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November 1, 2019 *Via Email*

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Re: DRC Abuse/Neglect Investigation and Request for Information Alameda County's Mental Health System

Dear Dr. Tribble and Ms. Ziegler,

Disability Rights California ("DRC") has been investigating Alameda County's ("the County") mental health system pursuant to its authority as California's protection and advocacy system for people with disabilities. In the last few months, DRC has visited numerous mental health facilities, including John George Psychiatric Hospital ("John George"), Villa Fairmont Mental Health Rehabilitation Center ("Villa Fairmont"), Jay Mahler Recovery Center, Woodroe Place, Casa de la Vida, Bonita House, and Cronin House, among others. DRC also visited additional facilities that detain, house, or serve a high number of Alameda County residents with mental health disabilities, including Santa Rita Jail, the Henry Robinson Center, and the South County Homeless Project.[1] This letter summarizes our initial findings.

[1] DRC has designated Goldstein Borgen Dardarian & Ho, the Bazelon Center for Mental Health Law, and Disability Rights Education and Defense Fund as its authorized agents for purposes of its investigation. 42 C.F.R. § 51.42(a).

Based on our investigation, including facility visits and interviews with patients and providers, we have concluded that there is probable cause to find that abuse and/or neglect of people with disabilities has or may have occurred, as those terms are defined in our authorizing statutes and regulations. Accordingly, consistent with DRC's statutory access authority, we are requesting the production of additional information and documents, as identified in **Attachment A** at the end of this letter.[2]

As our investigation continues, we propose meeting with you – along with other important stakeholders, including Alameda Health System – to discuss our findings of systemic deficiencies that amount to violations of federal and state law and that put people with mental health disabilities at serious risk of harm. It is our intention to ensure effective, durable remedial measures to address these issues with you in an efficient and cooperative manner. ***Please let us know if and when you are available for such a meeting.***

I. Definition of Probable Cause

Disability Rights California is the protection and advocacy system for the State of California, with authority to investigate facilities and programs providing services to people with disabilities under the Developmental Disabilities Assistance and Bill of Rights ("PADD") Act,[3] the Protection and Advocacy for Individuals with Mental Illness ("PAIMI") Act,[4] and the Protection and Advocacy for Individual Rights ("PAIR") Act.[5] The patients and clients we interviewed fall under the federal protections of the PADD Act and/or the PAIMI Act, and their implementing regulations.

Under the PAIMI Act, probable cause means "reasonable grounds for belief that an individual with mental illness has been, or may be at significant risk of being subject to abuse or neglect." DRC may make a probable cause determination based "on reasonable inferences drawn from [its] experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect."[6]

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[2] Welf. & Inst. Code § 4903.
[3] 42 U.S.C. § 15041, *et seq.*, as amended, 45 C.F.R. § 1386.
[4] 42 U.S.C. § 10801, *et seq.*, as amended, 42 C.F.R. § 51.
[5] 29 U.S.C. § 794e; Welf. & Inst. Code § 4900, *et seq.*
[6] 42 C.F.R. § 51.2.

"Abuse" is defined as "any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with mental illness."[7] It also includes "any other practice which is likely to cause immediate harm if such practices continue."[8] Additionally, "the P&A may determine[] in its discretion that a violation of an individual's legal rights amounts to abuse."[9]

"Neglect" is defined as any "negligent act or omission by an individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to an individual with mental illness or which placed an individual with mental illness at risk of injury or death." Neglect may include a failure to "establish or carry out an appropriate individual program or treatment plan (including a discharge plan)," "provide adequate nutrition, clothing, or health care"; or "provide a safe environment" with adequate numbers of appropriately trained staff.[10]

II. Key Initial Findings

We have found probable cause that abuse and/or neglect of people with disabilities has or may have occurred based on the County's failure to provide people with mental health disabilities: (1) appropriate services and supports in the most integrated setting appropriate, consistent with the goals of treatment and recovery; and (2) adequate treatment, conditions, and discharge planning at the County's institutions (psychiatric hospital, IMDs, and jail).

Alameda Health System plays a notable role in this discussion, with respect to the conditions people with disabilities face at John George as well as the deficiencies in treatment and discharge planning.

