UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CYRUS PATSON,

Plaintiff,

Case No.: 1:21-cv-00912-RJJ-RSK
Judge: Hon. Robert J. Jonker

v.

GRAND TRAVERSE COUNTY, MICHIGAN; THOMAS J. BENSLEY, in his official capacity as Sheriff of Grand Traverse County; MICHAEL SHEA, in his official capacity as Undersheriff of Grand Traverse County; and CHRIS BARSHEFF, in his official capacity as Administrator of Grand Traverse County Correctional Facility,

Defendants.

ORAL ARGUMENT REQUESTED

____/

PLAINTIFF'S BRIEF IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

TABLE OF CONTENTS

PAGE

INTRODUCTION 1

STATEMENT OF FACTS 3

A. OUD Is a Life-Threatening Medical Condition and a Public Health Crisis. 3

B. MOUD Is the Standard of Care for Treating OUD. 4

C. MOUD Is Medically Necessary to Treat Mr. Patson's OUD. 5

D. Mr. Patson Has Already Suffered Through Withdrawal, Threatening His Long-Term Recovery, in Grand Traverse County Correction Facility 7

E. Grand Traverse County Correction Facility's Forced Withdrawal Policy 9

F. Providing MOUD to Prisoners with OUD Has Had Demonstrable Success. 10

I. MR. PATSON IS LIKELY TO SUCCEED ON THE MERITS. 12

A. Mr. Patson Is Likely to Show That Defendants' Denial of Maintenance MOUD Constitutes Deliberate Indifference to a Serious Medical Need in Violation of the Eighth Amendment. 12

1. Mr. Patson Is Likely to Satisfy the Objective Prong. 13

2. Mr. Patson Is Likely to Satisfy the Subjective Prong. 16

B. Mr. Patson Is Likely to Succeed on the Merits of His ADA Claim for Denial of MOUD. 18

1. Mr. Patson Is a Qualified Individual with a Disability. 19

2. Mr. Patson Will Be Denied the Benefit of Health-Care Programs and Discriminated Against Because of His Disability. 19

II. MR. PATSON FACES IMMEDIATE IRREPARABLE INJURY. 22

III. THE BALANCE OF THE HARDSHIPS FAVORS MR. PATSON. 23

IV. THE PUBLIC INTEREST STRONGLY FAVORS INJUNCTIVE RELIEF. 25

TABLE OF AUTHORITIES

Page(s)

Cases

Am. Civ. Liberties Union Fund of Michigan v. Livingston Cnty.,
796 F.3d 636 (6th Cir. 2015) 11

Basicomputer Corp. v. Scott,
973 F.2d 507 (6th Cir. 1992) 22

Blackmore v. Kalamazoo County,
390 F.3d 890 (6th Cir. 2004) 13, 16

Brawner v. Scott County, Tenn.,
14 F.4th 585 (6th Cir. 2021) 12, 13, 15

Brown v. Plata,
563 U.S. 493 (2011)....................12

Comstock v. McCrary,
273 F.3d 693 (6th Cir. 2001) 13

Crews v. Sawyer,
No. 19-cv-2541 (D. Kan. Sept. 11, 2019)....................11

DiPierro v. Hurwitz,
No. 1:19-cv-10495-WGY (D. Mass. June 7, 2019)....................11

Estelle v. Gamble,
429 U.S. 97 (1976)....................12

Farmer v. Brennan,
511 U.S. 825 (1994)....................12

Finnigan v. Mendrick,
No. 21-cv-00341, Dkt. 71 (N.D. Ill. Feb. 26, 2021) 11

G & V Lounge, Inc. v. Mich. Liquor Control Comm'n,
23 F.3d 1071 (6th Cir. 1994) 25

Godsey v. Sawyer,
No. 2:19-cv-01498 (W.D. Wash.Dec. 3, 2019) 11

Holiday v. City of Chattanooga,
206 F.3d 637 (6th Cir. 2000) 19

Ingraham v. Wright,
430 U.S. 651 (1977)....................23

Jones v. Caruso,
560 F.3d 258 (6th Cir. 2009) 24

Koetje v. Norton,
No. 13-CV-12739, 2013 WL 8475802 (E.D. Mich. Oct. 23, 2013)....................16

Kortlever v. Whatcom County,
No. 2:18-cv-00823-JLR (W.D. Wash. Apr. 29, 2019) 11

MX Group, Inc. v. City of Covington,
106 F. Supp. 2d 914 (E.D.K.Y. 2000)*, aff'd, MX Group*, 293 F.3d 326 20

MX Group, Inc, v. City of Covington,
293 F.3d 326 (6th Cir. 2002) 18, 19, 20

Obama for Am. v. Husted,
697 F.3d 423 (6th Cir. 2012) 23

P.G. v. Jefferson Cty.,
2021 WL 4059409 (N.D.N.Y. Sept. 7, 2021).................... *passim*

Parker v. Michigan Dep't of Corr.,
No. 4:01CV11, 2001 WL 1736637 (W.D. Mich. Nov. 9, 2001)....................18

Pennsylvania Dep't of Corr. v. Yeskey,
524 U.S. 206 (1998)....................18, 19

Perez-Perez v. Adducci,
459 F. Supp. 3d 918 (E.D. Mich. 2020)....................11

Pesce v. Coppinger,
355 F. Supp. 3d 35 (D. Mass. 2018) .... *passim*

Phillips v. Michigan Dep't of Corr.,
731 F. Supp. 792 (W.D. Mich. 1990) 22, 23, 24, 25

S.B. v. Lee,
No. 3:21-CV-00317-JRG-DCP, 2021 WL 4755619 (E.D. Tenn. 2021) 25

Sclafani v. Mici,
No. 9-12550-LTS (D. Mass Feb. 27, 2020)....................11

Six Clinics Holding Corp., II v. Cafcomp Sys., Inc.,
119 F.3d 393 (6th Cir. 1997) 11

Smith v. Aroostook Cty.,
376 F. Supp. 3d 146 (D. Me. 2019), *aff'd*, 922 F.3d 41 (1st Cir. 2019) .... *passim*

Smith v. Fitzpatrick,
No. 1:18-cv-00288-NT (D. Me. Sept. 28, 2018) 11, 20, 23

Waskul v. Washtenaw Cty. Cmty. Mental Health,
979 F.3d 426 (6th Cir. 2020) 21

West v. Atkins,
487 U.S. 42 (1988)..13

Westlake v. Lucas,
537 F.2d 857 (6th Cir. 1976) 15

Wilson v. Gordon,
822 F.3d 934 (6th Cir. 2016) 22

Winter v. Nat'l. Res. Defense Def. Council, Inc.,
555 U.S. 7 (2008)..11

Statutes

42 U.S.C. § 12102(1)(A)..19

42 U.S.C. §§ 12131(1)(B)..18

Americans with Disabilities Act .... *passim*

Other Authorities

28 C.F.R. Pt. 35, App. A 18

28 C.F.R. § 35.108(b)(2)..19

28 C.F.R. § 35.130(b)(1)..18

28 C.F.R. § 35.130(b)(7)(1) 21

TABLE OF ABBREVIATIONS

Clark Decl. ¶ __	Declaration of Dr. Kelly J. Clark[1]
Hayes Decl. ¶ __	Declaration of Edmond Hayes
MacDonald Decl. ¶ __	Declaration of Dr. Ross MacDonald
Rosenthal Decl. ¶ __	Declaration of Dr. Richard Rosenthal
Valenti Decl. ¶ __	Declaration of Alexandra D. Valenti
ADA	Americans with Disabilities Act
FDA	U.S. Food and Drug Administration
Jail	Grand Traverse County Correctional Facility
MOUD	Medication for opioid use disorder
OUD	Opioid use disorder
SAMHSA	Substance Abuse and Mental Health Services Administration
WHO	World Health Organization

[1] The Clark, Hayes, and Rosenthal Declarations referenced in this Table of Abbreviations were previously submitted as Exhibits 1–3, respectively, to the Verified Complaint, ECF No. 1. The Valenti and MacDonald Declarations are being submitted concurrently herewith as Exhibits 1 and 2 respectively.

