

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS, LA ALLIANCE FOR HUMAN RIGHTS,
et al.:

ELIZABETH ANNE MITCHELL
UMHOFER, MITCHELL & KING LLP
11766 WILSHIRE BOULEVARD
SUITE 900
LOS ANGELES, CALIFORNIA 90025
(213) 394-7979
elizabeth@umklaw.com

MATTHEW DONALD UMHOFER
UMHOFER, MITCHELL & KING LLP
11766 WILSHIRE BOULEVARD
SUITE 900
LOS ANGELES, CALIFORNIA 90025
(213) 394-7979
matthew@umklaw.com

CARA M. ARNOLD
UMHOFER, MITCHELL & KING LLP
11766 WILSHIRE BOULEVARD
SUITE 900
LOS ANGELES, CALIFORNIA 90025
(213) 394-7979
cara@umklaw.com

FOR THE DEFENDANT, COUNTY OF LOS ANGELES, an
municipal entity:

MIRA HASHMALL
MILLER BARONDESS LLP
2121 AVENUE OF THE STARS
SUITE 2600
LOS ANGELES, CALIFORNIA 90067
(310) 552-4400
mhashmall@millerbarondess.com

FOR THE INTERVENOR, LOS ANGELES CATHOLIC WORKER:

SHAYLA RENEE MYERS
LEGAL AID FOUNDATION OF LOS ANGELES
7000 SOUTH BROADWAY
LOS ANGELES, CALIFORNIA 90003
(213) 640-3983
smyers.lafla.org

1 **LOS ANGELES, CALIFORNIA; TUESDAY, MAY 09, 2023; 9:07 A.M.**

2 -o0o-

3 THE COURT: We're on the record in L.A. Alliance
4 versus the County of Los Angeles.

5 Counsel, just remain seated, but your appearances,
6 please.

7 MS. MITCHELL: Good morning, Your Honor.
8 Elizabeth Mitchell, on behalf of plaintiffs.

9 THE COURT: Nice meeting you.

09:07:03 10 MR. UMHOFFER: Good morning, Your Honor.

11 Matthew Umhofer and also Cara Arnold --

12 THE COURT: Just a little bit louder.

13 MR. UMHOFFER: Yes.

14 Good morning, Your Honor.

09:07:08 15 Matthew Umhofer also for the plaintiffs.

16 And Cara Arnold is making her first appearance in
17 the case. She's an attorney at our firm.

18 THE COURT: It's a pleasure. It's nice meeting
19 you.

09:07:15 20 MS. ARNOLD: Thank you.

21 THE COURT: And then on behalf of the County,
22 please.

23 MS. HASHMALL: Good morning, Your Honor.

24 Mira Hashmall for the County of Los Angeles.

09:07:20 25 THE COURT: Okay. And I think we finally have

09:07:22 1 power, so if you want to turn on the mic.

2 MS. MYERS: Yes, Your Honor. Good morning.

3 Shayla Myers, on behalf of the intervenors.

4 THE COURT: It should be a very short discussion
09:07:31 5 today. And I was going to simply send out trial dates, but
6 I wanted to be courteous. I wanted to ask you your best
7 thoughts about the -- setting dates, so let me start with
8 LA Alliance for just a moment.

9 MS. MITCHELL: Your Honor, just looking at the
09:07:46 10 discovery that needs to be done --

11 *(Court Reporter requests clarification for the*
12 *record.)*

13 MS. MITCHELL: Thank you.

14 Just looking at the discovery that has to be done,
09:07:58 15 I think a lot of it is going to depend on how difficult the
16 County is here and what kind of discovery fights that we're
17 going to be getting into. But we think a reasonable date is
18 probably -- for trial is probably in October. We think we
19 can get it done that quickly.

09:08:13 20 THE COURT: Okay. Anything you would like to add?

21 MR. UMHOFFER: No, Your Honor.

22 THE COURT: And --

23 MS. ARNOLD: No.

24 THE COURT: Let me turn to the County.

09:08:21 25 What are your thoughts?

09:08:21 1 MS. HASHMALL: Thank you, Your Honor.

2 Well, first, as you know, the County believes
3 there's a binding settlement agreement between the parties.

4 THE COURT: I think we discussed that. And I've
09:08:28 5 sent out an order.

6 MS. HASHMALL: Yes.

7 THE COURT: Now, let's move through that, because
8 I tried to get dates and information from you. I was just
9 going to -- so I'm trying to get your best input.