Similarly, Alameda County's jail system, which consistently incarcerates a disproportionately high population of people with mental health disabilities, plays a consequential role in the issues we have

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[7] 42 C.F.R. § 51.2.
[8] 45 C.F.R. § 1326.19.
[9] *Id*.
[10] 42 C.F.R. § 51.2.

identified. We are aware that people with mental health disabilities held in jail face dangerous and damaging isolation conditions and inadequate access to programming or meaningful mental health treatment (including discharge planning), deficiencies that are the subject of current federal litigation. *Babu v. County of Alameda*, Case No. 4:18-cv-07677 (N.D. Cal). We have learned that people with mental health disabilities regularly cycle in and out of both the County's psychiatric institutions and the jail system.

A. Failure to Provide Appropriate Services in the Most Integrated Setting

People with mental health disabilities have a right to access treatment and services in the most integrated setting appropriate.[11] Needless segregation in institutions perpetuates unfounded assumptions that people with disabilities are incapable or unworthy of participating in society. In addition, it deprives them of benefits and opportunities of community life.[12]

Recent data shows that Alameda County involuntarily commits the highest number of adults with serious mental illness of any county in California. Its involuntary detention rate is more than three-and-a-half times the statewide average.[13]

We found that people with serious mental illness in Alameda County experience, or are at risk of experiencing, unnecessary institutionalization on a broad and systemic scale, in ways that are harmful and injurious to their health and well-being, thus constituting a ground for a finding of probable cause of abuse and/or neglect.

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[11] Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12131-12134, Section 504 of the Rehabilitation Act ("the Rehabilitation Act"), 29 U.S.C. §§ 794 *et seq.*, 28 C.F.R. § 41.51(d); 28 C.F.R. § 35.130(d) (1991); and Gov't Code §§ 11135-11139.

[12] *Olmstead v. L.C.*, 527 U.S. 581, 600-01 (1999).

[13] *See* California Involuntary Detentions Data Report, FY 2016/2017, http://www.dhcs.ca.gov/services/MH/Documents/FY16-17_InvolunDetenRep_12pt.pdf (Alameda County's 72-hour involuntary detention rate is 162.5 per 10,000 people, in contrast to the statewide average of 46.0, and that its 14-day intensive treatment rate is 46.6 per 10,000 people, in contrast to the statewide average of 13.1).

1. Harmful and Needless Institutionalization in John George's Psychiatric Emergency Services Unit

John George's Psychiatric Emergency Services (PES) unit is the primary facility providing services for adult Alameda County residents in psychiatric crisis. The PES is experiencing record high numbers of crisis visits—more than 1,100 visits per month. The number of people experiencing a psychiatric crisis regularly exceeds John George's capacity to treat such patients safely.

During our recent monitoring visits, we observed that individuals at John George's PES unit regularly wait 24 hours or more to receive an evaluation or any treatment. Our analysis of available data found that scores of people have been held for 70 hours or longer in 2019 alone, including at least one person who remained in the PES unit for eight days.

We observed individuals crowded into a single room awaiting evaluation and treatment. While waiting, patients compete for places to sit and lie down—including on the floor and in the hallways. On our recent tour, the census in the PES had reached 60 patients, far above the number of people it is designed and equipped to serve (resulting in a "census hold," discussed below).

Subjecting Alameda County residents to these counter-therapeutic conditions is particularly disconcerting given the County's own estimate that more than 75% of those placed on involuntary psychiatric holds—almost 10,000 people per year—do "not meet medical necessity criteria for inpatient acute psychiatric services."[14]

John George periodically institutes "census holds," which means that, in the troubling yet common situation where demand outpaces the facility's resources, John George must cut off admissions of patients from local emergency departments and inpatient units, regardless of their need for acute psychiatric evaluation and treatment.

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[14] *See, e.g.*, Alameda County Project Summary, Community Assessment and Transport Team (Apr. 13, 2018), https://mhsoac.ca.gov/sites/default/files/documents/2018-10/Alameda_INN%20Project%20Plan_Community%20Assessment%20and%20Transport%20Team_8.6.2018_Final.pdf.

Given these circumstances, people with serious mental illness face enormous risks, both of being confined unnecessarily in counter-therapeutic institutions and of being denied needed acute care.

These problems are compounded by systemic deficiencies that drive cycling in and out of John George for many people. The County itself has recognized that, upon discharge from PES, the majority of patients are "not linked to planned services and continue to over-use emergency services."[15] For example, we spoke with a patient who spent well over 24 hours in the PES and had multiple previous PES admissions. He reported that he is generally provided with little or no support at discharge (other than a non-individualized list of resources), and we confirmed that he would soon be discharged again without adequate discharge planning.

