewing  
16 staff and prisoners, reviewing and commenting on policies and procedures revised or added after  
17 the effective date of this Consent Decree as provided for in paragraph 9, negotiating with county  
18 personnel and their counsel, corresponding with prisoners, reviewing relevant documents,  
19 communicating with the Court experts and all other duties and obligations specifically set forth  
20 herein, including but not limited to those set forth in paragraphs 15-18. This provision is not  
21 intended to and does not supersede the Inmate Grievance Procedure. If plaintiffs reasonably  
22 believe that Defendant is not complying with the measures set forth in the Remedial Plan, they  
23 shall notify Defendant in writing of the alleged noncompliance. Defendant shall investigate  
24 allegation(s) and use its best efforts to provide plaintiffs with a response in writing within 30  
25 calendar days. If plaintiffs are not satisfied with Defendant's response, the parties shall engage in  
26 the dispute resolution process described in Paragraph 18.  
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2 15. Defendant shall provide plaintiffs, upon advance written notice, with access to  
3 information, including all jail facilities, documents, records, and staff, that plaintiffs reasonably  
4 believe in good faith is necessary to monitor Defendant's compliance with the Remedial Plan,  
5 subject where applicable to a protective order agreed to by the parties and attached as Appendix  
6 C. Plaintiffs shall not be entitled to personnel records, including records and information deemed  
7 confidential pursuant to Penal Code § 832.7. From the date this Consent Decree is entered by the  
8 Court, Defendant shall provide plaintiffs with access to such information within 30 calendar days  
9 of any request. If Defendant believes that the information requested by plaintiffs is not  
10 reasonably necessary to monitor compliance with the Remedial Plan, the parties shall engage in  
11 the dispute resolution process described in Paragraph 18.  
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13 16. Plaintiffs' counsel and their consultants (whose consultant fees shall be the sole  
14 responsibility of Plaintiffs) may conduct no more than two tours of the jail facilities per calendar  
15 year not to exceed a maximum of 40 hours total for all institutions each calendar year. Notice of  
16 any jail tour pursuant to this paragraph must be given in writing at least 7 days before the  
17 proposed tour. Scheduling of any requested tour is subject to jail operational and/or security  
18 concerns. Tours by plaintiffs' counsel and/or their consultants shall include reasonable access to  
19 all of the County jail facilities, including all housing units, facilities where health care services are  
20 provided, and any other facilities where services are provided pursuant to the Remedial Plan.  
21 Plaintiffs' counsel shall identify in their notice of any jail tour issues for discussion and  
22 Defendant shall provide appropriate personnel to address those issues. During the tours,  
23 Defendant shall make reasonable efforts to make available for interview management, clinical,  
24 custodial, and program staff that have direct or indirect responsibility for healthcare, disability  
25 accommodations, and the safety and security of prisoners. Defendant shall direct institution staff  
26 to reasonably cooperate with plaintiffs' counsel in obtaining necessary information they request  
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2 during the tours. During the tours, Defendant shall permit and facilitate plaintiffs counsel having  
3 reasonable brief confidential discussion with any consenting prisoner identified by plaintiffs'  
4 counsel. Upon two week's notice and request by Plaintiffs' counsel and pursuant to the  
5 protective order, Defendant shall make available for inspection and/or copying the health care  
6 and/or custodial information in Offendertrak of specified prisoners. At the reasonable request of  
7 plaintiffs' counsel jail personnel shall provide individual prisoners reasonable access consistent  
8 with jail security and staff availability to confidential telephone calls with plaintiffs' counsel.  
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10 17. In the event that Defendant fails to make an employee or an agent available for an  
11 interview, and the parties agree, plaintiff may depose the employee or agent who has not been  
12 made available. If the parties are unable to agree, the Court may order such deposition of the  
13 employee or agent if such deposition is reasonably necessary to the enforcement of the Consent  
14 Decree.  
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16 18. At the reasonable request of any party, the parties shall conduct good faith  
17 negotiations to resolve informally any dispute regarding Defendant's compliance with the  
18 measures set forth in the Remedial Plan, which shall not include any issue relating to an  
19 individual prisoner that is subject to the Inmate Grievance Procedure until after that process has  
20 been exhausted. Any party may begin this dispute resolution process by written notice to the  
21 opposing party. If the parties are unable to resolve informally the dispute within 30 days  
22 following the Defendant's written response to plaintiffs' counsel pursuant to paragraph 14, or  
23 within 30 days following Defendant's initial written notice to plaintiffs' counsel of a dispute, the  
24 party initiating the process may inform the Court's expert(s) of the area of disagreement and  
25 request that the expert(s) evaluate the issue and prepare a report. If either party believes that a  
26 request for an evaluation and report from an expert is beyond the scope of the Consent Decree or  
27 the Remedial Plan they may apply to the Court for an order vacating the request. Unless such a  
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2 motion is made within 10 days of the request or the Court vacates the request, the expert(s) shall  
3 devote his or her best efforts to provide his or her report regarding the area of disagreement  
4 within 45 days of the request. Defendant will pay the experts' reasonable fees for time incurred  
5 and any reports prepared by a Court expert about a disputed issue, as contemplated by this  
6 paragraph. Any report prepared by a Court expert about a disputed issue, as contemplated by this  
7 paragraph, shall be admissible as evidence at the request of any party in any judicial proceeding  
8 in this case. While the report may be admissible, it may be disputed or contested by any party  
9 with testimonial or extrinsic evidence, including expert testimony. The report shall not be  
10 admissible in any other action. If within 30 calendar days of receipt of the Court's expert's  
11 report, the parties are unable to reach a mutually satisfactory resolution of the dispute, any party  
12 may file a motion for relief to the Court.  
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15 **Enforcement**

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

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

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**Costs and Fees**

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

**Effect of Consent Decree in Other Actions**

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

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

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

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

IT IS SO AGREED AND STIPULATED.

PRISON LAW OFFICE

Dated: May 27, 2015

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

COOLEY LLP

Dated: May 27, 2015

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

DISABILITY RIGHTS CALIFORNIA

Dated: May 27, 2015

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

