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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES AMERICA,	)	Case No. CV 15-05903 DDP (JEMx)
	)	
Plaintiff,	)	
	)	ORDER GRANTING MOTION TO
v.	)	INTERVENE
	)	
COUNTY OF LOS ANGELES et	)	[DOCKET NUMBER 17]
al.,	)	
	)	
Defendants.	)	
	)	
_____	)	

Presently before the court is a Motion to Intervene filed by Teresa Powers, David Penn, Timothy Polk, Mark Sarni, Derrick Thomas, Darsel Whitfield, Royal Williams, and Lepriest Valentine (collectively, "Intervenors"). Intervenors assert that one paragraph of the executed settlement agreement between Plaintiff ("the government") and Defendant ("the County") violates the Americans with Disabilities Act ("ADA") and Intervenors' Fourth and Eighth Amendment rights. Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following Order.

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1           **I.     Background**

2           On August 5, 2015, the government filed a Complaint against  
3 the County under the Civil Rights of Institutionalized Persons Act  
4 ("CRIPA"), 42 U.S.C. §§ 1997-1997j, and the Violent Crime Control  
5 and Law Enforcement Act of 1994, 42 U.S.C. § 14141.<sup>1</sup> The Complaint  
6 alleged repeated and systemic violations of prisoners' constitutional  
7 rights in the Los Angeles County jail system. The alleged  
8 violations included constitutionally deficient mental health care  
9 and related services, such as suicide prevention, psychological and  
10 psychiatric services, and discharge planning, as well as inadequate  
11 housing and sanitation practices and a pattern of excessive force  
12 against prisoners. (Complaint ¶¶ 22-26.)

13           The same day the Complaint was filed, the government and the  
14 County filed a stipulated settlement of this matter. The  
15 stipulated Settlement Agreement ("Agreement"), which spans 125  
16 paragraphs and nearly sixty pages, provides for a series of new or  
17 enhanced policies and practices across nineteen subject areas  
18 intended to ensure that the County will provide "prisoners at the  
19 Jails with safe and secure conditions and ensure their reasonable  
20 safety from harm, including serious risk from self-harm and  
21 excessive force, and ensure adequate treatment for their serious  
22 mental health needs." (Agreement ¶ 16.) Among the stipulated  
23 terms is a provision regarding discharge planning ("Paragraph  
24 34."). That provision states:

25           34. The County and the Sheriff will conduct discharge  
26           planning and linkage to community mental health

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28           <sup>1</sup> The Complaint also named Los Angeles County Sheriff Jim  
McDonnell as a Defendant, in his official capacity.

1 providers and aftercare services for all prisoners  
2 with serious mental illness as follows:

3 (a) For prisoners who are in Jail seven days or  
4 less, a preliminary treatment plan, including  
5 discharge information, will be developed.

6 (b) For prisoners who are in Jail more than seven  
7 days, a [Qualified Mental Health Professional]  
8 will also make available:

9 (i) for prisoners who are receiving  
10 psychotropic medications, a 30-day  
11 prescription for those medications  
12 will be offered either through the  
13 release planning process, through  
14 referral to a re-entry resource  
15 center, or through referral to an  
16 appropriate community provider,  
17 unless clinically contraindicated;

18 (ii) in-person consultation to address  
19 housing, mental  
20 health/medical/substance abuse  
21 treatment, income/benefits  
22 establishment, and  
23 family/community/social supports.  
24 This consultation will also identify  
25 specific action to be taken and  
26 identify individuals responsible for  
27 each action;

28 (iii) if the prisoner has an intense need  
for assistance, as described in  
[County Mental Health] policies, the  
prisoner will further be provided  
direct linkage to an Institution for  
Mental Disease ("IMD"), IMD-Step-down  
facility, or appropriately licensed  
hospital;