09:08:37 10 MS. HASHMALL: The next sort of threshold issue is
11 whether the plaintiffs -- viable claims. We have filed a
12 motion to dismiss which is set for hearing on June 5th.

13 THE COURT: I'm aware of that.

14 MS. HASHMALL: As the Court may recall, we've done
09:08:50 15 prior pleading challenges but have not received a ruling
16 from the Court. And so the scope of potential claims,
17 particularly because the plaintiffs have not been able to
18 establish standing -- a fact noted by the Ninth Circuit in
19 its ruling in this matter and raised again in connection
09:09:05 20 with our pending motion to dismiss -- is going to
21 significantly affect whether claims can go forward and what
22 the nature and scope of discovery appropriate in the matter
23 would be.

24 THE COURT: And having heard all that, what's your
09:09:17 25 best suggestion concerning a trial date?

09:09:18 1 MS. HASHMALL: My experience is typically a year
2 from the scheduling conference is appropriate.

3 THE COURT: What's your input on behalf of the
4 intervenors?

09:09:30 5 MS. MYERS: We've obviously joined the motion to
6 dismiss, particularly --

7 *(Court Reporter requests clarification for the*
8 *record.)*

9 MS. MYERS: So we've joined the motion to dismiss
09:09:39 10 with regards to the standing issues and the nuance issues.
11 What the claims are, I think, will shape dramatically what
12 the discovery is. So we think a year is probably closer in
13 light of what, I assume, will be the disputes between the
14 plaintiffs and the County with discovery.

09:09:57 15 THE COURT: Say that again.

16 MS. MYERS: A year would be appropriate, given
17 what we assume will be the disputes between the plaintiffs
18 and the County on discovery. And we don't know how
19 plaintiffs are going to respond to any discovery request
09:10:08 20 related to standing, too.

21 THE COURT: Let me ask both of you, what -- just
22 your guesstimate, not holding you to the length of the
23 trial. What I don't want to do is have a jury around, let's
24 say, the Jewish/Christian holidays, for instance, in
09:10:28 25 December, because you've got trouble then holding that jury

09:10:31 1 together.

2 So what's your thought? And I'm not holding you
3 to this representation at all. I'm just trying to get a --
4 kind of guesstimate about what your time frame would be.

09:10:44 5 MS. MITCHELL: Your Honor, given what we know
6 about how the Court conducts trials and how much we can get
7 done in those days, we think that two weeks is probably
8 sufficient for plaintiffs.

9 THE COURT: What are your best -- I'm not holding
09:10:57 10 you to this trial length.

11 MS. HASHMALL: Well, I think very few claims
12 should survive Rule 56 motion practice, if they survive the
13 Rule 12 motion; but if we're there, I would say five to
14 seven days.

09:11:13 15 MS. MYERS: We don't have an opinion on that.

16 THE COURT: Okay. So let's just take the outside
17 parameter of two weeks. It could be longer. Has there been
18 any preliminary discussion concerning discovery between the
19 parties? In other words, since our last meeting, has there
09:11:32 20 been some informal discussion? And I don't want to know
21 what that is, but you anticipate running into some
22 obstacles, you say, from the County. I don't know if that's
23 true or not. I don't know what might be privileged. I
24 don't know --

09:11:46 25 MS. MITCHELL: Sure. Your Honor, at the outset,

09:11:47 1 we anticipate needing e-mails. We anticipate needing --
2 harvesting cell phones certainly of supervisors and senior
3 staff. So when we look at those significant issues -- and
4 we expect a lot of pushback from the County -- we are
09:12:02 5 looking at probably a lot of motion practice, which is going
6 to take some time.

7 We reached out to the County to have the initial
8 Rule 26 conference. They would not engage with us, so we
9 have not discussed it amongst the parties. But looking at
09:12:16 10 what we are looking at, I do think there's going to be some
11 discovery disputes.

12 THE COURT: Okay. I'm not too concerned about
13 participation or nonparticipation at this point in a formal
14 26 scheduling conference. But I think your input today is
09:12:39 15 going to be valuable, because I will set dates, and I
16 started to set dates without input from you. I re-thought
17 that, trying to get the best, you know, thought you have and
18 to share transparently what my concerns are.

19 If there's going to be difficulty between the two
09:12:54 20 of you in terms of discovery, I'd like to know what that is
21 as quickly as possible. I agree with you to some extent
22 that perhaps January might be the best date, but I'm not
23 going to set that date. I'm probably going to set an
24 October date, but I want to go back and think about that for
09:13:14 25 five or 10 minutes. And what that will do is, it will put

09:13:18 1 all of you in a position of responding quickly to discovery
2 or not responding to discovery. So if I'm running into
3 discovery problems, I might as well know that between the
4 two of you just as quickly as possible.

