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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 MARTI VILLERY; MARGUERITE)
15 BRAUNSTEIN; ALEX FLORES, by and)
through his Guardian ad Litem, MARIA)
16 PEREZ; MARY HAYES; NEIL)
DWORZACK, by and through his Guardian)
17 ad Litem, DIANE DWORZACK; EDUARDO)
ACEVES; EUNICE VIQUEZ; BONNIE)
18 HAGY; DIANA MOLINO; KEITH)
CROSSWHITE,)
19 and JUDY MAGANA,)
Plaintiffs,)

Case No. 95 - 5714 ABC

COMPLAINT
CLASS ACTION

Date:
Time:
Courtroom:

20 vs.

21 BOARD OF SUPERVISORS OF THE)
22 COUNTY OF LOS ANGELES, and ROBERT)
C. GATES, DIRECTOR OF THE LOS)
23 ANGELES COUNTY DEPARTMENT OF)
HEALTH SERVICES,)
24)
25 Defendants.)

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I. PRELIMINARY STATEMENT

1. On October 1, 1995, Los Angeles County not only will close all six comprehensive health centers and 29 of 39 public health centers, but it will also drastically reduce all hospital outpatient visits. The public health centers which will remain open will only provide minimal public health services, such as treatment of some communicable diseases; they will not provide general medicine services. The County readily acknowledges that these proposed cutbacks will prove disastrous for the health of plaintiffs and thousands of other medically indigent patients who depend on County facilities for their medical care.

2. The County's actions violate the federal Americans with Disabilities Act and Section 504 of the Rehabilitation Act, Medicaid and Medicare laws, the Due Process clause of the federal constitution, Title VI of the Civil Rights Act of 1964, the Emergency Medical Treatment and Active Labor Act and state law concerning the counties' obligations to furnish health care to the poor.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1347, which affords original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States. This Court has jurisdiction over plaintiffs claims for injunctive relief and declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 1983 and Fed. Rules of Civil Procedure 57 and 65.

4. The County defendants' conduct violates the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq.; the Medicaid and Medicare Act, 42 U.S.C. 1395x; the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq. ; the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. §1395dd; and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Plaintiffs bring this action against the County defendants pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1343 (a)(3) to challenge the deprivation of their rights by the state defendants' actions under color of state law.

5. Jurisdiction over plaintiffs' state law claim is invoked pursuant to the doctrine of

1 supplemental jurisdiction as codified at 42 U.S.C. § 1367.

2 6. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) in that defendants
3 named herein reside in, maintain an office in, or enforce the laws relevant to this litigation in the
4 Central District of California.

5 III. PARTIES

6 Defendants

7 7. Defendant Board of Supervisors of the County of Los Angeles ("Board") is the
8 governing body of the County of Los Angeles ("County") and has the duty of ensuring compliance
9 of the County with the laws of the United States and of the State of California. In particular, they
10 have the duty to ensure that necessary health care is provided to poor patients at County facilities
11 in accordance with federal Medicaid and Medicare laws and regulations and state laws and
12 regulations. The current members of the Board are Michael D. Antonovich, Yvonne Braithwaite
13 Burke, Deane Dana, Gloria Molina, and Zev Yaroslavsky.

14 8. Defendant Robert C. Gates is the Director of the Department of Health Services
15 of the County of Los Angeles ("DHS") and is charged with exercising supervision over all health
16 facilities operated by the County of Los Angeles.

17 9. Defendants are sued in their official capacity.

18 10. Each defendant has acted under color of state law to deprive plaintiffs and the class
19 they represent of the rights, privileges and immunities guaranteed by the United States
20 Constitution, its laws and regulations.

21 Plaintiffs

22 11. Plaintiff Marti Villery is a resident of the County and is an unemployed secretary
23 whose sole source of income is General Relief (hereafter "GR"). She receives her health care
24 through the County and is enrolled in the County's Ability to Pay plan (hereafter ATP). At all
25 times relevant herein, she has been forced to rely upon County clinics, physicians, and doctors
26 for her health care.

27 12. Plaintiff Diana Molino is a resident of the County and is a GR recipient. She is
28 enrolled in the County's Community Health Plan (hereafter CHP). She is unable to afford health

1 are and her sole source of care is the County's physicians, hospitals, and clinics.

2 13. Plaintiff Neal Dworzack is a nineteen-year-old resident of the County who receives
3 Medi-Cal. He has been unable to find a private health care provider to accept his Medi-Cal, and,
4 at all times relevant herein, his sole health care providers have been County physicians, clinics
5 and hospitals.