(iv) if the prisoner has a moderate need  
for assistance, as described in  
[County Mental Health] policies, and  
as clinically appropriate to the  
needs of the prisoner, the prisoner  
will be offered enrollment in Full  
Service Partnership or similar  
program, placement in an Adult  
Residential Facility ("Board and  
Care") or other residential treatment  
facility, and direct assistance  
accessing community resources;

1 (v) if the prisoner has minimal needs for  
2 assistance, as described in [County  
3 Mental Health] policies, the prisoner  
4 will be offered referrals to routine  
5 services as appropriate, such as  
6 General Relief, Social Security,  
7 community mental health clinics,  
8 substance abuse programs, and/or  
9 outpatient care/support groups.

6 (c) The County will provide a re-entry resource  
7 center with QMHPs available to all prisoners  
8 where they may obtain information about  
9 available mental health services and other  
10 community resources.

9 (Agreement ¶ 34.)

10 This court approved the Agreement on September 3, 2015. On  
11 September 28, 2015, Intervenors first sought to intervene in this  
12 matter. Intervenors later filed a First Amended Complaint in  
13 Intervention, which alleges that Paragraph 34 violates the  
14 Americans with Disabilities Act ("ADA") and the Fourth and Eighth  
15 Amendments to the Constitution. Intervenors allege, for example,  
16 that Paragraph 34 facially discriminates against disabled prisoners  
17 whose disability stems from personality disorders, substance abuse  
18 and dependence disorders, dementia, or developmental disabilities,  
19 as well as all disabled prisoners who spend seven days or fewer in  
20 jail.<sup>2</sup> (Agreement ¶ 34, 34(a).) Intervenors further allege, in  
21 essence, that Paragraph 34's discharge procedures are inadequate,  
22 as many disabled prisoners will be unable to obtain needed  
23 medication or services if provided with nothing more than a  
24 prescription or list of referrals upon discharge.

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27 <sup>2</sup> The Agreement's definition of "serious mental illness"  
28 expressly excludes these substantive categories, with the exception  
of personality disorders that are "associated with serious or  
recurrent significant self-harm." (Agreement ¶ 15(aa).)

1           **II. Legal Standard**

2           Federal Rule of Civil Procedure 24 governs motions to  
3 intervene. An applicant may intervene as of right if (1)  
4 the motion is timely; (2) the applicant has a "significantly  
5 protectable" interest relating to the action; (3) disposition of  
6 the action may, as a practical matter, impair or impede the  
7 applicant's ability to protect that interest; and (4) the  
8 applicant's interest is inadequately represented by the parties to  
9 the action. California ex rel. Lockyer v. United States, 450 F.3d  
10 436, 440 (9th Cir. 2006); Fed. R. Civ. P. 24(a)(2). Courts  
11 construe rule 24(a) liberally in favor of intervention. Id.

12           **III. Discussion**

13           A. Timeliness

14           In determining whether a motion to intervene is timely, courts  
15 weigh (1) the stage of the proceedings; (2) the prejudice to the  
16 parties; and (3) the length of and reason for any delay. United  
17 States v. Alisal Water Corp., 370 F.3d 915, 921 (9th Cir. 2004).  
18 Here, Intervenors did not seek to intervene until after the  
19 Agreement was reached and entered as a court order, closing the  
20 case. That fact, however, carries less weight under the unusual  
21 circumstances here, where the Complaint and Settlement Agreement  
22 were filed more or less concurrently. The court is not persuaded  
23 by the government's contention that the fact that the CRIPA  
24 investigation was covered in the media somehow obligated  
25 Intervenors to "take steps" during the investigatory process or  
26 some other, earlier stage. Intervenors did not delay in any  
27 significant degree by filing their motion approximately three weeks  
28 after the approval of the Settlement Agreement.