2. Harmful and Needless Institutionalization in John George's Inpatient Units

We learned through the course of our monitoring that the average daily census and average length of stay in John George's inpatient units is on the rise in recent years. The inpatient units are on pace to have over 5,000 patient visits in 2019. These units are segregated, institutional settings that allow little autonomy and are defined by rigid rules and monitoring.

All too often, patients are subjected to extended stays beyond what is clinically necessary due to a lack of sufficient community mental health resources, housing support, and/or programs that can meet patients' needs. These extended "administrative" stays can last several days or more, costing millions of dollars and harming patients through unnecessary institutionalization.

3. Harmful and Needless Institutionalization in Institutes for Mental Diseases

ACBHCS contracts with the Telecare Corporation to operate three mental health facilities that collectively hold almost 200 people with mental illness on a given day: (1) Villa Fairmont Mental Health Rehabilitation

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[15] Alameda County Project Summary, Community Assessment and Transport Team (Apr. 13, 2018), https://mhsoac.ca.gov/sites/default/files/documents/2018-10/Alameda_INN%20Project%20Plan_Community%20Assessment%20and%20Transport%20Team_8.6.2018_Final.pdf.

Center, (2) Gladman Mental Health Rehabilitation Center, and (3) Morton Bakar Center. These facilities are large, congregate, institutional settings populated by individuals with mental health disabilities. Individuals confined to these psychiatric institutions, especially Villa Fairmont, regularly remain institutionalized for weeks beyond what is clinically necessary due to the shortage of appropriate community options.

For example, we understand that, at Villa Fairmont, people are often held longer than clinically indicated due to the lack of appropriate residential and supportive services in the community. One patient at Villa Fairmont who was clinically ready for discharge faced an extremely lengthy delay in discharging from the institution due to the lack of a program to support his diabetes care needs. We also learned of incidents where people identified as appropriate for the community-based Casa de la Vida program waited weeks in Villa Fairmont, and even in Santa Rita Jail, for a spot to become available.

4. Lack of Community-Based Mental Health Services and Permanent Supported Housing

DRC found that, even with the recent implementation of some community programs (including the new crisis intervention services[16]), the need for community-based mental health treatment in Alameda County greatly outpaces the County's current capacity to provide such services. Indeed, providers at virtually every facility we visited spoke about how the lack of sufficient community-based mental health services and inadequate housing options create significant barriers to providing Alameda County residents with long-term safe environments and opportunities for recovery.

While the lack of community-based mental health services is extensive, a few key deficiencies raised repeatedly by mental health providers and Alameda County residents include not only the limited crisis intervention services but also: (1) failure to link high needs individuals to

[16] We are encouraged to see the recent implementation of programs designed to address the historical service deficit in the area of crisis intervention, including this year's rollout of the Community Assessment and Transport Team (CATT) program and the recent opening of Amber House's crisis stabilization unit and crisis residential treatment program. These programs are essential, and will almost certainly require significant expansion in order to meet the needs of the County's mental health services consumer population.

Full Service Partnerships; (2) lack of housing, especially permanent supported housing; and (3) lack of integrated services.

We learned of people with mental health disabilities discharging from residential treatment programs to inadequate housing or homelessness, and without essential services and support to avoid further incident of psychiatric decompensation and institutionalization. We discovered waitlists for housing and other services of six months or more.

The scarcity of community-based mental health resources in Alameda County is especially acute for individuals who have both mental health and other co-occurring needs. For instance, there is insufficient service capacity for people with a dual diagnosis of mental illness and substance use. The primary provider of this service, Bonita House, has capacity to serve just fifteen people. Patients must be ambulatory. This means that individuals who have dual-diagnoses and need such services are often left without timely access to such services.

Likewise, patients with co-occurring disabilities and health conditions experience a shortage of treatment and housing options, as noted above.

These systemic deficiencies are dangerous and damaging in multiple ways: first, they prolong unnecessary institutionalization in restrictive facilities; and second, they place at serious risk patients who have mental health disabilities combined with other disability and/or treatment needs that are not adequately addressed. Indeed, a high number of chronically homeless individuals report living with multiple disabling conditions, including not just psychiatric disorders but also intellectual and developmental disabilities, chronic health problems, physical disabilities, and/or substance abuse disorders. The situation also serves to stigmatize members of the population that ACBHS serves who are already marginalized and at elevated risk.

* * *

Alameda County's harmful and needless institutionalization of large numbers of its residents with serious mental illness puts people at serious risk of harm, at times with life-threatening consequences. The County's failure to provide services in the most integrated setting possible—through community services and supports—also violates Alameda County residents' federal and state rights. The ADA, the Rehabilitation Act, and the federal Medicaid Act, as well as related state law, prohibit

discrimination against persons with disabilities, which includes unnecessary segregation in institutions like psychiatric hospitals and other locked facilities.

