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12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

15 MARTI VILLERY; MARGUERITE ) Case No. CV-95-5714 JGD (SHx)  
BRAUNSTEIN; ALEX FLORES, by and )  
16 through his Guardian ad Litem, MARIA ) PLAINTIFFS' OPPOSITION TO  
PEREZ; MARY HAYES; NEIL ) DEFENDANTS' MOTION TO  
17 DWORZACK, by and through his Guardian ) DISMISS FOR FAILURE TO  
ad Litem, DIANE DWORZACK; ) STATE A CLAIM UPON WHICH  
18 EDUARDO ACEVES; EUNICE VIQUEZ; ) RELIEF CAN BE GRANTED  
BONNIE HAGY; DIANA MOLINO; ) PURSUANT TO FEDERAL  
19 KEITH CROSSWHITE, ) RULES OF CIVIL PROCEDURE,  
and JUDY MAGANA, ) RULE 12(b)(6) AND (7), AND  
20 Plaintiffs, ) FOR LACK OF SUBJECT  
21 vs. ) MATTER JURISDICTION  
PURSUANT TO RULE 12(B)( 1)

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

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1 **I. INTRODUCTION**

2 Contrary to defendants’ assertions, plaintiffs do not seek to “wrest the reins of  
3 government” away from the County of Los Angeles (hereinafter “County”). They seek only to  
4 insure that the local government officials, who are, in the words of their counsel, “driv[ing] these  
5 horses” not be allowed to commit wholesale violations of federal and state laws in punishing  
6 critically ill and disabled patients (not horses) out of a downsized health system. Plaintiffs  
7 acknowledge that defendants can legally downsize the County health care system, provide  
8 medical services through alternative means (including public-private partnerships), and transition  
9 many existing patients to other health care service providers. At the same time, defendants must  
10 adhere to applicable federal and state law protections enacted for the benefit of patients, persons  
11 with disabilities, and the poor as they begin implementing these reductions, as more particularly  
12 outlined in the Complaint. Since violations of individual patient rights are most likely to occur  
13 when a local government begins to operate in a “crisis mode,” it is critically important that this  
14 Court exercise its jurisdiction to insure adherence to the minimum legal standards and  
15 protections that apply to this process.

16 The matter presently before the Court is defendants’ motion to dismiss plaintiffs’  
17 Complaint, in its entirety. The Complaint raises significant, justiciable federal questions for  
18 resolution by this Court, pursuant to the Americans with Disabilities Act (ADA), the Medicare  
19 and Medicaid statutes and regulations, and federal substantive and procedural due process.  
20 Plaintiffs’ claims deal only with the manner and extent to which defendants can proceed to  
21 dismantle the County health care system. Defendants say virtually nothing about these federal  
22 claims, except to contend that they should somehow have been raised in, or are somehow  
23 insulated from review by this Court by virtue of, an unrelated state court action -- Tailfeather  
24 v. Board of Supervisors, Case No. BC080929, filed over two years before any of the proposed  
25 health service reductions or curtailments at issue in this case even occurred. As outlined below,  
26 the Tailfeather case involved only the County’s duty to adopt waiting time standards for  
27 emergency and outpatient care; it did not involve any proposed closures of clinics or hospitals,  
28 or the resulting denial or reduction of services to any County patients in violation of the ADA

1 and other federal and state laws. Tailfeather can be completely distinguished, factually and  
2 legally, from this action, as outlined in section II below. Moreover, the relief requested in  
3 Tailfeather (that the County be required to adopt waiting time standards for emergency and  
4 outpatient services) has no bearing on what is at issue in this case, which is the County's failure  
5 to provide equal access to medical services for disabled class members, to offer those services  
6 in an integrated manner as required by the ADA, and to provide notice and a hearing to class  
7 members before terminating or reducing the health services provided to each of them, as the  
8 County proceeds to downsize its health care system.

9 It is clear that defendants are attempting to have this case tried on the merits under the  
10 guise of a 12(b)(6) motion to dismiss. Their moving papers are replete with statements that  
11 plaintiffs' allegations are "not true"; Defendants' Motion to Dismiss ("Def. Mot. to Dismiss")  
12 at 14, 1. 15; 22, 11. 22-23). As this Court is well aware, the standard for dismissal pursuant to  
13 12(b)(6) requires the Court to assume the facts stated in the Complaint are true, construe them  
14 in the light most favorable to plaintiffs, draw all reasonable inferences therefrom, and to then  
15 determine whether plaintiffs are entitled to any form of legal remedy or relief. The motion must  
16 be denied if plaintiffs state any form of claim for relief. Conlev v. Gibson, 355 U.S. 41, 45-46  
17 (1957); 78 S.Ct. 99, 101-102; NL Industries, Inc. v. Kaplan (9th Cir. 1986) 792 F.2d 896, 898.

18 Rule 12(b)(6) motions are disfavored and are rarely granted (Hall v. City of Santa  
19 Barbara, 813 F.2d 198, 201, n.9 (9th Cir. 1986)), and in the Ninth Circuit are proper only in "the  
20 extraordinary case." United States v. Redwood City (9th Cir. 1981) 640 F.2d 963, 966.

21 Since plaintiffs have standing, and state claims for relief under the ADA, the Medicaid  
22 and Medicare discharge planning requirements, the due process clause, the Emergency Medical  
23 Treatment and Active Labor Act (EMTALA) 42 U.S.C. §1395dd, 42 U.S.C. §1983 and for  
24 declaratory and injunctive relief, (see Sections III through IX), together with their state  
25 supplemental claims, the Complaint is not subject to dismissal.

26 Defendants also ask this Court to dismiss the instant Complaint for lack of subject matter  
27 jurisdiction, pursuant to Rule 12(b)(1). Such dismissals are "exceptional" and limited to cases  
28 where the claims are frivolous. Roberts v. Corrothers (9th Cir. 1987) 812 F.2d 1173, 1177;

1 Nietzke v. Williams, 490 U.S. 319, 109, S.Ct. 1827, 1834 (1989). Defendants do not allege that  
2 these claims are frivolous, and do not even argue that plaintiffs fail to properly invoke federal  
3 question jurisdiction; they merely assert, erroneously, that an unrelated state court case filed in  
4 1993 and currently on appeal should operate to divest this court of jurisdiction.

5 Defendants also assert that Rule 12(b)(7) requires the dismissal of plaintiffs' Medicaid  
6 and breach of contract claims (second and third claims), apparently on the alleged ground that  
7 the state is an indispensable party. A rule 12(b)(7) motion may be granted only if the Court  
8 determines that the party is in fact "indispensable," (including that joinder of the party is not  
9 possible) Shermoen v. United States (9th Cir. 1992) 982 F.2d 1312, 1317. In this case, the State  
10 of California is neither an "indispensable" or even a "necessary" party, based on the claims set  
11 forth in the Complaint, and the Rule 12(b)(7) motion to dismiss must be denied. (See Section  
12 IV, below).

13 Finally, this Court must exercise jurisdiction over the supplemental state law claim  
14 alleged by plaintiffs, pursuant to 28 U.S.C. §1367(c) and Executive Software v. United States  
15 District Court 24 F.3d 1545 (9th Cir. 1994). No "exceptional circumstances" are present to  
16 support dismissal or a determination by this Court not to exercise supplemental jurisdiction.  
17 (See Section IX, below).

18 **II. THE INSTANT LAWSUIT SHOULD NOT BE DISMISSED ON THE BASIS**  
19 **OF THE JUDGMENT IN THE TAILFEATHER SUIT SINCE THE**  
20 **FACTUAL AND LEGAL ISSUES IN THE TWO CASES ARE QUITE**  
**DIFFERENT AND SINCE THE JUDGMENT IN THE OTHER SUIT IS**  
**NOT YET FINAL.**

21 Defendants' main argument for dismissing the instant case is that it supposedly is  
22 "identical" to another suit now pending on appeal in state court, Daisy Tailfeather. et al. v. Board  
23 of Supervisors of the County of Los Angeles. et al., Los Angeles Superior Court Case No. BC  
24 080929. Def. Mot. to Dismiss at 1-12, 28-31. Contrary to defendants' mischaracterizations, the  
25 instant case - Villerv - differs fundamentally from Tailfeather in terms of the underlying facts,  
26 the relief being sought and the nature of the legal claims. Tailfeather is no reason to dismiss  
27 the case at bar.

28 While both Villerv and Tailfeather concern the County health care system, they involve

1 quite different periods of time. Tailfeather was originally filed in May of 1993 when the County  
2 was operating six hospitals, six comprehensive health centers, 40 public health centers, and three  
3 rehabilitation centers. Tailfeather Registrar of Action, Defendants' Request for Judicial Notice  
4 Exhibit ("Def. Ex.") K, 255; Defendants' Answer in Tailfeather, Plaintiffs' Request for Judicial  
5 Notice ("Plf. Ex.") Ex. 3.' The Complaint in Tailfeather contained no allegations about the  
6 possible closures of any County facilities since no such closures were threatened during that time  
7 period. Tailfeather Second Amended Complaint, Def. Ex. D, 19-34.