6 14. Plaintiff Mary Hayes is a resident of Los Angeles County and a member of Los
7 Angeles County's CHP. Her sole source of income is GR. At all times relevant herein, Ms.
8 Hayes has been unable to afford or find private health care and was totally dependent upon the
9 County for all of her health care services.

10 15. Plaintiff Alex Flores is a seventeen-year-old Medi-Cal recipient with Down
11 syndrome, and numerous other health problems.' At all times relevant herein, Alex has been
12 unable to obtain health care from a private provider and has been dependent upon LAC/USC
13 Medical Center for necessary medical care. Alex resides in the County with his mother, Maria
14 Perez, who sues as guardian ad litem on his behalf.

15 16. Plaintiff Eunice Viquez is a sixty (60) year old female resident of Los Angeles
16 County who, at all times relevant herein, relied upon LAC/USC and county clinics and physicians
17 as her sole source of health care services. She participates in the County's ATP Program for her
18 medical care.

19 17. Plaintiff Bonnie Hagy is a resident of the County. She is a Medi-Cal recipient who
20 is a post polio outpatient at Rancho Los Amigos Medical Center. At all times relevant herein,
21 she has relied upon the outpatient and other health care services at Rancho Los Amigos for her
22 medical needs.

23 18. Plaintiff Marguerite Braunstein is a resident of the County. She is a Medi-Cal
24 recipient who is a post polio survivor with special needs. At all times relevant herein, she has
25 relied upon Rancho Los Amigos for her medical care.

26 19. Plaintiff Eduardo Aceves is a Medi-Cal recipient and resident of the County. He
27 is a disabled adult who relied upon the county facilities and, in particular, Rancho Los Amigos
28 Medical Center for his health care needs.

1 § 35.130 et seq., and/or Section 504 of the Rehabilitation Act, 29 U.S.C. §794(a);

2 b. whether the reduction and closure of the County health Services violate the
3 federal transfer and discharge planning requirements and emergency medical treatment
4 provisions;

5 c. whether the County's failure to give prior individualized notice and hearing
6 prior to terminating health care services violates the due process clause of the 14th
7 Amendment to the United States Constitution; and

8 d. whether the closure of County facilities and/or reductions in services
9 violates the County's duty to provide necessary health care to residents of Los Angeles
10 County with insufficient resources to pay for their medical needs, who depend and will
11 depend on the County for the provision of necessary medical care pursuant to Calif. Welf.
12 & Instit. Code §§ 10,000, 17,000 and Health and Safety Code § 1442.5.

13 25. The claims of the named plaintiffs are typical of the claims of the members of the
14 class in that inter alia, each of the named plaintiffs receives their medical care at County facilities
15 which are subject to closure or reductions and each of the named plaintiffs has not received
16 adequate prior notice and opportunity for hearing regarding the termination, reduction or transfer
17 of their care, and has not had an appropriate discharge plan and/or transfer arrangement
18 developed.

19 26. The named plaintiffs will fairly and adequately protect the interests of the class.
20 Plaintiffs have no interest which is now or may be potentially antagonistic to the interests of the
21 class. Plaintiffs are represented by, among others, San Fernando Valley Neighborhood Legal
22 Services, Protection and Advocacy, Inc., The California Women's Law Center, Western Center
23 on Law and Poverty, Inc. and The Legal Aid Foundation of Los Angeles. Counsel for plaintiffs
24 are well-established public interest law firms with extensive experience in litigating federal court
25 class action cases involving federal civil rights claims and government benefit programs, including
26 indigent health care.

27 27. Defendants, their agents, employees, and successors in office have acted, will act,
28 or refused to act on grounds generally applicable to the class, thereby making appropriate final

1 injunctive and declaratory relief with respect to the class as a whole.

2 V. FACTUAL ALLEGATIONS

3 A. The County Health Care System and Proposed Cuts

4 28. The health care system operated by the County is the last resort for the sick and
5 injured poor of Los Angeles County. The County currently operates six hospitals, six
6 comprehensive health centers, and 39 public health centers. In addition to inpatient services, the
7 hospitals provide outpatient, specialty and rehabilitation services.

8 29. The only option for those who are turned away from outpatient clinics and
9 community clinics is to resort to already overburdened emergency rooms, which is not a viable
10 option, since the services at issue cannot be or are not provided through emergency rooms.