INTRODUCTION

Plaintiff Cyrus Patson suffers from severe opioid use disorder ("OUD"), a life-threatening, chronic medical disease. His physician of eight years, Dr. Kelly Clark, prescribes Suboxone, a medication for opioid use disorder ("MOUD"), to treat his condition.[2] With Suboxone, Mr. Patson has begun his recovery. He has consistently attended counseling, developed healthy hobbies, and has rebuilt strong relationships with his family. This would not have been possible without the Suboxone his physician prescribes.

On June 9, 2021, Mr. Patson's course of treatment was disrupted when he was incarcerated at the Grand Traverse County Correctional Facility ("the Jail") after certain bond violations. Valenti Decl., Ex. 1 at 16:13–15. Between the date of the alleged violations and the hearing remanding him to the Jail, Mr. Patson resumed his Suboxone treatment and achieved early remission of his OUD, and found transitional housing and employment. *Id*. at 10:2–7. The judge ordered Mr. Patson to report to the Jail that day while awaiting sentencing, despite the concerns expressed by Mr. Patson's attorney that his incarceration would detrimentally impact Mr. Patson's remission. *Id*. at 15:11–18, 16:13–15.

Before his hearing on June 9, 2021, Mr. Patson was extremely worried the Jail would not allow him access to his Suboxone—the life-saving treatment that allowed him to achieve early remission, decreasing his cravings for opioids and preventing Mr. Patson from engaging in the risky behaviors that occurred during his periods of active addiction and relapse. Clark Decl. ¶¶ 7–8. Mr. Patson was justifiably afraid of being forced to withdraw from his Suboxone and endure the excruciating symptoms of forced withdrawal while incarcerated. Clark Decl. ¶ 7. He even

[2] Suboxone is the most common brand name for a formulation of buprenorphine and naloxone, which is an MOUD that treats OUD by training patients' brains to gradually decrease their response to, and cravings for, opioids.

asked Dr. Clark if he could begin tapering off his Suboxone to avoid suffering the pain and mental distress of forced withdrawal, but she explained to Mr. Patson that any interruption in his treatment, even tapering, would be highly unadvisable and place him at severe risk of relapse and death. *Id*. Unfortunately for Mr. Patson, his worst fears came true, as Defendants denied him access to his Suboxone, and he endured a brutal, debilitating withdrawal that wrought havoc on his physical and mental health.

That nightmare is now about to recur. Mr. Patson expects to be incarcerated again following a sentencing hearing scheduled in two weeks, on November 12, 2021. As his sentencing date nears, Mr. Patson's anxiety is rapidly increasing because he knows Defendants will again force him to endure withdrawal from his Suboxone, again risking his long-term recovery and putting Mr. Patson at increased risk of relapse and death.

As Mr. Patson has already experienced firsthand, it is the Defendants' policy and practice to categorically refuse to provide medication to treat people suffering from OUD, even to those—like Mr. Patson—who arrive with a prescription for such medication and are already in recovery as a result of access to the medication. If Mr. Patson does not receive his Suboxone, he will suffer from another excruciatingly painful withdrawal. Further, Mr. Patson will be subject to a high risk of relapse, overdose, and even death. Defendants are aware of all of these facts and risks. Accordingly, as applied to Mr. Patson, Defendants' policy and practice violates the Eighth Amendment's guarantee against cruel and unusual punishment, which prohibits deliberate indifference to an incarcerated person's serious medical needs. Defendants' policy and practice also violates the Americans with Disabilities Act ("ADA"), which prohibits the disparate treatment of people suffering from substance use disorders.

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Mr. Patson seeks emergency injunctive relief to require Defendants to provide him with continued access to his medically necessary, physician-prescribed medication to treat his OUD when he is jailed on or about November 12, 2021, and throughout his incarceration.

STATEMENT OF FACTS

A. OUD Is a Life-Threatening Medical Condition and a Public Health Crisis.

OUD is a chronic brain disease. Rosenthal Decl. ¶ 11. Its symptoms typically include cravings, increasing tolerance to opioids, withdrawal symptoms, and a loss of behavioral control. *See id.*; MacDonald Decl. ¶ 8. Without treatment, people with OUD often cannot control their use of opioids. *See* Rosenthal Decl. ¶ 12. Genetic factors account for much of a person's vulnerability to OUD and substance use disorder, as does early exposure and childhood trauma. *Id.* ¶¶ 16–17. More than half a million Americans have died from opioid overdose in the last twenty years, and the death toll has risen exponentially in the last five years. *Id.* ¶ 21; Compl. ¶ 24. The situation in Michigan is particularly dire. There were 2,684 confirmed and estimated overdose deaths in Michigan in 2020, an average of more than 7 deaths per day. Compl. ¶ 26.

As former President Trump's Commission on Combating Drug Addiction and the Opioid Crisis recognized, OUD is especially dangerous for people who are or have been incarcerated. *See* Compl. ¶ 32; *see also* Valenti Decl., Ex. 2 at 24–25, 73–74, 100. In the first two weeks after release, the opioid overdose death rate is approximately *129 times higher* for those recently released from incarceration than the general adult population. MacDonald Decl. ¶ 14. A 2016 study found that providing MOUD in jails and prisons was associated with an 85% reduction in the number of overdose deaths in the first month after release. Rosenthal Decl. ¶ 41.

B. MOUD Is the Standard of Care for Treating OUD.

The standard of care for treating OUD is MOUD. MOUD involves the use of FDA-approved medication in conjunction with counseling and other interventions. Rosenthal Decl. ¶ 26; MacDonald Decl. ¶¶ 5, 15, 26–29. The primary driver in MOUD's efficacy is the medication itself. Rosenthal Decl. ¶ 28; Compl. ¶ 33. The three FDA-approved medications for treating this disease as part of an MOUD regimen are methadone, buprenorphine (including Suboxone), and naltrexone (Vivitrol). Rosenthal Decl. ¶ 29. Both buprenorphine and methadone are considered "essential medicines" by the World Health Organization ("WHO"). *Id.* ¶ 31. In contrast, studies show that treatment with naltrexone results in poorer outcomes in part due to lower rates of treatment retention. *Id*. ¶ 33. Furthermore, a patient who discontinues using naltrexone and takes opioids is at higher risk of overdose than if the patient had taken no medication at all. *Id.* For these reasons, treatment using methadone or buprenorphine is the standard of care for treating OUD. *Id*.