8 This case, on the other hand, was filed last month. The impetus for this lawsuit is the  
9 imminent closure on October 1 of all six comprehensive health care centers, 28 of the public  
10 health centers, plus the elimination of a significant number of outpatient visits at the hospitals.  
11 Villerv Complaint ("Complaint"), ¶ 1.

12 Defendants insist that the "Villerv complaint is virtually identical to the complaint in  
13 Tailfeather." Def. Mot. to Dismiss at 4, 11. 6-7. This statement is simply not true as borne out  
14 by even a cursory reading of the two pleadings. Compare Tailfeather Second Amended  
15 Complaint, Def. Ex. D, at 19-34, with Complaint.

16 In Tailfeather the plaintiffs were concerned about the lengthy waiting times for  
17 emergency care at the County hospitals and for outpatient care at the specialty clinics throughout  
18 the County health care system. Tailfeather Second Amended Complaint, Def. Es. D, 25-27.  
19 Here, in contrast, plaintiffs are confronted with a much different and more drastic problem - the  
20 outright elimination of many of these outpatient care facilities and services. Complaint, ¶¶ 1,  
21 28-40.

22 As part of the summary judgment proceedings in Tailfeather, the County's Medical  
23 Director, Dr. William F. Loos, submitted a declaration swearing that the triage standards in the  
24 County's emergency rooms ensure the prompt treatment of patients "based on medical  
25 necessity." Dr. Loos Dec., Plt. Ex. 4 at ¶ 12. Dr. Loos also asserted that patients with "non-

26  
27  
28 Pursuant to Rule 201 of the Federal Rules of Evidence, the Court is asked to take  
judicial notice of this and other pleadings from Tailfeather and other state court actions; see  
Plaintiffs' Request for Judicial Notice filed concurrently herewith.

1 emergency conditions” typically “will be referred for appointments for outpatient care in the  
2 appropriate County outpatient facility, within the time specified by the physicians.” Id. at ¶ 13.

3 Dr. Loos is not likely to submit a declaration in this case with similar promises about  
4 how after October 1 County patients will still be able to receive outpatient care pursuant to their  
5 physicians’ specifications. On the contrary, defendants themselves have admitted that the  
6 imminent cutbacks in the County health care system will have disastrous consequences for the  
7 health of the patients. Complaint, ¶ 1; Def. Ex. L, 269.

8 Defendants incorrectly assert that the “same relief” is sought in this case as in Tailfeather.  
9 Def. Mot. to Dismiss at 4. The Tailfeather plaintiffs sought as relief an order which required  
10 the Board of Supervisors to adopt standards concerning how long indigent patients wait for  
11 outpatient care and emergency care at County facilities and some system to monitor compliance  
12 with these standards. Tailfeather Second Amended Complaint, Def. Ex. D at 20, 31, 32. This  
13 lawsuit contains no similar request for relief. Complaint ¶ 19-21, Prayer for Relief. Instead,  
14 plaintiffs are only asking that the County implement these massive and hurried reductions in its  
15 health care system in such a way as to comply with its ongoing obligations under federal and  
16 state law. Id. at ¶¶ 41-89 and Prayer for Relief. Thus, the County cannot, for example, cut off  
17 patients from existing health services without first affording them written notice and an  
18 opportunity to be heard. Id. at ¶¶ 58-61. Nor can the County discharge patients from its  
19 hospitals without first making some arrangements for them to receive ongoing care elsewhere.  
20 Id. at ¶¶ 49-55.

21 The suggestion that plaintiffs are “forum shopping” to relitigate issues involved in  
22 Tailfeather (Def. Mot. to Dismiss, at 2), is without merit. The claim that the County has a duty  
23 to adopt waiting time standards for specified services at facilities throughout the County is  
24 hardly analogous to the state law claims raised here that massive reductions in outpatient  
25 services will result in denying class members medical care defendants have a duty to provide  
26 under Welfare and Institutions Code (“WIC”) 17000, and in accordance with specified mandates  
27 under federal law. Moreover, if plaintiffs were “forum shopping,” they could easily have filed  
28 in state court, where County health care reductions have twice before (in 1987 and 1990) been

enjoined, in the cases of Salamanca v. Board of Supervisors and Sanchez v. Board of Supervisors.

Plaintiffs have brought this action in federal court not because they seek a better forum for state law issues, but because of the substantial federal claims that are inextricably intertwined with the state law issues.

Defendants also contend that this lawsuit is based on “the identical laws” which formed the basis for Tailfeather. Def. Mot. to Dismiss at 4, 11. 12-13. Once again, there is no truth to defendants’ contention. As will be discussed more fully below, the present lawsuit asserts legal claims, among others, under the Americans with Disabilities Act, the Medicaid and Medicare discharge planning and transfer requirements and the Emergency Medical Treatment and Active Labor Act. Villery Complaint, ¶¶ 41-55, 66-69. Tailfeather involved none of these federal claims, a point defendants begrudgingly concede. Def. Mot. to Dismiss at 4, 11. 13-14.

Even the Due Process claims in the two lawsuits are different. In Tailfeather plaintiffs essentially argued that their substantive due process rights were violated by the County’s standardless administration of its health care system. See Plaintiffs’ Tailfeather Memoranda of Points and Authorities, Def. Ex. H at 211-215; Def. Ex. I at 244-245. Here, in contrast, plaintiffs are primarily arguing that their procedural due process rights to notice and some type of hearing will be violated by the County’s precipitous cutbacks in necessary medical services.’

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‘The complaints, together with the minute orders reflecting the rulings of the Los Angeles Superior Court in Salamanca and Sanchez, are included as Ex. 5-6 and 7-8, respectively, in Plaintiffs’ Request for Judicial Notice filed concurrently herewith. Plaintiffs request that the Court take judicial notice pursuant to Federal Rules of Evidence Rule 20 1. Not surprisingly, defendants do not urge that either of these prior state court cases should control.

<sup>3</sup> Defendants emphasize that counsel for the Tailfeather plaintiffs are “many of the same attorneys” for the plaintiffs in this case. Def. Mot. to Dismiss at 1, 11. 26-27. It is true that during the past ten years, many counsel herein have represented indigents in lawsuits against the County concerning public benefits and health care for the poor. See Dec. of Beth Osthimer at ¶¶ 1-S in support of plaintiffs’ motion for class certification. This merely reflects the unfortunate fact that only a small number of nonprofit organizations exist with the resources and expertise to represent the poor in complex litigation. It hardly suggests that the litigation is all of one piece. As this Court may recall, some of the Villery counsel were also counsel several years ago for the plaintiffs in Rubi Garcia. et al. v. Board of

1 Complaint, ¶¶ 58-6 1.

2 Despite all the above-mentioned factual and legal differences between Tailfeather and  
3 Villerv, defendants nonetheless maintain that Tailfeather bars plaintiffs' claims in this case under  
4 the res judicata doctrine. Def. Mot. to Dismiss at 11, 11. 24-25. Defendants are wrong if for no  
5 other reason than there is no final judgment in Tailfeather. Pursuant to the "full faith and credit  
6 clause" in 28 U.S.C. § 1738, federal courts give the same preclusive effect to a state court  
7 judgment "as it would be accorded in a California court, whether the effect is one of claim  
8 preclusion or issue preclusion." Los Angeles Branch NAACP v. Los Angeles Unified School  
9 Dist., 750 F.2d 731, 736 (9th Cir. 1984); see also Migra v. Warren Citv School Dist. Bd. of  
10 Educ., 465 U.S. 75, 81, 104 S.Ct. 892 (1984).

11 The Tailfeather judgment is currently on appeal. Tailfeather Notice of Appeal, Def. Es.  
12 B, 13-15. In California the "doctrines of res judicata and collateral estoppel apply only when  
13 a final judgment on the merits has been rendered." National Union Fire Ins. Co. v. Stites  
14 Professional Law Corp., 235 Cal.App.3d 1718, 1726, 1 Cal.Rptr. 2d 570 (1991). "When, as  
15 here, a judgment is still open to direct attack by appeal or otherwise, it is not final and the  
16 doctrines of res judicata and collateral estoppel do not apply." Id. (emphases added).

17 Try as defendants might, they cannot convert this case into another Tailfeather. In short,  
18 Villerv should not be dismissed on account of Tailfeather.

19 **III. PLAINTIFFS HAVE ALLEGED FACTS SUFFICIENT TO ESTABLISH**  
20 **THAT, IF RANCHO LOS AMIGOS IS DIVESTED OR SEVERELY CUT,**  
21 **THEY WILL BE DENIED COUNTY MEDICAL SERVICES BY REASON**  
22 **OF THEIR DISABILITY, IN VIOLATION OF THE ADA AND SECTION**  
23 **504 OF THE REHABILITATION ACT.**

24 **A. Even If the County's Cutbacks Are Motivated Purely By Fiscal Concerns**

25 Supervisors or the County of Los Angeles, Case No 90-409 5 JGD (concerning delays in  
26 processing of Medi-Cal applications). More recently, plaintiffs' counsel have represented a  
27 class of General Relief recipients in Gardner v. County of Los Angeles, 34 Cal.App.4th 200,  
28 40 Cal.Rptr.2d 271 (1995), yet defendants do not claim that Villerv is the same as any of  
those other cases. Plaintiffs will address Defendants contentions about typicality and other  
class definition issues (Def. Motion to Dismiss at 5-7) in their reply to Defendants' Opposi-  
tion to Plaintiffs' Motion for Provisional Class Certification.