11 30. Effective October 1, 1995, Defendants will close 28 of 39 health centers, all six
12 comprehensive health centers and will drastically reduce outpatient specialty and rehabilitative care
13 by at least 75%.

14 B. Plaintiffs' Factual Circumstances.

15 31. Plaintiff Marti Villery is a breast cancer outpatient who receives her health care at
16 Martin Luther King Hospital Medical Center ("MLK"). She has received follow up care there
17 since she underwent a mastectomy in November 1994. She receives chemotherapy at MLK and
18 is scheduled for her final treatments in August. At that time, she is supposed to consult with a
19 doctor about reconstructive surgery. She has been told that at the end of the chemotherapy she
20 will have to undergo a battery of tests including: chest x-ray, heart scans, bone scans, and blood
21 tests. She receives services on an outpatient basis at the hematology, oncology, breast, nuclear
22 medicine, triage and prophylactic clinics at MLK. The chemotherapy has caused heart problems
23 and she must have her blood count monitored and checked frequently. She is given regular
24 injections of neupogen to build up her blood count. The staff at the clinic has taught her how to
25 give herself the injections. The hospital provides her with the supplies: syringes, alcohol, wipes,
26 bandages and the medicine. She could not afford the medicine or the supplies on her own. She
27 needs regular check-ups-at least three times a year. If the outpatient services are closed down she
28 would have no place to go, Her doctors have told her that her very survival depends on regular

1 comprehensive check-ups for the next five years. When she asked where she will be able to get
2 care, the doctors and nurses told her they have no idea. Her only source of income is General
3 Relief (\$212 monthly), so she has no money to pay for alternative care.

4 32. Plaintiff Mr. Neil Dworzack suffers from spastic quadriplegia, blindness, aphasia,
5 and osteopenia. Osteopenia means that Mr. Dworzack's bones can fracture from the simple act
6 of his being moved from bed. He has suffered from these conditions since he was involved in
7 an accident sixteen (16) years ago. He lives at home with his family, and requires 24-hour care.
8 He has a special bed, and needs respiratory treatments. When he becomes acutely ill, he is unable
9 to receive treatment anywhere other than High Desert Hospital because of his age and size, and
10 his particular medical conditions. Although he receives Medi-Cal, he has been unable to find any
11 private medical provider to care for him. He is unable to receive sufficient adequate medical
12 services at the only other private hospital in the Antelope Valley that accepts Medi-Cal. With the
13 proposed reduction of outpatient services at High Desert, the closest facility for Mr. Dworzack's
14 ongoing medical care would be Olive View Hospital, which is 60 miles away from his home. If
15 needed services are an hour away, his family would be risking his life by keeping him at home.
16 His mother has a 1979 automobile with serious engine problems. His family has no way to
17 transport him, except by ambulance, if he had to go to Olive View for his on-going medical care.
18 Moreover, if High Desert Hospital were closed, Mr. Dworzack's family would be unable to keep
19 him and care for him at home. Additionally, if the specialty out-patient services that Mr.
20 Dworzack requires for his medical conditions are significantly reduced or eliminated by the
21 proposed reductions at High Desert Hospital, and if there is also a 75% reduction in such over-
22 taxed hospital outpatient services at Olive View, 60 miles away, Mr. Dworzack would be forced
23 into an institution for his lifelong care needs, at a much higher cost.

24 33. Plaintiff, Mary Hayes, is forty-seven-years old and has been diagnosed with
25 osteoarthritis and rheumatoid arthritis. She suffers from severe pain, and is only able to walk
26 with great difficulty. She depends on a wheelchair to move even short distances. Her arthritis
27 continues to deteriorate, and she needs ongoing medical treatment. She is in the process of
28 attempting to qualify for SSI benefits and Medi-Cal, but currently receives only GR. She receives

1 care through the CHP (the County's health plan for GR recipients). Using CHP, she has no other
2 source for her care, other than county facilities and, in particular, Olive View Hospital. Although
3 she lives only a few miles from Olive View, she is dependent on her mother for transportation,
4 in her mother's car that is badly in need of repair. Ms. Hayes waited for over five months for
5 an appointment in the radiology outpatient clinic, for testing and treatment for her condition.
6 Prior to that-time, she was forced to seek treatment through the emergency room at Olive View
7 for her intense pain. On several occasions she waited for up to sixteen (16) hours to obtain pain
8 medication, including morphine. She now is receiving ongoing medical treatment for her
9 Osteoarthritis; including physical therapy. Without these needed medical services, her condition
10 would deteriorate even more quickly, and she would suffer significantly increased pain and loss
11 of mobility.