Not every medication works equally well for each patient; if any one form of MOUD is working for a patient, involuntarily terminating that particular medication violates the standard of care. Rosenthal Decl. ¶¶ 35; Clark Decl. ¶¶ 5, 19–20. For buprenorphine in particular, the dose and duration of maintenance treatment must be based on a medical provider's individualized assessment of a particular patient's medical needs. Rosenthal Decl. ¶ 34; Clark Decl. ¶ 5. Like treatments for other chronic diseases, MOUD maintenance treatment is generally lengthy, and sometimes lifelong. Compl. ¶ 41. MOUD's effectiveness at treating OUD is well documented, and has been shown to decrease opioid use and opioid-related overdose deaths. Rosenthal Decl. ¶ 27. For this reason, many government entities have recognized the necessity of MOUD, including the U.S. Department of Health and Human Services, the WHO, the FDA, the National Institute on Drug Abuse, former President Trump's Commission on Combating Drug Addiction and the Opioid

Crisis, the Office of National Drug Control Policy, and the Substance Abuse and Mental Health Services Administration ("SAMHSA"). Rosenthal Decl. ¶ 36.

Michigan's governmental agencies also recognize that MOUD is necessary to treat OUD. Compl. ¶ 31. In 2019, Governor Whitmer and the Michigan Opioids Task Force announced a plan to eliminate barriers to MOUD treatment, explaining that MOUD "is the gold standard for treating individuals with opioid use disorder, leading to significantly better outcomes." Valenti Decl., Ex. 3 (when combined with counseling or other behavioral therapy). The Michigan Department of Corrections also recognizes that MOUD is medically necessary for people with OUD, and has implemented MOUD programs at several prisons thus far, with the goal of offering MOUD programs at all facilities by 2023. Compl. ¶ 65; Valenti Decl., Ex. 4 at 14; Valenti Decl., Exs. 5–6. Several other county jails across Michigan have already implemented successful MOUD programs. Valenti Decl., Ex. 6.

C. MOUD Is Medically Necessary to Treat Mr. Patson's OUD.

Mr. Patson was diagnosed with severe OUD in November 2020, just as he turned 20 years old, when he sought treatment for OUD following a nearly year-long battle with opioid use. Clark Decl. ¶ 5; Compl. ¶ 69. After considering Mr. Patson's individual clinical profile and all treatment options, his long-time physician, Dr. Clark, determined that Suboxone was medically necessary to treat his severe OUD. *See* Clark Decl. ¶ 5. Mr. Patson suffered a brief period of relapse after beginning MOUD—as is common for *all* people with chronic disorders, including those with OUD. Clark Decl. ¶ 6; Rosenthal Decl. ¶ 12. By May 2021, Mr. Patson was able to achieve early remission of his OUD by regularly using his physician-prescribed Suboxone. Clark Decl. ¶¶ 6, 8; Compl. ¶ 69.

For Mr. Patson, taking Suboxone is not only crucial to treating his OUD, but to his mental health. Dr. Clark also treats Mr. Patson for several serious co-occurring disorders: major depression (severe), generalized anxiety disorder, and post-traumatic stress disorder. Clark Decl. ¶ 5. For individuals like Mr. Patson with co-occurring disorders, a failure to treat their substance use disorder exacerbates the severity of their co-occurring disorders. Clark Decl. ¶¶ 3, 4; MacDonald Decl. ¶ 18. Thus, the recognized standard of care for individuals with co-occurring disorders is to provide integrated treatment addressing the patient's OUD and their co-occurring mental health disorders. Clark Decl. ¶ 4. For individuals with OUD, like Mr. Patson, that standard of care includes continued treatment with MOUD, in his case Suboxone. Clark Decl. ¶ 4; Rosenthal Decl. ¶ 26; MacDonald Decl. ¶¶ 5, 15.

Abruptly discontinuing Mr. Patson's Suboxone treatment is medically contraindicated and would be "particularly dangerous" in his case. Clark Decl. ¶ 19. Once subjected to Defendants' policy of categorically denying MOUD treatment, Mr. Patson will experience acute withdrawal, which means the immediate onset of physical symptoms likely to include severe body aches, nausea, shaking, sweating, dizziness, dehydration, and vomiting. *Id.* ¶ 20; Rosenthal Decl. ¶ 9. Due to his co-occurring disorders, forced withdrawal could also lead to serious side effects including suicidal ideation and decompensation.[3] Clark Decl. ¶ 20; MacDonald Decl. ¶¶ 18, 39. Forced withdrawal from Suboxone also has long-term effects, including a higher risk of overdose, relapse, and death upon his release and while incarcerated. Clark Decl. ¶ 21; Rosenthal Decl. ¶ 38; MacDonald Decl. ¶¶ 9, 17. Indeed, due to the severity of his prior forced withdrawal at the

[3] Decompensating means Mr. Patson will "experience a dramatic loss in defense mechanisms and in his ability to cope, resulting in progressive personality disintegration. Decompensation can, in turn, lead to delusional behavior, mania, catatonia, loss of appetite, or uncontrollable anger." Clark Decl. ¶ 20.

Jail, Mr. Patson is already suffering from many of these symptoms—including suicidal thoughts as he awaits sentencing and *a second* forced withdrawal under Defendants' policies.

The only way to prevent Mr. Patson from suffering these short- and long-term harms is by providing him with continued, uninterrupted access to his life-saving, medically-necessary Suboxone treatment.

D. Mr. Patson Has Already Suffered Through Withdrawal, Threatening His Long-Term Recovery, in Grand Traverse County Correction Facility.

The Jail has already interrupted Mr. Patson's treatment once, which resulted in Mr. Patson experiencing severe trauma. On June 9, 2021, Mr. Patson was incarcerated at the Jail for a bond violation. Compl. ¶ 72; Valenti Decl., Ex. 1 at 16:13–15. Defendants refused to continue MOUD, and refused to provide him with his prescribed Suboxone while he was incarcerated. Compl. ¶ 73; Clark Decl. ¶¶ 9, 12. Defendants ignored Mr. Patson's physician's exhortations that Mr. Patson was a high-risk individual that requires Suboxone therapy and that his success with the life-saving treatment would make it "a tragedy to stop it." Clark Decl. ¶ 10. They persisted in their refusal even after Mr. Patson's criminal defense attorney obtained an order requiring that Mr. Patson continue his treatment. Compl. ¶¶ 9, 72.

Upon Mr. Patson's arrival at the Jail, Defendants verified all of Mr. Patson's current prescriptions. *See* Valenti Decl., Ex. 7 at 9–10. The June 9, 2021 Medication Verification Form confirms that Defendants would continue to provide all of Mr. Patson's prescription medications, like those for his anxiety, depression, and blood pressure—except for his Suboxone. *Id*. The Jail withheld Mr. Patson's Suboxone for two days while subjecting Mr. Patson to forced withdrawal and the Jail's "detox protocol." Only after Dr. Clark called and wrote the Jail explaining it was urgent and necessary for Mr. Patson to continue receiving his Suboxone, did the Jail give Mr. Patson a single dose of Suboxone. Clark Decl. ¶¶ 10–12.

Mr. Patson was never again provided with Suboxone during his incarceration.[4] Instead, the Jail "restarted" Mr. Patson on its forced "detox protocol." Valenti Decl., Ex. 7 at 4. This "detox protocol" denies patients access to MOUD, in contravention of the recognized standard of care for MOUD cessation, which instead requires a long tapering-off period—and even such tapering-off is only appropriate after the patient has been successfully in stable remission for a minimum of 6 months. Compl. ¶¶ 44, 78; Clark Decl. ¶ 8. Instead of providing patients with their medically necessary medication, the Defendants' "protocol" provides patients with nothing more than an electrolyte sports drink and over-the-counter pain killers in a futile gesture to combat the excruciating symptoms of withdrawal from MOUD.