**Rather Than Discriminatory Animus, They Violate the ADA and Section 504  
If the Impact Is to Exclude Patients By Reason of Their Disabilities.**

The County claims that because its proposed cuts “are not made on the basis of disability” but are instead “due to steep revenue decreases” that plaintiffs cannot show a violation of Section 504 or the ADA. Def. Mot. to Dismiss at 13, 11. 7-10. The County also claims, incorrectly, that the ADA and Section 504 require that discrimination occur solely by reason of disability, a point addressed in the next section.

But more importantly, neither the ADA nor Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, (“Section 504”) require proof of discriminatory intent, so the County’s motive in making reductions is irrelevant. See e.g., Alexander v. Choate, 469 U.S. 287, 298, 105 S.Ct. 712, 718 (1985) (Section 504). Instead, the courts use an “impact” test, by which a party must show that he or she is an otherwise qualified individual who is denied or excluded from services that are offered to others, and that the exclusion is a result of disability. Id. at 302, 105 S.Ct. 720. These allegations are amply present in the Complaint. Plaintiffs have alleged that the County has proposed to close or divest facilities, such as Rancho Los Amigos, which offer the only services in the County system which are accessible and appropriate for patients with disabilities. Complaint, ¶¶ 32, 37, 38, 39, 40, 47.<sup>4</sup>

If Rancho is closed, or sold without an adequate “bridge period” of continued County funding, the County has no basis for its claim that the “remaining services are equally available to both handicapped (sic) and non-handicapped individuals.” Def. Mot. to Dismiss at 13, 11. 22-23. The Complaint alleges that patients with disabilities cannot obtain care at any of the remaining County clinics or hospitals because these lack the equipment or the expertise to ensure

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<sup>4</sup> In support of their Opposition to Plaintiffs’ Motion for Preliminary Injunction, the County has submitted a declaration from Connie Diaz, the Administrator at Rancho Los Amigos, stating that the hospital will only reduce outpatient services by 20%, an amount which is significantly less than the reductions at other hospitals. If the County follows through on this commitment, the need for preliminary injunctive relief as to this particular aspect of the plaintiffs ADA claim may be unnecessary at this time. On the other hand, by the time this Motion is heard, the County may also have voted to immediately divest Rancho, and to close one or more additional hospitals. Regardless, for purposes of the instant Motion to Dismiss, all of the factual allegations in the Complaint, including the allegation that the County has proposed the closure or divestment of Rancho, are and must be taken as true.

1 accessibility. Complaint, ¶ 37 (special equipment and examination tables), ¶ 39, 40 (specialized  
2 services), ¶ 47 (no alternative in the County system). The only reason that these plaintiffs will  
3 be unable to obtain care on the same basis as other patients is their disability. Thus, the  
4 allegations in the Complaint do establish that patients with disabilities will be excluded from the  
5 County health system by reason of their disabilities.

6 **B. The Existence of Non-Disability Factors, Such as Fiscal Concerns, Does Not**  
7 **Immunize the County From Claims Under Section 504 or the ADA.**

8 The County is also wrong on the law: to prevail under the ADA or Section 504, plaintiffs  
9 need not prove that disability was the sole factor in their exclusion from services. While the  
10 language of Section 504 prohibits the denial of benefits to an “otherwise qualified individual . . .  
11 solely by reason of her or his disability,” (29 U.S.C. § 794) (emphasis added)), the regulations  
12 implementing Section 504 dropped the word “solely.”

13 When Congress enacted Title II of the ADA, it also eliminated the word “solely” from  
14 the new statute, which provides in relevant part:

15 . . . no qualified individual with a disability shall, by reason of such disability, be  
16 excluded from participation in or be denied the benefits of the services, programs,  
17 or activities of a public entity, or be subjected to discrimination by any such  
18 entity.

19 **42** U.S.C. § 12132. In doing so, Congress noted that it was not changing the law, but was  
20 instead deliberately adopting the interpretation and regulatory language used by the executive  
21 agencies enforcing Section 504,<sup>6</sup> as well as judicial interpretations,’ all of which held that the

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22 <sup>5</sup> See e.g., 45 C.F.R. 84.4(b)(1) (prohibiting discrimination by recipients of federal funds  
23 “on the basis of handicap”).

24 <sup>6</sup> The House Committee on Education and Labor explained that  
25 The Committee recognizes that the phrasing of section 202 of the new legislation [42  
26 U.S.C. 121321 differs from section 504 by virtue of the fact that the phrase “solely by  
27 reason of his or her handicap” has been deleted. The deletion of this phrase is  
28 supported by the experience of the executive agencies charged with implementing  
section 504. The regulations issued by most executive agencies use the exact  
language set out in section 202 in lieu of the language included in the section 504  
statute. A literal reliance on the phrase “solely by reason of his or her handicap” leads  
to absurd results . . .

1 “existence of non-disability related factors” does not “immunize” discriminatory decisions.  
2 House Comm. on Educ. and Labor, American with Disabilities Act of 1990, H. Rep. NO. 1 01-  
3 485(II), 101st Cong., 2nd Sess. 4 (1990), reprinted in 1990 U.S. Code Cong. & Admin. News  
4 303, 368. See also, Cook, “The Americans with Disabilities Act: The Move to Integration,” 64  
5 Temple L.Rev. 393, 417 (1991).

6 C. **Facially Neutral Restrictions Such as these May Violate the ADA, Where  
7 Their Impact Is Discriminatory.**

8 The County also argues that there can be no violation of the ADA where, as here, the  
9 reduction in benefits is “facially neutral.” Def. Mot. to Dismiss at 13, 1. 13. The ADA  
10 regulations themselves, which plainly establish an “effects” test for discrimination, dispel this  
11 notion. For example, the Department of Justice regulations implementing the ADA specifically  
12 prohibit practices which

13 “provide a qualified individual with an aid, benefit or service that is not as  
14 effective in affording equal opportunity to obtain the same result. to gain the same  
15 benefit, or to reach the same level of achievement as that provided to others.”

16 28 C.F.R. §35.130(b)( 1)(iii) (emphasis added).

17 The ADA regulations also prohibit “methods of administration . . . that have the purpose  
18 or effect of defeating or substantially impairing accomplishment of the objectives of the public  
19 entity’s program with respect to persons with disabilities.” 28 C.F.R. §35.130(b)(3)(ii) (emphasis  
20 added). The preamble to the final ADA regulations, now published as an Appendix to Part 35,  
21 explains that “[t]his paragraph [§35.130] prohibits both blatantly exclusionary policies or  
22 practices and nonessential policies and practices that are neutral on their face, but deny

23  
24 House Comm. on Educ. and Labor, American with Disabilities Act of 1990, H. Rep. No.  
25 101-485(II), 101st Cong., 2nd Sess. 4 (1990), reprinted in 1990 U.S. Code Cong. & Admin.  
26 News 303, 368. Accord, Senate Comm. on Labor and Human Resources, Report on the  
27 Americans with Disabilities Act, S. Rep. No. 116, 101st Cong., 1st Session (1989), pp. 44-  
28 4 5 .

‘The House Committee specifically relied on Pushkin v. Reoents of University of  
Colorado, 658 F.2d 1372, 1386 (10th Cir. 1981) (finding a violation of Section 504 despite  
the existence on non-disability related factors).

1 individuals with disabilities an effective opportunity to participate.” 28 C.F.R. Part 35, App. A  
2 at 440 (1992)(emphasis added).

3 Contrary to the County’s suggestions, Alexander v. Choate does not insulate facially  
4 neutral practices from challenge.’ Def. Mot. to Dismiss at 14-16. In Alexander, the court  
5 observed that a 14 day limit on Medicaid hospital coverage “did not have a particular  
6 exclusionary effect on the handicapped,” who would be as able as any other patients to utilize  
7 the coverage. Alexander, 469 U.S. at 302, 105 S.Ct. at 720. Here, by contrast, patients with  
8 disabilities are faced with the prospect of no treatment accessible to them, while other patients  
9 will continue to receive services, albeit more limited than before.

10 Here, plaintiffs have alleged that the cuts in outpatient services, even if neutral on their  
11 face, “will deny disabled patients the opportunity to benefit from county health services by  
12 eliminating physically accessible services and ... denying disabled patients the special expertise  
13 they need to gain the same benefit of appropriate medical treatment offered to other patients.”  
14 Complaint, ¶ 48. This allegation clearly asserts a “particular exclusionary effect” within the  
15 parameters set out by Alexander, 469 U.S. at 302, 105 S.Ct. at 720.