12 34. Plaintiff Alex Flores is seventeen years old and has Down Syndrome and related
13 medical problems. He and his mother live near to LAC/USC Hospital and he has received his
14 health care from specialists at that hospital throughout his entire life. Mr. Flores' doctor, Dr.
15 Fareau, is a specialist who works with children with Down Syndrome and related medical
16 problems. Dr. Fareau has been Alex Flores' doctor since his birth. Mr. Flores has a thyroid
17 condition which requires blood tests every two months. He gets these tests at the Down
18 Syndrome specialty outpatient clinic. Mr. Flores had a heart operation a year and a half ago to
19 avoid what the doctors believed would be serious pulmonary problems. His condition requires
20 follow-up care. Despite having Medi-Cal, Mr. Flores' mother has been unable to find a private
21 doctor to provide care for her son. She cannot drive, and does not have a car. She is sixty (60)
22 years old, and has arthritis and trouble walking to the point where there are days that she cannot
23 even stand upright. It would be extremely difficult, if not impossible, for her to take her son to
24 his doctor's appointment if they were further away from their home than LAC/USC, since they
25 would have to take the bus, and she has to walk with a cane. If Alex does not receive his medical
26 care every two months on an outpatient basis, he could become extremely ill, and suffer
27 complications. Because of his condition, he is more subject to infections which progress very
28 quickly if untreated. He and his mother have spent the entire weekend many times at LAC/USC

1 ecause Alex has contracted an ear infection and he must have treatment or he will become
2 ravelly ill. In addition, his thyroid condition, if untreated, would become exacerbated and could
3 ead to further complications. Without ongoing treatment Alex's doctor believes Alex's heart rate
4 ould increase possibly leading to congestive heart failure and/or deterioration of the heart. In
5 ddition, he could well experience cataracts, weight loss, and hyperactivity. Other doctors have
6 efused to care for Alex because they cannot provide the treatment that he needs. If the County
7 mplements the service reductions, Alex will be left without any medical care.

8 35. Plaintiff Diana Molino worked for thirty five years until she was forced to resign
9 ecause of health problems. She has no income other than GR and is totally dependent on the
10 County for her health care. She suffers from severe hypertension and heart problems. She has
11 locked arteries, prolapsing mitral valve and wall motion abnormality. She must be seen every
12 our to six weeks to monitor her condition. She goes to the hypertension unit at LAC/USC
13 ospital where she has her cholesterol tested, her blood pressure measured and her medicines
14 djusted as necessary. Currently her cholesterol is very high, putting her at great risk for a
15 stroke. As a consequence, she currently has weekly appointments to monitor her cholesterol. She
16 also suffers from arthritis, gastrointestinal problems and chronic depression and acute anxiety
17 disorder. Ms. Molino has ongoing appointments scheduled well into October of this year. When
18 she spoke to the staff at the hospital they told her the service she uses, ward 5P51, was closing
19 October 1. They also said they had no idea where she could go for follow up care. The medical
20 clerk told her that the patient records were going to be boxed up and sent to storage.

2 36. Plaintiff Eunice Viquez receives widow's benefits and has no medical insurance,
2 Medi-Cal or other way to pay for private health care. She uses the County's "Ability-to-Pay Plan"
2 (hereafter ATP) to get care at county facilities. Under this plan, she receives her care at no cost
2 due to her low income. Ms. Viquez needs ongoing outpatient care. She suffers from arthritis,
2 diabetes, high blood pressure and osteoporosis. She takes insulin and high blood pressure
2 medicine. She experiences considerable pain in her back, neck and legs, and has to take medicine
2 to control the pain, as well as her high blood pressure and diabetes. She also has ear problems
2 that affect her throat, and has had to have tubes put in her ears for this problem. She relies on