1 Further, it does not appear to the court that intervention  
2 would prejudice the parties. The court gives little weight to the  
3 parties' assertion that they would be prejudiced by intervention  
4 because their collective ability to implement the remaining  
5 provisions of the Agreement will be compromised if they are forced  
6 to divert any attention to the issues raised by Intervenors.  
7 First, Intervenors challenge but a single paragraph of the 125-  
8 paragraph Agreement. Second, the provisions of Paragraph 34 are  
9 not yet being implemented, and as even the parties acknowledge,  
10 need not necessarily comprise the entirety of whatever discharge  
11 policy the County ultimately adopts. Further, as the parties also  
12 recognize, other provisions of the Agreement are already being  
13 implemented. Indeed, Intervenors themselves have expressed strong  
14 support for the remainder of the Agreement. There appears,  
15 therefore, to be little threat to the settlement in its entirety.  
16 See Alisal, 370 F.3d at 922. The court is satisfied that  
17 Intervenors' motion is timely.

18 B. "Significantly Protectable" Interest

19 A proposed intervenor's interest is sufficient for purposes of  
20 Rule 24(a)(2) if "the interest is protectable under some law, and  
21 [] there is a relationship between the legally protected interest  
22 and the claims at issue." Wilderness Society v. United States  
23 Forest Service, 630 F.3d 1173, 1179 (9th Cir. 2011) (quotation  
24 marks and citation omitted). Neither party appears to dispute that  
25 Intervenors have a legally protectable interest. Although The  
26 government expressly concedes that Intervenors have a significant,  
27 protectable interest, it argues that such ADA-related interests are  
28 unrelated to the subject matter of this action. The crux of the

1 government's contention is that this case is, and the government's  
2 investigation was, limited to CRIPA and Section 14141 violations.  
3 This court is mindful that CRIPA and Section 14141 were the driving  
4 force behind the investigation, and that the government did not  
5 necessarily intend to give its imprimatur to a discharge or ADA  
6 policy comprised entirely of the terms of Paragraph 34. Rule 24,  
7 however, does not require that Intervenor's protectable interest be  
8 the same as that implicated in the existing action, only that there  
9 be some relationship between the issues. Wilderness Society 630  
10 F.3d at 1179. Where, as here, the stipulated solution to the  
11 problems underlying the government's Complaint allegedly violate  
12 Plaintiff's ADA and constitutional rights, a sufficient  
13 relationship exists for purposes of intervention.<sup>3</sup>

14 C. Intervenor's Ability to Protect Their Interests

15 The parties argues that Intervenor's interests would not be  
16 impaired by the denial of this motion because Intervenor can file  
17 a separate, freestanding lawsuit. Although Intervenor could so  
18 proceed, intervention as of right is not limited to instances in  
19 which applicants have no other recourse. Rather, review under Rule  
20 24(a) "is guided primarily by practical considerations . . . ."  
21 Southwest Center for Biological Diversity v. Berg, 268 F.3d 810,  
22 818 (9th Cir. 2001) (internal quotation and citation omitted).  
23 This focus on practical and equitable concerns "serves both  
24 efficient resolution of issues and broadened access to the courts."

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26 <sup>3</sup> Nothing in this Order shall be read to suggest that this  
27 court takes any position on either the merits of Intervenor's  
28 claims or the government's arguments on the merits, including the  
argument that Paragraph 34 does not violate the ADA because it  
comprises only a portion of County ADA and discharge planning  
policy.

1 United States v. City of Los Angeles, 288 F.3d 391, 397-398 (9th  
2 Cir. 2002) (quotation marks and citation omitted). The parties'  
3 approach would not "prevent or simplify future litigation involving  
4 related issues," but rather multiply it.<sup>4</sup> <sup>5</sup> Id. at 398.