16 **D. The County’s Claim of Hardship or Burden From Complying With the ADA**  
17 **Is Not Relevant to the Rule 12(b)(6) Motion.**

18 The County makes several arguments which are improperly raised in a Rule 12(b)(6)  
19 motion, since they involve contested factual matters outside the pleadings and fail to assume that  
20 the facts alleged in the Complaint are true. Plaintiffs will address these and other issues in their

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21 <sup>8</sup> The Department of Justice itself underscored the impact of Alexander in the preamble  
22 to the ADA regulations. After explaining that facially neutral provisions may still be  
23 discriminatory, the Preamble notes that:

24 “This standard is consistent with the interpretation of section 504 by the U.S.  
25 Supreme Court in Alexander v. Choate, 469 U.S. 287 (1985). The Court in  
26 Choate explained that members of Congress made numerous statements during  
27 passage of section 504 regarding eliminating architectural barriers, providing  
28 access to transportation, and eliminating discriminatory effects of job qualifica-  
tion procedures. The Court then noted: “These statements would ring hollow  
if the resulting legislation could not rectify the harms resulting from action that  
discriminated by effect as well as by design.”

28 C.F.R. Part 35, App. A at 440 (1992).

1 reply to the County's opposition to the motion for a preliminary injunction and only note them  
2 here for reference.

3 For example, the County claims that patients with disabilities have access to alternative  
4 services through the Medi-Cal program. In fact, every plaintiff submitted a declaration  
5 explaining why private Medi-Cal providers are unable to provide them appropriate, accessible  
6 treatment. The County's own preliminary surveys reveal that private providers will not accept  
7 patients with certain disabilities, even with Medi-Cal coverage. Plaintiffs' Memorandum in  
8 Support of Preliminary Injunction at 8, n. 10; AR 2046, 2047. The Complaint includes  
9 allegations that plaintiffs and others have no adequate alternatives through the Medi-Cal  
10 program. Complaint, ¶ 32, 34, 37, 39.

11 The County also assumes blithely that "most disabled members of the class are Medi-Cal  
12 recipients." However, many are not, such as declarant Geneva Compton, a stroke patient who  
13 was treated at Rancho Los Amigos and cannot obtain treatment elsewhere. (Plaintiffs  
14 Memorandum in Support of Preliminary Injunction at 20, n. 3 1, AR 3025). Since she is a GR  
15 recipient, the County claims that it will continue to provide her treatment, but this will be of  
16 little consolation to her if Rancho - the only facility which can offer her appropriate, accessible  
17 care - is closed.

18 Finally, the County claims that maintaining accessible services would be a fundamental  
19 alteration to their program and impose undue burdens and hardships. However, if the County  
20 is now representing that Rancho Los Amigos will not be closed or divested, then the remaining  
21 ADA issue is whether patients at other closed or curtailed facilities, or those patients who will  
22 be subject to the outpatient reductions at Rancho, have special needs which must be  
23 accommodated, either through special referrals, transfers to remaining County facilities, or other  
24 means. These determinations should occur in the context of individual notice and hearings  
25 which are independently required under the due process clause. See, Plaintiffs' Memorandum  
26 in Support of Preliminary Injunction at 34, n.49 (notice must reflect individualized determination  
27 re: disability status and accommodation needs, citing Stillwell v. Kansas City, MO. Bd. of Police  
28 Corn., 872 F.Supp. 682 (W.D. MO. 1995)., Tugg v. Towe, 864 F.Supp. 1201 (S.D. Fla. 1994.)

1 Providing this notice and hearing need not halt all closures and cutbacks.

2 IV. PLAINTIFFS PROPERLY STATE A CLAIM FOR RELIEF UNDER THE  
3 MEDICAID-MEDICARE DISCHARGE REGULATIONS.

4 Defendants first argue that plaintiffs fail to state a claim under the Medicaid and  
5 Medicare discharge planning requirements, not because plaintiffs fail to allege facts that support  
6 this claim, but because defendants contend that “the services can be provided by non-County  
7 Medi-Cal providers, which are numerous.” Def. Mot. to Dismiss at 18. Not only are defendants  
8 improperly asserting matters that are extrinsic to the Complaint; their statements are factually  
9 incorrect. Plaintiffs do not allege, and the discharge regulations do not require, that the County  
10 provide all follow-up care itself. The discharge planning requirements would be satisfied by  
11 meaningful referrals to providers who would actually accept and follow-up with discharged  
12 patients. However, the allegations in the Complaint, taken as true, show that these requirements  
13 will be violated. Complaint, ¶¶ 32, 34, 40, 51. In addition, the discharge planning requirements  
14 apply to all patients within the hospital, not iust those eligible for Medicaid and Medicare. 42  
15 C.F.R. § 482.21 and § 482.43. The County fails completely to acknowledge its duty to provide  
16 referrals for discharged patients who are not eligible for Medi-Cal. Compare, Complaint, ¶ 51  
17 with Def. Motion at 18. Moreover, although such matters are not properly before the Court on  
18 a motion to dismiss, the County’s own Closure/Contingency Plans and its preliminary surveys  
19 of private providers confirm that the there are not enough private Medi-Cal providers in the  
20 community able and willing to accept all the County’s existing Medi-Cal patients, particularly  
21 those with severe or acute conditions, such AIDS, much less those patients who are without  
22 Medi-Cal coverage. Motion for Preliminary Injunction, at 8, n.10; 20-22; 27, n.39.

23 Defendants also assert that “plaintiffs lack standing” to enforce the discharge planning  
24 obligations (Def. Motion at 18), but their argument seems to confuse concepts of private  
25 enforceability through Section 1983 and implied private rights of action, and never directly  
26 addresses any alleged standing issue.

27 Without question, provisions of the Medicaid statute and its implementing regulations are  
28 privately enforceable through Section 1983. Wilder v. Virginia Hospital Ass’n, 496 U.S. 498,  
509, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990). A presumption exists that federal rights are

1 enforceable against state and local officials under § 1983. Wright v. Roanoke Development and  
2 Housing Authority, 479 U.S. 418, 107 S.Ct. 766, 93 L.Ed.2d 781 (1987). Section 1983 will  
3 exist as a remedy where statutes create obligations “sufficiently specific and definite” which  
4 are intended to benefit the plaintiff and this remedy is not foreclosed “by express provision or  
5 other specific evidence from the statute itself.” Golden State Transit v. City of Los Angeles, 493  
6 U.S. 103, 108, 110 S.Ct. 444, 107 L.Ed.2d 420 (1989).

7 The discharge planning requirements satisfy the Golden State and Wilder test for  
8 enforcement through Section 1983. First, the regulations impose specific and definite mandates  
9 on hospitals which are not vague, amorphous or unenforceable by the courts. Wilder, 496 U.S.  
10 at 5 10, 110 S.Ct. at 25 17. With great detail and mandatory language, the discharge planning  
11 statute mandates how participating hospitals “must” identify patients, then “must” timely provide  
12 discharge planning evaluations and services. 42 U.S.C. §1395x(ee).<sup>9</sup> The Secretary  
13 implemented these discharge planning requirements by promulgating 42 C.F.R. §482.21(b)(2)  
14 (1994), which mandates that all Medicaid/Medicare certified hospitals create adequate discharge  
15 plans and transfer and refer patients, “along with necessary medical information ... to appropriate  
16

17 <sup>9</sup> In pertinent part, 42 U.S.C. §1395x(ee)(2) states:

18 (A) The hospital must identify, at an early stage of hospitalization, those patients who  
19 are likely to suffer adverse health consequences upon discharge in the absence of adequate  
20 discharge planning.

21 (B) Hospitals must provide a discharge planning evaluation for patients identified  
22 under subparagraph (A) and for other patients upon the request of the patient, patient’s  
23 representative, or patient’s physician.

24 (C) Any discharge planning evaluation must be made on a timely basis to ensure that  
25 appropriate arrangements for post-hospital care will be made before discharge and to avoid  
26 any unnecessary delays in discharge.

27 (D) A discharge planning evaluations must include an evaluation of a patient’s likely  
28 need for appropriate post-hospital services, including hospice services, and the availability of  
29 those services.

30 (E) The discharge planning evaluation be included in the patient’s medical record for  
31 use in establishing an appropriate discharge plan and the results of the evaluation must be  
32 discussed with the patient (or the patient’s representative).

33 (F) Upon the request of a patient’s physician, the hospital must arrange for the  
34 development and initial implementation of a discharge plan for the patient.

35 (G) Any discharge planning evaluation or discharge plan required under this para-  
36 graph must be developed by, or under the supervision of, a registered professional nurse,  
37 social worker, or other appropriately qualified personnel.

facilities, agencies or outpatient services as needed for follow up or ancillary care.” 42 C.F.R. §482.2 1 (b)(2) (1994) (emphasis added).

Next, the patients in Medicaid certified hospitals are the class intended to benefit from the Medicaid statute in general and from these regulations in particular. Wilder, 496 U.S. at 510, 110 S.Ct. at 2517.