1 a County run comprehensive health center, the H. Claude Hudson Health Center, for ongoing
2 medical services and monitoring of her chronic conditions. However, the staff at Claude Hudson
3 must refer her to LAC/USC when she becomes very ill. She also receives ophthalmology services
4 from the County, and cannot see without the glasses that the County provides. She receives
5 physical therapy for her arthritis and osteoporosis from LAC/USC. Without it, she would be
6 unable to move or walk because her arms and legs stiffen terribly. Ms. Viquez gets her
7 medication and insulin at no cost through the County ATP program. She does, however, have
8 to pay fifty dollars each time she has to buy a blood sugar kit, and she cannot afford even this
9 small amount. Without the County, she cannot get the care she needs. If the outpatient care she
10 depends upon is cut back, Ms. Viquez's diabetes will worsen. If she cannot get the ongoing
11 specialty outpatient services she needs from LAC/USC and/or the H. Claude Hudson
12 Comprehensive Health Center, her blood pressure will rise and she will become very ill. If she
13 does not receive her medication and monitoring for her diabetes and high blood pressure, she may
14 well require emergency care. She is at risk of death from stroke if her blood pressure is not
15 properly treated.

16 37. Plaintiff, Bony Hagy, relies upon Rancho Los Angeles Medical Center for her
17 health care needs. She is a post polio survivor who has special health needs associated with her
18 condition. She has tried private providers but returns to Rancho because it is the only place in
19 greater Los Angeles with special expertise and equipment for treating post polio patients.
20 Furthermore, she has found that many other providers are not even accessible. Rancho, on the
21 other hand, has special equipment and tables for individuals using wheelchairs. In addition, the
22 pulmonary clinic is experienced in caring for patients with ventilators such as Ms. Hagy. MS
23 Hagy also relies upon Rancho's outpatient clinics and services including the dental, Ob-Gyn, and
24 chest services. These services are especially equipped to accommodate her physical needs. In
25 addition, the chest clinic has on call practitioners so she does not have to travel to the facility to
26 receive advice and help. Without the services at Rancho, Ms. Hagy's health will be severely
27 compromised and she would be unable to remain in her home.

28 38. Plaintiff Marguerite Braunstein has been a patient- at Rancho Los Amigos for forty

1 three years. She is post polio and relies upon the special training and experience the staff at
2 Rancho have in dealing with disabled individuals. She uses Rancho to get her medical supplies
3 and pulmonary care.

4 39. Plaintiff Eduardo Aceves is a post polio survivor and quadriplegic individual who
5 has received his health care from Rancho Los Amigos for forty five years. Because of his special
6 medical needs he relies solely upon Rancho's services including the cardiology, urology,
7 neurology, and dermatology services. When he has sought health care elsewhere he has had
8 severe problems and did not receive proper treatment.

9 40. Plaintiff Judy Magana has been a patient at Rancho Los Amigos for six years. She
10 uses the Spinal Cord injury, Dermatology, Gynecology, Dental, and Eye Care clinics. She is a
11 Medi-Cal recipient and uses a wheelchair. She was an inpatient at Rancho Los Amigos Hospital
12 and received physical and occupational therapy rehabilitative services and learned to drive with
13 hand controls at the hospital. She receives all her care at Rancho Los Amigos Hospital because
14 of the hospital's expertise in dealing with and accommodating to those with severe disabilities.

1 VI. CLAIMS FOR RELIEF

1 FIRST CLAIM FOR RELIEF

1 (Violation of Americans with Disabilities Act of 1990)

1 41. Plaintiffs reallege and incorporate by reference each and every allegation contained
2 in the above paragraphs as though fully set forth herein.

2 42. Title II-A of the Americans with Disabilities Act (hereafter "ADA"), 42 U.S.C.
2 §§ 12131-12134, provides in relevant part, "no qualified individual with a disability shall, by
24 reason of such disability, be excluded from participation in or be denied the benefits of the
25 services, programs, or activities of a public entity, or be subjected to discrimination by any such
26 entity."

26 43. The Department of Justice regulations implementing the ADA contain an
27 "integration mandate". which commands that "[a] public entity shall administer services, programs,
28 and activities in the most integrated setting appropriate to the needs of qualified individuals with

1 isabilities." 28 C.F.R. §35.130(d).

2 44. These same regulations specifically prohibit practices which "deny.. a qualified
3 individual with a disability the opportunity to participate or benefit" from the service or "provide
4 ...service that is not as effective in affording equal opportunity to . . .gain the same benefit.. as
5 hat provided to others." 28 C.F.R. §35.130(b)(i, iii).

6 45. --- 'Further, a public entity such as the County may not "utilize. ..methods of
7 administration.. . that have the.. .effect of defeating or substantially impairing the accomplishment
8 of the objectives of the public entity's program with respect to individual's with disabilities." 28
9 C.F.R. §35.130(b)(3)(iii).