After several efforts by Dr. Clark to convince the Jail to provide MOUD treatment to Mr. Patson (Clark Decl. ¶¶ 9–12), on June 17, 2021, Jail medical staff informed Dr. Clark that they would no longer provide Mr. Patson with Suboxone. Compl. ¶¶ 77–78; Clark Decl. ¶ 12. No medical justification was provided for why Mr. Patson would not be permitted to continue on his Suboxone treatment. *Id*. Instead, Dr. Clark was informed that the Defendants' decision to stop providing Mr. Patson with Suboxone was solely due to Defendants' policy that people with "long-term" incarcerations are categorically denied access to MOUD. Clark Decl. ¶ 12; Compl. ¶ 77.

On the Jail's forced "detox protocol," Mr. Patson began experiencing withdrawal symptoms immediately. Compl. ¶¶ 75, 78. The physical symptoms were excruciating. Mr. Patson was in constant pain, and could not find a comfortable position to rest his body. Valenti Decl., Ex.

[4] On June 13, 2021, Mr. Patson slept through medical rounds, and it is therefore unknown if he would have been offered Suboxone that day. Valenti Decl., Ex. 7 at 5. When he woke up, Mr. Patson requested his Suboxone and it was denied to him because he did not awaken in time to receive his other medications as well. *Id*.; Compl. ¶ 74. Thereafter, Mr. Patson continued to be provided all of his other physician-prescribed medications *except* Suboxone. Compl. ¶ 74.

7 at 4. Cold sweats prevented him from sleeping at night, leaving him exhausted. *Id*. Mr. Patson could barely eat or drink due to his nausea, taking in no food and almost no water for days. *Id.* He was restless, but every movement he made was painful. Compl. ¶ 79. His bones felt like they were bruised. *Id*. He was sweating and freezing at the same time. *Id*. He had no appetite, and was experiencing diarrhea and vomiting. *Id*.

Mr. Patson's mental health also deteriorated. During a video visit he told his grandmother that he should kill himself. Compl. ¶ 79. Upon learning of this development, Dr. Clark sent the Jail yet another letter advising that resumption of MOUD was necessary to combat Mr. Patson's declining mental health. Clark Decl. ¶¶ 13–15; Valenti Decl., Exs. 8–9. In response, the Jail placed Mr. Patson into isolation because Defendants concluded that he presented a suicide risk, but they refused to resume his MOUD treatment. Valenti Decl., Ex. 7 at 5; Valenti Decl., Ex. 9.

By the time Mr. Patson was released on August 8, 2021, he had suffered a significant worsening in all of his co-occurring mental health disorders. Compl. ¶ 86. He promptly resumed care with Dr. Clark, who began treating him with Suboxone again. Clark Decl. ¶ 18. He has been successful at keeping his OUD in remission, and has not used illegal drugs while on Suboxone. *Id*. Unfortunately, Mr. Patson has not recovered from the relapse in his co-occurring disorders. Compl. ¶ 86. While he awaits sentencing, Mr. Patson has been participating in a partial hospitalization program to treat his worsened symptoms of depression, anxiety, and suicidal ideations that resulted from his forced withdrawal. *Id*.

E. Grand Traverse County Correction Facility's Forced Withdrawal Policy

Without access to Suboxone, Mr. Patson faces a high risk of relapse, overdose, and death, both during his incarceration and upon his release. MacDonald Decl. ¶ 17; *see* Rosenthal Decl. ¶¶ 48–49. On October 8, 2021, Mr. Patson's criminal defense counsel, Jesse Williams, sent a letter to Defendant Bensley informing him again of Mr. Patson's serious medical needs, and that it is

medically necessary for Mr. Patson to be provided with MOUD while at the Jail, specifically, his physician-prescribed doses of Suboxone. Compl. ¶ 93; Valenti Decl., Ex. 10. Mr. Williams informed Defendant Bensley that, by failing to provide MOUD, Defendants would put Mr. Patson at a severe risk of physical suffering and an increased risk of death, in violation of the U.S. Constitution and federal law. Compl. ¶ 94; Valenti Decl., Ex. 10. Mr. Williams asked that Defendant Bensley confirm in writing by Friday, October 15, 2021, that Mr. Patson will be able to continue his Suboxone, as currently prescribed by his treating physician, if incarcerated at the Jail. Compl. ¶ 93; Valenti Decl., Ex. 10. Defendants have provided no such assurance, and have yet to respond. Compl. ¶ 93. Following the filing of the Complaint, Plaintiff's counsel spoke with Mr. Kit Tholen, counsel for Grand Traverse County, who indicated that Defendants would not be concurring in the relief requested.

F. Providing MOUD to Prisoners with OUD Has Had Demonstrable Success.

Defendants' forced withdrawal policy stands in stark contrast to the positive results other correctional institutions have experienced by offering maintenance MOUD to incarcerated persons. Several prisons in Michigan, and multiple county jails in Michigan, now provide MOUD treatment for people with OUD throughout their sentence. Valenti Decl., Ex. 4 at 14; Valenti Decl., Exs. 5–6. By way of additional examples, people incarcerated at Rikers Island, New York and in San Francisco, California have received maintenance MOUD, and Rhode Island makes maintenance MOUD available across its entire corrections department. MacDonald Decl. ¶¶ 22, 34. These programs have profoundly helped both incarcerated people suffering from OUD as well as the surrounding communities. For example, Rhode Island experienced clinically meaningful reductions in overdose-related deaths both post-release and statewide after implementing its MOUD program. *Id.* ¶¶ 22, 24. Reflecting the strength of the consensus that MOUD is

administrable in jails and prisons, the National Commission on Correctional Health Care and the National Sheriffs' Association, in their joint guide on practices and guidelines for jail-based treatment of OUD, wrote that MOUD "is considered a central component of the contemporary standard of care" for the treatment of individuals with OUD. Valenti Decl., Ex. 11 at 6.

ARGUMENT

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat'l. Res. Defense Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Am. Civ. Liberties Union Fund of Michigan v. Livingston Cnty.*, 796 F.3d 636, 642 (6th Cir. 2015). The court must balance these four factors, with "no single factor" being dispositive. *See Six Clinics Holding Corp., II v. Cafcomp Sys., Inc.*, 119 F.3d 393, 400 (6th Cir. 1997). These factors also govern a motion for a temporary restraining order. *Perez-Perez v. Adducci*, 459 F. Supp. 3d 918, 924 (E.D. Mich. 2020) (citing *Ohio Republican Party v. Brunner*, 543 F.3d 357, 362 (6th Cir. 2008)). Under this standard, courts within the First and Second Circuits have granted preliminary injunctions in indistinguishable cases brought by plaintiffs suffering from OUD who challenged, on Eighth Amendment and ADA grounds, correctional facilities' policies denying MOUD.[5] *See Pesce v. Coppinger*, 355 F. Supp. 3d 35, 39–40 (D. Mass. 2018); *Smith v. Aroostook Cty.*, 376 F. Supp. 3d 146, 149 (D. Me. 2019), *aff'd*, 922 F.3d 41 (1st Cir. 2019); *P.G. v. Jefferson Cty.*, 2021 WL

[5]A litany of other cases similar to this one resulted in settlements or other remedies that provided treatment to the plaintiff while incarcerated. *See, e.g.*, *Finnigan v. Mendrick*, No. 21-cv-00341, Dkt. 71 (N.D. Ill. Feb. 26, 2021); *Sclafani v. Mici*, No. 9-12550-LTS (D. Mass Feb. 27, 2020); *Godsey v. Sawyer*, No. 2:19-cv-01498 (W.D. Wash.Dec. 3, 2019); *Crews v. Sawyer*, No. 19-cv-2541 (D. Kan. Sept. 11, 2019); *DiPierro v. Hurwitz*, No. 1:19-cv-10495-WGY (D. Mass. June 7, 2019); *Smith v. Fitzpatrick*, No. 1:18-cv-00288-NT (D. Me. Sept. 28, 2018); *Kortlever v. Whatcom County*, No. 2:18-cv-00823-JLR (W.D. Wash. Apr. 29, 2019).