5 D. Adequacy of Representation

6 "Normally, a presumption of adequate representation generally  
7 arises when the representative is a governmental body or officer  
8 charged by law with representing the interests of the absentee."  
9 City of Los Angeles, 288 F.3d at 401 (internal quotations omitted).  
10 Inquiries into adequate representation, however, look to  
11 (1) whether a party will "undoubtedly make all of a proposed  
12 intervenor's arguments; (2) whether the present party is capable

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14 <sup>4</sup> The County focuses the majority of its opposition on the  
15 argument that Intervenor's lack standing. In the Ninth Circuit,  
16 however, "[i]n general, an applicant for intervention need not  
17 establish Article III standing to intervene." Perry v.  
18 Schwarzenegger, 630 F.3d 898, 906 (9th Cir. 2011) (per curiam);  
19 Vivid Entm't, LLC v. Fielding, No. CV-13-190 DDP, 2013 WL 1628704  
20 at \*2 (C.D. Cal. Apr. 16, 2013). Even if standing were required,  
21 Intervenor's have demonstrated at least a "credible threat of future  
22 injury." See City of Los Angeles v. Lyons, 461 U.S. 95, 106  
23 (1983). Intervenor's have presented evidence that they are caught  
24 up in a tragic cycle of homelessness and incarceration perpetuated  
25 and punctuated by manifestations of mental illness and unbroken by  
26 any adequate treatment.

21 <sup>5</sup> Alisal is not to the contrary. Although the court did  
22 conclude that the applicant's interest was not impaired because  
23 alternate process was available, that alternate process only  
24 required the applicant to obtain court approval to seek to enforce  
25 a judgment lien. Alisal, 370 F.3d at 921. Intervenor's task would  
26 be far more complicated here, as they would have to litigate  
27 freestanding ADA and constitutional claims from scratch, and then  
28 only after Paragraph 34 had already gone into effect. And although  
the City of Los Angeles court did find the possibility of  
independent suits sufficient with respect to a proposed intervenor  
that did not contest a consent decree, it reversed the district  
court's denial of intervention to an applicant that sought to  
enjoin a consent decree that, like the Agreement here, was filed  
the same day as the complaint. City of Los Angeles, 288 F.3d at  
396-397, 400-402.



1 and willing to make such arguments; and (3) whether a proposed  
2 intervenor would offer any necessary elements to the proceeding  
3 that other parties would neglect." Arakaki v. Cayetano, 324 F.3d  
4 1078, 1086 (9th Cir. 2003). Here, the presumption of adequate  
5 representation is rebutted where the government has not only  
6 declined to make some of the arguments Intervenor would make, but  
7 has in fact taken a contrary position. The government cannot,  
8 therefore, be said to adequately represent Intervenor's significant  
9 protectable interest.

#### 10 **IV. Conclusion**

11 For the reasons stated above, the Motion to Intervene is  
12 GRANTED.<sup>6</sup> The court emphasizes, however, that nothing in this  
13 Order shall be read as a commentary on the merits of Intervenor's  
14 claims or on the sincerity of the parties' attempts to address the  
15 issues raised in either the Complaint or the First Amended  
16 Complaint in Intervention. Indeed, in the court's experience, both  
17 parties, as well as Intervenor's counsel, have proven to be deeply  
18 committed, well-intentioned, and effective collaborators, even in  
19 the face of difficult financial and political realities. The  
20 mental health issues around which this matter revolves are public  
21 safety issues as well as legal ones, and concern the well-being of  
22 not only the prisoners and public servants directly involved, but  
23 of the larger community as well. Mental health issues have  
24 unfortunately, and self-evidently, risen to crisis levels, and the  
25 Sheriff has been forced to assume a prominent role in the absence

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27 <sup>6</sup> Having concluded that Intervenor's must be permitted to  
28 intervene as of right, the court need not address permissive  
intervention.

1 of sufficient mental health resources. The court encourages all  
2 parties to continue to work together to formulate and implement  
3 policies that are not only constitutionally and legally adequate,  
4 but efficacious and empathetic as well.

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6 IT IS SO ORDERED.

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9 Dated: December 15, 2015

  
DEAN D. PREGERSON  
United States District Judge

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