B. Inadequate Discharge and Other Treatment Plans

Alameda County's system of discharge planning for people returning to the community from institutions is inadequate; the County maintains no effective practice for ensuring that individuals are discharged to appropriate settings with adequate services and supports to prevent re-institutionalization. This deficiency constitutes "neglect" under the law, which is defined, *inter alia*, as a failure to "establish or carry out an appropriate individual program or treatment plan (*including a discharge plan*)."[17]

During our monitoring visits, we observed significant deficiencies related to discharge planning, and a lack of adequate coordination between facilities and community-based service providers. We learned that many individuals are discharged to dangerous situations without adequate linkages to essential mental health care and related supports. The discharge plans for people with mental health disabilities at John George, IMDs, and Santa Rita Jail are frequently boilerplate and disconnected from a person's individualized needs as they prepare to return to the community.

Due to inadequate treatment and discharge plans, Alameda County residents with mental health disabilities end up experiencing repeated placements at John George or other locked psychiatric facilities. We are aware of many patients with mental health disabilities who have been repeatedly admitted to John George. Public documents show that approximately 2,300 John George PES visits each year consist of "high utilizers" of care (defined by AHS as people with at least four PES visits in a twelve-month period).[18] Data recently provided by AHS also reveals that more than 250 people have had four or more John George inpatient admissions since 2016. Nearly half of this group identifies as Black or

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[17] 42 C.F.R. § 51.2 (emphasis added); *see also* Welf. & Inst. Code § 4900(g)(3).
[18] Rebecca Gebhart & Karyn Tribble, John George Pavilion, Capacity Issues: Causes and Potential Solutions at 6 (July 11, 2016), http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_7_11_16/HEALTH%20CARE%20SERVICES/Regular%20Calendar/John_George_Pavilion_Psych_services_Health_7_11_16.pdf.

African-American, a striking and disproportionately high number. One person estimated that he had been held at John George more than 150 times.

We are also concerned about these same individuals cycling unnecessarily between locked psychiatric facilities, jail, and homelessness. It is notable and disturbing that an estimated 25% of the County's jail population and one-third of the County's homeless population has serious mental illness.

Alameda County also lacks an adequate system for assessing, placing, and tracking its mental health patients, which compounds the problems that DRC observed related to discharge planning. The system is comprised of various different providers and lacks an effective method for tracking each patient's evaluations, referrals, treatment, and progress.

Deficiencies in the County's coordination between the County's jail system and Alameda County Behavioral Health Care Services plays a role here as well. We observed deficiencies in the provision of discharge/reentry planning and services for people with mental health disabilities being released from Santa Rita Jail. These deficiencies expose this group to significant risks of re-institutionalization, homelessness, and a range of physical and psychological harms.

As one federal court recently noted, the recurring cycle of institutionalization, without adequate community-based services to stop it, is "the hallmark of a failed system."[19]

III. Next Steps

Given these initial findings, we plan to proceed with our investigation, including reviewing additional relevant documents and information.

Because DRC has found probable cause to believe that abuse and/or neglect has occurred, we are entitled to access and examine all relevant

[19] *United States of America v. State of Mississippi*, --- F.Supp.3d ----, 2019 WL 4179997, *7, No. 3:16-CV-622-CWR-FKB (S.D. Miss. Sept. 3, 2019).

records.[20] We are also entitled to lists of names of individuals receiving services from the County's mental health system.[21]

While DRC has broad discretion and independence in determining how to best gain access to individuals, facilities, and records, we have a statutory duty to maintain the confidentiality of any records obtained in the course of an investigation.[22] The access authority and confidentiality requirements that apply to DRC apply equally to its authorized agents.

DRC's statutory access authority directs that it shall have access to such records "relevant to conducting an investigation . . . not later than three business days after the agency makes a written request."[23]

We request that the County provide the records and information requested in Attachment A no later than November 22, 2019.

IV. Conclusion

If you have any questions regarding our initial findings or our request for documents and information, please feel free to contact us.

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[20] 42 C.F.R. § 51.41(d); Welf. & Inst. Code § 4902(a)(1); Welf. & Inst. Code § 4903(a).