Finally, nothing in the Medicaid statute indicates that Congress intended to preclude private enforcement. In Wilder v. Virginia Hospital Ass’n itself, the Supreme Court found that the existence of “limited oversight” from the state and federal Medicaid agencies did not foreclose § 1983 enforcement of the Medicaid statute by private individuals. 496 U.S. at 521, 110 S.Ct. at 2524. This fully disposes of the County’s claim that plaintiffs’ only relief is through the state enforcement agencies. Def. Mot. to Dismiss at 19.

The cases cited by the County do not defeat the existence of a Section 1983 claim against the County for violation of Medicaid regulations. In Stewart v. Bernstein, 769 F.2d 1088 (5th Cir. 1985) (Def. Mot. to Dismiss at 19), the plaintiffs sought relief against a private nursing home for a the wrongful eviction of a resident. The Court found that there was no state action for purposes of Section 1983, because the nursing home had only an “indirect and incidental” connection with the State Medicaid agency. Id. at 1090. Here, there is ample state action for purposes of Section 1983, since the County is cutting health services and violating its discharge planning requirements while “clothed with the authority of state law” as the statutorily mandated indigent health care provider pursuant to WIC § 17000. National Collegiate Athletic Ass’n v. Tarkanian, 488 U.S. 179, 191, 109 S.Ct. 454, 102 L.Ed.2d 469 (1988), quoting Monroe v. Pane, 365 U.S. 167, 172 (1964), and United States v. Classic, 313 U.S. 299, 326 (1941). The Stewart court also found that Medicaid recipients had no implied cause of action against private nursing homes for Medicaid nursing home regulatory violations, a holding which is immaterial as to whether patients have a claim against the County pursuant to § 1983.<sup>10</sup>

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<sup>10</sup> While the State must comply with federal regulatory requirements once it elects to participate in the program, nothing within Alabama Nursing Home Association v. Harris, 617 F.2d 388, 396 (5th Cir. 1980)(Def. Mot. to Dismiss at 19) forecloses federal regulatory enforcement against participating providers as well.

1           The Court's holding in O'Bannon v. Town Court Nursing Center, 447 U.S. 773, 100  
2 S.Ct. 2467, 65 L.Ed.2d 506 (1980) is also irrelevant. Def. Mot. to Dismiss at 18. O'Bannon  
3 held that Medicaid regulations conferred no constitutional right on Medicaid-eligible residents  
4 to continue to reside in a de-certified nursing home. Here, the defendants have elected to remain  
5 certified Medicaid/Medicare providers and, as such, must comply with the federal responsibilities  
6 owed to all patients -- Medicaid and non-Medicaid eligible. <sup>11</sup>

7           **V.     PLAINTIFFS PROPERLY STATE A CLAIM FOR BREACH OF CONTRACT.**

8           Plaintiffs can additionally enforce the discharge planning requirements as third party  
9 beneficiaries of Defendants' participation agreements, independent of their § 1983 claim.  
10 Defendants' participation in the Medicare and Medicaid programs is conditioned upon their  
11 compliance with provider agreements and conditions of participation. (Complaint, ¶ 56-57). See  
12 generally 42 C.F.R. Part 482 ("CONDITIONS OF PARTICIPATION FOR HOSPITALS")."  
13 Defendants' acknowledge the existence of these conditions of participation, requiring Medicaid  
14 and Medicaid certified hospitals to provide adequate discharge planning, transfer and referral  
15

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16           <sup>11</sup> Defendants fail to meet their burden of establishing how and why the State Department  
17 of Health Services is a necessary, much less an indispensable, party without whom complete  
18 relief cannot be granted or whose interest might be prejudiced if this litigation were to  
19 proceed without it. Def. Mot. to Dismiss at 19, 11. 3-9. Pacific Northwest Generating COOP.  
20 v. Brown, 822 F.Supp. 1479, 1511 (D.Or.1993) affirmed 25 F.3d 1443 (9th Cir 1994). The  
21 State is not an indispensable party to this lawsuit simply because it has elected to anticipate  
22 in the Medicaid program. Alabama Nursing Home Association v. Harris, 617 F.2d 388, 396  
23 (5th Cir. 1980). Contrary to defendants' representations, nowhere in the complaint do  
24 plaintiffs allege the "closure of facilities will result in an insufficient pool of Medi-Cal  
25 providers" (Def. Mot. to Dismiss at 18) in violation of the State's duty to ensure Medical  
26 payment rates are sufficient to attract enough providers. 42 U.S.C. §1396a(a)(30)(A); 42  
27 C.F.R. §447.204. Plaintiffs' claims are against the County for violations of state and federal  
28 law. Even the County's authority, Stewart v. Bernstein, 769 F.2d 1088 (1985) (Def. Mot. to  
Dismiss 19) acknowledges that "a state cannot be held liable for the decisions of a [provider]  
to discharge or transfer a patient." Id. at 1090. Finally, if this Court were somehow to find  
that the State was an indispensable, rather than a "necessary" party, granting plaintiffs leave  
to amend the complaint, rather than dismissal, would be appropriate relief. Wright & Miller,  
Federal Practice und Procedure, § 1359 at 429 ( 1990).

<sup>12</sup> Contrary to Defendant's assertions (Def. Mot. to Dismiss at 20), California law does  
not require that a copy of the Defendants' Medicaid/Medicare provider agreements be  
attached to the Complaint in order for this claim to be properly alleged. C.C.P. §430.10(g).

1 services. 42 C.F.R. §482.21; Def. Mot. to Dismiss at 17. Plaintiffs do not allege that these  
2 provision prohibit Medi-Cal providers from ever going “out of business.” Def. Mot. to Dismiss  
3 at 20, 11. 25-26. Rather, plaintiffs allege that as long as Defendants continue to participate in  
4 the Medicaid/Medicare programs, they must adequately transfer, refer and discharge patients “as  
5 needed.” 42 C.F.R. §482.21(b)(2) (emphasis added); Complaint ¶ 49-57.

6 Numerous California cases have found that government benefit recipients are entitled as  
7 third party beneficiaries to enforce contracts against governmental and private entities. See e.g.,  
8 Zigas v. Superior Court, 120 Cal.App. 3d 827, 174 Cal.Rptr. 806 (1981)(tenants have standing  
9 to sue landlord as third party beneficiaries where landlord agreed in contract with the  
10 Department of Housing and Urban Development to not charge more rent than permitted by the  
11 Department); Zakaria v. Lincoln Property Co., 185 Cal.App.3d 500, 229 Cal.Rptr. 669 (1986)(as  
12 intended beneficiaries, low-income tenants had standing to sue developer who agreed to promote  
13 the development of adequate multi-family low-income housing as a condition of receiving city  
14 revenue funds); Flagstaff Medical Center, Inc. v. Sullivan, 962 F.2d 879, 888 (9th Cir.  
15 1992)(patients were entitled to recover as intended third-party beneficiaries of Hill-Burton  
16 agreement between federal government and medical center). Accordingly, patients are also  
17 entitled, as third party beneficiaries, to enforce Medicaid/Medicare conditions of participation  
18 against providers. Fuzie v. Manor Care, Inc., 461 F.Supp. 689 (N.D. Ohio 1977).<sup>13</sup>

19 The County’s reliance upon Guardians Assoc. v. Civil Service Commission, 463 U.S.  
20 582, 603, n. 24, 103 S.Ct. 3221, 77 L.Ed.2d 866 (1983) for the proposition that a recipient of  
21 public services cannot be a third party beneficiary of any contract is misplaced. Third party  
22 beneficiary claims were involved only as an “analogy,” Id., at 603, n. 24 (opinion of White, J.).  
23 In fact, Justice White opined that the private right of action against a municipal defendant did  
24 include prospective injunctive relief, Id., at 597-602 -- the precise relief the Villerv plaintiffs

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25  
26 <sup>13</sup> Even the County’s authority, Stewart v. Bernstein, acknowledges that where § 1983 or  
27 an implied cause of action against a provider does not lie, the provider is still bound by its  
28 contractual duties. Stewart v. Bernstein, supra., 769 F.2d at 1094, citing O’Bannon v. Town  
Court Nursing Center, 447 U.S. 773, 787 and n. 20, 100 S.Ct. 2467, 2476 & n. 20, 65  
L.Ed.2d 506 (1980).

1 seek. The footnote the County cites was intended to establish only that a right of action did not  
2 include such “open-ended liability” as monetary damages, which plaintiffs do not seek.”