10 46. Defendants herein are public entities within the meaning of 42 U.S.C. §12131(1).

11 47. Plaintiffs are informed and believe, and on such information and belief, allege that
12 :he proposed severe reductions in outpatient specialty and rehabilitative services, the proposed
13 closure or divestment of High Desert Hospital and the closure or divestment of Rancho Los
14 Amigos Medical Center will result in the elimination of specialty outpatient and rehabilitative
15 services for County patients so that they are forced to remain in acute care facilities and cannot
16 return to their families and community. It will also result in the elimination of the county health
17 facilities with sufficient reasonable accommodations and expertise to enable patients with
18 disabilities to benefit from the County's health care program.

19 48. Plaintiffs are informed and believe, and on such information and belief, allege that
20 the Defendants' proposed health service reductions violate the ADA by (a) making it impossible
21 for patients to return to their homes and remain in the community consistent with the "integration
22 mandate"; (b) denying disabled patients the opportunity to benefit from county health services by
23 eliminating physically accessible services; and (c) denying disabled patients the special expertise
24 they need to gain the same benefit of appropriate medical treatment offered to other patients.

25 SECOND CLAIM FOR RELIEF

(Violation of Medicaid and Medicare Discharge Planning and
Transfer Requirements)

26 49. Plaintiffs reallege and incorporate by reference each and every allegation contained

1 in the above paragraphs as though fully set forth herein.

2 50. Defendants' facilities participate in the Medicaid (called Medi-Cal in California)
3 and Medicare programs. As Medicaid and Medicare providers, the County facilities must comply
4 with federal statutes and regulations and contractual conditions of participation for Medicaid and
5 Medicare.

6 51. -- 42 U.S.C. §1395x(ee); 42 C.F.R. §§440.10(a)(3)(iii); 42 C.F.R. §§482.43 and
7 182.21 require that facilities which receive Medicaid and Medicare funds must engage in
8 effective discharge planning for all patients.

9 52. Federal regulations, 42 C.F.R. §482.21(b)(2), 42 C.F.R. §§440.10(a)(3)(iii), and
10 440.20(a)(3)(ii) require Medicare and Medicaid (called Medi-Cal in California) certified hospitals
11 to transfer and refer patients, "along with necessary medical information...to appropriate facilities,
12 agencies or outpatient services as needed for follow up or ancillary care." 53. 42 C.F.R.
13 § 482.43 requires facilities that receive Medicaid and Medicare funds to: 1) to identify patients
14 needing discharge plans; 2) to timely evaluate the needs of those identified patients and any other
15 patient requesting an evaluation; 3) to discuss the results of the evaluation with the patient; 4)
16 develop a discharge plan when a need for one is indicated or when a patient's physician requests
17 a plan; 4) to implement the plan and counsel the patient and family to prepare them for post-
18 hospital care; and 5) to transfer or refer each patient, along with necessary medical information,
19 to appropriate facilities, agencies, or outpatient services, as needed for follow up or ancillary care.

20 54. Plaintiffs are informed and believe, and on such information and belief, allege that
21 defendants are violating federal law, 42 U.S.C. § 1395x(e), 1395x(ee), 42 C.F.R. §§ 482.21 and
22 482.43 in that they have failed to engage in effective discharge planning for all patients.

23 55. Plaintiffs are informed and believe, and on such information and belief, allege that
24 defendants have violated the requirements of 42 CFR 482.43 in that they have not arranged for
25 those patients who are losing services as a result of the cutbacks to receive adequate follow up
26 care. In particular Defendants have failed to: (a) identify and evaluate patients needing or
27 requesting discharge plans in a timely manner; (b) discuss the evaluation results with the patient;
28 (c) or develop appropriate discharge plans; (d) implement discharge plans; (e) counsel the patient

1 and family to prepare them for post-hospital care and (f) transfer or refer patients for follow up
2 care as needed.

3 THIRD CLAIM FOR RELIEF

4 (Breach of Contract)

5 56. Plaintiffs reallege and incorporate by reference each and every allegation contained
6 in the above-paragraphs as though fully set forth herein.

7 57. Plaintiffs are informed and believe, and on such information and belief, allege that
8 defendants have and will breach the contractual conditions of participation set out in 42 USC §
9 395x, 42 C.F.R. §§ 482.21 and 482.43 by failing to develop timely and adequate discharge plans
10 and by failing to make appropriate transfers and referrals as needed by plaintiffs. Plaintiffs bring
11 suit against defendants as the intended third party beneficiaries of these conditions of participation
12 because defendants' breach places plaintiffs at serious risk of bodily harm, disability and death.