09:13:35 5 Do you have any more input? If not, the motion to
6 dismiss has been filed, noted by the Court. The opposition
7 is due. There are prior rulings handed down. I want to
8 look at those prior rulings in addition to whatever
9 additional claims that have been brought.

09:13:58 10 And do you have any further input? I'd just like
11 about five or 10 minutes to sort out what would be
12 appropriate.

13 L.A. Alliance?

14 MS. MITCHELL: No, I don't think so, Your Honor.
09:14:10 15 I think beyond the discovery dispute, there's likely to be
16 Rule 56 practice, as -- raised and plaintiffs are likely to
17 bring that as well. And so, I think that's the only other
18 consideration.

19 There's likely to be expert discovery. We think
09:14:25 20 that if we move quickly -- and we do think we should move
21 quickly on this -- that we can get all of that done, but
22 it's going to take dedication.

23 THE COURT: Let me turn to the County.

24 MS. HASHMALL: Your Honor, I do think we should
09:14:37 25 clarify exactly what has happened and not happened in

09:14:41 1 connection with discovery in this matter.

2 Back in 2021, we tried to engage with plaintiffs'
3 counsel with regards to the Rule 26 process. We even
4 initiated written discovery because many of the local rules
09:14:51 5 in the Central District actually encourage the parties to
6 move expeditiously. They balked at that. We've not engaged
7 on the Rule 26 process. It would be requested and obtained
8 a stay of the proceeding. So it is not accurate to suggest
9 that any intransigence on our part is why the parties have
09:15:10 10 not conducted discovery.

11 The reason there was no Rule 26 conference is
12 because the Court set this scheduling conference at the
13 April 20th hearing on a time frame where the parties had
14 already missed the scheduling time frame for conducting that
09:15:28 15 Rule 26 conference.

16 THE COURT: I understand that concern.

17 MS. HASHMALL: And with regard to discovery, you
18 got to establish standing before you can do discovery in a
19 case where you're attempting to legislate executive
09:15:38 20 decision-making about the County's resources in the absence
21 of any cognizable injury under federal law. You know, we do
22 believe the Rule 12 motion is critical and --

23 THE COURT: Waiting for the opposition. And I
24 think that's due in a week or so. I didn't look at the date
09:16:00 25 before I came out. So that will be resolved, one way or the

09:16:03 1 other, rather quickly, okay?

2 Ms. Myers.

3 MS. MYERS: I do think October, given the dates
4 that have been articulated and given what I think is already
09:16:13 5 clear about the intransigence between the two parties -- the
6 two primary parties related to this. I expect that there
7 will be significant motion practice, and I would hate to
8 waste the Court's time with a date that is unreasonable,
9 literally given the timelines for motion practice in order
09:16:30 10 to get rulings and those kinds of things. And so I would
11 just -- I would just say that January seems like a more
12 reasonable date under the circumstances, but --

13 THE COURT: When Mayor Bass and chairwoman --
14 Supervisor Hahn and President Paul Krekorian with counsel
09:16:53 15 asked for a recess -- not on the last hearing, but the prior
16 hearing, none of you as counsel were present.

17 I think it's widely known now that the Court was
18 requested to recess for 90 days, while Mayor Bass went back
19 to Washington, and there was some other discussion that will
09:17:17 20 remain private.

21 I think the Court was very gracious. I was
22 inclined not to grant that. I listened to the parties,
23 thought that that was a reasonable effort and agreed with
24 Mayor Bass to that 90 days.

09:17:28 25 You know, my main concern here, amongst others, is

09:17:31 1 the unaccountability of the settlement offered to the Court.
2 And it's that report -- a simple report to the Court,
3 amongst other things -- that's causing me great concern.

4 My colleague, Judge Pregerson, I haven't spoken to
09:17:52 5 him recently. He's in the middle of a contempt proceeding
6 fairly soon with the County where there is actually a
7 consent decree. And whatever that ruling is, that's going
8 to before maybe -- I don't know if your law firm is
9 representing that or Bob Dugdale, maybe Todale [phonetic]
09:18:10 10 is.

11 Are you involved in that?

12 MS. HASHMALL: I am not.

13 THE COURT: Well, let me make you aware of it.
14 Apparently, five years ago, a consent decree was signed
09:18:20 15 concerning mental health at the Orange County -- strike
16 "Orange County" -- at the Los Angeles Jail.