3 VI. PLAINTIFFS STATE A CLAIM FOR RELIEF UNDER EMTALA

4 Defendants’ efforts to dismiss plaintiffs’ claims under the Emergency Medical Treatment  
5 and Active Labor Act (42 U.S.C. §1395dd) must also fail. EMTALA requires the defendants  
6 to adequately screen all patients seeking emergency care (42 U.S.C. §1395dd(a)) and to stabilize  
7 all patients with emergency medical conditions. 42 U.S.C. §1395dd(b).<sup>15</sup> Patients suffering  
8 emergency medical conditions may only be transferred to other facilities under certain specified  
9 circumstances. 42 U.S.C. §1395dd(c). These protections are triggered if a patient with an  
10 emergency medical condition simply comes onto the facility; the patient need not come directly  
11 to the emergency room. McIntyre v. Schick, 795 F.Supp. 777, 780 (E.D.Va. 1992); Thorton v.  
12 Southwest Detroit HOSP., 895 F.2d 113 1, 1134 (6th Cir. 1990).<sup>16</sup> Plaintiffs allege that the  
13 County’s wholesale dismantling of approximately 75% of its outpatient clinic services will  
14 cripple its emergency rooms. (Complaint, at ¶ 66-69). Both emergency and non-emergency  
15 patients will flood the emergency rooms, because they will be the only available source of care.  
16 As a result, appropriate screening, stabilization and transfer of emergency patients will be  
17 impossible. Complaint, at ¶ 69. The County’s only defense to this claim is that it is factually  
18

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19 <sup>14</sup> The County’s reliance upon Mendlv v. County of Los Angeles, 23 Cal.App.4th 1193,  
20 28 Cal.Rptr. 2d 822 (1994) is also odd. Mendlv plaintiffs sought to enforce a stipulated  
21 judgment with Los Angeles County which was abrogated by a state emergency statute. In  
22 holding that a stipulated judgment regarding prospective welfare payments was not a  
23 “contract” subject to constitutional protection from impairment of contracts, the Court noted  
24 that a state may not enter into binding contracts to not exercise its police power. Otherwise,  
25 persons could avoid state restrictions simply by making private contractual arrangements. Id.  
26 at 829. Nothing within Mendlv supports the County’s argument that it should be excused  
27 from complying with its Medi-Cal/Medicare provider agreements.

28 <sup>15</sup> Facilities must provide these screening and stabilization services to any individual  
whether or not eligible for Medicare benefits and regardless of ability to pay. 42 U.S.C.  
§1395dd. See also, 42 C.F.R. §489.24.

<sup>16</sup> See also, Proposed Regs., Health Care Financing Administration Comments, 59 F.R.  
No. 119, p. 32098 (June 22, 1994)(“It is enough that the patient, even in a non-hospital-  
owned ambulance on the hospital’s property, came onto the hospital premises seeking care.”)

under the Ninth Circuit's decision in Griffeth.<sup>21</sup>

**VIII. PLAINTIFFS' ALLEGATIONS OF OFFICIAL COUNTY ACTIONS IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT AND FEDERAL LAWS CLEARLY STATE A CLAIM UNDER 42 U.S.C. §1983.**

Plaintiffs' Complaint contains specific allegations that official County actions to close six comprehensive health centers and 29 of 39 public health centers and drastically reduce all outpatient care violate the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, Medicaid and Medicare laws, the Due Process Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and the federal Emergency Medical Treatment and Active Labor Act. Complaint, ¶ 1, 2. It further alleges that these "actions and inactions [are] contrary to the Civil Rights Act of 1871, 42 U.S.C. § 1983, in that under color of state law they have deprived plaintiffs of rights secured by the laws of the United States . . . ." Id., ¶ 71. The Complaint also contains specific factual and legal allegations with respect to each federal claim, but the allegations of ¶¶ 1, 2 and 71 are, without more, sufficient to satisfy the requirement that complaints include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.Proc. Rule 8(a)(2).

Monell v. Department of Social Services 436 U.S. 658, 98 S.Ct. 2018 (1978), cited by defendants (Def. Mot. to Dismiss at 25), hardly supports a Motion to Dismiss. Monell overruled Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473 (1961), which had held local governments immune from suit under Section 1983. Monell, 436 U.S. at 701, 98 S.Ct. at 2041. Specifically, it held that "[l]ocal governing bodies . . . can be sued directly under §1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or

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\*Defendants also cite Lipsomb v. Simmons, 962 F.2d 1374 (9th Cir. 1992). Def. Mot. to Dismiss at 24. Lipscomb involved a challenge to Oregon's foster care program, which provided greater financial benefits for children placed with nonrelatives than for children placed with relatives. Id. at 1376. Presumably it is cited for its recitation that "The government generally is under no obligation to facilitate or fund the exercise of constitutional rights." Id. at 1379 (citations omitted). Again, defendants confuse the distinction between a claim for services arising under the constitution--which plaintiffs do not assert--and the constitutional protections that attach to specific entitlements created by state law recognized in Memorial Hospital v. Maricopa County *supra*, Griffeth, *supra*, and LaBaron v. U.S., *supra*.

1 violation . . . ." Monell, supra, 436 U.S. at 694, 98 S.Ct. at 2038. Here, that has been clearly  
2 alleged. The complaint states a claim under Section 1983.

3 **IX. DECLARATORY RELIEF IS APPROPRIATE TO RESOLVE AN ACTUAL**  
4 **CONTROVERSY BETWEEN PLAINTIFFS AND DEFENDANTS AS TO THEIR**  
5 **RESPECTIVE RIGHTS AND DUTIES.**

6 In Aetna Casualty & Surety Co. v. Quarles, 92 F.2d 321 (4th Cir. 1937), decided not long  
7 after the enactment of the Declaratory Judgment Act, the court stated that:

8 "The statute providing for declaratory judgments meets a real need and should be  
9 liberally construed to accomplish the purpose intended, i.e., to afford a speedy and  
10 inexpensive method of adjudicating legal disputes without invoking the coercive  
11 remedies of the old procedure, and to settle legal rights and remove uncertainty  
12 from legal relationships without awaiting a violation of the rights or a disturbance  
13 of the relationships."

14 Id. at 325 (emphasis added). Plaintiffs claim that defendants have a duty to implement medical  
15 budget cuts in a manner that protects the reasonable expectations of existing patients to  
16 continued care or transition planning under federal and state laws, and that plaintiffs have a  
17 protected liberty and property interest in medical care that cannot be terminated or denied  
18 without meaningful individual notice and an opportunity to be heard. A practical resolution of  
19 that very real dispute demands an immediate determination before medical care is denied,  
20 provider-patient relationships broken, and facilities closed, rendering improbable any effective  
21 remedy.

22 Plaintiffs are not requesting an abstract determination of agency authority, such as the  
23 plaintiffs sought in Zetterbera v. State Dept. of Public Health, 43 Cal.App.3d 657, 118 Cal.Rptr.  
24 100 (1975).<sup>24</sup> They claim specific rights based on clear legal claims that they allege will be  
25 violated by reductions in health care defendants acknowledge are going into effect. Unlike  
26 Mitcheson v. Harris, 955 F.2d 235, 236 (4th Cir. 1992), cited by defendants (Defendants Mot.  
27 to Dismiss at 27), where an insurance carrier sought to use diversity jurisdiction to settle the  
28 state law question whether it had a duty to defend insured party, while simultaneously defending

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<sup>24</sup> Defendants incorrectly cite this case as 43 Cal.3d 657. Def. Mot. to Dismiss at 26.

1 the same party in a state court action, the only way this litigation can be resolved in a single  
2 proceeding is for this Court to accept supplemental jurisdiction and make determinations  
3 respecting the interrelated federal and state claims. Declaratory relief is adequately pled and is  
4 appropriate.

5 **X. THE COURT SHOULD NOT DISMISS THE EIGHTH CLAIM FOR**  
6 **RELIEF AS THIS STATE LAW CLAIM IS INEXTRICABLY RELATED**  
7 **TO PLAINTIFFS' FEDERAL CLAIMS AND DOES NOT FALL WITHIN**  
8 **THE EXCEPTIONS TO THE RULE ON SUPPLEMENTAL JURISDIC-**  
9 **TION.**

10 Defendants do not argue that the eighth claim for relief fails to state a cause of action  
11 under state law. Def. Mot. to Dismiss at 4. They, instead, have asked this Court to refuse to  
12 exercise supplemental jurisdiction over this state law claim. Id. at 28-31.

13 It is, however, undisputed that plaintiffs' state law claim is inextricably related to their  
14 federal claims. Complaint, ¶¶ 41-82. Thus, this Court should normally exercise supplemental  
15 jurisdiction over the claim. 28 U.S.C. § 1367(a). As the Ninth Circuit recently stated in  
16 Executive Software v. U.S. District Court, supra., the word "shall" in the statute "makes clear  
17 that if power is conferred under section 1367(a), ... a court can decline to assert supplemental  
18 jurisdiction over a pendent claim only if one of the four categories specifically enumerated in  
19 section 1367(c) applies." Id. at 1555.

20 Defendants have tried to squeeze plaintiffs' state law claim into all four of the exceptions  
21 under section 1367(c). It does not fit. Even assuming, arguendo, that one of these exceptions  
22 might apply, the Court still should exercise supplemental jurisdiction over this claim for  
23 purposes of "economy, convenience, fairness, and comity." Executive Software, 24 F.3d at  
24 1557.