13 FOURTH CLAIM FOR RELIEF

14 (Violation of Procedural Due Process)

15 58. Plaintiffs reallege and incorporate by reference each and every allegation contained
16 in the above paragraphs as though fully set forth herein.

17 59. The Due Process clause of the Fourteenth Amendment to the United States
18 Constitution requires that notice and a hearing be afforded to individuals prior to a reduction in,
19 or loss of, an entitlement.

20 60. Plaintiffs have a property interest in the uninterrupted receipt of the health care
21 services defendants are required by federal and state law to provide. Plaintiffs also have a liberty
22 interest in not having their county health services reduced or withdrawn in a manner which
23 subjects them to serious harm. The Fourteenth Amendment to the United States Constitution
24 forbids defendants from depriving plaintiffs of this property and liberty interest without providing
25 prior individual notice and a prior opportunity for a hearing to challenge the appropriateness of
26 the termination, reduction or transfer of services.

27 61. Plaintiffs are informed and believe, and on such information and belief state that
28 Defendants do not plan to provide prior individual notice and prior opportunity for a hearing to

1 plaintiffs before terminating, reducing or transferring their services. Plaintiffs have no adequate
2 remedy at law to prevent this deprivation of their rights and to avoid the grievous threats to their
3 health and safety caused by this deprivation.

4 FIFTH CLAIM FOR RELIEF

5 (Violation of Substantive Due Process)

6 62. -- Plaintiffs reallege and incorporate by reference each and every allegation contained
7 in the above paragraphs as though fully set forth herein.

8 63. Defendants have assumed a special relationship with the impoverished patients who
9 rely upon it for necessary medical services.

10 64. The Due Process clause of the Fourteenth Amendment to the United States
11 Constitution requires that the County not arbitrarily abandon its patients or terminate services on
12 which those patients rely.

13 65. Plaintiffs are informed and believe, and on such information and belief, allege that
14 defendants are violating the Due Process Clause of the Fourteenth Amendment to the United States
15 Constitution in that, having undertaken the care of the patient class members, they are now
16 arbitrarily abandoning these patients and terminating the life sustaining health care services on
17 which they rely, without regard for accepted medical standards of care.

18 SIXTH CLAIM FOR RELIEF

19 (Violation of Anti-Patient Dumping Provisions)

20 66. Plaintiffs reallege and incorporate by reference each and every allegation contained
21 in the above paragraphs as though fully set forth herein.

22 67. The Emergency Medical and Active Labor Act (EMTALA), 42 U.S.C. §1395dd,
23 requires all Medicare-certified hospitals to screen and stabilize all patients suffering emergency
24 medical conditions unless the patient provides his or her informed consent to be transferred or
25 unless a physician certifies the benefits of transfer outweigh the risks.

26 68. EMTALA further requires that all transfers be "appropriate." To be an appropriate
27 transfer, the sending facility must verify the receiving hospital has both available space, qualified
28 personnel and that they have agreed to accept the transfer and provide appropriate medical

74. Welfare and Institutions Code § 10000 sets forth the purpose of California's public assistance statutes, including § 17000. It requires that services shall be provided "promptly and humanely".

Health and Safety Code § 1442.5 requires that even if a County closes facilities or reduces services, it must continue to meet its duty to provide indigent with medical care through alternative means.

76. Health and Safety Code § 450 requires the County to take necessary measures to reserve and protect the public health.

77. Title 22 Code of Regulations § 88222 forbids the discharge of a Medi-Cal beneficiary inpatient from any facility without a valid medical-social reason which warrants discharge.

78. Title 22 Code of Regulations § 88222 provides for the termination of medical treatment. These procedures require, inter alia, that patients be provided with individualized plans for continuing care.

79. Plaintiffs are informed and believe on such information and belief state that the reductions in health care services will result in Defendants inability to provide necessary, timely and humane health care to indigent residents of the County in violation of California

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Welfare and Institutions Code §§ 10000 & 17000. Plaintiffs are informed and believe, and on such information and belief state that Defendants have violated their obligations under California Health and Safety Code § 1442.5, the California Beilenson Act, by failing to provide for the continuation of care through alternate means for indigent residents of the County.