4059409 (N.D.N.Y. Sept. 7, 2021). And the Sixth Circuit has held that a categorical refusal to provide medications, including Suboxone, that result in severe withdrawal symptoms, can violate the constitution under the analogous standards that apply to pre-trial detainees under the Fourteenth Amendment. *Brawner v. Scott County, Tenn.*, 14 F.4th 585, 598, 600 (6th Cir. 2021). This Court should grant an injunction here, as all factors weigh in Mr. Patson's favor.

I. MR. PATSON IS LIKELY TO SUCCEED ON THE MERITS.

Here, Mr. Patson is likely to succeed on the merits of both his Eighth Amendment and ADA claims. First, Mr. Patson is likely to prove that Defendants, pursuant to their forced withdrawal policy, are deliberately indifferent to Mr. Patson's serious medical needs in violation of the Eighth Amendment. Second, Mr. Patson is likely to prove that the forced withdrawal policy constitutes unlawful discrimination against him under the ADA.

A. Mr. Patson Is Likely to Show That Defendants' Denial of Maintenance MOUD Constitutes Deliberate Indifference to a Serious Medical Need in Violation of the Eighth Amendment.

Mr. Patson is likely to succeed on his Eighth Amendment claim that Defendants' refusal to maintain his Suboxone treatment is cruel and unusual punishment. Because "society takes from prisoners the means to provide for their own needs," incarcerated persons "are dependent on the State for food, clothing, and necessary medical care." *Brown v. Plata*, 563 U.S. 493, 510 (2011). "Just as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical care." *Id.* at 510–11. "A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society." *Id.* at 511. Prison officials thus have an affirmative obligation to provide incarcerated people with medical care, *Estelle v. Gamble*, 429 U.S. 97, 103–04 (1976), and a constitutional duty to protect those it detains from "a substantial risk of serious harm." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). "Contracting out prison medical care does not relieve the

State of its constitutional duty to provide adequate medical treatment to those in its custody," nor does it "deprive the State's prisoners of the means to vindicate their Eighth Amendment rights." *West v. Atkins*, 487 U.S. 42, 56 (1988).

An Eighth Amendment claim has objective and subjective elements. *Blackmore v. Kalamazoo County*, 390 F.3d 890, 895 (6th Cir. 2004). The objective element requires the plaintiff to show evidence that "the medical need at issue is 'sufficiently serious.'" *Comstock v. McCrary*, 273 F.3d 693, 702–03 (6th Cir. 2001) (quoting *Famer*, 511 U.S. at 834). Subjectively, a plaintiff must prove that Defendants are aware of and deliberately indifferent to that serious medical need. *Blackmore,* 390 F.3d at 896. Mr. Patson is likely to satisfy both elements.

1. Mr. Patson Is Likely to Satisfy the Objective Prong.

Mr. Patson is likely to satisfy the Eighth Amendment's objective inquiry. *See Pesce*, 355 F. Supp. 3d at 47 (plaintiff was "reasonably likely to satisfy the objective inquiry" because "the [MOUD] treatment he would be denied" pursuant to a prison policy "has been documented as the only adequate treatment for his opioid use disorder"); *P.G.*, 2021 WL 4059409, at *5 (plaintiff was likely to succeed on objective prong because "opioid use disorder is a chronic brain disease and [] opioid withdrawal has been recognized as an 'objectively' serious medical condition that . . . must be treated with methadone").

First, OUD is a serious medical need. A medical need is "serious" where it has been "diagnosed by a physician as mandating treatment, or . . . is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Blackmore*, 390 F.3d at 387 (emphasis in original) (citing *Friend v. Rees*, 779 F.2d 50 (6th Cir. 1985)). Mr. Patson's physician has diagnosed him with severe OUD, a chronic brain disease that kills more than a hundred Americans every single day, and Defendants have acknowledged and confirmed Mr. Patson's diagnosis of OUD. Clark Decl. ¶ 5; *see* Valenti Decl., Ex. 7 at 4 (conducting detoxification

evaluation for Mr. Patson). *See Brawner*, 14 F.4th at 599 ("[C]onsidering that suboxone is a well-known opioid-withdrawal medication, 'a jury could reasonably find that [Plaintiff] had a serious need for medical care that was so obvious that even a layperson would easily recognize the necessity for a doctor's attention.'" (quoting *Blackmore*, 390 F.3d at 899)).

Second, MOUD is medically necessary to adequately treat Mr. Patson's OUD. Mr. Patson's physician is currently prescribing Suboxone to him, and prescribed this treatment because she determined it was medically necessary to treat his OUD. Clark Decl. ¶ 5. That MOUD is the *only* standard of care to treat OUD is widely acknowledged, including by the U.S. Department of Health and Human Services, the National Institute on Drug Abuse, the FDA, SAMHSA, and WHO. Rosenthal Decl. ¶ 26. This life-saving treatment has helped Mr. Patson begin to recover from his OUD. Clark Decl. ¶¶ 6, 7. Once a patient is successfully recovering using buprenorphine maintenance treatment, involuntarily halting that medication contradicts sound medical practice and professional standards of care. Rosenthal Decl. ¶ 37. Mr. Patson's primary care provider made clear in visit notes from May 2021 that any interruption in treatment was medically contraindicated due to the "severely" increased risk of relapse and threat to Mr. Patson's health and mental wellness. Valenti Decl., Ex. 12 at 12. Recognizing this, other district courts have explicitly held that failure to provide MOUD poses an "objectively serious" danger to people in similar circumstances as Mr. Patson. *See P.G.*, 2021 WL 4059409 at *5; *accord. Pesce*, 355 F. Supp. 3d at 47.

Directly contradicting Mr. Patson's own medical provider and the weight of medical authority, Defendants' forced withdrawal policy categorically denies Mr. Patson access to necessary medical care. Whether a plaintiff has "suffered unduly by the failure to provide medical care is to be determined in view of the totality of the circumstances," including "the extent of the

injury, the realistic possibilities of treatment, and the possible consequences to the prisoner" if medical care is not provided. *Westlake v. Lucas*, 537 F.2d 857, 860 n.5 (6th Cir. 1976) (noting that medical treatment that is "woefully inadequate . . . amount[s]to no treatment at all" for Eighth Amendment purposes). Without Suboxone, Mr. Patson faces excruciating physical and mental pain during forced withdrawal, as well as substantially increased risk relapse, overdose, death. Thus, refusing to treat Mr. Patson contravenes constitutional requirements by uniformly denying him access to physician-prescribed treatment and forcing him to withdraw from his buprenorphine treatment without consideration of his individual needs or circumstances.[6] *See Brawner*, 14 F.4th at 599 ("[W]e have previously suggested that abrupt discontinuation of substances that could lead to withdrawal symptoms and potential seizures might pose constitutional problems.").