25 **A. The State Law Claim Does Not Raise Novel or Complex Issues of State Law.**

26 Under 28 U.S.C. § 1367(c)(1), a court "may decline to exercise supplemental jurisdiction"  
27 if "the claim raises a novel or complex issue of State law" (emphasis added). While defendants  
28 maintain that the instant case raises "issues of unsettled state law," they offer nothing to support  
this point other than their insistence that Dillerve is merely a replead of Tailfeather. . . t o  
Dismiss at 28-29. As discussed previously, there are profound differences between this case and

1 (Medically Indigent Adult.); County of Alameda v. State Bd. of Control, 14 Cal.App.4th  
2 1096, 1100-01, 18 Cal.Rptr.2d 487 (1993) (ability to pay patients). Indeed, in the past the  
3 County has admitted its obligation to provide medical care at least to Medically Indigent  
4 Adults.” See Memorandum of Points and Authorities in County of Los Angeles, et al. v. State  
5 of California, et al., Los Angeles Superior Court No. C731033, Ex. 9 at 104.

6 Relying again upon the trial court’s decision in Tailfeather, defendants allude to a  
7 “comprehensive statutory scheme limiting County financial requirements for indigent health and  
8 the recent statutory amendments to the WIC and the HSC preventing additional requirements.  
9 . . .” Def. Mot. to Dismiss at 29, 11. 6-10. Not surprisingly, defendants fail to cite specific  
10 statutes as no such statutes support their position. Moreover, while the trial court’s unreported  
11 decision in Tailfeather held that a county’s “duty to provide medical care” to GR recipients “  
12 is met by “enacting a sufficient standard of aid for GR under WIC § 17000.5” [Def. Ex. A at  
13 4], this ruling runs contrary to the reported and controlling decision by the Court of Appeal in  
14 Gardner v. County of Los Angeles, 34 Cal.App.4th 200, 40 Cal.Rptr. 271 (1995).<sup>28</sup> There, the  
15

16 <sup>26</sup> The former WIC § 14052 defined a “Medically indigent person” as a “person who  
17 could not qualify as a public assistance recipient, a medically needy person, or a medically  
18 needy family person, for reasons other than income or resources but whose income and  
19 resources are insufficient to provide for the costs of health care. . . .” Stats. 1982, ch. 328, §  
20 16 (emphasis added).

21 <sup>27</sup> No California appellate court has directly ruled upon the question whether a county has  
22 the residual obligation under state law to provide medical care to Medi-Cal recipients who  
23 are unable to find such care from other providers. Nevertheless, two appellate courts have  
24 declared that the Medi-Cal program was not “intended to supplant the obligation imposed” on  
25 the counties to provide medical care pursuant to WIC § 17000 et seq. and that “the Legisla-  
26 ture intended that [the] County bear an obligation to its poor and indigent residents, to be  
27 satisfied from county funds, notwithstanding federal and state funds which exist concurrently  
28 with County’s obligation . . . .” Madera Community Hospital v. Madera County, 155  
29 Cal.App.3d 136, 150-51, 201 Cal.Rptr. 768 (1984) (emphasis in original); accord, Comer,  
30 207 Cal.App.3d at 557-58.

31 <sup>28</sup> Despite these and other plainly erroneous legal rulings in the trial court’s decision in  
32 Tailfeather, ‘defendants have cited this unpublished decision as authority on a number of  
33 issues of state law. Def. Mot. to Dismiss at 9-1 1. They should know better. Rule 977 of the  
34 California Rules of Court expressly states that the unpublished opinion of a California trial  
35 court is not supposed to be cited or relied on by a court or a party in another case unless the  
36 principles of res judicata, collateral estoppel or law of the case apply.

1 court unequivocally held that the reference to aid in WIC § 17000.5 “does not include medical  
2 care.” Id. at 205.

3 In short, the Court is only being asked to apply settled principles of state law concerning  
4 the County’s obligations to provide health care to its indigent residents.

5 **B. The Federal Claims Predominate Over the State Law Claim.**

6 The second exception pursuant to which the Court may decline supplemental jurisdiction  
7 is where the state law claim “substantially predominates over the claims or claims over which  
8 the district court had original jurisdiction.” 28 U.S.C. § 1367(c)(2). As demonstrated above,  
9 the Complaint has properly alleged a number of causes of action under the federal constitution,  
10 laws and regulations. It is because the County’s current actions gave rise to these federal claims  
11 that plaintiffs filed this case in federal, not state court. The federal claims do predominate.

12 **C. The District Court Will Not Dismiss Any, Much Less All, of the Federal  
13 Claims.**

14 Much of the preceding analysis applies equally to the third exception under 28 U.S.C.  
15 § 1367(c) - “the district court has dismissed all claims over which it has original jurisdiction.”

16 For the foregoing reasons, plaintiffs do not anticipate that any of plaintiffs’ federal  
17 claims will be dismissed and certainly not all of these claims. This exception does not apply.

18 **D. There Are No Other Compelling Reasons for the Court to Decline Jurisdiction.**

19 The last exception, 28 U.S.C. § 1367(c)(4), provides that a court may decline  
20 supplemental jurisdiction over a state law claim in “exceptional circumstances” where “there are  
21 other compelling reasons for declining jurisdiction.” The Ninth Circuit has cautioned that this  
22 catchall exception “should be of the same nature as the categories listed in subsections (c)(1)-  
23 (3)” and “should be the exception, rather than the rule.” Executive Software, 24 F.3d at 1557-  
24 58.

25 The only exceptional circumstance, according to defendants, is Tailfeather. Def. Mot.  
26 to Dismiss, at 30-31. Once again, defendants are simply wrong about the similarities with  
27 Tailfeather. Regardless of whether defendants win or lose on appeal in Tailfeather, plaintiffs’  
28 eighth claim for relief still asserts a proper claim under state law. Contrary to defendants’

1 beliefs, Tailfeather is not a compelling reason to decline supplemental jurisdiction over plaintiffs'  
2 state law claim in this case.

3 **E. Even Assuming, Arguendo, that the State Law Claim Falls Within One of**  
4 **Exceptions, the Court Still Should Retain Jurisdiction over this Claim.**

5 For the sake of argument, plaintiffs will assume that their state law claim falls within one  
6 of the exceptions under 28 U.S.C. § 1367(c). The Court still must decide whether dismissing  
7 this claim would serve the values of “economy, convenience, fairness, and comity.” The answer  
8 is no. If the eighth claim is dismissed, plaintiffs would have to file a new lawsuit with this  
9 claim in state court. At that point, the parties would then be proceeding simultaneously on two  
10 urgent cases in two courts. To make matters worse, plaintiffs would have no choice but to seek  
11 a temporary restraining order in state court against the October 1 cutbacks since there would not  
12 be enough time to seek a duly noticed motion for preliminary injunction. No one - not the  
13 plaintiffs, the defendants, this Court or the state courts - would benefit from such confusion.  
14 In short, the Court should retain supplemental jurisdiction over the state law claim and decide  
15 this claim together with plaintiffs’ related federal claims.”

16 **XI. THE COUNTY’S FAILURE TO PROVIDE MANDATED HEALTH SERVICES**  
17 **IN A MANNER AND TO THE EXTENT REQUIRED BY FEDERAL AND STATE**  
18 **LAW PRESENTS A JUSTICIABLE CONTROVERSY FOR THIS COURT TO**  
19 **DETERMINE.**

20 The Supreme Court, in Baker v. Carr, 369 U.S. 186, 226; 82 S.Ct. 691, 715 (1962), set

21 “Defendants also request that this court abstain in light of Tailfeather. Def. Motion to  
22 Dismiss at 27. There are absolutely no grounds to invoke abstention and indeed, defendants  
23 cite no cases in support of their request. Abstention is rarely appropriate, since federal courts  
24 have a “virtual unflagging obligation” to exercise jurisdiction, particularly in cases where  
25 federal question jurisdiction is invoked, and may not abstain simply because of parallel  
26 proceedings in a state court action. Colorado River Water Conservation District v. United  
27 States, 424 U.S. 800, 96 Sup.Ct. 1236 (1976). “Only the clearest of justifications will  
28 warrant dismissal.” Id. at 819, 96 S.Ct at 1247.

29 Where federal question jurisdiction is invoked, as here, it is a “major consideration”  
30 weighing against surrender of jurisdiction. Moses H. Cone Memorial Hospital v. Mercury  
31 Construction Corp., 460 U.S. 1, 103 Sup.Ct. 927 at 942) (1983). The courts have held that  
32 such dismissal must be based on “exceptional circumstances.” Id. No such “exceptional  
33 circumstances” can be alleged by defendants, and Colorado River dismissal is inappropriate  
34 in this case. Neuchatel Swiss General Insurance Co. v. Lufthansa Airlines, 925 F.2d 1193  
35 (9th Cir. 1991).