81. Plaintiffs are informed and believe on such information and belief state that Defendants' proposed closures will violate Health and Safety Code § 450 by failing to preserve the public health of the general public, and by allowing harmful and contagious medical conditions to increase and spread.

82. Plaintiffs are informed and believe on such information and belief state, that by their actions complained of herein, defendants are discharging Medi-Cal beneficiaries for

Submitted by:

Beilenson Hearing

1 reasons not allowed by 22 CCR § 51482 and without adopting transfer plans in accord with 22
2 CCR § 70717 and are thus violating state law,

3 NINTH CLAIM FOR RELIEF

4 (Injunctive Relief)

5 83. Plaintiffs reallege and incorporate by reference each and every allegation contained
6 in the above paragraphs as though fully set forth herein.

7 84. Plaintiffs have no adequate remedy at law to prevent defendants from failing to
8 provide health care services in a humane and timely manner and to avoid serious threats to their
9 health and safety.

10 85. The proposed reductions in care will cause grave and irreparable harm to plaintiffs'
11 health and safety in that, among other things, defendants have:

- 12 a. proposed to reduce or discontinue necessary health care without making
13 necessary arrangements to provide services to patients with disabilities in
14 the most integrated setting appropriate to their needs and without the same
15 access to medical services as other patients;
- 16 b. failed to make necessary arrangements for appropriate transfer, referral and
17 follow up care for patients who are or will be discharged following
18 hospitalization;
- 19 c. proposed to implement these service reductions and transfers without
20 adequate prior notice and opportunity for pre-termination hearing;
- 21 d. failed to live up to their obligation to ensure the provision of necessary
22 health care to the poor directly or through alternate means;

23 86. Plaintiffs have no adequate remedy at law to prevent the damage, including life
24 threatening injuries, that will result if defendants are allowed to proceed. Unless enjoined and
25 restrained by order of this court, defendants will continue their illegal actions and plaintiffs will
26 suffer irreparable injury, including pain, serious illness, disability, and even death.

2 b. provide patients with disabilities with the same access to medical services
as other patients;

3 c. provide appropriate transfer, referral and follow-up care for patients who
4 are or will be discharged following hospitalization at the County's medical centers;

5 d. provide adequate written notice to all patients, a prior opportunity to be
6 heard and aid-paid pending before terminating, reducing or transferring their medical services;

7 e. ensure that patients suffering medical conditions will be appropriately
8 screened, stabilized and transferred pursuant to the requirements of EMTALA; and

9 f. provide essential non-emergency medical services to patients with inefficient
10 resources to pay for their medical needs either directly through other County facilities or indirectly
11 through alternative means.

12 5. Enter a declaratory judgment that the reduction and elimination of county health
13 services and accessible facilities.

14 a. discriminate against persons with disabilities contrary to the rights granted
15 to persons with disabilities under the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq.
16 and its implementing regulations;

17 b. violate federal requirements to provide appropriate discharge planning,
18 transfer and follow up care for inpatients;

19 c. violate the Due Process clause of the Fourteenth Amendment to the U.S.
20 Constitution which requires prior individualized notice to every patient and the right to a prior
21 hearing to contest the transfer, service reduction or termination of care;

22 d. violate EMTALA provisions regarding screening, stabilization and transfer
23 of patients with emergency medical conditions; and

24 e. violate state law provisions requiring the County to ensure that poor patients
25 receive necessary health services directly or through alternative means, pursuant to Calif. Welfare
26 and Institutions Code § 10,000, 17,000 and Health and Safety Code § 1442.5.

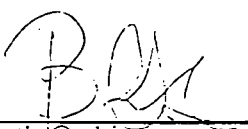
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6. Award plaintiffs their reasonable costs of suit, attorneys fees, costs and disbursements.

7. Award such other relief as the Court deems just and proper.

Dated: 8/24/95

RESPECTFULLY SUBMITTED,
PROTECTION AND ADVOCACY, INC.
CALIFORNIA WOMEN'S LAW CENTER
NATIONAL HEALTH LAW PROGRAM
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
LEGAL AID FOUNDATION OF LOS ANGELES
LOYOLA LAW SCHOOL
LEGAL SERVICES PROGRAM FOR PASADENA
AND SAN GABRIEL - POMONA VALLEY
WESTERN CENTER ON LAW & POVERTY, INC.
SAN FERNANDO VALLEY
NEIGHBORHOOD LEGAL SERVICES, INC.

By: 
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