Both Mr. Patson and his primary care physician Dr. Clark requested Suboxone to treat his OUD while at the Jail, and Dr. Clark repeatedly emphasized the importance of Mr. Patson being maintained on his treatment. *See generally* Valenti Decl., Ex. 13 (documenting back and forth between Dr. Clark and Defendants regarding Mr. Patson's access to buprenorphine). The facility provider in turn ordered "no Suboxone to be given," forcing Mr. Patson into withdrawal. Valenti Decl., Ex. 7 at 2. Mr. Patson did not receive a medical explanation for Defendants' decision to deny MOUD, which has already resulted in ongoing harm as he continues to suffer from relapse of his mental health disorders as a result of his forced withdrawal. As further indication that there was no medical reason to remove Mr. Patson from his buprenorphine, the Jail indicated it may restart Mr. Patson on MOUD when he was within 24 to 48 hours of his release from the facility. Valenti Decl., Ex. 7 at 4, 10.

[6] Currently, the only persons to whom the Jail will administer MOUD are incarcerated people staying for only a short period of time. Hayes Decl. ¶ 11.

2. *Mr. Patson Is Likely to Satisfy the Subjective Prong.*

As applied to Mr. Patson, Defendants' forced withdrawal policy constitutes deliberate indifference to a serious medical need. *Pesce*, 355 F. Supp. 3d at 48 ("[A]llegations that prison officials denied or delayed recommended treatment by medical professionals may be sufficient to satisfy the deliberate indifference standard." (internal quotations and citation omitted)); *P.G.*, 2021 WL 4059409 at *5 (plaintiff was likely to succeed on subjective prong because defendants were "on notice that refusing access to [plaintiff's] medically necessary treatment exposes plaintiff to serious risk of harm to his health"); *accord Koetje v. Norton*, No. 13-CV-12739, 2013 WL 8475802, at *1, *3 (E.D. Mich. Oct. 23, 2013) (granting temporary restraining order due, in part, to prison staff's failure to act in accordance with instructions from plaintiff's medical provider). Defendants' policy disregards Mr. Patson's serious medical needs in favor of a blanket mandate denying him access to his medically necessary medication. This policy is not premised on any medical reasons, but rather on Defendants' deliberate indifference to the health and safety of people suffering from substance abuse and mental health disorders, as illustrated by Defendant Bensley's own public comments: "[I]t's a jail. We're not a hospital, we're not a mental health facility." Compl. ¶ 88; Valenti Decl., Ex. 6 (quoting Defendant Bensley in a local newspaper).

Mr. Patson is "likely to succeed on the merits of his Eighth Amendment claim" because the Jail has already and will continue to "ignore[] treatment prescriptions given to Plaintiff by [his medical providers]." *See Pesce*, 355 F. Supp. at 48 (internal quotations omitted); *see also Blackmore*, 390 F.3d at 896 (prison officials' "aware[ness] of a prisoner's obvious and serious need for medical treatment and delay[ing] medical treatment of that condition for non-medical reasons" constituted deliberate indifference); *Koetje*, 2013 WL 8475802 at *3. Mr. Patson's treating physician has notified Defendants multiple times that the Suboxone she prescribes him is medically necessary, and her efforts during his prior incarceration show the strength of this medical

recommendation—and the Defendants' steadfast refusal to honor it. *See* pgs. 7–8, *supra*. The necessity of the continuation of his Suboxone treatment was again emphasized to Defendants through the October 8 letter sent to Defendant Bensley on Mr. Patson's behalf by his criminal defense counsel, describing Mr. Patson's serious medical needs and his Suboxone prescription. Compl. ¶ 89; Valenti Decl., Ex. 10. Defendants have simply ignored this letter, just as it ignored Mr. Patson's need for treatment during his prior incarceration. Compl. ¶ 93; *see generally* Valenti Decl., Ex. 7 (documenting denied requests for MOUD and provision minimal palliative care for brutal withdrawal symptoms). Again, public statements made by Defendant Bensley in August 2021 reveal Defendants' true view: "don't go to jail …. If you do, you'll be treated by the medical professionals we hire." Valenti Decl., Ex. 14.

Defendants are likely to cite security concerns as justifying their blanket denial of MOUD to those suffering from OUD. But Defendants cannot conceivably identify any legitimate security reason for *allowing* MOUD to certain people (currently those with "short-term" stays), while *disallowing* MOUD to all others without regard for their individual medical needs. Indeed, the numerous prisons and jails in Michigan currently—and successfully—providing MOUD treatment to *all* people who require such treatment show that providing MOUD in the jail setting is administrable and safe. Similarly, the contractor that Defendants rely upon for medical services has publicly indicated it is both willing and able to operate an MOUD program at the Jail, and does provide such services in other jails and prisons across the country. Valenti Decl., Exs. 6, 16. Moreover, carceral facilities across the country are now successfully providing MOUD to all incarcerated people in need thereof on a daily basis, including in facilities of similar size to the Jail in similarly small rural counties. Hayes Decl. ¶¶ 2–3; MacDonald Decl. ¶ 33. Defendants have no excuse for denying Mr. Patson the life-saving medication that it is immediately able to provide.

B. Mr. Patson Is Likely to Succeed on the Merits of His ADA Claim for Denial of MOUD.

Mr. Patson is also likely to succeed on his claim, in Count II of the Complaint, that denying him access to MOUD constitutes unlawful discrimination under the ADA. The ADA prohibits public entities, such as the Jail, from discriminating against qualified individuals with a disability on the basis of that disability. 42 U.S.C. §§ 12131(1)(B) (providing that a "public entity" is any "instrumentality" of the state and therefore subject to the ADA), 12132 ("[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."); *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998) ("State prisons fall squarely within the statutory definition of public entity which includes any department, agency, special purpose district, or other instrumentality of a State or States or local government.") (internal citations and quotations omitted). The ADA "applies to all State and local detention and correctional facilities, regardless of whether the detention or correctional facility is directly operated by the public entity or operated by a private entity through a contractual, licensing, or other arrangement." 28 C.F.R. Pt. 35, App. A; *see also* 28 C.F.R. § 35.130(b)(1) (public entity cannot deny aid on the basis of a disability). To succeed on an ADA claim, a plaintiff must show that: (1) they have a disability; (2) they are otherwise qualified; (3) they are being excluded from participation in, denied the benefits of, or subjected to discrimination under the program because of their disability. *See MX Group, Inc, v. City of Covington*, 293 F.3d 326, 336–37 (6th Cir. 2002); *Parker v. Michigan Dep't of Corr.*, No. 4:01CV11, 2001 WL 1736637, at *7 (W.D. Mich. Nov. 9, 2001) (citing 42 U.S.C. § 12132). Each element is satisfied here.