1 forth a five-prong test for determining whether a nonjusticiable “political question” is at issue:  
2 (1) a “textually demonstrable constitutional commitment of the issue to a coordinate political  
3 department”; (2) a “lack of judicially discoverable and manageable standards” for resolving the  
4 claims; (3) “an initial policy determination of a kind clearly for nonjudicial discretion”; (4)  
5 whether a decision would express “lack of respect due coordinate branches of government”; or,  
6 (5) the potentiality of embarrassment from multifarious pronouncements by various departments  
7 on one question. Id. at 217, 82 S.Ct. at 710. In Baker, plaintiffs asserted an equal protection  
8 challenge to the constitutionality of a state’s apportionment statute. Id. at 187-188; 82 S.Ct. at  
9 694. Notwithstanding the political sensitivity of such an issue, the court stated that it could not  
10 reject as a “political question” the claim that the state apportionment plan violated equal  
11 protection. Id. at 228, 82 S.Ct. at 716.

12 Plaintiffs claims that the County’s planned actions will violate the due process clause  
13 of the Fourteenth Amendment to the Constitution, the ADA and other federal and state statutory  
14 provisions are not the type of “political questions” insulated from federal court review.<sup>30</sup>  
15 Neither County of Butte v. Superior Court 176 Cal.App.3d 693, 222 Cal.Rptr. 429 (1985) nor  
16 Spivey v. Barry 665 F. 2d 1222, 1232 (D.C. Cir. 1981), relied upon by defendants (Defendants  
17 Memorandum, p. 31) are to the contrary. County of Butte involved a claim by the Sheriff that  
18 the County Board of Supervisors was required to provide all necessary funding to guaranty the  
19 continued employment of all employees of the Sheriffs department. 176 Cal.App.3d at 696, 222  
20 Cal.Rptr. at 43 1. The court set aside a preliminary injunction not on the grounds that no judicial  
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22 <sup>30</sup> Defendants presumably cite Marbury v. Madison, 1 Cranch 137 (1803) for Justice  
23 Marshall’s assertion that “Questions in their nature political, or which are, by the constitution  
24 and laws, submitted to the executive, can never be made in this court.” Id. at -(Plaintiffs  
25 do not have available the official report containing Marbury and are quoting from a copy of  
26 the decision printed in Lockhart, Kamisar, and Choper, The American Constitution--Cases  
27 and Materials (West 1967), pp. 1-6). He went on to add rhetorically: “But, . . . what is there  
28 in the exalted station of the officer, which shall bar a citizen from asserting, in a court of  
justice, his legal rights, or shall forbid a court to listen to the claim . . . directing the  
performance of a duty, not depending on executive discretion, but on particular acts of  
congress, and the general principles of law?” Id. In such circumstances, Justice Marshall  
declared, “It is emphatically the province and the duty of the judicial department to say what  
the law is.” Id.

1 decision could ever impose limits on budget decisions, but because “notwithstanding those  
2 authorities [limiting budget determinations], the sheriff has failed to show any possibility that  
3 he is likely to prevail on the merits in his mandate action, and thus was not entitled to the  
4 preliminary injunction which was issued.” Id. at 699, 222 Cal.Rptr. at 433.

5 Spivev actually supports plaintiffs’ contention that this Court has jurisdiction to adjudicate  
6 their claims. The Spivev court, it is true, found on the merits that the District of Columbia  
7 statute on which plaintiffs had relied did not support their claim to keep a particular clinic open  
8 (665 F.2d. at 1231), and rejected their equal protection claim based upon geographical  
9 discrimination (Id. at 1233). In the absence of an underlying duty to keep the clinic open,  
10 plaintiffs’ due process claim could not succeed. But the court refused to abstain from exercising  
11 jurisdiction over the pendent state law claims and rejected defendants’ assertion that the  
12 procedural due process claim was foreclosed by the Supreme Court’s decision in O’Bannon v.  
13 Town Court Nursing Center, 447 U.S. 773, 100 S.Ct. 2467 (1980).

14 Similarly, neither Jefferson v. Hackney, 406 U.S. 535, 92 S.Ct. 1724 (1972) nor  
15 Dandridge v. Williams, 397 U.S. 483, 90 S.Ct. 1153 (1970) are apposite. Both dealt with equal  
16 protection challenges to state legislation that established formulas for determining the amount  
17 of welfare benefits families would receive. Jefferson, 406 U.S. at 536, 92 S.Ct. at 1726;  
18 Dandridge, 397 U.S. at 472-473, 90 S.Ct. at 1155. In both the court counseled deference to  
19 legislative determinations respecting social welfare programs. Dandridge, 397 U.S. at 485 (“[A]  
20 State does not violate the Equal Protection Clause merely because the classifications made by  
21 its laws are imperfect.”); Jefferson, 406 U.S. at 546, 92 S.Ct. at 1731 (“So long as its judgments  
22 are rational, and not invidious, the legislature’s efforts to tackle the problems of the poor and  
23 the needy are not subject of a constitutional straitjacket.”). Here, by contrast, plaintiffs do not  
24 seek to challenge any county policy except insofar as county actions contravene specific  
25 statutory and constitutional rights that are beyond the authority of the county to change. As  
26 plaintiffs have repeatedly indicated, they do not challenge county decisions to implement budget  
27 reductions or eventually--if done with proper notice and procedures to insure protection of the  
28 rights of existing patients--decisions to close facilities. The relief sought by plaintiffs does not

1 infringe on any policy decisions that fall within the county's legitimate authority to operate a  
2 health care system.

3 Quite simply, defendants' extravagant claim that budget decisions are immune from  
4 review is untenable. Numerous state and federal cases clearly recognize jurisdiction over just  
5 these types of alleged unlawful actions by governmental entities. See, e.g., Helen L. v. DiDario  
6 46 F. 3d 325 (3rd Cir. 1995)("lack of funding" no defense to ADA claim); Concerned Parents  
7 v. Citv of West Palm Beach 846 F. Supp. 986, 991-992 (S.D. Fla. 1994)(budget shortfall no  
8 defense to ADA violation based on elimination of accessible program); Washington v. Board  
9 of Supervisors 18 Cal. App 4th 981; 22 Cal Rptr. 2d 852 (Cal. App. 4 Dist. 1993) (County  
10 cannot address budgetary shortfalls by redefining state standards of eligibility for mandated  
11 programs). Plaintiffs' claims are justiciable.

12 XII.

13 CONCLUSION

14 For all the foregoing reasons, Plaintiffs respectfully request that this Court deny  
15 Defendants' Motion to Dismiss.

16  
17 Dated: September 18, 1995

18 Respectfully submitted,

19 PROTECTION AND ADVOCACY, INC.

20 CALIFORNIA WOMEN'S LAW CENTER

21 NATIONAL HEALTH LAW PROGRAM

22 ACLU FOUNDATION  
23 OF SOUTHERN CALIFORNIA

24 LEGAL AID FOUNDATION OF LOS ANGELES

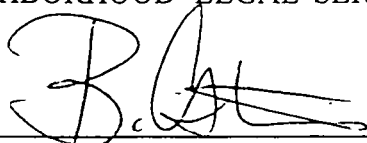
25 LOYOLA LAW SCHOOL

26 LEGAL SERVICES PROGRAM FOR PASADENA  
27 & SAN GABRIEL - POMONA VALLEY

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WESTERN CENTER ON LAW & POVERTY, INC.

SAN FERNANDO VALLEY  
NEIGHBORHOOD LEGAL SERVICES, INC.

By   
BETH A. OSTHIMER  
Attorneys for Plaintiffs

**PROOF OF SERVICE BY MAIL**

1 I, LUPE LOMELI, declare that I am employed in the County of Los Angeles,  
2 State of California, the County where this mailing occurred. I am over the age of 18 and  
3 not a party to the within action; my business address is: 13327 Van Nuys Boulevard,  
4 Pacoima, California 91331.

5 On September 18, 1995, I served the following documents described as **Plaintiffs'**  
6 **Opposition to Defendants' Motion to Dismiss for Failure to State a Claim Upon**  
7 **Which Relief Can Be Granted Pursuant to Federal Rules of Civil Procedure, Rule**  
8 **12(b)(6) and (7), and For Lack of Subject Matter Jurisdiction Pursuant to Rule**  
9 **12(B)(1)** on the interested parties in this action by placing a true copy thereof enclosed in  
10 envelopes addressed as follows:  
11  
12

13 **SEE ATTACHED LIST**

14  
15 Such envelopes were placed for deposit in the United States Postal Service at  
16 Pacoima, California. The envelopes were mailed with postage thereon fully prepaid. I  
17 am readily familiar with my office's practice for collection and processing of  
18 correspondence for mailing with the United States Postal Service. The envelopes were  
19 sealed, placed for collection and mailing, and deposited with the United States Postal  
20 Service on the date noted above in the ordinary course of business, and pursuant to the  
21 office's ordinary business practices. I am aware that on motion of party served, service is  
22 presumed invalid if postage cancellation date or postage meter date is more than one day  
23 after date of deposit for mailing in affidavit.  
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: September 18, 1995, at Pacoima, California.

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LUPE LOMELI

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PROOF OF SERVICE LIST

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