[21] DRC's access comes with Congress' intent that protection and advocacy systems have extensive investigative authority to "ensure that PAIMI's mandates can be effectively pursued." *Ala. Disabilities Advocacy Program v. J.S. Tarwater Developmental Ctr*., 97 F.3d 492, 497 (11th Cir.1996). Courts have found this to mean that following the requisite probable cause finding that neglect and abuse occurs within a facility charged with caring for individuals with a mental illness, authorized agencies, like DRC, may access a list names of individuals at the facility or involved in a specific program at the facility. *Connecticut Office of Prot. & Advocacy for Persons With Disabilities v. Hartford Bd. of Educ*., 464 F.3d 229, 244-45 (2d Cir. 2006); *Penn. Prot. & Advocacy, Inc. v. Royer-Greaves Sch. for the Blind,* 1999 WL 179797 (E.D. Pa 1999).

[22] 42 U.S.C. §§ 10805, 10806; *see also* Welf. & Inst. Code § 4903(f).

[23] Welf. & Inst. Code § 4903(e)(1).

We also look forward to having the opportunity to sit down and speak with you about next steps toward achieving an effective, durable remedy to the issues we have identified. Please let us know when you are available for such a meeting.

Thank you for your ongoing cooperation and courtesy.

Sincerely,

/s/ Kim Swain

Kim Swain
Disability Rights California

/s/ Andrew P. Lee

Andrew P. Lee
Goldstein Borgen Dardarian & Ho

/s/ Jennifer Mathis

Jennifer Mathis
Bazelon Center for Mental Health Law

/s/ Namita Gupta

Namita Gupta
Disability Rights Education & Defense Fund

Cc: David Abella, Alameda Health System [dabella@alamedahealthsystem.org]

Encl: Attachment A-DRC Requests for Records and Information

Attachment A

DRC REQUESTS FOR RECORDS AND INFORMATION

Pursuant to its access authority, DRC requests the documents and information described below *no later than November 22, 2019.*

DRC reserves the right to follow up with additional document and information requests.

A. List of all individuals, including their respective current commitment status, length of stay, and contact information, currently (*i.e.*, as of date of response) receiving treatment at: (1) John George Psychiatric Hospital, (2) Villa Fairmont, (3) Gladman, and (4) Morton Bakar.

B. List of all individuals, including contact information, who visited John George's PES unit more than three times since January 1, 2018, including documentation of how many times they visited John George's PES and/or inpatient unit, the dates and lengths of stay for each visit, the setting to which each person was discharged, and any discharge plans provided.

C. List of all individuals, including contact information, who were admitted to John George's inpatient unit two or more times since January 1, 2018, including documentation of how many times they visited John George's inpatient unit, the dates and lengths of stay for each visit, the setting to which each person was discharged, and any discharge plans provided.

D. List of all individuals, including contact information, who stayed at Villa Fairmont, Morton Bakar, and/or Gladman two or more times since January 1, 2018, including documentation of how many times they visited these facilities, the dates and lengths of stay for each visit, the setting to which each person was discharged, and any discharge plans provided.

E. List of all individuals, including contact information, who have within the past two years received treatment at: (1) John George Psychiatric Hospital, (2) Villa Fairmont, (3) Gladman, or (4) Morton Bakar, AND had a co-occurring disorder or chronic condition, such as a substance abuse disorder, a physical disability, or a chronic condition, with the dates and lengths of stay for each visit, the setting to which each person was discharged, and any discharge plans provided.

F. List of all individuals, including contact information, who have a serious mental illness and have been discharged to a homeless shelter following a visit/admission at John George.

G. List of all individuals, including contact information, who have used crisis or emergency services for psychiatric reasons two or more times within the past two years.

H. List of all individuals, including contact information, who were booked at Santa Rita Jail within 60 days or less of discharge from John George's inpatient or PES units, Villa Fairmont, Gladman, or Morton Bakar since January 1, 2018.

I. List of all individuals, including contact information, who were admitted to John George's inpatient or PES units within 60 days or less of release from Santa Rita Jail since January 1, 2018.

J. The MHS-140 Client Information Face Sheet(s) for each person on any of lists produced in response to any of the aforementioned Requests.

K. The County's definition of a "high utilizer" of mental health services, and any policies or procedures that correspond with special treatment or care provided to such high utilizers.

L. Any and all policies and training materials regarding referrals to Full Service Partnerships.

M. The criteria that ACCESS uses to determine eligibility for a Full Service Partnership.

N. Any and all policies and training materials regarding discharge plans from John George's PES, John George's inpatient units, Villa Fairmont, Gladman, Morton Bakar, and Santa Rita Jail.