1. *Mr. Patson Is a Qualified Individual with a Disability.*

Individuals with OUD, including Mr. Patson, are "qualified individuals with disabilities" under the ADA. A "disability" includes "a physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1)(A). Such impairments include "drug addiction." 28 C.F.R. § 35.108(b)(2). Accordingly, courts uniformly agree that OUD is a "disability" under the ADA. *See MX Group,* 293 F.3d at 337 (holding that OUD patients receiving treatment are disabled); *Pesce*, 355 F. Supp. 3d at 45 (noting that it is "not disputed" that OUD is a disability); *P.G.*, 2021 WL 4059409 at *4 (finding plaintiff disabled because "he has been diagnosed with opioid use disorder and is participating in a supervised rehabilitation program"). Mr. Patson's disability is severe, and left untreated his OUD "substantially limits" major life activities, such as caring for oneself, learning, concentrating, thinking, communicating, and working—to say nothing of the fact that it is also life threatening. Clark Decl. ¶¶ 18–22; Compl. ¶ 86. Mr. Patson thus qualifies for ADA protection.

2. *Mr. Patson Will Be Denied the Benefit of Health-Care Programs and Discriminated Against Because of His Disability.*

Mr. Patson also satisfies the second and third elements for demonstrating an ADA violation. Medical care is a service within the meaning of the ADA. *See Yeskey*, 524 U.S. at 210. Here, in at least three ways, Mr. Patson is likely to show that Defendants' forced withdrawal policy denies him medical care by reason of his disability, and thus violates the ADA.

First, denying prisoners access to MOUD, when that denial is not based on individualized medical inquiry, is so unreasonable that it gives rise to an inference of unlawful disability discrimination. *See Pesce*, 355 F. Supp. 3d at 46; *Smith*, 376 F. Supp. 3d at 160. Under the ADA, a decision made with respect to a disability must be made on an individual's actual characteristics and not the disability itself, so as to reduce stereotypes and prejudice. *Holiday v. City of*

Chattanooga, 206 F.3d 637, 643 (6th Cir. 2000).[7] As the Sixth Circuit has made clear, "[t]he thesis of the ADA" requires that "people with disabilities . . . should not be judged nor discriminated against based on unfounded fear, prejudice, ignorance, or mythologies." *Id.* (quoting *Smith v. Chrysler Corp.*, 155 F.3d 799, 805 (6th Cir. 1998)). Other district courts have held that a county's blanket prohibition of methadone maintenance treatment gave rise to an inference of discrimination because such policies are not based on individualized medical or security considerations. *Pesce*, 355 F. Supp. 3d at 47; *Smith*, 922 F.3d at 42 (finding defendants' failure to make case-by-case assessment and implementation of a blanket prohibition gave rise to an inference of discrimination). The same is true here. Far from relying on "reasoned medical judgment," Defendants' forced withdrawal policy "[does] not give[] any consideration to [Mr. Patson's] specific medical needs nor indicate[] any likelihood to do so." *See Pesce*, 355 F. Supp. 3d at 46; *Smith*, 376 F. Supp. 3d at 159.

Second, Defendants' policy to halt buprenorphine maintenance treatment, as applied to Mr. Patson, is "exactly what the ADA forbids," as it discriminates against him specifically due to his OUD. *See MX Group, Inc. v. City of Covington*, 106 F. Supp. 2d 914, 920 (E.D.K.Y. 2000)*, aff'd, MX Group*, 293 F.3d 326 (holding that a city's blanket prohibition on methadone clinics violated the ADA). Here, Defendants are refusing to provide Mr. Patson MOUD because it is a treatment method for OUD—his disabling condition. In *MX Group*, the district court found that a city's "blanket prohibition of all methadone clinics" was based on stereotypes regarding people with OUD, including whether people with OUD pose a "safety concern." 106 F. Supp. 2d at 920 (E.D.K.Y. 2000) (internal citations and quotations omitted). Thus, the court found, and the Sixth

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[7] Cases interpreting the Rehabilitation Act and the ADA are interchangeable. *MX Group Inc. v. City of Covington*, 293 F.3d 326, 332 (6th Cir. 2002).

Circuit affirmed, the city's policy to be "discriminatory on its face and thus violative of the ADA and void." *Id.* Denial of benefits or services on the basis of such stereotypes goes to the crux of what the ADA intends to prohibit. *See id*.

Here, if Mr. Patson had asthma, hypertension, or another chronic health condition requiring long-term medication, Defendants would provide it. And, in fact, they *did* treat other disabilities from which he suffered—his June 9, 2021 Medication Verification Form confirms that Mr. Patson received anxiety, depression, and hypertension medications for the duration of his stay at the Jail. Valenti Decl., Ex. 7 at 9–10. The Form shows only one medication Defendants refused to provide Mr. Patson: Suboxone, the medically-necessary treatment his physician prescribed to treat his OUD. *Id.* This disparity underscores the stigma motivating Defendants' forced withdrawal policy. "Medical decisions that rest on stereotypes about the disabled rather than 'an individualized inquiry into the patient's condition' may be considered discriminatory." *Pesce*, 355 F. Supp. 3d at 46 (internal citations and quotations omitted); *see Smith,* 376 F. Supp. 3d at 159 (discussing how outmoded stereotypes or false assumptions regarding OUD motivate denials of MOUD); *see also* Hayes Decl. ¶ 23.

Third, Defendants' policy discriminates against Mr. Patson because it fails to reasonably accommodate his disability. The ADA requires public entities to make reasonable accommodations to avoid discrimination against a qualified individual with a disability, unless the public entity can show that making the accommodation would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7)(1); *Waskul v. Washtenaw Cty. Cmty. Mental Health*, 979 F.3d 426, 463 (6th Cir. 2020). Here, Mr. Patson has requested a reasonable accommodation for his OUD—continuing his Suboxone maintenance treatment—that will not fundamentally change Defendants' health services. This is especially so given that Jail staff briefly

did provide Mr. Patson with his Suboxone, and the Jail currently provides MOUD to people with OUD who are in the facility for a short period of time. Hayes Decl. ¶ 11; Compl. ¶ 77; Clark Decl. ¶ 12.

For all of these reasons, Mr. Patson is "likely to succeed on the merits of his ADA claim against Defendants." *Pesce*, 355 F. Supp. 3d at 47; *Smith*, 376 F. Supp. 3d at 159 (finding "[d]efendants' conduct is consistent with the broader stigma against MAT . . . . Accordingly . . . Plaintiff is likely to succeed on her ADA claim under a disparate treatment theory"); *P.G.*, 2021 WL 4059409, at *5 ("Under these circumstances, a refusal to guarantee access to methadone treatment likely violates the ADA").

II. MR. PATSON FACES IMMEDIATE IRREPARABLE INJURY.

Mr. Patson will suffer irreparable harm should Defendants again deny him access to Suboxone treatment. Irreparable harm in the preliminary injunction context means a harm that cannot be fully compensated by money damages. *Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992). Both delay and denial of medical care constitute irreparable harm. *See Wilson v. Gordon*, 822 F.3d 934, 958 (6th Cir. 2016) ("Courts routinely uphold preliminary injunctions where the alleged irreparable harm involves delay in or inability to obtain medical services"); *Phillips v. Michigan Dep't of Corr.*, 731 F. Supp. 792, 800 (W.D. Mich. 1990) (finding state's denial of medical care "[wrought] havoc on plaintiff's physical and emotional state," constituting irreparable harm).

Absent injunctive relief, Defendants' forced withdrawal policy inflicts multiple irreparable harms upon Mr. Patson: First, he will be subjected (again) to the excruciatingly painful forced-withdrawal process, and its concomitant impact on his co-occurring mental health disorders; and second, both in the Jail and upon release, he faces a heightened risk of relapse, overdose, and death.