17 Judge Pregerson now has undertaken a contempt
18 proceeding in that matter. And my concern transparently
19 with all of you is: If the County was in contempt, if that
09:18:35 20 wasn't fulfilled, let alone with a consent decree given by
21 the County -- and I don't know when Judge Pregerson is going
22 to rule -- why would this Court ever accept a simple report
23 to the Court with no accountability in this matter?

24 I think we've been through that discussion a
09:18:51 25 number of times. You chose to raise it again today. I give

09:18:55 1 that back to you as simply not accountability and that's why
2 the settlement amongst other reasons has been turned down.

3 You also have the power, regardless of your public
4 positions, to resolve this at any time. You both know that.

09:19:13 5 So this idea that you can't resolve it, you can resolve
6 this.

7 And I ask this one question for all of you: Can't
8 we do much better? I mean, with this crisis on our hands,
9 can't all us just do much better?

09:19:29 10 What that "much" is, I'm not certain yet. I don't
11 want to dictate terms. I don't think it's appropriate for
12 me to give you a number, but I think it's pretty widely
13 known, and I keep going back to Dr. Sherin's report. And in
14 2019, Dr. Sherin says, *I need 3,000 subacute spaces*, and he
09:19:47 15 undertakes a pilot program and the County undertakes a study
16 called the "Mercer Report." I wrote about that in my
17 opinion. It's in a footnote, for goodness sakes. You're
18 all aware of that. There were initially 500 acute spaces.
19 He was given 164. Go back and check the history of this.

09:20:05 20 Then later on there was a little bit of a fill-in
21 by the County. But if you talk to Jon Sherin, when I could
22 talk to him, that was a very difficult place for the
23 Department of Mental Health to be in this kind of
24 incremental need. Now, I don't know if he deserved 3,000
09:20:22 25 subacute bed spaces. I don't if he deserved 500, but it was

09:20:26 1 clear in the report that was actually put forward by the
2 County.

3 So while it's not the reason, you know, my concern
4 is -- and I'm praising you for the progress. I want you to
09:20:37 5 hear that. I recognize you got 300. Probably the Court is
6 badgering up to 1,000. But if, in fact, you have the need
7 of 1,000 or 1,500, if you count the 500 for the seniors, and
8 that's in 2019, which is one-half of what John Mercer is
9 asking. And then you're asking the Court to also approve
09:21:02 10 four years later, on a five-year program, which means
11 nine years, half of what your Department of Mental Health is
12 asking in 2019: 1,500?

13 Well, I could probably get through that if there's
14 accountability, but there's got to be accountability here.
09:21:25 15 This document you submitted to me doesn't have
16 accountability, and I'm not going to accept a simple report.
17 I've alluded to the City -- I've been, I think, working very
18 well with the City. Haven't interfered in one way or
19 intruded with the City, including Mayor Bass, you know,
09:21:41 20 making her best efforts.

21 So you can quite frankly settle if you chose to
22 without me, but you know that the Court doesn't have the
23 approval for the settlement. I think it's inadequate, and I
24 think there's no accountability here.

09:21:54 25 And so with that in mind, I'm inclined -- but I

09:21:57 1 want to take a few moments and finish this cup of coffee --
2 to October, because if I set a date in October, that puts
3 tremendous pressure on you, but I know two things: Are you
4 really going to settle outside the Court's bailiwick? And
09:22:14 5 if you're not and I've got discovery problems, I'll handle
6 those discovery problems. Those won't go to a
7 Special Master. And so I'll know very quickly what the
8 problem is, if there is a problem between the two of you.

9 Now, I can delay this with a scheduled 26 and give
09:22:30 10 you more time. And I think if we can work together, we can
11 come up with some dates today. And, quite frankly, I think
12 that 90 days that I granted before was extraordinarily
13 gracious. And I regret it, quite frankly. I should have
14 set it two weeks after that initial meeting.

09:22:47 15 I'll be back with you in about 15 minutes or
16 20 minutes. If you want to go downstairs and get a cup of
17 coffee, why don't we just say at 9:45, okay? I'll have you
18 out of here. Thank you.

19 MS. MITCHELL: Thank you.

09:22:58 20 MS. HASHMALL: Thank you, Your Honor.

21 *(Recess taken from 9:23 a.m. to 9:44 a.m.)*

22 THE COURT: These will be the dates, and I'll be
23 transparent concerning my reasoning with both of you,
24 whether you agree with it or not.