MacDonald Decl. ¶¶ 10, 14. As discussed, pgs. 6, 8–9, *supra*, the physical symptoms of withdrawal are agonizing, and last for weeks on end. MacDonald Decl. ¶¶ 11, 17. Indeed, Mr. Patson continues to suffer ongoing mental health consequences of the prior forced withdrawal inflicted upon him by Defendants. Compl. ¶ 86. The only treatment Defendants provide for these symptoms are sports drink and Tylenol. Valenti Decl., Ex. 7 at 6–8. Courts have found that suffering the physical pain of forced withdrawal constitutes irreparable harm. *P.G.*, 2021 WL 4059409, at *4 (finding irreparable harm where methadone withdrawal was "excruciatingly painful"); *Smith*, 376 F. Supp. 3d at 161–62 (finding irreparable harm where plaintiff suffered from buprenorphine withdrawal); *Phillips*, 731 F. Supp. at 800; *accord. Ingraham v. Wright*, 430 U.S. 651, 695 (1977) ("The infliction of physical pain is final and irreparable; it cannot be undone in a subsequent proceeding").

Forced withdrawal is also irreparable harm insomuch as it exposes Mr. Patson to an increased risk of relapse, overdose, and death both in the Jail and upon release. *See* MacDonald Decl. ¶¶ 17; Rosenthal Decl. ¶¶ 49; *see also Pesce*, 355 F. Supp. 3d, at 48 (finding reasonable likelihood of irreparable harm where there was a "high risk of overdose and death upon [] release if not treated during [] incarceration."); *Smith*, 376 F. Supp. 3d at 162 (same); *PG.*, 2021 WL 4059409, at *4 (internal citations and quotations omitted) ("The uncontested evidence established that withdrawal from methadone will . . . place plaintiff at a significantly heightened risk of relapse and death. In short this amounts to a "strong showing" of irreparable harm.").

III. THE BALANCE OF THE HARDSHIPS FAVORS MR. PATSON.

When seeking a preliminary injunction "on the basis of a potential constitutional violation, the likelihood of success on the merits often will be the determinative factor." *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012). As shown above, Mr. Patson is likely to succeed on

the merits of both his Eighth Amendment and ADA claims. Moreover, Mr. Patson would greatly benefit from continuing medical treatment while Defendants would be far less burdened. *See Jones v. Caruso*, 560 F.3d 258, 277 (6th Cir. 2009) (granting preliminary injunction where irreparable harm "decidedly outweighs any potential harm to the defendant" (internal quotations omitted)); *Smith*, 376 F. Supp. 3d at 162 (finding balance of hardships favored plaintiff where plaintiff would personally benefit from continued treatment and prison administrators had minimal burden); *Phillips*, 731 F. Supp. at 797 (granting injunction where plaintiff had a definite need for treatment, even where the Michigan Department of Corrections would "bear the financial burden").

Mr. Patson has a clear medical need for continuing MOUD and the Jail *already* has the infrastructure in place to provide it. *See Smith*, 376 F. Supp. 3d at 162 (finding injunction requiring prison to provide MOUD imposed a "limited burden" where prison could administer in ways "that would avoid any risk of diversion" and former prisoner had received MOUD with "no apparent security impact"); *P.G.*, 2021 WL 4059409, at *5 (balance of hardships weighed in favor of plaintiff where plaintiff personally benefitted from treatment and defendants had already provided similar treatment to a different prison population). The Jail provides MOUD, including Suboxone, to individuals with only "short-term stays" in the Jail. Hayes Decl. ¶ 11; Compl. ¶¶ 77–78; Clark Decl. ¶ 12. And, as noted above, Defendants' medical contractor can and will operate an MOUD program in the Jail if instructed to do so by Defendants. Valenti Decl., Exs. 6, 16. There is no reason a jail able to safely deliver MOUD to those populations could not also, with limited, if any, additional burden, provide MOUD to *all* people with OUD. Hayes Decl. ¶ 11.

IV. THE PUBLIC INTEREST STRONGLY FAVORS INJUNCTIVE RELIEF.

The public interest strongly favors injunctive relief. "It is always in the public interest to prevent the violation of a party's constitutional rights," *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994), and to enforce the ADA, *see S.B. v. Lee*, No. 3:21-CV-00317-JRG-DCP, 2021 WL 4755619, *28 (E.D. Tenn. 2021). In this case in particular, with access to Suboxone Mr. Patson can continue his recovery. *See, e.g.*, *Pesce*, 355 F. Supp. 3d at 49 ("[T]he public interest is better served by ensuring [Plaintiff] receives the medically necessary treatment that will ensure he remains in active recovery"); *Smith*, 376 F. Supp. 3d at 162 (same); *Phillips*, 731 F. Supp. at 801 (granting an injunction because the public interest "will be served by safeguarding Eighth Amendment rights in the prisons in Michigan" and ensuring that prisons are "humane"). That recovery benefits not only Mr. Patson, but the public at large. As *Pesce* recognized, the provision of MOUD to incarcerated people involves "constitutional issues of *broad concern* to the treatment of drug addiction in correctional facilities." Valenti Decl., Ex. 17 at 5 (emphasis added).

Millions of Americans are addicted to opioids, and OUD is a public health crisis of national proportions. Rosenthal Decl. ¶¶ 18, 20; MacDonald Decl. ¶ 5. MOUD is essential to combatting this crisis as it has been shown to decrease opioid use, opioid-related deaths, criminal activity, and even infectious disease transmission. Rosenthal Decl. ¶ 27. MOUD importantly increases "patients' social functioning and retention in treatment." *Id*. Without MOUD, detoxification from opioids can be "perilous" and the risk of relapse is incredible high. *Id.* ¶ 28. Particularly in the carceral setting, studies have shown that when people have access to MOUD in jail they are more likely to continue treatment when they return to the community. *Id*. ¶ 39. This has been shown to

benefit the communities surrounding jails that provide MOUD, not just the individual benefitting from the medical treatment. MacDonald Decl. ¶¶ 22, 24; Hayes Decl. ¶ 13.

Defendants' forced withdrawal policy, as applied to people receiving MOUD maintenance treatment when remanded to the Defendants' custody, provides one more barrier to effective treatment for those suffering from OUD. It intensifies rather than ameliorates the ongoing opioid crisis by disrupting effective treatment and making relapse and potential overdose more likely.

CONCLUSION

For the foregoing reasons, this Court should issue a Temporary Restraining Order and Preliminary Injunction requiring Defendants to provide MOUD treatment to Mr. Patson upon his admission to the Jail on or about November 12, 2021, and throughout his incarceration.

Dated: October 28, 2021

Respectfully submitted,

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LOCAL CIVIL RULE 7.2(b)(ii) CERTIFICATE OF COMPLIANCE AND CERTIFICATE OF SERVICE

The undersigned counsel certifies pursuant to Local Civil Rule 7.2(b)(ii) that Plaintiff's Brief in Support of Emergency Motion for Temporary Restraining Order and Preliminary Injunction contains 8,584 words, excluding the parts of the document that are exempted by Local Civil Rule 7.2(b)(i). This word count was generated using Microsoft Word version 2102.

The undersigned further certifies that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to the non-registered participants this 28th day of October, 2021.

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