09:45:10 25 First, the trial date will be on Monday,

09:45:19 1 November 6th. I'll check with the Clerk of the Court to
2 make certain jurors are available on Monday, but Kiry will
3 be, I think, very cooperative. If it's a two-week estimate,
4 you'll probably finish by the 16th; if not, I understand
09:45:42 5 that that's Thanksgiving week. We would have to go over a
6 week and we would resume on the 27th or the 28th, depending
7 upon jurors. Because in 40-some-years now, I've never been
8 able to hold a jury together over Thanksgiving. They're
9 catching good fares on a Friday night; because on a Friday
09:46:01 10 night, they're \$300. Thanksgiving week, they're three times
11 that amount.

12 So I would expect, if we don't finish, that you
13 should plan that we would be in recess through -- the
14 20th through the 24th, because Thanksgiving is on the 23rd.
09:46:16 15 If we do finish, hopefully, the jury can go into
16 deliberations. Now, that assumes two weeks, and I'm not
17 holding you to it. It may be longer.

18 The pretrial will be on October 24th. The motion
19 cut-off date, which is the actual day that we will hear
09:46:34 20 motions, will be on October 10th. That means you're filing
21 30 days prior.

22 Your discovery cut-off date will be September 8th.
23 It's a Friday.

24 Now, let me be completely transparent with you.
09:46:49 25 You've raised, regardless of who's correct, that there might

09:46:52 1 be some difficulty during discovery between the two of you.
2 This is going to flesh out the problems concerning discovery
3 immediately. And so if there is a problem, I'm going to
4 know about it literally within a month or two.

09:47:08 5 If we delay until January, we're not treating this
6 as the emergency that it is, but I'm flexible. Along the
7 way, I do expect all parties to cooperate in discovery. And
8 the reason for that is, the Court has the power of adverse
9 inferences in front of the jury. And I'll remind you both
09:47:26 10 of that. So I'm encouraging your cooperation so that I
11 don't get into a position potentially of an adverse
12 inference in front of the jury.

13 I will resolve all discovery disputes in my court
14 and it will not go to a Special Master, so I'll know the
09:47:42 15 cooperative level very quickly between the two of you.

16 I don't need a formal write up. I'll simply put
17 this in the docket to get this case moving. I think this
18 has "emergency" written all over it. I think I've delayed
19 further or long enough concerning listening to the parties
09:47:56 20 ask the Court for additional time, and I've been cooperative
21 in terms of those 90 days, but it ends here.

22 So November 6th for your trial; October 24th,
23 pretrial. Motion cutoff, which is the day I'm hearing
24 motions, on October 10th.

09:48:10 25 September 8th is discovery cutoff, and that's for

09:48:12 1 experts and laypeople. And the reason for that is, I'm not
2 going to push your discovery with your experts earlier in
3 case you decide to settle outside the Court's -- from
4 outside this Court's -- well, in case you decide to settle
09:48:30 5 privately. I don't want to run up the costs, in terms of
6 the experts, okay?

7 All right. We'll put that out in a minute order.
8 I want to thank you very much for your courtesy.

9 MS. HASHMALL: Your Honor, may I raise one more
09:48:39 10 thing, please?

11 THE COURT: Please. Certainly.

12 MS. HASHMALL: It's been a year or maybe more
13 since the plaintiffs withdrew as counsel for one of the
14 individual plaintiffs, Gary Whitter. The County and the
09:48:49 15 City moved jointly for an OSC re Dismissal regarding that
16 individual.

17 THE COURT: Do I have that on my docket?

18 MS. HASHMALL: It was filed in October and it has
19 not been ruled on.

09:48:57 20 THE COURT: You know, I've neglected it. I'll go
21 back and look at that. Thank you. It's probably sitting
22 there. I didn't see it, okay. I'll resolve it for you.

23 MS. HASHMALL: Thank you.

24 THE COURT: Thank you very much for your courtesy.

09:49:07 25

09:49:07 1 (At 9:49 a.m., proceedings were adjourned.)

2 -oOo-

3 CERTIFICATE

4 I hereby certify that pursuant to Section 753,
5 Title 28, United States Code, the foregoing is a true and
6 correct transcript of the stenographically reported
7 proceedings held in the above-entitled matter and that the
8 transcript page format is in conformance with the
9 regulations of the Judicial Conference of the United States.

10
11 Date: May 9, 2023

12
13
14 /s/DEBORAH D. PARKER
15 DEBORAH D. PARKER, OFFICIAL REPORTER
16
17
18
19
20
21
22
23
24
25